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Chapter VII Infringements

(Right of demanding cessation)

Article 112. (1) Against those who infringe or are likely to infringe moral rights of authors, copyright, right of publication, moral rights of performers or neighboring rights, the author, the performer or the owner of copyright, right of publication or neighboring rights may make a demand for cessation or prevention of such infringements.

(2) In making such demand, the author, the performer or the owner of copyright, right of publication or neighboring rights may demand to take measures necessary to effect such cessation or prevention of infringement, such as the abandonment of objects the making of which constituted an infringement, objects made by an act of infringement or implements and tools used solely for an infringement.

(Acts considered to be infringements)

Article 113. (1) The following acts shall be considered to constitute infringements on moral rights of authors, copyright, right of publication, moral rights of performers or neighboring rights:

(i) the importation into this country, for distribution, of objects made by an act which would constitute an infringement on moral rights of authors, copyright, right of publication, moral rights of performers or neighboring rights if they were made in this country at the time of such importation;

(ii) the distribution or the possession for distribution, or the making of an offer of distribution, or the exportation by trade or the possession for exportation by trade, of objects made by an act infringing moral rights, copyright, right of publication or neighboring rights (including those imported as mentioned in the preceding item), by a person who is aware of such infringement.

(2) An act of using on a computer, in the conduct of business, copies made by an act infringing copyright in a program work (including copies made by the owner of such copies in accordance with the provisions of [Article 47ter](#), paragraph (1) as well as copies of a program work imported as mentioned in item (i) of the preceding paragraph and copies made by the owner of such imported copies in accordance with the provisions of [Article 47ter](#), paragraph (1)) shall be considered to constitute an infringement on that copyright, so far as a person using such copies is aware of such infringement at the time when he has acquired an authority to use these copies.

(3) The following acts shall be considered to constitute infringements on moral rights of authors, copyright, moral rights of performers or neighboring rights relating to rights management information concerned:

(i) the intentional addition of false information as rights management information;

(ii) the intentional removal or alteration of rights management information excluding the case where such act is conditional upon technology involved in the conversion of recording or transmission systems or other cases where it is deemed unavoidable in the light of the purpose and the manner of exploiting works or performances, etc.;

(iii) the distribution, importation for distribution or possession for distribution of copies of works or performances, etc. by a person who knows that any act mentioned in the preceding two items has been done concerning such works or performances, etc. or the public transmission or making transmittable of such works or performances, etc. by such person.

(4) For the application of the provisions of the preceding paragraph, the right to remuneration mentioned in [Article 94bis](#), [Article 95ter](#), paragraph(3) and [Article 97ter](#), paragraph (3) and the right to secondary use fees mentioned in [Article 95](#), paragraph (1) and [Article 97](#), paragraph (1) shall be considered as neighboring rights. In this case, "the owners of neighboring rights" in the preceding Article shall read "the owners of neighboring rights (including the owners of the rights considered as neighboring rights in accordance with the provisions of paragraph (4) of the next Article)", and "neighboring rights" in paragraph(1) of the preceding Article shall read "neighboring rights (including the rights considered as neighboring rights in accordance with the provisions of paragraph (4) of the next Article)".

(5) In the case where the owner of copyright or neighboring rights, who publishes in person or makes others publish such commercial phonograms as intended to be distributed within this country (hereinafter in this paragraph referred to as "phonograms for domestic distribution"), publishes in person or makes others publish outside this country commercial phonograms which have the same contents as those of phonograms for domestic distribution and are intended to be distributed exclusively outside this country (hereinafter in this paragraph referred to as "phonograms for foreign distribution"), the importation into this country for distribution within this country, the distribution within this country or the possession for distribution within this country of such phonograms for foreign distribution by a person who knows that such phonograms are those for foreign distribution shall be considered to constitute infringements on copyright or neighboring rights in such phonograms, so far as such distribution within this country of such phonograms for foreign distribution prejudices unreasonably the interests as expected to be gained by the owner of copyright or neighboring rights by means of the publication of such phonograms for domestic distribution; provided, however, that an exception shall be made of the importation, distribution or possession of phonograms for foreign distribution having the same contents as those of phonograms for domestic distribution which go beyond a period, by provided by Cabinet Order, within seven years from the first publication of such phonograms in this country.

(6) An act of exploitation of a work prejudicial to the honour or reputation of the author shall be considered to constitute an infringement on his moral rights.

(Exceptional provisions to the right of transfer of ownership in relation to a bona fide third party)

Article 113bis. When the ownership of the original or copies of works (excluding copies of cinematographic works (including copies of cinematographic works in the case of works reproduced in cinematographic works); the same shall apply hereinafter in this Article), sound or visual recordings of performances or copies of phonograms has been transferred to a person who does not know or has no negligence in not knowing that such original or copies of works, sound or visual recordings of performances or copies of phonograms do not fall within any of the items of [Article 26bis](#), paragraph (2), [Article 95bis](#), paragraph (3) or [Article 97bis](#), paragraph (2), respectively, an act by such person to transfer to the public the ownership of such original or copies of works, sound or visual recordings of performances or copies of phonograms shall be considered not to constitute an infringement on the rights mentioned in [Article 26bis](#), paragraph (1), [Article 95bis](#), paragraph (1) or [Article 97bis](#), paragraph (1).

(Presumption of the amount of damages)

Article 114. (1) In the case where the owner of copyright, right of publication or neighboring rights (hereinafter in this paragraph referred to as "the owner of copyright, etc.") claims compensation for damages from a person who infringed intentionally or negligently any of these rights, if such infringer has transferred the ownership of objects made by such act of infringement or has made the public transmission (including the making transmittable in the case of the interactive transmission) constituting such infringement, the amount obtained by multiplying the number of objects so transferred or the number of copies made of works or performances, etc. as a result of reception by the public of such transmission (hereinafter in this paragraph the number of such objects or of such copies is referred to as "the number of objects, etc." and such copies are as "reception copies"), by the amount of profits per unit from such sale of objects (including reception copies) as the owner of copyright, etc. could make if there was no such infringement, can be considered as equivalent to the amount of damages suffered by such owner, within the limits of the amount corresponding to the ability of such owner to sell such objects or do other acts relating to them. However, if there are some circumstances under which the owner of copyright, etc. cannot sell as many number of objects as corresponding to the whole or a part of the number of objects, etc., the amount proportionate to the number corresponding to such circumstances shall be deducted.

(2) In the case where the owner of copyright, right of publication or neighboring rights claims compensation for damages from a person who has infringed intentionally or negligently any of these rights, the profits, if any, obtained by the infringer from that infringement shall be presumed to be the amount of damages suffered by such owner.

(3) The owner of copyright or neighboring rights may claim compensation for damages from a person who has infringed intentionally or negligently their copyright or neighboring rights, the amount of damages suffered being that corresponding to the amount of money which would be received by them through the exercise of these rights.

(4) The provisions of the preceding paragraph shall not prejudice any claim to compensation for damages in excess of the amount mentioned therein. In this case, the court may consider the absence of any bad faith or gross negligence on the part of the infringer in fixing the amount of damages.

(Duty to clarify the actuality)

Article 114bis. In a lawsuit relating to an infringement on moral rights of authors, copyright, right of publication, moral rights of performers or neighboring rights, if the other party denies the actuality of objects which the authors, the performer or the owner of copyright, right of publication or neighboring rights claims as those constituting such infringement or those made by an act of infringement, such party shall clarify the actuality of his acts, unless there are reasonable reasons for which the party cannot make such clarification.

(Submission of documents, etc.)

Article 114ter. (1) In a lawsuit relating to infringements on moral rights of authors, copyright, right of publication, moral rights of performers or neighboring rights, the court may, at the request of the parties concerned, order them to submit documents necessary for the proof of acts of infringements concerned for the account of damages caused by acts of infringements concerned, provided that a possessor of such documents may refuse, with reasonable justification, to submit them.

(2) The court may make a possessor of the documents present such documents when it deems necessary for judging whether there is such reasonable justification as mentioned in the proviso to the preceding paragraph. In this case, any person may not ask for the disclosure of such documents so made available.

(3) In the case of the preceding paragraph, the court may disclose such documents to the parties concerned, etc. ("the parties concerned, etc." means the parties concerned (in the case of a legal person, the representative), or an agent (excluding an attorney and his or her assistant), an employee or any other worker of the parties concerned; the same shall apply in [Article 114sexies](#), paragraph (1)), an attorney or his or her assistant when it deems it necessary to consult their opinion, disclosing such documents, as to whether there is such reasonable justification as mentioned in the proviso to paragraph (1).

(4) The provisions of the preceding three paragraphs shall apply *mutatis mutandis* to the making available of such objects of inspection as necessary for the proof of acts of infringement concerned in a lawsuit relating to infringements on moral rights of authors, copyright, right of publication, moral rights of performers or neighboring rights.

(Duty of the parties concerned to explain to an appraiser)

Article 114quater. When the court, in a lawsuit relating to an infringement on copyright, right of publication or neighboring rights, has ordered, at the request of the parties concerned, an appraisal as to matters necessary for the account of damages caused by acts of infringement concerned, the parties concerned shall explain to an appraiser as to matters necessary for such appraisal.

(Award of a reasonable amount of damages)

Article 114quinquies. In the case where it is found that there has been damages caused in a lawsuit relating to an infringement on copyright, right of publication or neighboring rights, if it is extremely difficult from the nature of facts

concerned, to prove facts necessary for the proof of the amount of damages, the court may award a reasonable amount of damages based upon all the gist of oral proceedings and the results of the taking of evidence.

(Order to keep secrets)

Article 114sexies. (1) In a lawsuit relating to an infringement on moral rights of authors, copyright, right of publication, moral rights of performers or neighboring rights, the court may, at the request of the parties concerned and by decision, order the parties concerned, an attorney or his or her assistant that trade secrets ("trade secrets" means those provided in [Article 2](#), paragraph (6) of the Unfair Competition Prevention Law (Law No.47, of 1993); the same shall apply hereinafter) retained by the parties concerned should not be used for purpose other than those of following that lawsuit or should not be disclosed to persons other than those to whom an order relating to such trade secrets has been issued under the provisions of this paragraph, where a *prima facie* proof has been made that such trade secrets fall within all of the following two items, except in the case where, before such request, the parties concerned, an attorney or his or her assistant had acquired or retained such trade secrets by means other than those of the perusal of preparatory documents mentioned in item (i) or the examination of evidences or the disclosure mentioned in that item:

- (i) trade secrets retained by the parties concerned appear in preparatory documents already submitted or to be submitted, or such trade secrets are contained in the contents of evidences already examined or to be examined (including such documents as disclosed under the provisions of [Article 114 ter](#), paragraph (3));
 - (ii) the use of such trade secrets for purpose other than those of following that lawsuit or the disclosure of such trade secrets is likely to hinder business activities of the parties concerned of the basis of such trade secrets, and it is necessary to restrict such use or disclosure in order to prevent such hindrance.
- (2) The request for such order under the provisions of the preceding paragraph (hereinafter referred to as "an order to keep secrets") should be in writing stating the following matters:
- (i) a person to whom an order to keep secrets is to be issued;
 - (ii) facts sufficient enough to specify such trade secrets as to be object of an order to keep secrets;
 - (iii) fact to fall within all of the two items of the preceding paragraph.
- (3) In the case where an order to keep secrets has been issued, a written decision for such order must be served to a person to whom such order has been issued.
- (4) An order to keep secrets shall come into effect from the item when a written decision has been served to a person to whom such order had been issued.
- (5) An immediate complaint may be lodged against a court decision rejecting the request to issue an order to keep secrets.

(Annulment of an order to keep secrets)

Article 114septies. (1) Those who have requested to issue an order to keep secrets those to whom such order has been issued may request the court having the records of a lawsuit (if there is no such court, the court having issued such order) to annul such order for the reason that any of the conditions mentioned in paragraph (1) of the preceding Article is lacking or has come to be lacking.

(2) In the case where there has been a court decision relating to a request for annulment of an order to keep secrets, the written decision must be served to a person who has made such request or his or her opponent party.

(3) An immediate complaint may be lodged against a court decision relating to the request for annulment of an order to keep secrets.

(4) A court decision annulling an order to keep secrets shall, if not finalized, not take effect.

(5) When having made a decision to annul an order to keep secrets, the court must notify immediately to a person, if any, other than a person who has requested to annul such order or his or her opponent party, to whom such order has been issued in relation to such trade secrets in a lawsuit issuing such order, that a court decision has been made to annul such order.

(Notice, etc. of a demand for a perusal, etc. of the records of a lawsuit)

Article 114octies. (1) In the case where a decision mentioned in [Article 92](#), paragraph (1) of the Civil Proceedings Law (Law No.109, of 1996) has been made with regard to the records of a lawsuit as to which an order to keep secrets has been issued (excluding a lawsuit as to which all the orders to keep secrets have been annulled), a clerk of the court must, if the parties concerned have made a demand for a perusal, etc. of the parts in which appear the secrets provided in that paragraph and if a person who has made such demand is not a person to whom an order to keep secrets has been issued in a lawsuit concerned, give a notice of such demand immediately after that demand to the parties concerned who have made a request mentioned in that paragraph (excluding a person who has made such demand; the same shall apply in paragraph (3)).

(2) In the case of the preceding paragraph, a clerk of the court may not allow a person having made such demand to make a perusal, etc. of parts in which appear the secrets provided in that paragraph, for a period in which two weeks have passed after the day of that demand (in the case where a request for an order to keep secrets to be issued to a person having made such demand has been made before that day, for a period until a court decision has been finalized as to that request).

(3) The provisions of the preceding two paragraphs shall not apply in the case where there is a consent of all the parties concerned who have made a request mentioned in [Article 92](#), paragraph (1) of the Civil Proceedings Law for a perusal, etc., to a person having made a demand mentioned in paragraph (1), of the parts in which appear the secrets provided in that paragraph.

(Measures for recovery of honour, etc.)

Article 115. The author or the performer may demand the person who has infringed his moral rights intentionally or negligently to take measures necessary to identify him as the author or the performer, to correct distortions, mutilations, or modifications or to recover his honour or reputation either in place of or together with indemnification

(Measures to protect the moral interests after the author's or the performer's death)

Article 116. (1) After the death of the author or the performer, his bereaved family ("bereaved family" means surviving spouse, children, parents, grandchildren, grandparents, brothers or sisters of the dead author or performer; the same shall apply hereinafter in this Article) may make a demand mentioned in [Article 112](#) of a person who violates or is likely to violate the provision of [Article 60](#) or [Article 101ter](#) with respect to the author or the performer concerned, or a demand mentioned in the preceding Article of a person who has infringed moral rights of authors or performers intentionally or negligently or who has violated the provision of [Article 60](#) or [Article 101ter](#).

(2) Unless otherwise determined by the will of the author or the performer, a demand by the bereaved family mentioned in the preceding paragraph may be made in the order of the enumeration of the bereaved family in that paragraph.

(3) The author or the performer may appoint by will a person who acts for the bereaved family. In this case, the appointed person may not make a demand after the expiration of a period of fifty years from the year following the date of the author's or performer's death or, if any bereaved family still survive at the time of such expiration, after the death of all the bereaved family.

(Infringement with respect to a joint work, etc.)

Article 117. (1) Each co-author of, or each co-owner of the copyright in, a joint work shall be entitled to make, without the consent of the other co-authors or co-owners of the copyright, a demand mentioned in [Article 112](#) or a demand for compensation for damages to his share or a demand for the surrender of unjust enrichment corresponding to his share.

(2) The provision of the preceding paragraph shall apply *mutatis mutandis* to an infringement on copyright or neighboring rights in co-ownership.

(Safeguard of rights in anonymous or pseudonymous works)

Article 118. (1) The publisher of an anonymous or pseudonymous work shall be entitled to make, in his own name and in favour of the author or the copyright owner of the work, a demand mentioned in [Article 112](#), or [Article 115](#) or [Article 116](#), paragraph (1) or a demand for compensation or the surrender of unjust enrichment, provided that the pseudonym is not generally known as that of the author and that the true name of the author is not registered under the provision of [Article 75](#), paragraph (1).

(2) A person whose true name or generally known pseudonym is indicated as the name of the publisher in the customary manner on copies of an anonymous or pseudonymous work shall be presumed to be the publisher of that work.

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