

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

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(No. 479/1989, of May 5, 1989, as amended by Royal Decree 1248/1995, of July 14, 1995)

TABLE OF CONTENTS **

Articles

Chapter I: General Provisions	1-3
Chapter II: Composition of the Arbitration Commission on Intellectual Property	4-8
Chapter III: General Arbitration Procedure	9-20
Chapter IV: Procedure for Setting an Amount in Lieu of General Tariffs	21-28
Chapter V: Procedure for Setting the Level of Equitable Remuneration for Contracts Entered into Prior to July 1, 1994, Assigning or Transferring the Right of Rental of Phonograms and Audiovisual Recordings Purpose of the Procedure	29
Initiators of the Procedure	30
Requirements for the Request	31
Transmittal of the Request	32
Decision on the Acceptance of the Arbitration Request	33
Designation of Representatives on the Commission	34
Adoption of the Arbitral Award Settling the Conflict	35
Effects of Non-Acceptance of the Request or Arbitration Settlement.	36
Final Provision	

* *Spanish title:* Real Decreto 479/1989, de 5 de mayo, por el que se regula la composición y el procedimiento de actuación de la Comisión Arbitral de Propiedad Intelectual.

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Source: Communication from the Spanish authorities.

Note: Consolidation and translation by the International Bureau of WIPO.

¹ For the Consolidated Text of the Law on Intellectual Property, see *Rights Laws and Treaties*, SPAIN — Text 1 -01 (*Editor's note*).

Copyright and Neighboring

** Added by the International Bureau of WIPO.

Chapter I

General Provisions

1.—(1) The purpose of this Royal Decree shall be to lay down the composition and operating procedure of the Arbitration Commission on Intellectual Property² referred to in **Article 143** of Law 22/1987, of November 11, 1987, on Intellectual Property [*Ley 22/1987, de 11 de noviembre, de Propiedad Intelectual*].

(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 provision 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.

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 36/1988, of December 5, 1988, on Arbitration [*Ley 36/1988, de 5 de diciembre, de Arbitraje*], 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.

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 36/1988, of December 5, 1988, on Arbitration.

Chapter II

Composition of the Arbitration Commission on Intellectual Property

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.

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.

² The denomination, “Arbitration Commission on Intellectual Property”, has been changed to “Intellectual Property Mediation and Arbitration Commission” [*Comisión Mediadora y Arbitral de Propiedad Intelectual*]. See Article 158 of the Consolidated Text of the Law on Intellectual Property (*Communication from the national authorities*).

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.

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.

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

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.

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.

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.

12.—(1) The arbitral procedure shall proceed according to the principles of hearing, crossquestioning 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.

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.

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.

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.

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.

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](#).

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.

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.

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

Procedure for Setting an Amount in Lieu of General Tariffs

[Heading of Chap. IV amended by Royal Decree 1248/1995.]

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.

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.

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.

24.—(1) On receipt of the statements or on the expiration of the period allowed under the foregoing Article, the arbitrator 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.

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.

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.

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.

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 matters submitted to the Commission.

Chapter V

Procedure for Setting the Level of Equitable Remuneration for Contracts Entered into Prior to July 1, 1994, Assigning or Transferring the Right of Rental of Phonograms and Audiovisual Recordings

[Chap. V added by Royal Decree 1248/1995.]

Purpose of the Procedure

29.—(1) The purpose of this Chapter is to lay down the procedure for the setting of the level of equitable remuneration referred to in [Article 3\(1\)](#) of Law 43/1994, of December 30, 1994, where, according to the terms of the Third Final Provision of the said Law, no agreement has been reached between the parties on the setting of the level of the said remuneration.

(2) This procedure shall relate exclusively to contracts entered into prior to July 1, 1994, and shall be initiated at the instigation of a party.

Initiators of the Procedure

30.—(1) By virtue of the faculty provided for in [Article 143 \(a\)](#) of the Law on Intellectual Property in conjunction with [Article 3.1](#) and the Third Final Provision of Law 43/1994, of December 30, 1994, the following may apply to the Arbitration Commission for the initiation of the procedure for the setting of the level of equitable remuneration referred to in the said [Article 3\(1\)](#) :

- (a) entities for the administration of intellectual property rights that represent the owners of the right referred to in the said provisions by virtue of [Article 3\(2\)](#) of the said Law 43/1994;
- (b) those who engage in rentals to the public of phonograms or audiovisual recordings in their capacity as successors in title to the owners of the corresponding right to authorize or prohibit the said rental.

(2) The procedure referred to in the foregoing paragraph shall conform to the provisions of [Chapter III](#) of this Royal Decree (“General Arbitration Procedure”), subject to the reservations provided for in this Chapter.

Requirements for the Request

31. The requests shall fulfill the following requirements:

- (a) it shall expressly state its purpose of initiating the procedure for setting the level of equitable remuneration;
- (b) it shall state the reasons underlying the request for the initiation of the said procedure, and also the action that has been taken up to that time;
- (c) it shall give the identity of the other party involved in the prior procedure;
- (d) it shall propose an amount calculated or calculable by means of a simple arithmetic operation;

- (e) it shall include express acceptance of the jurisdiction of the Commission in accordance with the provisions of **Article 143 (a)** of the Law on Intellectual Property in conjunction with **Article 3(1)** and the Third Final Provision of Law 43/1994, of December 30, 1994;
- (f) it shall fulfill the other provisions of **Article 70(1)** of Law 30/1992, of November 26, 1992, on the Legal Regime of Public Administrations and Common Administrative Procedure [*Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*].

Transmittal of the Request

32. On receipt of the request the Arbitration Commission shall convey it to the other party in order that he may, within the period imposed on him by the President, make such statements as he considers fit regarding its acceptance.

Decision on the Acceptance of the Arbitration Request

33.—(1) On receipt of the statements or on the expiry of the period allowed under the foregoing Article, the arbitrators shall rule on the acceptance of the request for arbitration. Where defects are noted that could be remedied, the provisions of **Article 71** of Law 30/1992, of November 26, 1992, on the Legal Regime of Public Administrations and Common Administrative Procedure shall be observed.

(2) Failure to remedy defects on the terms set forth in the invitation provided for in the foregoing paragraph shall result in the non-acceptance of the request.

Designation of Representatives on the Commission

34.—(1) On the acceptance of a request for the setting of the level of equitable remuneration, the parties shall be notified accordingly so that they may designate their representatives on the Commission.

(2) Nevertheless, failure by the parties 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 or prevent the adoption of the arbitral award settling the conflict, or deprive such award of its effectiveness.

Adoption of the Arbitral Award Settling the Conflict

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

Effect of Non-Acceptance of the Request or Arbitration Settlement

36. Non-acceptance of the request or arbitration settlement shall exhaust the ordinary judicial remedies for the matter brought before the Commission.

FINAL PROVISION

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

(This text replaces the one previously classified under the same code number.)