

Ordinance of 14 December 1999 on Copyright and Neighbouring Rights (Copyright Ordinance)

Liechtenstein State Gazette (*Liechtensteinisches Landesgesetzblatt*)
1999 Volume, No. 253, published on 29 December 1999

TABLE OF CONTENTS

	<i>Page</i>
I. General Provisions	
Subject	2
Designations.....	2
II. Collective Exploitation	
A. General	
Principle	2
Conditions.....	2
Form of the Security Deposit	3
Use and Release of the Security Deposit.....	3
Granting of Licences.....	3
Term; Publication.....	3
B. Safeguarding of Authors' Rights	
Exploitation Obligation.....	3
Principles of Management.....	3
C. Tariffs	
Obligation to Draw up Tariffs.....	4
Joint Tariff	4
Principle of Reasonableness.....	4
D. Distribution	
Principles of Distribution	4
Distribution of the Proceeds of Exploitation	5
E. Cooperation of Users	
Obligation to Provide Information	5
III. Supervision of the Collecting Societies	
A. General	
Spheres of Exploitation Subject to Supervision	5
Supervisory Authority	6
B. Supervision of the Management	
Scope of Supervision	6
Measures Relating to the Infringement of Obligations..	6
C. Supervision of Tariffs	
Approval of Tariffs	6
Filing of Application.....	7
Hearing.....	7
Adjustment of Tariff Proposals.....	7
Proceedings	7
Obligation to Provide Information and Render Accounts	7
IV. Measures Relating to Import and Export	
Scope.....	7
Request for Assistance.....	7
Withholding of Goods.....	8
V. Fees	
A. Fees of the Supervisory Authority	
Principle	8
Calculation and Persons Liable to Payment	8
Advances and Time Limit for Payment.....	8
B. Fees for Import and Export Procedure	
Processing and Safekeeping Fees.....	9
VI. Final Provision	

Pursuant to Article 74 of the Law of 19 May 1999 regarding the Copyright and Neighbouring Rights (Copyright Law), Liechtenstein State Gazette 1999, No. 160¹, the Government issues the following Ordinance:

I. GENERAL PROVISIONS

Subject

1. This Ordinance governs the collective exploitation of authors' rights and neighbouring rights, the supervision of the collecting societies as well as the measures relating to import and export of goods, whose distribution within the country infringes copyright or neighbouring rights.

Designations

2. Terms used in this Ordinance referring to persons of the female gender shall also be deemed to apply to persons of the masculine gender².

II. COLLECTIVE EXPLOITATION

A. General

Principle

3. Any person who exploits authors' rights which are subject to supervision shall require a licence from the Government.

Conditions

4.—(1) Licences shall only be granted to collecting societies which:

- (a) have the exploitation of authors' rights as their primary purpose;
- (b) are open to all holders of rights;
- (c) grant the authors an appropriate right of co-determination;
- (d) offer to guarantee compliance with the legal provisions, in particular on the basis of their articles of association;
- (e) can be anticipated to achieve effective and economic exploitation.

(2) If foreign collecting societies are licensed, they shall in Liechtenstein at least designate an address for legal service within the country and shall, on application for the granting of a relevant licence, submit a binding declaration that with regard to their activity in Liechtenstein they fully subject themselves to the legislation and jurisdiction of Liechtenstein.

(3) Collecting societies of states which do not have agreements on the enforcement of foreign judgments with the Principality of Liechtenstein shall deposit a security of at least 100,000 francs with the Principality's cash office as security for the claims made against them as a result of their business activity.

(4) As a rule, only one society shall be granted a licence per category of work.

Form of the Security Deposit

5. The security may be deposited:

- (a) as a surety or guarantee declaration by a bank or insurance institution;
- (b) as surety insurance, provided that the indemnification payments are provided independently of the payment of the premiums;
- (c) as a cash deposit.

Use and Release of the Security Deposit

6.—(1) The security deposit may, in particular, be used

- (a) to cover the costs of the Supervisory Authority;
- (b) to make payments which are due to the authors and holders of neighbouring rights.

(2) The security deposit or the residual sum shall be released at the earliest after the expiration of one year following the expiration or withdrawal of the licence.

Granting of Licences

7.—(1) Licences for the exploitation of authors' rights shall be granted on application or by way of invitation to tender procedure.

(2) The Office of National Economy shall be entrusted to conduct the invitation to tender procedure. The decision on the selection of bidders and the granting of the licences shall be the responsibility of the Government.

Term; Publication

8.—(1) The licence shall as a rule be granted for a term of three years; after expiration of this term it may as a rule be renewed for an additional three years in each case.

(2) The granting, renewal, amendment, withdrawal and non-renewal of the licence shall be published in the official publication instruments.

B. Safeguarding of Authors' Rights

Exploitation Obligation

9. Collecting societies shall be under an obligation vis-à-vis the holders of rights to safeguard the authors' rights and neighbouring rights pertaining to their sphere of activity.

Principles of Management

10.—(1) Collecting societies must conduct their business in accordance with the principles of orderly and economic administration.

(2) They must manage exploitation in accordance with fixed rules and without arbitrariness.

- (3) They must not strive to make a profit of their own.
- (4) They shall where possible conclude reciprocity agreements with foreign collecting societies.

C. Tariffs

Obligation to Draw up Tariffs

- 11.**—(1) The collecting societies must draw up tariffs for the remuneration that they collect.
- (2) They must submit the tariffs to the Supervisory Authority for approval and publish the approved tariffs in a suitable manner. They shall at least inform the associations for the users of the works accordingly.
- (3) The Supervisory Authority may require that the collecting societies negotiate the form of the individual tariffs with the relevant associations for the users of the works.

Joint Tariff

- 12.**—(1) If more than one collecting society is acting in the same sphere of use, they must draw up a joint tariff for the same use of works in accordance with uniform principles and designate a joint place of payment applicable to all of them.
- (2) The Government may issue additional provisions relating to their cooperation.

Principle of Reasonableness

- 13.**—(1) The following considerations shall be taken into account for the determination of remuneration:
- (a) the revenue obtained from the use of the work, the performance, the phonogram or videogram or the broadcast, or alternatively the expenditure in connection with such use;
- (b) the nature and quantity of the works, performances, phonograms or videograms, or broadcasts used;
- (c) the proportion of protected compared to unprotected works, performances, phonograms or videograms, or broadcasts, as well as to other services.
- (2) Remuneration shall as a rule amount to a maximum of 10% of the revenue from or expenditure for use in the case of the authors' rights and a maximum of 3% in the case of the neighbouring rights; it shall, however, be fixed in such manner that the persons entitled receive reasonable remuneration, based on economic administration.
- (3) The use of works for cultural and social purposes by public-benefit institutions shall be favoured pursuant to the tariff.

D. Distribution

Principles of Distribution

- 14.**—(1) The collecting societies shall be required to draw up distribution regulations and to submit these to the Supervisory Authority for approval.

(2) The use of parts of the proceeds of exploitation for the purpose of social provision and reasonable cultural promotion shall require the consent of the Supervisory Authority.

Distribution of the Proceeds of Exploitation

15.—(1) The collecting societies must distribute the proceeds of exploitation in accordance with the revenue from the individual works. They shall undertake all endeavours which can reasonably be expected of them to determine the persons entitled.

(2) If this distribution is unreasonably costly, the collecting societies shall be permitted to estimate the extent of the revenue from the work; the estimates must be based on verifiable and appropriate criteria.

(3) The proceeds should be apportioned between the author and other persons entitled in such manner that as a rule the author retains a reasonable proportion. Another form of distribution shall be permitted if the expenditure would be unreasonable or if service works are involved.

(4) The distribution regulations shall not cancel contractual arrangements by the original holder of rights with third parties.

E. Cooperation of Users

Obligation to Provide Information

16.—(1) Where it may reasonably be expected of them, the users of works shall provide the collecting societies with all the necessary information for drawing up and applying the tariffs and for distributing the proceeds.

(2) The collecting societies shall be obliged to preserve business secrets.

III. SUPERVISION OF THE COLLECTING SOCIETIES

A. General

Spheres of Exploitation Subject to Supervision

17.—(1) The following shall be subject to supervision:

(a) the exploitation of the exclusive rights to the performance and broadcasting of non-theatrical works of music and to the production of phonograms of such works;

(b) the assertion of the claims to remuneration envisaged in the Law pursuant to Articles 14, 15, 22, 25 and 41.

(2) The Government may subject additional spheres of exploitation to supervision if the public interest so requires.

(3) The personal exploitation of exclusive rights by the author or his heirs shall not be subject to supervision.

Supervisory Authority

18.—(1) The Supervisory Authority shall be the Office of National Economy; it shall supervise the collecting societies.

(2) The Supervisory Authority shall charge fees for its activity (Articles 30 to 33).

(3) Decisions by the Supervisory Authority may be contested by way of appeal to the Government.

B. Supervision of the Management

Scope of Supervision

19.—(1) The Supervisory Authority shall supervise the management of the collecting societies and shall ensure that they fulfil their obligations. It shall audit and approve the annual report.

(2) It may issue instructions concerning the obligation to provide information and concerning the cooperation between collecting societies within the country.

(3) In order to exercise its powers, it may also call in authorised agents who are not members of the administration; the latter shall be under an obligation to observe confidentiality.

Measures Relating to the Infringement of Obligations

20.—(1) If a collecting society fails to fulfil its obligations, the Supervisory Authority shall set a reasonable time limit for the lawful situation to be established.

(2) In the event of a failure to obey the orders of the Supervisory Authority, the Government may, on the application of the Supervisory Authority, restrict or withdraw the licence following an appropriate warning.

(3) The Government may publish legally valid decisions at the cost of the collecting society.

C. Supervision of Tariffs

Approval of Tariffs

21.—(1) The Supervisory Authority shall audit the tariffs of the collecting societies; they shall approve a tariff submitted to it if it is reasonable in its composition and in the individual provisions.

(2) After hearing the collecting societies involved in the proceedings and the associations for the users of the works, it may undertake amendments.

(3) Tariffs approved with legal validity shall be binding on the civil and criminal courts.

Filing of Application

22.—(1) Together with the application for approval of a tariff, the collecting societies shall submit the necessary documents and, where appropriate, a brief report on the course of the negotiations with the relevant associations for the users of the works within the country.

(2) The applications for approval of a new tariff must be submitted to the Supervisory Authority at least seven months prior to the envisaged entry into force. In substantiated cases this time limit may be deviated from.

Hearing

23. The parties to the proceedings shall be entitled to a hearing.

Adjustment of Tariff Proposals

24.—(1) Where the Supervisory Authority deems that a tariff or that individual provisions of a tariff may not be approved, it shall give the collecting society an opportunity, before taking its decision, to amend its tariff proposals to enable approval to be given.

(2) If the collecting society does not avail itself of such possibility, the Supervisory Authority may at the cost of the collecting society effect the necessary amendments itself.

Proceedings

25. The proceedings shall also comply with the provisions of the Law relating to State Administration (*Landesverwaltungspflegegesetz*).

Obligation to Provide Information and Render Accounts

26. The collecting societies shall provide the Supervisory Authority with all information and make available all documents required to carry out the supervision, and shall also render accounts yearly in an activity report.

IV. MEASURES RELATING TO IMPORT AND EXPORT

Scope

27. Assistance from the customs authorities shall extend to the importing and exporting of goods where there is a suspicion that their distribution would infringe the legislation applicable in Liechtenstein in the field of copyright or neighbouring rights or the storing of such goods in a customs warehouse.

Request for Assistance

28.—(1) Entitled persons shall submit a request for assistance to the Office of National Economy. In urgent cases, the request may be submitted directly to the customs office at which the suspected goods are to be imported or exported.

(2) The request shall be valid for two years unless submitted for a shorter period of validity. It may be renewed.

Withholding of Goods

29.—(1) If the customs office withholds goods, it shall keep them itself against a fee or shall entrust them to a third party at the expense of the person submitting the request.

(2) The person submitting the request shall be entitled to inspect the withheld goods. Persons entitled to dispose of the goods may take part in the inspection.

(3) Where it is established prior to expiry of the time limits laid down in Article 77(2) or (3) of the Copyright Law, that the person submitting the request will not be able to obtain precautionary measures, the goods shall be immediately released.

V. FEES

A. Fees of the Supervisory Authority

Principle

30.—(1) Collecting societies that have a licence to collect authors' rights and neighbouring rights subject to supervision shall be required to pay fees to the Supervisory Authority as a function of its expenditure.

(2) The fees shall be determined in such a manner that they cover all costs arising from the supervisory activities.

Calculation and Persons Liable to Payment

31.—(1) For the grant, renewal or amendment of licences, and for the examination and approval of annual reports and distribution regulations as well as for special activities of the Supervisory Authority, between 200 and 300 francs per hour of work, depending on the degree of difficulty, shall be invoiced.

(2) The fees shall be paid by the collecting society to which an activity of the Supervisory Authority refers. Where more than one collecting society is liable for payment for the same activity, all societies shall be jointly liable. In justified cases, third parties participating in proceedings may be required to participate in the costs.

(3) A separate invoice shall be drawn up for costs arising from the use of outside experts, from special examinations or from the provision of the necessary information and documents.

Advances and Time Limit for Payment

32.—(1) The persons liable for payment may be required to pay an appropriate advance.

(2) The fees shall be paid by the date laid down by the Supervisory Authority.

B. Fees for Import and Export Procedure

Processing and Safekeeping Fees

33.—(1) The fees of the Office of National Economy for the processing of the request for assistance shall be based on the cost covering principle.

(2) The fees of the customs authorities for the processing of the request for assistance and for the safekeeping of withheld goods shall be based on the Swiss Ordinance of 22 August 1984 concerning the Fees of the Customs Authorities applicable in Liechtenstein.

VI. FINAL PROVISION

Entry into Force

34. This Ordinance shall enter into force on the date on which it is announced.

Government of the Principality of Liechtenstein:

Signed *Dr. Mario Frick*

Head of Government of the Principality of Liechtenstein

¹ LR 231.1

² This reference to persons of the feminine and masculine gender is a translation of the text in the German language in which the feminine form is employed to cover both feminine and masculine forms. Since there is usually no distinction made in the equivalent terms (such as author, producer and holder, for example), in the English language, all references to such persons in this translation shall be deemed to apply to both genders.