



Royal Decree

(No. 479, of May 5, 1989)

Enacting Provisions on the Composition and Operating Procedures of the Arbitration Commission on Intellectual Property

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Article 143 of the Law on Intellectual Property, No. 22 of November 11, 1987, created at the Ministry of Culture, giving it the character of a collegiate body of national scope, the Arbitration Commission on Intellectual Property, the function of which is to settle any conflicts that may arise between administration entities and associations of users, or between such entities and broadcasting organizations, as a result of the collective management of intellectual property rights, with respect to the grant of non-exclusive authorizations, the conclusion of general contracts and the setting of general tariffs.

The Commission is thus made into a particularly suitable instrument, integrated in the current intellectual property system, for the settlement of this type of conflict, which generally calls for a complex assessment of relative interests.

For that reason, and in view of the fact that, according to the provisions of the same Article 143, two representatives of the administration entities and two more of the association of users or of the broadcasting organization are entitled to form part of the Commission for any issue involving them, a procedure has been devised and adopted whereby the parties are induced to reach an agreement which facilitates the making of the arbitral award.

In the light of the foregoing, on the proposal of the Minister of Culture, pursuant to the provisions of Article 143 and the Second Additional Provision of the Law on Intellectual Property, with the approval of the Minister for Public Administration, in agreement with the Council of State and following deliberation by the Council of Ministers on May 5, 1989,

WE HEREBY DECREE AS FOLLOWS:

CHAPTER I *General Provisions*

Article 1.

(1) The purpose of this Royal Decree shall be to lay down the composition and operating procedure of the Arbitration Commission on Intellectual Property referred to in Article 143 of the Law on Intellectual Property, No. 22 of November 11, 1987.

(2) The function of the Arbitration Commission shall be to settle any conflicts that may arise between administration entities and associations of users or between those entities and broadcasting organizations regarding the grant of non-exclusive authorizations in relation to rights, the laying down of general tariffs and the conclusion of general contracts, in accordance with the provisions of Articles 142(1) and (2) and 143 of the Law on Intellectual Property.

The said functions shall include the solution of such conflicts as may arise as a result of the interpretation or general application of the standard contracts between such administration entities and associations of users or between such entities and broadcasting organizations.

Article 2. The provisions laid down in this Royal Decree shall be considered in all cases without prejudice to whatever the parties may agree in the relevant arbitral convention established under the Law on Arbitration, No. 36 of December 5, 1988, and no clauses shall be written into the said convention that are contrary to what is laid down in this provision or prevent the submission to the Arbitration Commission of any conflicts that may arise in connection with the provisions of Article 143(b) of the Law on Intellectual Property.

Article 3. The Arbitration Commission on Intellectual Property shall be governed by the Law on Intellectual Property and by this Royal Decree and, with regard to matters not covered by the aforesaid provisions, by the Law on Arbitration, No. 36 of December 5, 1988.

CHAPTER II

Composition of the Arbitration Commission on Intellectual Property

Article 4. The Arbitration Commission on Intellectual Property shall be composed of a maximum of seven members, three of whom shall be neutral arbitrators and permanent members.

The remaining members of the Commission shall be designated as representatives of the administration entity and of the association of users or of the broadcasting organizations for each of the cases submitted to it for settlement. Each of the parties to the conflict shall be entitled to nominate up to two members.

Article 5.

(1) The arbitrators shall be appointed by the Minister of Culture for a renewable period of three years from among lawyers of recognized standing.

(2) One of the arbitrators shall be appointed Chairman. He shall direct and coordinate the work, debates and votes of the Commission, convene it and draw up the agenda for its meetings, and shall exercise such other functions as may be necessary for the Commission to operate properly.

Article 6.

(1) Arbitrators shall exercise their functions with independence, neutrality and impartiality, and shall be subject to the provisions on objection and abstention contained in the current Law on Arbitration.

(2) In the event of objection or abstention, and also where absence or indisposition prevents one of the arbitrators from hearing a case brought before the Commission, the Chairman shall inform the Minister of Culture accordingly in order that a substitute arbitrator may be appointed for the conflict concerned, according to the provisions of the foregoing Article.

Article 7.

(1) The administration entity and the association of users or the broadcasting organization party to the conflict shall designate their representatives on the Commission for each of the cases in which they are involved.

(2) The members of the Commission representing each of the parties shall be designated within 15 days following notification of its recognition of the conflict.

Article 8. An official of the Ministry of Culture shall act as Secretary without the power either to speak or to vote, and shall keep a record of the meetings that are held, of the agreements and decisions that are adopted and of any other acts decided upon by the members of the Commission.

CHAPTER III *General Arbitration Procedure*

Article 9.

(1) The arbitration request shall be made in the form of a written document addressed to the Chairman, in which the parties expressly and voluntarily submit to the Commission so that it may make the appropriate award.

(2) The request for arbitration shall state precisely the subject of the conflict, the content of the claims and allegations of the parties, and also whether the matter at issue is to be ruled upon at law or in equity.

(3) Where an association of users is party to arbitration, the request shall be accompanied by an attestation stating the surname and forenames or business style and the domicile of the individuals or corporate bodies members of the said association.

(4) The parties may act in their personal capacity or through a practising attorney.

Article 10.

(1) The arbitrators shall agree on the recognition of the conflict according to the Commission's competence and any other requirements laid down in the Law on Intellectual Property and this Royal Decree.

(2) The recognition agreement shall be adopted exclusively by the arbitrators and by a majority, and it shall be understood that the arbitral award is to be made in equity except where the parties have expressly opted for arbitration according to law.

(3) Where it is agreed that the conflict cannot be recognized, the decision, accompanied by a statement of reasons, shall be notified to the parties, and no appeal therefrom shall be entertained.

Article 11. The arbitral procedure shall begin with the convening of the Commission so that the parties may establish their initial positions, and adduce such documentation as they may consider appropriate.

Article 12.

(1) The arbitral procedure shall proceed according to the principles of hearing, cross-questioning and equality between the parties.

(2) Nevertheless, failure to attend or inaction on the part of any of the parties shall not stay the progress of the procedure or the issue of the award, neither shall the said award be deprived of effectiveness thereby.

Article 13. When the positions of the parties have been established, the Chairman shall convene what meetings he considers consistent with the purpose of reaching such agreement between the said parties as will allow the conflict to be settled.

Article 14.

(1) At any stage in the procedure before the Commission, on the initiative of the arbitrators or the parties, the production of any evidence that is considered relevant may be agreed upon.

(2) Any expenses arising from the production of the evidence shall be defrayed by the person who sought it, or by both parties *pro rata* when it was proposed by the arbitrators, except where the arbitral award has condemned one of the parties to pay costs.

Article 15. Where in the course of the arbitral proceedings the parties reach an agreement on the questions at issue, those questions shall be set down in writing and submitted to the Chairman of the Commission so that the latter may draw up the appropriate award proposal, which shall then be put to the vote within the Commission.



Article 16.

(1) Where the Chairman considers that the questions have been debated sufficiently and that no agreement between the parties is possible, he shall declare an end to the search for a compromise and shall convene the Commission so that the parties may state their final positions.

(2) On the basis of the said positions, and of what has gone before, the Chairman shall draw up an award proposal which shall be voted upon by the Commission.

Article 17. There shall be a quorum in the Commission when it is attended by a majority of its membership, provided that at least two arbitrators are present, and without prejudice to the provisions of Article 19.

Article 18.

(1) Every member of the Commission shall have one vote, and in the event of equally-divided votes that of the Chairman shall prevail.

(2) The Commission's findings shall be adopted by a majority vote, with a favorable vote of at least two arbitrators being required in all cases.

Article 19.

(1) The award shall require the attendance of all the arbitrators. It shall be set down in writing and accompanied by a statement of reasons, and it shall answer the questions raised by the parties within the limits of the Commission's specific jurisdiction.

(2) The award adopted by the Commission shall be binding and enforceable on the parties, and shall be contestable and subject to enforcement in accordance with the provisions of the Law on Arbitration.

Article 20.

(1) The award shall be made within a maximum period of six months following recognition of the conflict.

(2) The said period may only be extended by the Chairman, in a reasoned decision and after both parties have been heard, for a maximum of three months.

CHAPTER IV *Special Procedure*

Article 21. Where an association of users or a broadcasting organization makes use of the faculty provided for in Article 143(b) of the Law on Intellectual Property, for the purpose of setting an amount in lieu of the general tariffs laid down by an administration entity, the proceedings shall take place according to the provisions of this Royal Decree, subject to the reservations provided for in this Chapter.

Article 22. The request may be formulated by the association of users or the broadcasting organization, and it shall fulfill the following requirements:

- (a) the purpose of the request shall be to set an amount in lieu of the general tariffs laid down by the administration entity;
- (b) it shall state the reasons underlying the request for the setting of an amount in lieu of the tariffs of the administration entity;
- (c) it shall propose an amount in lieu of the tariff, calculated or calculable by means of a simple arithmetic operation;
- (d) it shall where appropriate expressly acknowledge the Commission's competence, under the provisions of Article 143(b) of the Law on Intellectual Property, to bring about a solution of the conflict which was itself submitted by the administration entity concerned.



Article 23. On being presented with the request, the Arbitration Commission shall convey it to the administration entity concerned so that the latter may make such statements as it considers appropriate regarding its acceptance, which it shall do within a period allowed it by the Chairman.

Article 24.

(1) On receipt of the statements or on the expiration of the period allowed under the foregoing Article, the arbitrators shall rule on the acceptance of the request for arbitration.

(2) Where none of the requirements specified in Article 22 is met, the request shall be declared unacceptable.

Article 25.

(1) On acceptance of a request for the setting of an amount in lieu of general tariffs, the parties shall be notified accordingly so that they may designate their representatives on the Commission.

(2) Nevertheless, failure by the administration entity to designate such representatives, or failure to attend or inaction on the part of any of the parties, shall not stay the progress of the proceedings, neither shall it prevent the adoption of the arbitral award settling the conflict, or deprive such award of its effectiveness.

Article 26.

(1) The filing of a request for the setting of an amount in lieu of general tariffs under this Chapter shall not relieve the individual or corporate owners represented by the association of users, or the broadcasting organization, of their obligation to pay subject to reservations or to lodge with a judicial officer the amount charged by the administration entity under Article 142(2) of the Law on Intellectual Property.

(2) However, once the amount in lieu has been determined by arbitral award, it shall be sufficient to remit that amount for the authorization referred to in the said Article 142(2) to be considered granted, insofar as the parties reach an agreement.

Article 27. The arbitral award settling the conflict shall require the attendance of all the arbitrators; it shall be pronounced in equity and shall be set down in writing and accompanied by a statement of reasons.

Article 28. Non-acceptance of the request or the arbitral award settling the conflict shall leave the way open to ordinary judicial actions for the hearing of the matter submitted to the Commission.

FINAL PROVISION

This Royal Decree shall enter into force on July 1, 1989.

Spanish title: Real Decreto por el que se regula la composición y el procedimiento de actuación de la Comisión Arbitral de Propiedad Intelectual.— WIPO translation.

Entry into force: July 1, 1989.

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