

Law on the Administration of Copyright and Neighboring Rights

(Copyright Administration Law)*

(of September 9, 1965, as last amended by the Law of June 23, 1995)

SECTION I AUTHORIZATION TO CONDUCT BUSINESS

Article 1. Compulsory Authorization

(1) Any person who undertakes the collective management of exploitation rights, authorization rights or claims to remuneration pursuant to the Copyright Law of September 9, 1965 (Bundesgesetzblatt I, p. 1273), for the account of several authors or holders of neighboring rights shall require an authorization to that effect irrespective of whether administration is undertaken on his own behalf or on behalf of others.

(2) Paragraph (1) shall not apply to the occasional or short term administration of the rights and claims referred to.

(3) Any person who acts without the authorization required by paragraph (1) may not assert the rights or claims entrusted to him for administration. He shall not be entitled to file a complaint under Article 109 of the Copyright Law.

(4) If the activity referred to in paragraph (1) is undertaken by a legal person or a partnership they shall constitute a collecting society within the meaning of this Law. If the activity referred to in paragraph (1) is undertaken by an individual natural person, the provisions of this Law in respect of collecting societies shall apply to such person *mutatis mutandis*.

Article 2. Grant of Authorization

Authorization shall be granted by the supervisory authority (Article 18(1)) on a written application. The application shall be accompanied by:

1. the statutes of the society;
2. a statement of the names, addresses and nationalities of the persons entitled by law or the statutes to represent the society;
3. a declaration stating the number of persons who have entrusted the collecting society with the administration of their exploitation rights, authorization rights or claims to remuneration, and the quantities and economic importance of the rights and claims entrusted to the society for administration.

Article 3. Refusal of Authorization

(1) Authorization may be refused only if:

1. the statutes of the collecting society do not comply with the provisions of this Law;
2. there is reason to believe that a person entitled by law or the statutes to represent the collecting society does not possess the trustworthiness needed for the exercise of his activity; or
3. it is unlikely, in view of the economic basis of the collecting society, that the rights and claims entrusted to it will be effectively administered.

(2) The reasons for refusing authorization shall be given and notified to the collecting society.

Article 4. Revocation of Authorization

(1) Authorization shall be revoked if:

1. one of the grounds for refusal mentioned in Article 3(1) was not known to the supervisory authority at the time of granting authorization or occurred subsequently and the deficiency is not remedied within a period to be laid down by the supervisory authority, or

* (Translation by the International Bureau of WIPO, completed by the German authorities with regard to Amendments by the Law of July 5, 1994, and by the Law of June 23, 1995.)

2. despite a warning by the supervisory authority, the collecting society repeatedly infringes one of the obligations incumbent on it under this Law.

(2) The grounds for revoking the authorization shall be given and notified to the collecting society. Revocation shall become effective three months after it has become uncontestable, provided no later date is fixed therein.

Article 5. Publication

The grant of authorization and any revocation that has become effective in accordance with Article 4(2) shall be published in the Official Bulletin (Bundesanzeiger).

SECTION II RIGHTS AND DUTIES OF COLLECTING SOCIETIES

Article 6. Obligation to Administer

(1) A collecting society shall be required, at the request of a right holder, to administer on equitable terms the rights and claims relevant to its sphere of activity if such right holder is a German within the meaning of the Basic Law or nationals of another Member State of the European Union or of another Contracting State of the Convention Concerning the European Economic Area or has his place of residence in the territory to which this Law applies and if effective administration of his rights and claims is not otherwise possible. If the owner of an enterprise is the rightholder, the obligation shall exist towards the company which has its headquarters in a Member State of the European Union or in a Contracting State of the Convention Concerning the European Economic Area.

(2) A joint representation shall be constituted to adequately safeguard the interests of right holders who have not been accepted as members of a collecting society. The statutes of a collecting society shall contain provisions on the choice of the representation by the right holders and on the powers of the representation.

(Amended by the Law of June 23, 1995.)

Article 7. Distribution of Revenue

A collecting society shall distribute the revenue from its activities according to fixed rules (distribution plan) that prevent any arbitrary act of distribution. The distribution plan shall conform to the principle that culturally important works and performances are to be promoted. The principles of the distribution plan shall be incorporated in the statutes of collecting societies.

Article 8. Welfare and Assistance Schemes

Collecting societies shall set up welfare and assistance schemes for the holders of the rights and claims that they administer.

Article 9. Rendering of Accounts and Auditing

(1) Immediately on completion of the financial year, a collecting society shall draw up for the past year a balance sheet, profit and loss account and an appendix (annual accounts) together with an annual report.

(2) The annual accounts shall be drawn up in a clear and readily understandable manner. The rules of orderly bookkeeping shall be applied. Explanations on the balance sheet and on the profit and loss account shall be given in the appendix.

(3) The annual report shall set out the transactions and situation of the collecting society in such a way as to present a picture that corresponds to the real circumstances.

(4) The annual accounts, including the bookkeeping and the annual report, shall be audited by one or more qualified auditors. Only accountants or firms of accountants may be appointed as auditors.

(5) The auditors shall report in writing on the result of their audit. If the outcome of their audit results in no objections, they shall certify that fact by the following statement on the annual accounts:

I/we have duly examined the bookkeeping, the annual accounts and the annual report and have found them in conformity with the law and with the statutes of the society.

If they have objections to raise, the auditors shall either qualify or refuse their audit certificate. The auditors shall sign the audit certificate stating the place and date.

(6) The collecting society shall publish the annual accounts and the annual report in the Bundesanzeiger not later than eight months after the close of the financial year. Publication shall include the full text of the audit

certificate. If the auditors refuse their certification, attention shall be drawn to the fact in a special note on the annual accounts.

(7) More extensive statutory provisions on rendering of accounts and auditing shall remain unaffected.

(Amended by the Law of December 19, 1985.)

Article 10. Obligation to Furnish Information

Collecting societies shall be required to inform any person, on a written request, whether they administer exploitation rights in a given work or given authorization rights or claims to remuneration on behalf of an author or of a holder of neighboring rights.

Article 11. Obligation to Contract

(1) Collecting societies shall be required to grant exploitation rights or authorizations to any person so requesting on equitable terms in respect of the rights they administer.

(2) Should no agreement be reached with respect to the amount of remuneration to be paid for the grant of exploitation rights or of an authorization, the rights or authorization shall be deemed to have been granted if the remuneration demanded by the collecting society has been paid subject to reservation or has been deposited in favor of the collecting society.

Article 12. Inclusive Contracts

Collecting societies shall be required to conclude inclusive contracts in respect of the rights and claims they administer, on equitable terms, with associations whose members exploit works or performances protected under the Copyright Law or who are required to pay remuneration under the Copyright Law, unless they may not reasonably be expected to conclude such inclusive contract, particularly where the membership of such association is too small.

Article 13. Tariffs

(1) Collecting societies shall draw up tariffs in respect of the remuneration they demand for the rights and claims they administer. Where inclusive contracts have been concluded, the rates of remuneration agreed upon in such contracts shall constitute the tariffs.

(2) Collecting societies shall be required to publish the tariffs and any amendment thereto without delay in the Bundesanzeiger.

(3) The basis for calculating the tariffs shall normally be the monetary advantages obtained from exploitation. The tariffs may also be computed on other bases where these result in adequate criteria for the proceeds of exploitation, that may be assessed with reasonable economic outlay. When establishing tariffs, the proportion of the utilization of a work in the total exploitation shall be taken into appropriate account. In establishing the tariffs and in collecting the remuneration, collecting societies shall have due regard to the religious, cultural and social interests of the persons liable to pay the remuneration, including the interests of youth welfare.

(Amended by the Law of June 24, 1985.)

Article 13a. Obligations of Organizers

(1) Organizers of public communications of copyrighted works shall be required to obtain beforehand the authorization of the collecting society which administers the exploitation rights in the works concerned.

(2) After the event, the organizer shall send to the collecting society a list of the works used at the event. This shall not apply to the communication of a work by means of audio recordings, to communication of broadcasts of a work or to events at which as a rule non-protected or insignificantly adapted works of music are performed.

(3) Where information for the distribution of revenue from the administration of the right to communicate broadcasts is needed from the broadcasting organizations which have organized the broadcasts, such organizations shall be required to provide the collecting societies with such information against payment of their expenses.

(Amended by the Law of June 24, 1985.)

Article 13b. Presumption of Entitlement

(1) Where a collecting society asserts a claim to information that may only be asserted by a collecting society, it shall be presumed that it administers the rights of all right holders.

(2) Where a collecting society asserts a claim to remuneration under Articles 27,54(1), Article 54a(1) or (2), Article 75(3), Article 85(3) or Article 94(4) of the Copyright Law, it shall be presumed that it administers the rights of all right holders. Where more than one collecting society is entitled to assert the claim, the presumption shall only apply where the claim is asserted jointly by all entitled collecting societies. Where a collecting society receives payments for those right holders whose rights it does not administer, it shall exempt the persons liable to make payments from the remuneration claims of such right holders.

(Added by the Law of June 24, 1985, and amended by the Law of July 25, 1994, and by the Law of June 23, 1995.)

Article 14. Arbitration Board

(1) In disputes to which a collecting society is a party, any party may apply to the Arbitration Board where the dispute concerns

1. the use of works or performances protected by the Copyright Law, or
2. the conclusion or amendment of an inclusive contract.

(2) The Arbitration Board shall be constituted at the supervisory authority (Article 18(1)). It shall consist of a Chairman or his deputy and two assessors. The members of the Arbitration Board must be competent to act as judges in conformity with the German Law on Judges. They shall be appointed by the Federal Minister for Justice for four years; they may be reappointed.

(3) The members of the Arbitration Board shall not be bound by instructions.

(4) Recourse to the Arbitration Board may be obtained by written application.

(5) The Arbitration Board shall endeavor to obtain an amicable settlement to the dispute. A settlement decided by the Arbitration Board shall become enforceable when signed by the Chairman and the parties and the day on which it has been reached is recorded thereon; Article 797a of the Code of Civil Procedure shall apply *mutatis mutandis*.

(6) An arbitration agreement concerning future disputes under paragraph (1), item 2, shall be null and void if it does not afford every party the right to apply to the Arbitration Board, instead of to an arbitration tribunal, and to require a decision by the ordinary courts.

(7) Application to the Arbitration Board shall interrupt prescription in the same way as the institution of legal proceedings. The interruption shall continue until the procedure before the Arbitration Board is completed. Article 211(2) of the Civil Code shall apply *mutatis mutandis*. If the application to the Arbitration Board is withdrawn, the prescription shall be deemed not to have been interrupted.

(Amended by the Law of June 24, 1985.)

Article 14a. Settlement Proposal by the Arbitration Board

(1) The Arbitration Board shall take its decisions on a majority vote. Article 196(2) of the Judiciary Law shall be of application.

(2) The Arbitration Board shall propose a settlement to the parties. The settlement proposal shall be reasoned and shall be signed by all members of the Arbitration Board. The settlement proposal shall point out the possibility of opposition and set out the consequences of failure to comply with the time limit for opposition. The settlement proposal shall be served on the parties.

(3) The settlement proposal shall be deemed to have been accepted and an agreement corresponding to the content of the proposal to have been entered into if the Arbitration Board has received no written opposition within one month of service of the proposal.

(4) The accepted settlement proposal shall be enforceable; Article 797a of the Code of Civil Procedure shall apply *mutatis mutandis*.

Article 14b. Limitation of the Settlement Proposal; Waiver of a Settlement Proposal

(1) Where disputes under Article 14(1), item 1, concern the applicability or equitability of tariffs (Article 13) and where the substance is also disputed, the Arbitration Board may limit its settlement proposal to comments as to the applicability or equitability of the tariff.

(2) Where the applicability or equitability of tariffs under Article 14(1), item 1, are not in dispute, the Arbitration Board may waive a settlement proposal.

Article 14c. Disputes Concerning Inclusive Contracts

(1) In the case of disputes under Article 14(1), item 2, the settlement proposal shall contain the contents of the inclusive contract. The Arbitration Board may only propose an inclusive contract with effect from January 1 of the year in which the application was made.

(2) At the request of any of the parties, the Arbitration Board may make a proposal for a provisional settlement. Article 14a(2), second to fourth sentences, and (3) shall be of application. The provisional settlement shall apply, failing any other agreement, until completion of the procedure before the Arbitration Board.

(3) The Arbitration Board shall inform the Federal Cartel Office (Bundeskartellamt) of the proceedings. Article 90(1), second sentence, and (2) of the Law Against Restrictions on Competition shall be of application *mutatis mutandis* subject to the limitation that the President of the Federal Cartel Office may not appoint as a representative any member of the supervisory authority (Article 18(1)).

(Articles 14a to 14c added by the Law of June 24, 1985.)

Article 15. Proceedings Before the Arbitration Board

The Federal Minister for Justice shall have the power to lay down, by statutory order,

1. the procedure before the Arbitration Board,
2. detailed regulations on the remuneration of members of the Arbitration Board for their activities,
3. charges (fees and expenses) to be imposed by the supervisory authority for proceedings before the Arbitration Board to cover administrative costs; the fees shall not be in excess of those applicable to first instance proceedings,
4. provisions concerning the party liable for costs, the time at which charges are due and their prescription, the obligation of payment in advance, exemption from charges, the procedure for the fixing of charges and legal remedies against the fixing of charges.

(Amended by the Law of June 24, 1985.)

Article 16. Assertion of Claims Before the Courts

(1) For disputes under Article 14(1), claims may not be asserted in court proceedings unless they have been preceded by proceedings before the Arbitration Board.

(2) This shall not apply for disputes under Article 14(1), item 1, in which the applicability and equitability of the tariff are not disputed. Should it nevertheless prove during the action that the applicability or the equitability of the tariff is in dispute, the court shall suspend the action to enable the parties to apply to the Arbitration Board. If the party that disputes the applicability or equitability of the tariff does not provide within two months of suspension evidence that an application has been made to the Arbitration Board, the action shall be continued; in such event, the applicability and equitability of the tariff on which the exploitation relationship has been based by the collecting society shall be deemed to have been accepted.

(3) Prior application to the Arbitration Board shall likewise not be required for applications for a distraint order or an injunction. Once a distraint order or an injunction has been issued, the action shall be receivable without the limitation contained in paragraph (1) if a time limit has been imposed on the party under Articles 926 and 936 of the Code of Civil Procedure for instituting proceedings.

(4) Claims for the conclusion of an inclusive contract (Article 12) shall be heard exclusively in first instance by the competent Provincial High Court. Part 1 of the Second Volume of the Code of Civil Procedure shall apply *mutatis mutandis* to the procedure. The Provincial High Court shall determine the content of the inclusive contracts, in particular the nature and amount of remuneration, at its discretion. The findings of the court shall replace the corresponding agreement between the parties. Determination of a contract is only possible with effect from January 1 of the year in which the request was made. Appeals from final decisions taken by the Provincial High Court shall be governed by the Code of Civil Procedure.

(Amended by the Law of June 24, 1985.)

Article 17. Exclusive Jurisdiction

(1) Exclusive jurisdiction for litigation concerning claims by a collecting society for infringement of an exploitation right or an authorization right administered by it shall reside with the court in whose area the act of infringement has been committed or in which the infringer has his legal domicile. Article 105 of the Copyright Law shall remain unaffected.

(2) Where more than one court is competent to hear under the first sentence of paragraph (1) a series of actions against the same infringer, the collecting society may assert all its claims before one of those courts.

SECTION III SUPERVISION OF COLLECTING SOCIETIES

Article 18. Supervisory Authority

(1) The supervisory authority shall be the Patent Office.

(2) Any supervision of collecting societies under other statutory provisions shall be exercised in conjunction with the Patent Office.

(3) Decisions on applications for authorization to conduct business (Article 2) and on revocation of authorization (Article 4) shall be taken by the Patent Office, in agreement with the Federal Cartel Office. If no such agreement is possible, the Patent Office shall submit the case to the Federal Minister for Justice, whose directives, issued after consultation with the Federal Minister for the Economy, shall replace such agreement.

Article 19. Purpose of Supervision

(1) The supervisory authority shall ensure that collecting societies faithfully discharge their obligations under this Law.

(2) The supervisory authority may at all times demand from collecting societies information on any matters concerning their conduct of business and require to see their books or other business papers.

(3) The supervisory authority shall be entitled to be represented at the meetings of members and also at any meetings of the supervisory board or advisory board where such exist.

(4) If there is reason to believe that a person entitled by law or the statutes to represent a collecting society does not possess the trustworthiness needed for the exercise of his activity, the supervisory authority shall set a date for him to be relieved from his post to avoid revocation of authorization under Article 4(1), item 1. The supervisory authority may forbid him to exercise his activity further pending expiry of the time limit where necessary to prevent serious detriment.

Article 20. Obligation to Notify

Collecting societies shall be required to inform the supervisory authority of any change concerning the persons entitled by law or by the statutes to represent them. They shall immediately furnish the supervisory authority with copies of:

1. any amendment to the statutes;
2. the tariffs and any alteration thereof;
3. the inclusive contracts;
4. agreements with foreign collecting societies;
5. the resolutions of the meeting of members, of any supervisory board or advisory board and of all committees;
6. the annual accounts, annual report and auditors' report;
7. any decisions in judicial or official proceedings to which they are party, where the supervisory authority so requires.

(Amended by the Law of December 19, 1985.)

Article 20a. (Repealed)

(Added by the Law of June 24, 1985, and repealed by the Law of July 25, 1994.)

SECTION IV TRANSITIONAL AND FINAL PROVISIONS

Article 21. Penalties

The Administrative Enforcement Law of April 27, 1953 (Bundesgesetzblatt I, p. 157), shall apply to the enforcement of administrative acts issued in pursuance of this Law, provided that the penalty may not exceed 10,000 German marks.

Article 22. (Repealed)

(Repealed by the Law of March 2, 1974.)

Article 23. Existing Collecting Societies

(1) Collecting societies already existing at the time this Law enters into force may pursue their activities to their existing extent for up to one year after the entry into force of this Law without the authorization required by this Law (Article 1).

(2) The supervisory authority may, on request, exempt such collecting society during a period of up to one year after the entry into force of this Law from individual obligations incumbent on it under this Law.

(3) The supervisory authority may, on request, appropriately extend the periods mentioned in paragraphs (1) and (2) once or several times in favor of a collecting society, but not beyond December 31, 1969.

Articles 24 – 26 Amending and Repealing Provisions

.....

Article 26a. Pending Actions

Articles 14 to 16 shall not be applied to actions already pending before the Arbitration Board on entry into force of this Law; Articles 14 and 15 of the Law on the Administration of Copyright and Neighboring Rights in its version of September 9, 1965 (Bundesgesetzblatt I, p. 1294), shall apply to such actions.

(Added by the Law of June 24, 1985.)

Article 27. Application in Land Berlin (irrelevant)

This Law shall also apply in the Land Berlin in accordance with Article 13(1) of the Third Transitional Law of January 4, 1952 (Bundesgesetzblatt I, p. 1). Statutory orders issued pursuant to this Law shall also apply in the Land Berlin in accordance with Article 14 of the Third Transitional Law.

Article 28. Entry Into Force

(1) Article 14(7) shall enter into force on the day following the promulgation of this Law.

(2) All other provisions of this Law shall enter into force on January 1, 1966.
