

Exploitation Rights

Sec. 15 UrhG lists the author's exploitation rights by way of example ("in particular"). They primarily secure the material interests of the author in an economic use of the work.

1. Exploitation in material form, Sec. 15 (1) UrhG

a) Reproduction right

Right to make copies, no matter in which process and in which number, Sec. 16 (1) UrhG

- Handmade single copy of a painting
- Production of books or phonograms in thousands of copies
- In principle, caching and browsing on the Internet is also copying; but permissible according to Sec. 44a UrhG.
- Hyperlinks on the internet **no** reproduction (BGH GRUR 2003, 958 - *Paperboy*)

b) Distribution right

Right to offer the original or copies of the work to the public or to put it into circulation, Sec. 17 (1) UrhG

- Exhibiting copies of works for the purpose of sale
- Sending offer lists, brochures or catalogs
- Sale to persons who do not belong to the personal acquaintance circle of the manufacturer or owner
- Not the use of a copyrighted piece of seating furniture in a shop window or as a resting place in a department store (ECJ, GRUR 2008, 604, para. 35-41 - *Peek & Cloppenburg KG/Cassina SpA, Le-Corbusier-Möbel*)

The distribution right is limited by the exhaustion principle in Sec. 17 (2) UrhG. The author has received remuneration for the first sale. The interests of the author are thus satisfied. Any further distribution is then permissible in the interest of the free movement of goods. However, this only applies to exploitation in physical form.

c) Exhibition right

The right to exhibit is limited to unpublished works of fine arts as well as unpublished photographic works, Sec. 18 UrhG

2. Exploitation in non-material form

The cases mentioned in Sec. 15 (2) UrhG are exclusively concerned with the communication of a work to the *public*, i.e. a communication intended for a plurality of members of the public. The decisive factor here is the personal relationship of those present with each other.

Non-public:

- Among friends
- Within the family
- In a small company
- Public:
 - Sports broadcast in the clubhouse
 - University Lecture
 - In common areas of nursing homes or correctional facilities.

a) Right of recitation

Right to make a spoken work publicly heard by personal performance, Sec. 19 (1) UrhG. "Personal" in this context means any natural person, not necessarily the author himself.

- Public reading of one's own or another's work
- Recitation of a poem
- Cover band plays songs from Deep Purple, Van Halen or Linkin Park
- Not, however, reproduction by means of sound carrier or radio broadcasting

b) Right of performance

Right to publicly perform a work of music by personal performance or to publicly present a work on stage, Sec. 19 (2) UrhG.

- Concert performance

Rendition of a song is performance with respect to the music and recital with respect to the lyrics (cf. above cover band).

- Stage performance

The visually recognizable moving play is decisive

- Drama
- Opera
- Operetta
- Puppetry

c) Right of presentation

Right to make a work of fine art, a photographic work, a cinematographic work or representations of a scientific or technical nature publicly perceptible by means of technical equipment, Sec. 19 (4) UrhG.

- Cinema screening
- Slide show

d) Right to make available to the public

Right to make the work available to the public by wire or wireless means in such a way that it is accessible to members of the public from places and at times of their choice, Sec. 19a UrhG.

The protection already starts with the creation of a technical possibility for interactive retrieval.

(-) In the case of hyperlinks, as these merely facilitate access that has already been opened (BGH GRUR 2003, 958 - *Paperboy*)

e) Broadcasting rights

Right to make the work available to the public by radio, such as sound and television broadcasting, satellite broadcasting, cable broadcasting or similar technical means, Sec. 20 UrhG.

f) Right of secondary exploitation

The work may be reproduced several times in the same or in other ways after its publication. The resulting extension of the circle of use is reserved to the author.

aa) Right of reproduction by means of visual and audio carriers Right to make lectures or performances of the work perceptible to the public by means of visual or audio media, Sec. 21 UrhG.

- Music Box
- Music sprinkling from the CD e.g. in restaurants, department stores or supermarkets

bb) Right of reproduction of radio broadcasts

Right to make radio broadcasts and reproductions of the work based on public accessibility publicly perceptible by means of screens, loudspeakers or similar technical devices, Sec. 22 UrhG.

- Playback of radio or television broadcasts from innkeepers, hairdressers, etc.
- Projection of a television program on a cinema screen
- Also the public reproduction of video recordings of a broadcast (not of a reproduction of the work itself, then Sec. 19 (4) UrhG).

Reproduction may only take place with the consent of the author, but in practice secondary exploitation rights are largely managed by collecting societies.