Copyright Contract Act

(Bill no. 33 308)

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[New Copyright Contract Law in The Netherlands]

[Adopted by the Dutch House of Representatives on 12 February 2015]

[It is expected that the Dutch Senate will adopt the bill in the spring of 2015 and that the changes to copyright contract law will enter into force on 1 July 2015].

ARTICLE I

The Copyright Act will be amended as follows:

A

Article 2 will read:

Article 2 [assignment & exclusive licensing]

1. Copyright passes by succession and is transmissible by assignment in whole or in part.

2. The maker, or his successor in title, may grant a licence to a third party for the whole or part of the copyright.

3. Whole or partial assignment, as well as the grant of an exclusive licence, may only be effected by means of a deed executed for that purpose. The assignment or the grant of an exclusive licence shall comprise only the rights that are stated in the deed or that necessarily derive from the nature and purpose of the title or the grant of the licence.

4. The copyright that vests in the maker of a work and, after his death, the copyright in any of his unpublished works transmitted to his heir or legatee of the maker, is not subject to seizure.

5. The third paragraph, second sentence, and the fourth paragraph do not apply to a maker as meant in Articles 7 and 8.¹

¹ Article 7: ‘Where labour which is carried out in the service of another consists in the making of certain literary, scientific or artistic works, the person in whose service the works were created is taken to be the maker, unless the parties have agreed otherwise’. (Translation M.M.M. van Eechoud)

Article 8 ‘A public institution, an association, a foundation or a company that makes a work public as its own, without naming any natural person as the maker, is taken to be the maker of that work, unless it is proved that in the circumstances the making public of the work was unlawful’. (Translation M.M.M. van Eechoud)
After Article 25a, a chapter will be added that reads:

CHAPTER IA THE EXPLOITATION AGREEMENT

Article 25b  [applicability]

1. This chapter applies to a contract, the main purpose of which is to grant to another party the right to exploit the maker’s copyright, unless Article 3.28 of the Benelux Convention on Intellectual Property applies.\(^2\)

2. Article 25f applies to a contract by which the maker assigns the copyright in whole or in part, or by which the maker grants an exclusive licence.

3. This chapter does not apply to the maker as meant in Articles 7 and 8.\(^3\)

4. This chapter applies equally to the natural person who has acquired the copyright as the maker’s heir or legatee.

Article 25c  [fair compensation]

1. The maker is entitled to contractually stipulated fair compensation for granting a right of exploitation.

2. Our Minister of Education, Culture and Science may, having consulted an advisory body appointed by Order in Council and after consulting with Our Minister of Security and Justice, determine the amount of fair compensation for a specific sector and for a certain period of time. The fair compensation shall be determined with due regard to the importance of preserving cultural diversity, the accessibility of culture, a social policy objective and the interests of the consumer.

\(^2\) Article 3.28 BCIP [Cumulation] ‘1. Authorization given by the designer of a work protected by copyright to a third party to file a design in which that work is incorporated shall imply the assignment of the copyright attached to that work insofar as it is incorporated in the design. 2. The party filing a design shall be presumed also to be the owner of the copyright relating thereto; this presumption shall not, however, apply in respect of the true designer or his beneficiary. 3. The assignment of the copyright relating to a design shall result in the assignment of the right in the design and vice versa, without prejudice to the application of Article 3.25. (Translation Benelux Office for Intellectual Property (BOIP)).

\(^3\) See footnote 1.
3. Our Minister of Education, Culture and Science shall only determine the fair compensation, as meant in the second paragraph, at the joint request of an association of makers existing in the relevant sector and a commercial user or an association of commercial users. This request shall contain jointly agreed advice regarding fair compensation and a clear definition of the sector to which the request relates.

4. An association as meant in the third paragraph is representative and independent. The association’s bylaws show that its objects include advising Our Minister of Education, Culture and Science as meant in the third paragraph.

5. By or pursuant to an Order in Council, further rules may be set in connection with the submission of the request by associations of makers and commercial users and the determination of fair compensation by the Minister of Education, Culture and Science.

6. If the maker has granted exploitation rights for exploitation in a manner that is not yet known on conclusion of the contract and the other party commences exploitation, the latter will owe the maker additional fair compensation for this. If the party with whom the maker concludes the contract has assigned this exploitation to a third party and that third party commences exploitation, then the maker may claim the additional fair compensation from that third party.

**Article 25d  ['bestseller clause']**

1. The maker may claim additional fair compensation in court from the other party to the contract if, having regard to the performances delivered by both parties, the agreed compensation is seriously disproportionate to the proceeds from the exploitation of the work.

2. If the serious disproportion between the maker’s compensation and the proceeds from the work’s exploitation arises after the other party to the contract with the maker assigns the copyright to a third party, the maker may bring the claim as meant in the first paragraph against that third party.

**Article 25e  [non-use]**

1. The maker may dissolve the contract wholly or in part if the other party to the contract does not sufficiently exploit the copyright to the work within a reasonable period after having concluded the contract, or does not sufficiently exploit the copyright after having initially performed acts of exploitation. The preceding sentence shall not apply if the failure to sufficiently exploit the copyright within this period is attributable to the maker, or if the interest of the other party to the contract in maintaining the contract is so compelling that, according to standards of reasonableness and fairness, it outweighs the maker’s interest in that regard.
2. If the copyright vests in several makers and the maker’s contribution is not distinct from the contribution of the others, then the maker may only dissolve the contract with the consent of the other makers. If a maker withholds his consent and the other makers are disproportionately injured as a result, the contract may only be dissolved by a court of law.

3. To the extent that exploitation by the other party to the contract is not permanently impossible, the right to dissolve the contract shall only arise after the maker has granted the other party, in writing, a reasonable period to sufficiently exploit the work and no exploitation is made within this period.

4. At the maker’s request, the other party to the contract shall provide him with a written statement about the extent of the exploitation within the time limit meant in the third paragraph.

5. In accordance with Article 6:267 Civil Code, the contract shall be dissolved by a written statement by the maker to the other party to the contract. On application by the maker, the contract may also be dissolved by a judicial decision.

6. If the other party to the contract has assigned the copyright to a third party, then the maker may also exercise the rights arising from the dissolution against that third party after having notified him, in writing, of the dissolution as soon as possible.

7. If the other party to the contract or the third party does not transfer the copyright back within a reasonable stipulated period, then a court may, on application of the maker, determine a reasonable amount in the circumstances which the other party to the contract or the third party must pay the maker, in addition to the damages owed to the maker.

**Article 25f [unfair clauses]**

1. A clause stipulating rights to the exploitation of future works of the maker for an unreasonably long or insufficiently determinate period shall be voidable.

2. A clause that, having regard to the nature and content of the contract, the way in which the contract was concluded, the reciprocal, cognisable interests of the parties or the other circumstances of the case, is unreasonably onerous for the maker, shall be voidable.

3. If the other party to the contract has stipulated that the contract may be terminated early, the maker shall also have this right on the same conditions.
**Article 25fa** [open access]

The maker of a short scientific work, the research for which has been paid for in whole or in part by Dutch public funds, shall be entitled to make that work available to the public for no consideration following a reasonable period of time after the work was first published, provided that clear reference is made to the source of the first publication of the work.

**Article 25g** [dispute resolution committee]

1. Our Minister of Security and Justice may appoint a dispute resolution committee for the resolution of disputes between a maker and the other party to the contract or a third party for the purposes of Articles 25c, paragraphs 1 and 6, 25d, 25e or 25f.

2. If a court has not been seised of the dispute within three months of a copy of the dispute resolution committee’s decision having been sent to the parties, then the parties shall be deemed to have agreed on the findings set out in this decision once this term has ended.

3. Proceedings in respect of a dispute may also be brought on behalf of makers by a foundation or an association with full legal capacity to the extent that, pursuant to its bylaws, it represents the interests of makers.

4. By or pursuant to an Order in Council, further rules may be set concerning the financing, composition, structure, procedures, funding, working method and supervision of the dispute resolution committee.

**Article 25h** [Unwaivable, applicable law]

1. The maker may not waive the provisions of this chapter.

2. Regardless of the law that governs the contract, the provisions of this chapter shall apply if:

   a. the contract would have been governed by Dutch law when no applicable law had been chosen, or;

   b. the acts of exploitation take place or should take place wholly or predominantly in the Netherlands.
C

Article 45d will read:

**Article 45d [Film works]**

1. Unless the makers and the producer of a film work have agreed otherwise in writing, the makers are deemed to have assigned to the producer, as from the time meant in Article 45c, the right to rent out the film work and to make it public in any other way, to reproduce it within the meaning of Article 14, to subtitle it and to dub the dialogue. The above shall not apply to whoever created the music for the film work and to whoever wrote the lyrics to the music. Irrespective of the manner of assignment, the producer owes the makers fair compensation for the assignment of rights and the exploitation of the film work. The right to fair compensation cannot be waived.

2. Without prejudice to the provisions of Article 26a, anyone who broadcasts the film work, or who has it broadcast, or who communicates it to the public in any other manner, whether by wired or wireless connection, with the exception of making the film work available in such a manner that the film work is accessible to the members of the public in a place individually chosen by them, owes the principal director and the screenplay writer of the film work who has assigned these rights to the producer, proportional fair compensation. The right to fair compensation cannot be waived.

3. The right to the compensation meant in the second paragraph is exercised by representative legal persons which, according to their bylaws, aim to represent the interests of principal directors or screenplay writers through the exercise of that right. Article 26a, paragraphs 2 and 3, apply equally.

4. The party who owes the compensation meant in the second paragraph is obliged to provide the legal person meant in the third paragraph with access to the documents or other data carriers required to establish the liability for and the level of the compensation and its distribution.

5. By or pursuant to an Order in Council, further rules may be set concerning the exercise of the right meant in the second paragraph.

6. The right to proportional fair compensation meant in the second paragraph does not apply to a film work if exploitation of it as such is not the main purpose.

7. Article 25d and Article 25e apply equally. Article 25c, paragraphs 2 to 6, and Article 25g apply equally to the fair compensation meant in the first paragraph.
ARTICLE II [Applicability to neighbouring rights]

The Neighbouring Rights Act will be amended as follows:

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After Article 2a an article will be inserted that reads:

Aa

Article 4 will be amended as follows:

1. Figure 1. will be inserted before the text.

2. A paragraph will be added that reads:

2. Article 45d, paragraphs 2 to 6, of the Copyright Act applies equally to a performer, as meant in the first paragraph, who plays a leading role in the film work.

Article 2b

Chapter 1a of the Copyright Act applies equally to the performer.

B

Article 9 will read:

Article 9

1. The rights granted by this Act pass by succession. These rights are transmissible by assignment in whole or in part. As regards the performing of acts as meant in Articles 2, 6, 7a and 8, a licence may be granted for the whole or part of the exclusive right.

2. Whole or partial assignment, as well as the grant of an exclusive licence, may only be effected by means of a deed executed for that purpose.

3. The assignment or the grant of an exclusive licence by the performer or the natural person who, as an heir or legatee, has acquired the exclusive right meant in Article 2 shall comprise only the rights that are stated in this deed or that necessarily derive from the nature or the purpose of the title.
ARTICLE III  [Application in time]

1. The law that applied before the date of entry into force of this Act will remain in force for agreements concluded before that date, on the understanding that Article 25e, paragraphs 1 to 5 and 7, Article 25f and Article 25fa of the Copyright Act apply to agreements concluded before the date of entry into force. Article 45d, paragraph 7, of the Copyright Act and Article 2b of the Related Rights Act will also apply to the extent that Article 25e, paragraphs 1 to 5 and 7, and Article 25f of the Copyright Act have been declared equally applicable in those articles.

2. In derogation from the provisions of the first paragraph, the law that applied before the date of entry into force of this Act will remain in force for film works completed before that date, on the understanding that Article 25e, paragraphs 1 to 5 and 7 and Article 25f of the Copyright Act apply to film works completed before the date of entry into force. Article 45d, paragraph 7, of the Copyright Act and Article 2b of the Related Rights Act will also apply to the extent that Article 25e, paragraphs 1 to 5 and 7, and Article 25f of the Copyright Act have been declared equally applicable in those articles.

3. In derogation from the provisions of the first and second paragraphs, the right to proportional fair compensation as meant in Article 45d, paragraphs 2 and 3, of the Copyright Act applies from the date of entry into force to the broadcasting and any other manner of communication of a film work to the public as meant in Article 45d, paragraph 2.

ARTICLE IV

The articles of this Act will enter into force on a date to be determined by Royal Decree, which may vary for the different articles or parts thereof.

ARTICLE V

This Act may be cited as the Copyright Contract Act (Wet auteurscontractenrecht).