

COPYRIGHT ORDINANCE 1913

Ordinance of 17 December 1912 (National Gazette 1913 no. 3) effective as of 1 February 1913;
Amended by:

- 1) National Ordinance of 7 May 1975 (National Gazette 1975 no. 70) enforceability established by National Decree of 7 October 1975, no. 9, (National Gazette 1975 no. 192) as of 1 December 1975.

CHAPTER I

General provisions

§1. Nature of the copyright

Article 1. The copyright is the exclusive right of the maker of a work of literature, science or art, or of his legal representatives to publish it and to multiply it, barring the limitations imposed by law.

Article 2. 1. The copyright is considered an object of movable property.

2. It passes into other hands by hereditary succession and is subject to complete or partial transfer. Complete or partial transfer cannot occur in any other way than by means of an authentic or an underhand instrument. It comprises only the authorities, the transfer of which is mentioned in the instrument or is necessarily a consequence of the nature and purport of the agreement entered upon.

3. The copyright, which is the property of the maker of the work, and also after the demise of the maker, the copyright on unpublished works which is the property of the person who obtained it as inheritor or legatee, is not liable to seizure.

§2. The maker of the work

Article 3. *Expired by National Ordinance of 7 May 1975 (National Gazette 1975 no. 70).*

Article 4. 1. Without prejudice to proof to the contrary, the maker is considered to be he who is mentioned as such on or in the work or in the absence of such an indication, he who, on publication of the work is presented as its maker by the person who publishes it.

2. In case during the delivery of an oral presentation not published in print or the performance of a musical work not published in print, no mention is made concerning the maker, without prejudice to proof to the contrary, then the maker is considered to be he who delivers the presentation or performs the musical work.

Article 5. 1. Of a work of literature, science or art, which consists of separate works of two or more persons, without prejudice to the copyright on each separate work, the maker is considered to be he under whose guidance and supervision the whole work was brought about, or in the absence of whom, the person who has collected the various works.

2. As a violation of the copyright of the complete work is considered the multiplication or publication of any separate work included therein, upon which there is a copyright, by another person than the maker of same or his legal representative.

3. In case such a separate work has not previously been published, then, unless agreed upon otherwise by parties, it is considered a violation of the copyright on the whole work, the multiplication or publication of that separate work by its maker or his legal representatives, in case in doing so no mention is made of the work of which it forms part.

Article 6. In case work has been brought about according to the design of another person and under his guidance and supervision the latter is considered to be the maker of the work.

Article 7. In case the labour, performed in the service of another person, consists of the making of certain works of literature, science or art, then, unless agreed upon otherwise by parties, the maker of those works is considered to be the person in whose service the works have been made.

Article 8. In case a public institution, a society, foundation or partnership publishes a work as originating from it, without mentioning in doing so any natural person as the maker, it is considered to be the maker of that work, unless it is proven that the publication under the abovementioned circumstances was unlawful.

Article 9. In case on or in any work which appeared in print the maker is mentioned or is not mentioned by his real name, the copyright can be exercised towards third parties for the benefit of the person entitled by the person who on or in that work has been indicated as the publisher of same or in the absence of such an indication, by the person who on or in the work is mentioned as the printer.

§3. The works on which copyright exists

Article 10. By works of literature, science of art this ordinance understands:

- 1°. books, brochures, newspapers, magazines and all other pieces of writing;
- 2°. drama and musical drama;
- 3°. oral presentations;
- 4°. choreographic works and pantomimes, the manner of performance of which has been established in writing or otherwise;
- 5°. musical works with or without words;
- 6°. works of drawing, painting, building and sculpting, lithography, engraving and other illustrated work;
- 7°. geographical maps;
- 8°. designs, sketches and plastic arts, with regard to architecture, geography, topography or other sciences;
- 9°. photographic and cinematographic works and works produced according to similar procedures;
- 10°. works of art applied to industry;

and in general every product in the field of literature, science or art, in whatever manner or form it might be multiplied.

2. Translations, adaptations, musical arrangements and other multiplications in altered form of a work of literature, science or art, and also collections of several works, without prejudice to the copyright on the original work, are considered to be independent works.

Article 11. There is no copyright on laws, decrees and ordinances, issued by the public authorities, nor on judicial sentences and administrative decisions.

2. Nor does copyright exist on that which has furthermore been made public by or on behalf of the public authorities, unless that right has been reserved, either in general by law, decree or

ordinance, or in a given case as appears from an announcement on the work itself or on publication of same.

§4. Publication

Article 12. 1. By publication of a work of literature, science or art is also understood:

1^o. the publication of a multiplication of the whole work or part of the work;

2^o. the distribution of the whole work or of part of the work or of a multiplication of same, as long as it has not appeared in print;

3^o. the recitation, performance or presentation in public of the whole work or part of the work or of a multiplication of same.

2. By a recitation, performance or presentation in public is also understood one given in private, which is accessible upon payment, also if this payment is made by payment of a contribution or in some other manner. The same applies for an exhibition in public.

§5. Multiplication

Article 13. By the multiplication of a work of literature, science or art is also understood the translation, the musical arrangement or stage adaptation and in general every complete or partial adaptation or imitation in altered form, which must not be considered a new, original work.

Article 14. By the multiplication of a work, which can be perceived by means of hearing, is also understood the manufacturing of rolls, gramophone records and other articles, meant to render the complete work or part of the work by mechanical means.

§6. Restrictions of the copyright

Article 15. As a violation of the copyright on a newspaper or magazine is not considered the copying of articles, news items or other parts published therein, by another newspaper or magazine, provided that the newspaper or magazine, from which they were copied, be mentioned clearly.

2. However, novels and short stories, which have appeared in newspapers or magazines, may not be copied without permission of the maker or of his legal representatives.

3. A similar permission is required with regard to other newspaper or magazine articles, in case the maker or the editors have had an explicit statement included in the same issue of the newspaper or magazine, in which the article has appeared, whereby copying is prohibited.

4. The prohibition, as referred to in the abovementioned section, cannot be applied with respect to articles concerning political issues, news items or mixed messages.

5. The provisions are also applicable with respect to copying into another language than the one of the original article.

Article 16. 1. As a violation of the copyright on a published work of literature, science or art is not considered the copying of some brief parts of same or of some brief compositions or poems in anthologies and other works intended for education or some other scientific purpose, and also in announcements and reviews in newspapers and magazines, provided that in the copied part, composition or poem, or in the announcement or review, the work is mentioned from which it has been copied, and the maker, insofar as the latter has been indicated on or in the

work, is mentioned. This provision is also applicable concerning the copying into another language than the one of the original.

2. Where it concerns a work as referred to in article 10, 6^o., the complete work can be multiplied, under the same circumstances and conditions, provided that multiplication by its size or by the procedure according to which it has been produced, shows a clear difference with the original work; when two or more of these works have been published together, the multiplication of only one of them is permissible.

3. Of an oral presentation held in public, which has not yet been published in print. The essential contents can be mentioned in an account in a newspaper or magazine, provided the person who held the presentation is mentioned in doing so.

Article 17. 1. As a violation of the copyright on a work of literature, science or art is not considered the multiplication, which remains limited to a few copies and exclusively serves as private practice, study or use and where applicable, a work as referred to in article 10, 6^o., by its size or by the procedure according to which it has been produced, shows a clear difference with the original work.

2. This provision is not applicable with respect to the copying of buildings. Article 18. As a violation of the copyright on a work as referred to in article 10, 6^o., which has been positioned permanently visible on or along the public road, is not considered to be the multiplication, which by its size or by the procedure by which it has been produced, shows a clear difference with the original work, and limits itself, as to construction, to the external part of same.

Article 19. 1. As a violation of the copyright on a portrait is not, considered the multiplication of same by or for the benefit of the person whose portrait has been painted. Or after his demise, his next of kin.

2. Should one and the same portrait contain the picture of two or more persons, that multiplication is only free to each of them concerning other portraits than his own, with the permission of those other persons, or during ten years after their demise, of their next of kin.

3. Under next of kin are understood the parents, the spouse and the children.

4. With regard to a photographic portrait is also not considered a violation of the copyright the publication of same in a newspaper or magazine by or with the permission of one of the persons mentioned in the first section, provided the name of the maker, insofar as this is indicated on or with the portrait, is mentioned in doing so.

5. This article is only applicable with regard to portraits, which have been made in compliance with a commission by or on behalf of the persons of whom the portrait has been made, or that was given to the maker for their benefit.

Article 20. 1. Unless agreed upon otherwise, the person who is entitled to the copyright on a portrait, is not authorized to publish it without the permission of the person of whom the portrait was made or, during ten years after his demise, of his next of kin.

2. In case the same picture contains the portrait of two or more persons, then with regard to the whole picture, the permission is required of all the persons of whom the portrait has been made, or during ten years after their demise, of their next of kin.

3. The third and last sections of the previous article are applicable.

Article 21. Should a portrait have been made without the pertaining commission, given to the maker by or on behalf of the person portrayed, or for his benefit, then publication of same by the person who is entitled to the copyright on same is not authorized, insofar as a reasonable interest of the person portrayed or, after his demise, of one of his blood relations or in-laws in the second

degree, both in the direct line and in the collateral line, or of his spouse is opposed to the publication.

Article 22. In the interest of public safety and also in order to trace punishable acts, pictures of whatever nature may be multiplied by or on behalf of the Justice Department and publicly exhibited and distributed.

Article 23. Unless agreed upon otherwise, the owner of a work of drawing, painting, building or sculpture, or of a work of art applied to industry, is authorized to exhibit that work publicly or multiply it in a catalogue, with a view to selling it, without the permission of the person entitled to the copyright on same.

Article 24. Unless agreed upon otherwise, the maker of any work of painting remains authorized to produce similar works of painting, notwithstanding the transfer of his copyright.

Article 25. 1. No modification may be made to any work as referred to in article 10.1° through 9°, with the exception of buildings, without the permission of the person entitled to the copyright on same. In case the maker has transferred the copyright, then during his life his permission is also nonetheless required.

2. The same applies with regard to the title of the work and to the indication of the maker insofar as they appear on or in the work. Should however, a work not have been published under the real name of the maker, then after the demise of the maker, the person entitled to the copyright is authorized to mention the real name of the maker on or in the work, in case the latter has authorized him to do so.

3. The provision of the first section does not apply with respect to changes of such a nature, that the maker or his legal representatives should not be allowed to refuse their permission thereto in good faith. Also the maker, even though he should have transferred his copyright, retains the authority to make such modifications to the work as he is permitted in good faith according to the rules of social intercourse.

Chapter II

Maintaining the copyright and the provisions of Criminal Law

Article 26. 1. In case two or more persons are entitled to a joint copyright on one and the same work, exercising and maintaining that right shall occur by all rightful claimants together, either for their benefit by the person appointed therefore by the rightful claimants by mutual consent, or in absence of agreement, at the request of the most directly interested party, by the Judge of First Instance of his place of residence.

2. If in this way two or more Judges of First Instance have made designations, then only the first one made has legal consequences.

3. No higher provision is available against the designation by the Judge of First Instance.

4. By mutual consent the rightful claimants are authorized to set aside the person designated by the Judge of First Instance or to replace him by someone else.

Article 27. Notwithstanding the complete or partial transfer of his copyright, the maker retains his authority to put in a legal claim to obtain a claim for damages against a person, who has violated the copyright.

Article 28. 1. The copyright gives the authority to seize objects, published in violation of that right, and also unauthorized multiplications, in the manner and with due observance of the provisions prescribed for the revindictory attachment of movables, and either to claim same as

his property, or to demand destruction or rendering useless of same. The same authority to seize and to claim exists with respect to the amount of the entrance fees, paid for attending a recitation, a performance or an exhibition or presentation, by which the copyright is violated.

2. In case delivery is demanded of the matters as referred to in the first section, the judge may order the delivery to be made only against payment of a certain compensation to be paid by claimant.

3. The two abovementioned sections of this article are exclusively applicable with respect to movables and to the matters, which by their destination are considered to be immovables.

4. With regard to other immovables, than those referred to in the previous section, by which the copyright is violated, the judge, on petition of the entitled party, can order the defendant to make such changes to same, that the violation of the copyright is lifted, while sentencing the defendant to the payment of a certain sum of money as compensation in case within a certain time the judge's order has not been complied with.

5. All this without prejudice to criminal prosecution due to violation of the copyright and the civil procedure to obtain a compensation.

Article 29. 1. The right as mentioned in the first section of the previous article cannot be exercised with respect to objects, in the keeping of persons who do not deal in similar objects and who obtained those objects exclusively for their own use, unless they themselves violated the relevant copyright.

2. The claim as referred to in the fourth section of the previous article, can only be brought against the owner or possessor of the unmovable object, who is guilty of violating the relevant copyright.

Article 30. In case a person, without being authorized thereto, publishes a portrait, then the same provisions apply with respect to the right of the person portrayed as has been stipulated in articles 28 and 29 with relation to the copyright.

Article 31. He who intentionally violates the copyright of someone else, is punished with a fine of one hundred to five thousand guilders.¹

Article 32. He who distributes or publicly offers for sale a work of which he knows, that a violation is made of the copyright of someone else, is punished with a fine of fifty to two thousand guilders.

Article 33. The crimes described in the two previous articles, are only prosecuted after a complaint lodged by the maker of the work, or of the person who is authorized to act in maintenance of the copyright, or, in case two or more persons are authorized, one of them.

Article 34. 1. He who intentionally, in any work of literature, science or art upon which there is a copyright, unlawfully makes any alterations in the name of same or in the indication of the maker, is punished with a fine of one hundred to five thousand guilders.

2. In case the work belongs to the sentenced person, it can be confiscated.

3. The crime is only prosecuted after a complaint lodged by the maker of the work, or by the person, who is entitled to the copyright on same.²

Article 35. He who, without the pertaining authorization, publicly exhibits a portrait or in some other manner publishes it, is punished with a fine of four to two hundred guilders.³

¹ The punishable actions mentioned in articles 31 and 32 are superfluously labeled as crimes in article 6 sub 6° jo. article 7 of the *öCommencement Ordinance of the Criminal Code* (National Gazette 1918 no. 6).

² This punishable act is moreover labeled as a crime in article 6 sub 8° jo. article 7 of the *öCommencement Ordinance Criminal Code* (National Gazette 1928 no. 6).

Article 36. 1. The multiplications confiscated by the criminal judge are destroyed; however the judge can determine in the judgment that they shall be handed over to the person entitled to the copyright, in case the latter reports to the court registry to this end within a month after the sentence has become *res judicata*.

2. By the delivery the ownership of the multiplications passes into the hands of the rightful claimant. The judge may order, that the delivery shall only occur against a certain compensation to be paid by the rightful claimant, which shall accrue to the State.

Article 37. 1. With an imprisonment of eight days to two years or a fine of a hundred to five thousand guilders is punished:

1° he who on or in a work of literature, science, art or industry falsely places any name or any sign, or falsifies the real name or the real sign, with the aim of hereby rendering acceptable, that the work should be from the hand of the person, whose name or sign he affixed thereon or therein.

2° he who intentionally sells, offers for sale, delivers has in stock for sale or imports in to the colony a work of literature, science, art or industry on which or in which any name or any sign has falsely been affixed, or the real name or the real sign has been falsified, as though the work were from the hand of the person, whose name or sign has been falsely affixed thereon or therein.⁴

2. In case it belongs to the sentenced person, the work can be confiscated.

CHAPTER III

The duration of the copyright

Article 38. 1. The copyright shall expire by the lapse of 50 years, to be calculated from the day of the demise of the maker of the work, without prejudice to what was stipulated in the following articles of this chapter.

2. The duration of the jointly held copyright on the same work to which two or more persons are entitled as joint makers of same, is calculated from the day of the demise of the survivor.

Article 39. 1. The copyright on a work, on which or in which the maker has not been indicated, or not in such a way, that his real name is known through this, shall expire by the lapse of 50 years, to be calculated from the last day of the calendar year, in which the first publication of the work by or on behalf of the rightful claimant has taken place.

2. The same applies with respect to works in which, pursuant to article 7 or article 8, a public institution, a club, foundation or partnership is considered to be the maker, and also with respect to the works which have been published for the first time after the demise of the maker.

Article 40. 1. The exclusive right to translate a work that appeared in print expires through the lapse of 10 years, to be calculated from the last day of the calendar year, in which the first issue of the work took place by or on behalf of the rightful claimant, with respect to those languages, in which no translation of the work has been published by the maker or with his consent in one of the States, associated with the International Union for the protection of works of literature and art.

³ This punishable act is considered to be a summary offence pursuant to article 4 sub 30° jo. article 5 of the *öCommencement Ordinance Criminal Codeö* (National Gazette 1918 no. 6).

⁴ This punishable act is considered to be a crime pursuant to article 6 sub 8° jo. article 7 of the *öCommencement Ordinance Penal Codeö* (National Gazette 1981 no. 6).

2. The exclusive right to publicly hold recitations or performances or presentations of any work in another language than the original one, lasts as long as the exclusive translation right.

Article 41. The copyright on photographic and cinematographic works and also on works, produced according to similar working-methods, expires through the lapse of 50 years, to be calculated from the last day of the calendar year, in which the first publication of the work took place by or on behalf of the rightful claimant.

Article 42. 1. For the application of the provisions of the previous three articles, works appeared in installments, are considered to have been published only on the appearance of the last installment.

2. With regard to works composed of two or more parts, numbers or pages, which appeared in print at different times, and also with regard to reports and news items, published by societies or by private persons, each part, number, page or report and news item, is considered to be a separate work.

Article 43. In deviation insofar from the stipulations in this chapter, no appeal whatsoever can be made on copyright, the duration of which has already expired in the country of origin of the work.

CHAPTER IV

Transitional and final provisions

Article 44. 1. On becoming effective of this ordinance the general ordinance of June 1883 (National Gazette No. 5), containing regulation of the copyright in the colony of Curaçao, expires.

2. However, article 11 of the latter article remains effective with regard to works and translations, sent in before said point of time.

Article 45. 1. This ordinance is applicable to all works of literature, science or art, which have been published for the first time in the Colony of Curaçao by or on behalf of the maker, either before, or after it became effective.

2. A work is published in the sense of this article, when it has appeared in print or, in general, when multiplications of same have been made public; the presentation of a play or piece of musical drama, the performance of a musical work, the exhibition of a work of art and the construction of a building are not considered to be a publication in that sense.

3. In deviation from the first paragraph, no rights and authorities for the maintenance of the copyright can be exercised with regard to actions, which at the moment at which they took place, were not unlawful, neither pursuant to any provision of a law, nor pursuant to any treaty.

Article 46. This ordinance recognizes no copyright on works, of which the copyright had expired at the moment that it became effective pursuant to articles 13 and 14 of the general ordinance of 20 June 1883 (National Gazette No. 5), containing regulation of the copyright in the colony of Curaçao.

Article 47. The copyright, obtained pursuant to the general ordinance of 20 June 1883 (National Gazette No. 5), containing regulation of the copyright in the colony of Curaçao, is maintained after this ordinance has become effective.

Article 48. 1. He who before 1 January 1913, not being in violation of the regulations of the general ordinance of 20 June 1883 (National Gazette No. 5), containing regulation of the copyright in the colony of Curaçao, nor with those of any treaty in the colony of Curaçao,

either has published any multiplication of a work of literature, science or art, or has publicly made a presentation, or given a performance, exhibition or presentation of a work of literature, science or art, or of any multiplication of same, through the becoming effective of this ordinance does not lose the authority to distribute and to sell the multiplications published before that point of time, or publicly to hold the same recitations or performances, exhibitions or presentations.

2. This article remains effective during two years after this ordinance has become effective.

Article 49. All instruments and documents regarding the complete and partial transfer of copyright, or concerning the permit to exercise any authority pertaining to the copyright, which are made up by the rightful claimant and the recipient or their legal representative together or each separately, be it privately or before a public servant, without the cooperation of third parties, are free from stamp duty and of the formality of registration or, in case this formality is desired, they are registered free of charge.

Article 50. This ordinance can be referred to by the title "Copyright ordinance 1913".

Article 51. This ordinance becomes effective on the first day of the month following that in which it is announced.