

Übersetzung durch Ute Reusch

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## **Act on the Management of Copyright and Related Rights by Collecting Societies\***

### **Collecting Societies Act**

Act on the Management of Copyright and Related Rights by Collecting Societies of 24 May 2016 (Federal Law Gazette I p. 1190), as last amended by Article 4 of the Act of 1 June 2017 (Federal Law Gazette I p. 1416)

This Act serves to implement Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72).

The Act was adopted by the Bundestag as Article 1 of the Act of 24 May 2016 (Federal Law Gazette I p. 1190). Pursuant to the first sentence of Article 7 of that Act, it entered into force on 1 June 2016.

#### **Part 1**

#### **Subject matter of the Act; definitions**

##### **Section 1**

##### **Scope**

This Act regulates the management of copyright and related rights by collecting societies, dependent and independent management entities.

##### **Section 2**

##### **Collecting society**

(1) "Collecting society" means an organisation which is authorised by law or contractual arrangement to manage, as its sole or main purpose, copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, irrespective of whether it is acting in its own name or on behalf of another.

(2) In order to be a collecting society, the organisation must, further, fulfil at least one of the following conditions:

1. its shares are held by its members (section 7) or it is controlled by its members;
2. it is organised on a not-for-profit basis.

##### **Section 3**

##### **Dependent management entity**

(1) "Dependent management entity" means an organisation whose shares are at least indirectly or in part held by at least one collecting society or which is at least indirectly or in part controlled by at least one collecting society.

(2) In so far as the dependent management entity carries out the activities of a collecting society, the provisions applicable to those activities under this Act shall apply mutatis mutandis. The provisions

referring to the management in section 21 (1) and (2) shall apply mutatis mutandis, irrespective of which activities of a collecting society the dependent management entity carries out. Section 90 shall apply in respect of supervision.

#### **Section 4 Independent management entity**

(1) “Independent management entity” means an organisation which, in addition to fulfilling the requirements of a collecting society pursuant to section 2 (1), meets the following criteria:

1. its shares are held neither directly nor indirectly, neither wholly nor in part, by its entitled persons (section 6) or the management entity is controlled neither directly nor indirectly, neither wholly nor in part, by its entitled persons and
2. the management entity is organised on a for-profit basis.

(2) Sections 36, 54, 55 and 56 (1) nos 1 to 4 and 7 to 9 shall apply mutatis mutandis to independent management entities. Section 91 shall apply in respect of supervision.

#### **Section 5 Rightholder**

(1) For the purposes of this Act, “rightholder” means any person or entity holding a copyright or related right or being entitled, by law or under an agreement for the exploitation of rights, to a share of the rights revenue.

(2) Collecting societies are not rightholders within the meaning of this Act.

#### **Section 6 Entitled person**

For the purposes of this Act, “entitled person” means any rightholder who, by law or contractual arrangement, stands in a direct management relationship to one of the organisations referred to in section 1.

#### **Section 7 Members**

For the purposes of this Act, “members” means

1. entitled persons and
  2. entities representing rightholders
- admitted by the collecting society as members.

#### **Section 8 User**

For the purposes of this Act, “user” means any person or entity carrying out an act subject to the authorisation of the rightholder or payment of remuneration to the rightholder.

### **Part 2 Rights and obligations of the collecting society**

#### **Chapter 1 Internal relationship**

#### **Subchapter 1 Rightholders, entitled persons and members**

#### **Section 9 Obligation to manage**

The collecting society shall be obliged, at the request of the rightholder, to manage rights of his choice in types of works and other subject matters of his choice, in territories of his choice if

1. the rights, the works and other subject matters, and the territories belong to the scope of activity of the collecting society and

2. there are no objective reasons to preclude the management.

The conditions under which the collecting society manages the rights of the entitled person (conditions of management) shall be reasonable.

#### **Section 10 Consent to management**

Where a collecting society manages copyright or related rights under a contractual arrangement with the rightholder, it shall obtain the consent of the rightholder to manage each individual right and shall evidence such consent in documentary form. The arrangement shall be made in text form, also in so far as rights are granted in future works.

#### **Section 11 Non-commercial uses**

The collecting society shall lay down conditions under which the entitled person may grant any person the right to use his works or other subject matters for non-commercial purposes, even if he has granted or transferred authorisation for the management of the rights in them to the collecting society.

#### **Section 12 Termination of management; withdrawal of rights**

(1) The collecting society shall lay down in the conditions of management that the entitled person, upon serving reasonable notice not exceeding six months, may terminate the management relationship as a whole or may withdraw from the collecting society rights of his choice in types of works and other subject matters of his choice, for territories of his choice in each case.

(2) The conditions of management may stipulate that such termination of the management relationship or withdrawal of rights shall not take effect until the end of the financial year.

(3) The collecting society shall continue to collect, manage and distribute the rights revenue under the general provisions even if the entitled person is entitled to rights revenue

1. for uses in the period before the termination of the management relationship or the withdrawal of rights took effect or
2. from a right of use which the collecting society granted before the termination of the management relationship or the withdrawal of rights took effect.

#### **Section 13 Membership terms**

(1) The collecting society shall lay down in its memorandum, in its articles of association or in other rules of constitution (statute) that entitled persons and entities representing rightholders are to be admitted as members if they fulfil the membership requirements. The requirements shall be objective, transparent and non-discriminatory, and they shall be laid down in the statute.

(2) In cases where a collecting society refuses to accept an application for membership, it shall provide a clear explanation of the reasons therefor.

#### **Section 14 Electronic communication**

The collecting society shall offer all members and entitled persons access to electronic communication.

#### **Section 15 Record of members and entitled persons**

The collecting society shall keep an up-to-date record of its members and entitled persons.

#### **Section 16 Principle of participation**

The statute of the collecting society shall provide for appropriate and effective mechanisms for the participation of members and of entitled persons in the collecting society's decision-making processes. The representation of the different categories of members and entitled persons, such as authors of musical works, phonogram producers and performers, shall be fair and balanced.

## **Section 17**

### **General powers of the general assembly of members**

(1) The general assembly of members constitutes the body in which the members participate and exercise their voting rights. The collecting society shall lay down in its statute that the general assembly of members shall decide at least on the following issues:

1. the statute of the collecting society (section 13);
2. the annual transparency report (section 58);
3. the appointment and removal of the auditor or membership of a cooperative auditing association;
4. mergers and alliances involving the collecting society, the setting-up of subsidiaries, the acquisition of other entities or shares or rights in other entities by the collecting society;
5. the risk management policy;
6. the distribution plan (section 27);
7. the use of non-distributable rights revenue (section 30);
8. the general investment policy with regard to rights revenue (section 25);
9. the general policy on deductions from rights revenue (section 31 (1)), including general policy on deductions in respect of management fees (section 31 (2)) and, where applicable, deductions to promote culturally important works and contributions and to establish and operate welfare and assistance schemes (section 32);
10. the acquisition, the sale and hypothecation of immovable property;
11. the taking out and granting of loans and the provision of security for loans;
12. the conclusion, the content and the termination of representation arrangements (section 44);
13. the conditions of management (section 9, second sentence);
14. the tariffs (sections 38 to 40);
15. the rights belonging to the scope of activity;
16. the conditions under which the entitled person may grant any person the right to non-commercial use of his works or other subject matters (section 11).

(2) The general assembly of members may decide that the powers under subsection (1), second sentence, nos 3 to 5 and 10 to 14 are to be delegated to the supervisory body under section 22.

## **Section 18**

### **Powers of the general assembly of members in regard to bodies**

(1) The collecting society shall lay down in its statute that the general assembly of members shall decide on the appointment and dismissal as well as on the remuneration and provision of other benefits to

1. those persons authorised, by law or under the statute, to act on behalf of the collecting society,
2. the members of the supervisory board,
3. the members of the administrative board,
4. the members of the supervisory body (section 22), in so far as its powers are not exercised by the supervisory board or the administrative board.

(2) The general assembly of members may decide that the powers under subsection (1) as regards those persons authorised to represent by law or under the statute are to be delegated to the supervisory board or to the supervisory body under section 22.

### **Section 19**

#### **Conduct of the general assembly of members; proxy**

- (1) The general assembly of members shall be convened at least once a year.
- (2) All the members of the collecting society shall be entitled both to participate in and to vote at the general assembly of members.
- (3) The collecting society shall lay down in its statute the conditions under which the members may additionally participate in the general assembly of members without being present and without a proxy and may exercise their right to vote by way of electronic communication. The collecting society may permit the exercise of other membership rights by electronic means.
- (4) Each member must be entitled by law or under the statute to also have his rights exercised by a proxy at the general assembly of members, provided that such proxy representation does not give rise to a conflict of interests. A conflict of interests shall in particular arise where the same proxy represents members of various categories as laid down in the statute. The collecting society may limit in its statute the number of members which may be represented by the same proxy, though this number may not fall below ten. Authorisation to act as proxy at a general assembly of members shall be effective only if it is limited to representing the member at this general assembly of members. The proxy shall be obliged to vote in accordance with the instructions of the member appointing him as proxy.

### **Section 20**

#### **Participation of entitled persons who are not members**

- (1) Those entitled persons who are not members shall at least every four years elect delegates from among their number.
- (2) The statute of the collecting society shall at least regulate
  1. the number and composition of the delegates;
  2. the procedure for electing the delegates;
  3. that the delegates are authorised to participate in the general assembly of members;
  4. that the delegates are entitled to vote at least on decisions concerning the matters referred to in section 17 (1), second sentence, nos 6 to 9 and 12 to 16, (2) and in section 18, with the exception of decisions concerning the appointment and dismissal of those persons referred to in section 18 (1), and
  5. that the delegates may at any rate participate in an advisory capacity in decisions taken by the general assembly of members on which they are not entitled to vote.
- (3) Section 19 (3) shall apply mutatis mutandis to the participation of delegates in the general assembly of members.

### **Subchapter 2**

#### **Management and supervision**

### **Section 21**

#### **Management**

- (1) The collecting society shall take measures to ensure that those persons who, by law or under the statute, are authorised to represent the collecting society do so in a sound, prudent and appropriate manner.
- (2) In order to be able to identify and avoid conflicts of interest of persons who, by law or under the statute, are authorised to represent the collecting society, the collecting society shall put in place and apply procedures to prevent adverse effects for members and entitled persons. The collecting society shall thereby also stipulate that unavoidable conflicts of interest must be disclosed, monitored and ended at the earliest opportunity.

(3) Those persons who, by law or under the statute, are authorised to represent the collecting society shall make an individual statement to the general assembly of members at least once a year which shall contain the following information:

1. their interests in the collecting society,
2. the amount of remuneration and other benefits they received in the preceding financial year from the collecting society,
3. the amounts they received in the preceding financial year from the collecting society in their capacity of entitled person (section 6) and
4. the nature and extent of any actual or potential conflict between their personal interests and those of the collecting society or between any obligations owed to the collecting society and any duty owed to any other natural or legal person.

(4) The collecting society may, for the purposes of the individual statement, determine appropriate increments in respect of the amounts referred to in subsection (3) no. 3.

## **Section 22 Supervisory body**

(1) The collecting society shall have a body which is entrusted with continuously monitoring those persons who, by law or under the statute, are authorised to represent the collecting society (supervisory body).

(2) There shall be fair and balanced representation of the different categories of members in the supervisory body.

(3) The supervisory body shall have at least the following powers and tasks:

1. the powers delegated to it by the general assembly of members;
2. the monitoring of the activities of and performance of tasks by those persons who, by law or under the statute, are authorised to represent the collecting society;
3. the monitoring of the activities of and performance of tasks by those persons who, by law or under the statute, are authorised to represent a management entity which is dependent on the collecting society, in so far as the dependent management entity carries out the activities of a collecting society.

(4) The supervisory body shall meet regularly and shall report on its activities to the general assembly of members at least once a year.

(5) The members of the supervisory body shall make a statement in accordance with section 21 (3) to the general assembly of members at least once a year. Section 21 (4) shall apply mutatis mutandis.

## **Subchapter 3 Rights revenue**

### **Section 23 Collection, management and distribution of rights revenue**

The collecting society shall exercise due diligence when collecting, managing and distributing, under the provisions of this Subchapter, the rights revenue, including the revenue from rights which it manages under a representation agreement (section 44), unless provided otherwise under this Act. For the purposes of this Act, "rights revenue" includes any income arising from the investment of such revenue.

### **Section 24 Separate accounts**

The collecting society shall keep separate in its accounts:

1. rights revenue,
2. any own assets it may have and income arising from such assets, from management fees and from other activities.

## **Section 25**

### **Investment of rights revenue**

(1) Where the collecting society invests rights revenue it shall do so in the sole and best interests of the entitled persons. The collecting society shall lay down guidelines for the purposes of investing the rights revenue (investment guidelines) and shall comply with these whenever investing the rights revenue.

(2) The investment guidelines shall

1. be consistent with the general investment policy (section 17 (1), second sentence, no. 8) and the risk management policy (section 17 (1), second sentence, no. 5);

2. guarantee that the investment corresponds to one of the types of investment referred to in section 1807 (1) of the German Civil Code or another type of investment complying with the principles of the efficient management of assets pursuant to section 1811, second sentence, of the German Civil Code;

3. guarantee that the investments are properly diversified so as to avoid excessive reliance on any particular asset and to avoid accumulations of risk in the portfolio as a whole.

(3) The collecting society shall have an auditor or an auditing firm assess and certify, without undue delay, whether the investment guidelines and any changes thereto comply with the requirements set out in subsection (2).

## **Section 26**

### **Use of the rights revenue**

The collecting society shall be permitted to use the rights revenue only for the following purposes:

1. for its distribution to entitled persons (section 27) and to other collecting societies under representation arrangements (section 46);

2. pursuant to a decision taken in accordance with section 17 (1), second sentence, no. 7, in so far as the rights revenue is non-distributable;

3. pursuant to a decision taken in accordance with section 17 (1), second sentence, no. 9 on deductions in respect of management fees;

4. pursuant to a decision taken in accordance with section 17 (1), second sentence, no. 9 on deductions to promote culturally important works and contributions and for the establishment and operation of welfare and assistance schemes (section 32).

## **Section 27**

### **Distribution plan**

(1) The collecting society shall establish rules to preclude arbitrary acts of distribution of the rights revenue (distribution plan).

(2) If the collecting society jointly manages rights for several rightholders, it may specify in the distribution plan that the revenue from the management of such rights be distributed according to fixed shares, irrespective of who ceded the rights to the collecting society.

## **Section 27a**

### **Revenue from the author's statutory remuneration rights**

(1) After the release of a published work or upon its registration with the collecting society, the author may declare consent to the collecting society for the publisher to receive a share of the revenue from the statutory remuneration rights referred to in section 63a, first sentence, of the Copyright Act.

(2) The collecting society shall determine the amount of the publisher's share in accordance with subsection (1).

## **Section 28**

### **Time limit for distribution**

(1) The collecting society shall set deadlines in the distribution plan or in the conditions of management by which the rights revenue is to be distributed.



- (2) The collecting society shall set the deadlines so that the rights revenue is distributed no later than nine months from the end of the financial year in which it was collected.
- (3) The collecting society may provide that a deadline does not expire so long as the collecting society is prevented from distributing the rights revenue for objective reasons.
- (4) The collecting society shall keep separate account of rights revenue which is not paid before the expiry of the deadline set because the entitled person cannot be identified or located.

#### **Section 29** **Identification of entitled persons**

- (1) Where rights revenue cannot be distributed within the deadline (section 28) because an entitled person cannot be identified or located, the collecting society shall take reasonable measures to identify or locate the entitled person.
- (2) In particular, the collecting society shall, where applicable, provide its members, its entitled persons and all the collecting societies for which it manages rights under a representation arrangement, no later than three months after the expiry of the deadline (section 28), with the following information regarding the works and other subject matters whose entitled persons could not be identified or located:
1. the title of the work or other subject matter,
  2. the name of the entitled person who cannot be identified or located,
  3. the name of the relevant publisher or producer and
  4. any other necessary information which could assist in identifying the entitled person.
- (3) The collecting society shall publish the information referred to in subsection (2) no later than one year after the expiry of the three-month period, except where the entitled person has in the meantime been identified or located.

#### **Section 30** **Non-distributable rights revenue**

- (1) Rights revenue shall be deemed non-distributable if it was not possible to identify or locate the entitled person after three years from the end of the financial year in which the collection of the rights revenue occurred and provided that the collecting society has taken all the necessary measures referred to in section 29.
- (2) The collecting society shall set general rules on the use of non-distributable rights revenue.
- (3) The rights of the entitled person arising from the management relationship shall remain unaffected.

#### **Section 31** **Deductions from rights revenue**

- (1) Deductions from the rights revenue shall be reasonable in relation to the services provided by the collecting society to the entitled persons and shall be determined on the basis of objective criteria.
- (2) In so far as the collecting society makes deductions from the rights revenue in respect of costs incurred in managing copyright and related rights (management fees), such deductions shall not exceed the justified and documented management fees.

#### **Section 32** **Cultural promotion; welfare and assistance schemes**

- (1) The collecting society is to promote culturally important works and contributions.
- (2) The collecting society is to establish welfare and assistance schemes for its entitled persons.
- (3) If the collecting society finances cultural promotion and welfare and assistance schemes through deductions from rights revenue, it must provide such financing of cultural promotion and of the services of the welfare and assistance schemes on the basis of fixed rules based on fair criteria.

#### **Subchapter 4** **Complaints procedures**

#### **Section 33** **Complaints procedures**

- (1) The collecting society shall lay down rules in respect of effective and timely complaints procedures.



(2) The following, in particular, shall be cited as the subject matter of a complaint:

1. the commencement and termination of rights management or the withdrawal of rights,
2. the membership terms and the conditions of management,
3. the collection, management and distribution of rights revenue,
4. the deductions from rights revenue.

(3) The collecting society shall respond to complaints in writing. If the collecting society rejects the complaint, it shall provide reasons therefor.

## **Chapter 2 External relationship**

### **Subchapter 1 Agreements and tariffs**

#### **Section 34 Obligation to contract**

(1) The collecting society shall be obliged, on the basis of the rights it manages, to grant any person, upon request, rights of use at reasonable conditions. In particular, the conditions shall be objective and non-discriminatory and shall provide for appropriate remuneration.

(2) The collecting society shall not already be in violation of its obligation to be non-discriminatory because it does not also grant the conditions agreed between itself and the provider of a new type of online service to another provider of a similar new type of online service. An online service shall be new if it has been available to the public in the European Union or in another Contracting Party to the Agreement on the European Economic Area for less than three years.

#### **Section 35 Inclusive contracts**

The collecting society shall be obliged to conclude an inclusive contract with associations of users at reasonable conditions in respect of the rights it manages, except where the collecting society cannot be reasonably expected to conclude such an inclusive contract, in particular because the membership of the association of users is too small.

#### **Section 36 Negotiations**

(1) The collecting society and the users or association of users shall conduct negotiations in good faith on the rights managed by the collecting society. The parties shall provide each other with all the information required in the negotiations.

(2) The collecting society shall reply without undue delay to enquiries made by a user or an association of users and shall inform them of which information it requires in order to make a contractual offer. It shall without undue delay after receipt of all the necessary information make an offer as regards the grant of the rights it manages or shall make a reasoned statement as to why it is not making such an offer.

#### **Section 37 Deposit; conditional payment**

Where no agreement can be reached in respect of the amount of the remuneration for the grant of the rights of use, the rights of use shall be deemed to have been granted if the remuneration

1. has been paid to the collecting society in the amount accepted by the user and
2. has been paid conditionally to the collecting society in the amount exceeding the claim of the collecting society or has been deposited for its benefit.

#### **Section 38 Obligation to set tariffs**

The collecting society shall set tariffs in respect of that remuneration which it claims for the rights it manages. If inclusive contracts have been concluded, the rates of remuneration agreed in them shall constitute the applicable tariffs.

### **Section 39** **Setting of tariffs**

(1) As a general rule, the tariffs shall be calculated on the basis of the pecuniary benefits derived on account of the exploitation. The tariffs may also be calculated on another basis if there are sufficient indications which can be secured at economically justifiable expense for the benefits from the exploitation.

(2) When setting the tariffs, reasonable consideration shall be given to the share which the use of the work represents of the total utilisation and to the economic value of the services provided by the collecting society.

(3) The collecting society is to pay reasonable consideration when setting the tariffs and collecting the remuneration to the religious, cultural and social concerns of the users, including the concerns of the youth services.

(4) The collecting society shall inform the users concerned of the criteria used for the setting of the tariffs.

### **Section 40** **Setting of tariffs for appliances and storage media**

(1) The amount of the remuneration paid for appliances and storage media shall be based on section 54a of the Copyright Act. To that end the collecting societies shall set tariffs on the basis of an empirical survey resulting from proceedings pursuant to section 93. Section 38 (2) shall remain unaffected.

(2) The obligation to set tariffs shall not arise where it is to be expected that the necessary economic effort would be disproportionate to the expected income.

## **Subchapter 2** **Duties of notification**

### **Section 41** **Users' duty to provide information**

(1) The collecting society may require the user to provide information about the use of those works and other subject matters in which it has granted the right of use to the user, in so far as the information is necessary for the collection of rights revenue or for its distribution. This shall not apply if providing the information would require disproportionately high effort on the part of the user.

(2) The collecting society shall agree with the user in the license agreements appropriate rules regarding the provision of information.

(3) As regards the format for the provision of such information, the collecting society and the user are to take into account industry standards.

### **Section 42** **Users' duty to report**

(1) The organisers of communications of copyrighted works to the public shall before an event obtain the consent of the collecting society which manages the rights of use in these works.

(2) After the event, the organiser shall send to the collecting society a list of the works used at the event. This shall not apply to

1. the communication of a work by means of audio recordings,
2. the communication of broadcasts of a work and
3. events at which, as a rule, non-copyrighted or only insignificantly adapted non-copyrighted works of music are performed.

(3) Where, for the distribution of revenue from the management of rights to communicate broadcasts to the public, information is required from the broadcasting organisations which organised the broadcasts, such broadcasting organisations shall provide the information to the collecting society against reimbursement of their expenses.

**Section 43**  
**Electronic communication**

The collecting society shall offer all users access to electronic communication, including for the reporting of the use of the rights.

**Chapter 3**  
**Special provisions on the management of rights under representation agreements**

**Section 44**  
**Representation agreement; prohibition of discrimination**

Where a collecting society mandates another collecting society with managing the rights it manages (representation agreement), the mandated collecting society may not discriminate against the rightholders whose rights it manages under the representation agreement.

**Section 45**  
**Deductions**

The mandated collecting society may make deductions from the revenue from rights it manages under a representation agreement other than in respect of management fees only where the mandating collecting society has explicitly consented thereto.

**Section 46**  
**Distribution**

(1) As regards the distribution of revenue from rights which the mandated collecting society manages under a representation agreement, the distribution plan of the mandated collecting society shall be authoritative unless the collecting societies have agreed deviating arrangements in the representation agreement. Deviating arrangements in the representation agreement shall preclude arbitrary acts of distribution.

(2) The representation agreement may not derogate from the provisions on the deadline (section 28) to the detriment of the mandating collecting society.

(3) If the representation agreement refers to rights and works or other subject matters belonging to the area of activity of both collecting societies, the mandating collecting society shall determine the deadline (section 28) so that the rights revenue is distributed to the entitled persons it represents no later than six months after receipt.

**Section 47**  
**Information requirements**

The mandated collecting society shall no later than twelve months following the end of each financial year inform the collecting societies for which it managed rights under a representation agreement in that financial year, by electronic means, at least about the following:

1. the revenue from those rights managed under the representation agreement which was attributed to the mandating collecting society in that financial year, with a breakdown per category of rights managed and per type of use;
2. the revenue from those rights managed under the representation agreement which was paid to the mandating collecting society in that financial year, with a breakdown per category of rights managed and per type of use;
3. all of the rights revenue attributed but not yet paid out to the mandating collecting society;
4. the deductions made from the rights revenue in that financial year in respect of management fees;
5. the deductions made from the rights revenue in that financial year for purposes other than in respect of management fees;
6. information on agreements concluded with users as well as on applications by users which were refused, in so far as the agreements and applications refer to works and other subject matters covered by the representation agreement and

7. the resolutions adopted by the general assembly of members in so far as those resolutions are relevant to the management of the rights under the representation agreement.

#### **Chapter 4** **Presumptions; outsiders in respect of cable retransmission**

##### **Section 48** **Presumption in respect of rights to information**

Where the collecting society asserts a right to information which may only be asserted by a collecting society, it shall be presumed that it manages the rights of all the rightholders.

##### **Section 49** **Presumption in respect of statutory remuneration rights**

(1) Where the collecting society asserts a right to remuneration under section 27, section 54 (1), section 54c (1), section 77 (2), section 85 (4), section 94 (4) or section 137I (5) of the Copyright Act, it shall be presumed that it manages the rights of all the rightholders.

(2) Where more than one collecting society is entitled to assert the right, the presumption shall apply only if the right is asserted jointly by all entitled collecting societies.

(3) In so far as the collecting society also receives payments for those rightholders whose rights it does not manage, it shall release the user from the remuneration rights of these rightholders.

##### **Section 50** **Outsiders in respect of cable retransmission**

(1) Where a rightholder has not delegated the management of his right to cable retransmission within the meaning of section 20b (1), first sentence, of the Copyright Act to any collecting society, the collecting society which manages rights of this type and which is authorised to do so (section 77) shall be deemed to be authorised to manage his rights. Where several collecting societies come into consideration, they shall be deemed to be jointly authorised; if the rightholder chooses one of them, then only that collecting society shall be deemed to be authorised. The first and second sentences shall not apply to rights held by the broadcasting organisation whose programme is retransmitted.

(2) Where the collecting society which is deemed to be authorised in accordance with subsection (1) has concluded an agreement on cable retransmission, the rightholder shall have the same rights and obligations vis-à-vis this collecting society as if he had entrusted it with the management of his rights. His rights shall lapse after the expiry of three years from the date when the collecting society is required to invoice the cable retransmission based on the distribution plan or the conditions of management; the collecting society may not cite against him any shorter period on account of reporting deadlines or similar matters.

#### **Chapter 5** **Out-of-commerce works**

##### **Section 51** **Out-of-commerce works**

(1) It shall be presumed that a collecting society which manages the rights of reproduction (section 16, Copyright Act) and of making works available to the public (section 19a, Copyright Act) in out-of-commerce works and which is authorised to do so (section 77) is authorised, within its scope of activity, to also grant users these rights in works of those rightholders who have not mandated the collecting society with the management of their rights

1. in the case of out-of-commerce works published before 1 January 1966 in books, journals, newspapers, magazines or in other writings,
2. if the works are part of the holdings of publicly accessible libraries, educational institutions, museums, archives and institutions active in the field of film and audio heritage,
3. if the reproduction and the making available to the public serves non-commercial purposes,
4. if the works were entered, on application by the collecting society, in the Register of Out-of-Commerce Works (section 52) and

5. if the rightholders did not, within six weeks of notice of the entry being published, lodge an objection against the Register on account of the intended management of their rights by the collecting society.
- (2) Rightholders may at any time object to the management of their rights by the collecting society.
- (3) Where more than one collecting society is authorised to manage the rights pursuant to subsection (1), the presumption under subsection (1) shall apply only if the rights are managed by all the collecting societies jointly.
- (4) In so far as the collecting society also receives payments for rightholders who have not mandated the collecting society with the management of their rights, it shall release the user from any claims of these rightholders. Where it is presumed that a collecting society is authorised to manage rights in accordance with subsections (1) and (2), a rightholder shall have the same rights and obligations vis-à-vis the collecting society as if the rights to management had been delegated.

## **Section 52**

### **Register of Out-of-Commerce Works; authorisation to issue statutory instruments**

- (1) The Register of Out-of-Commerce Works shall be kept by the German Patent and Trade Mark Office. The Register shall contain the following information:
  1. the title of the work,
  2. the designation of the author,
  3. the publishing company which published the work,
  4. the date of publication of the work,
  5. the designation of the collecting society which filed the application under section 51 (1) no. 4 and
  6. whether the rightholder has objected to the management of his rights by the collecting society.
- (2) The German Patent and Trade Mark Office shall effect the entries without examining the applicant's authorisation or the correctness of the facts registered for entry. The fees and expenses for the entry shall be paid in advance.
- (3) The entries shall be published on the German Patent and Trade Mark Office's website ([www.dpma.de](http://www.dpma.de)).
- (4) Any person shall be free to inspect the Register via the German Patent and Trade Mark Office's website ([www.dpma.de](http://www.dpma.de)).
- (5) The Federal Ministry of Justice and Consumer Protection shall be authorised, by way of statutory instrument and without the consent of the Bundesrat,
  1. to enact provisions concerning the form of the application for entry in the Register and on the maintenance of the Register,
  2. to order the imposition of fees and expenses to cover the administrative costs for making the entry and to enact provisions regarding which party is liable to pay costs, the due date for payment of costs, the obligation to pay costs in advance, exemptions from payment of costs, limitation, the procedure for the assessment of costs and legal remedies against the assessment of costs.

## **Chapter 6**

### **Information requirements; accounting and transparency report**

#### **Subchapter 1**

#### **Information requirements**

### **Section 53**

#### **Provision of information to rightholders prior to consent to management**

- (1) Before the collecting society obtains the consent of the rightholder to manage his rights it shall inform the rightholder about

1. his rights under sections 9 to 12, including the conditions specified in section 11 and
  2. the deductions made from the rights revenue, including deductions in respect of management fees.
- (2) The collecting society shall list the rights under sections 9 to 12 in its statute or in the conditions of management.

#### **Section 54** **Provision of information to entitled persons**

No later than twelve months following the end of each financial year the collecting society shall provide to all the entitled persons to whom it has distributed rights revenue in that financial year at least the following information:

1. any contact data which the collecting society may use with the consent of the entitled person in order to identify and locate the entitled person,
2. the rights revenue attributed to the entitled person in that financial year,
3. the rights revenue paid to the entitled person in that financial year, per category of rights managed and type of use,
4. the period in which the uses for which the rights revenue was distributed to the entitled person took place, unless objective reasons relating to reporting by users prevent the collecting society from making this information available,
5. deductions made in that financial year from the rights revenue in respect of management fees,
6. deductions made from the rights revenue in that financial year for purposes other than in respect of management fees, including, where applicable, deductions made to promote culturally important works and contributions and to establish and operate welfare and assistance schemes and
7. any rights revenue attributed but not yet paid out to the entitled person.

#### **Section 55** **Information regarding works and other subject matters**

(1) The collecting society shall, in response to a sufficiently justified request, provide the rightholders, the collecting societies for which it manages rights under a representation agreement and users, without undue delay and by electronic means, with at least the following information:

1. the works or other subject matters it represents, the rights it manages, directly or under representation agreements, and the territories covered in each case or
2. the types of works or other subject matters it represents, the rights it manages directly or under a representation agreement, and the territories covered in each case where such works and other subject matters cannot be determined on account of the scope of activity of the collecting society.

(2) The collecting society may, where necessary, take appropriate measures to protect the correctness and integrity of the information in order to be able to control its further use and protect commercially sensitive information.

(3) The collecting society may make the provision of information dependent on reimbursement of the associated costs in so far as this is appropriate.

#### **Section 56** **Disclosure of information to the public**

(1) The collecting society shall publish at least the following information on its website:

1. its statute,

2. the conditions of management, including the conditions for the termination of the management relationship and the withdrawal of rights,
  3. the standard license agreements,
  4. the tariffs and standard rates of remuneration, in each case including discounts,
  5. the inclusive contracts it has concluded,
  6. a list of those persons who, by law or under the statute, are authorised to represent the collecting society,
  7. the distribution plan,
  8. the general policy on deductions made from the rights revenue in respect of management fees,
  9. the general policy on deductions made from the rights revenue for purposes other than in respect of management fees, including, where applicable, deductions made to promote culturally important works and contributions and for the establishment and operation of welfare and assistance schemes,
  10. the general policy on the use of non-distributable rights revenue,
  11. a list of representation agreements it has entered into and the names of the collecting societies with which the agreements have been concluded,
  12. the regulations on the complaints procedure under section 33 and information regarding in which cases of dispute recourse may be taken to the Arbitration Board in accordance with sections 92 to 94,
  13. the regulations pursuant to section 63 on the correction of data to which reference is made in section 61 (2) and on the correction of the information referred to in section 62 (1).
- (2) The collecting society shall keep the information up to date.

## **Subchapter 2 Accounting and transparency report**

### **Section 57 Financial statements and management report**

- (1) The collecting society shall, even if it is not operated in the legal form of a corporation, draw up, have audited and disclose financial statements comprising a balance sheet, profit and loss account, cash-flow statement and an annex, and a management report under the provisions applicable to large corporations set out in the Commercial Code. The disclosure shall be effected no later than eight months following the end of the financial year. The full wording of the certification of the financial statements shall be reproduced.
- (2) The audit of the financial statements shall include an examination of whether the obligations under sections 24 and 28 (4) have been fulfilled and whether the valuations and attribution to accounts have been done correctly and comprehensibly, taking account of the principle of consistency, as well as an examination of whether the investment guidelines were complied with when the rights revenue was invested (section 25 (1), second sentence). The result shall be included in the audit report.
- (3) Statutory provisions on accounting and auditing over and above this shall remain unaffected.

### **Section 58 Annual transparency report**

- (1) No later than eight months following the end of a financial year the collecting society shall draw up a transparency report (annual transparency report) for that financial year.
- (2) The annual transparency report shall contain at least the information set out in the Annex.
- (3) The financial information referred to in point 1 (g) of the Annex as well as the content of the special report referred to in point 1 (h) of the Annex shall be subjected to an audit by an auditor. The



provisions on the appointment of the auditor shall apply mutatis mutandis to the audit. The auditor shall summarise the result of the audit in a certificate in respect of the annual transparency report. (4) The collecting society shall publish on its website the annual transparency report, including the certification of the financial statements and the certificate in respect of the annual transparency report under subsection (3) or any objections, in full in each case, within the period referred to in subsection (1). The annual transparency report shall remain available to the public on that website for at least five years.

### **Part 3**

#### **Special provisions on the multi-territorial licensing of online rights in musical works**

##### **Section 59**

###### **Scope**

- (1) The special provisions of this Part shall apply in respect of the multi-territorial licensing of online rights in musical works by collecting societies.
- (2) For the purposes of this Act, “online rights” means rights needed for the provision of an online service and to which the author is entitled in accordance with Articles 2 and 3 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).
- (3) For the purposes of this Act, “multi-territorial licensing” means that a licence covers the territory of more than one Member State of the European Union or other Contracting Party to the Agreement on the European Economic Area.

##### **Section 60**

###### **Non-applicable provisions**

- (1) Section 9, second sentence, shall not apply in relation to the rightholder.
- (2) Section 34 (1), first sentence, and sections 35, 37 and 38 shall not apply in relation to the user. Section 39 shall apply mutatis mutandis in respect of the remuneration which the collecting society charges on the basis of the rights it manages.

##### **Section 61**

###### **Special requirements of collecting societies**

- (1) The collecting society shall have sufficient capacity to be able to process electronically, in an efficient and transparent manner, data needed for the management of multi-territorial licences for online rights in musical works.
- (2) The collecting society shall in particular
1. have the ability accurately to identify each musical work whose online rights it manages;
  2. have the ability to identify, in respect of each musical work and each part of a musical work whose online rights it manages, the online rights, wholly or in part and in relation to each territory covered, as well as the respective rightholder;
  3. make use of unique identifiers in order to identify rightholders and musical works, taking into account, as far as possible, voluntary industry standards and practices developed at international level;
  4. make use of adequate means to identify and resolve in a timely and effective manner inconsistencies in the data held by other collecting societies granting multi-territorial licences for online rights in musical works.

##### **Section 62**

###### **Information on musical works and online rights**

- (1) The collecting society shall, in response to a sufficiently justified request, provide to online service providers, entitled persons, rightholders whose rights it manages under a representation agreement and other collecting societies information, by electronic means, about
1. the musical works whose online rights it currently manages,
  2. the online rights it currently manages wholly or in part and

3. the territories currently covered by the management.
- (2) The collecting society may, where necessary, take reasonable measures to protect the correctness and integrity of the data in order to control their reuse and to protect commercially sensitive information.

### **Section 63**

#### **Correction of information**

- (1) The collecting society shall have in place regulations in accordance with which online service providers, rightholders and other collecting societies may request that the data referred to in section 61 (2) and the information referred to in section 62 (1) be corrected.
- (2) Where a request is justified, the collecting society shall without undue delay correct the data or information.

### **Section 64**

#### **Submission of information by electronic means**

- (1) The collecting society shall provide each entitled person with the means of submitting in electronic form information concerning his musical works, his online rights in those works and the territories in respect of which he has authorised the collecting society. In doing so the collecting society and the entitled persons shall, as far as possible, take into account the voluntary industry standards and practices for the exchange of data developed at international level.
- (2) Under representation agreements, subsection (1) shall also apply to the mandating collecting society's entitled persons, in the absence of any other agreement on the part of the collecting society.

### **Section 65**

#### **Monitoring of uses**

The collecting society shall monitor the use of musical works by online service providers in so far as it has granted a multi-territorial licence for the musical works.

### **Section 66**

#### **Reporting of use by electronic means**

- (1) The collecting society shall offer the online service provider the possibility of reporting by electronic means the use of musical works. It shall offer the use of at least one method of reporting which takes into account voluntary industry standards and practices for the electronic exchange of data developed at international level.
- (2) The collecting society may refuse to accept a report if it does not correspond to a method of reporting offered in accordance with subsection (1), second sentence.

### **Section 67**

#### **Invoicing of online service providers**

- (1) The collecting society shall invoice an online service provider without undue delay following his reporting of the actual use of musical works, except where this is not possible for reasons attributable to the online service provider.
- (2) The collecting society shall settle accounts by electronic means. It shall offer the use of at least one invoicing format which takes into account the voluntary industry standards and practices developed at international level.
- (3) The online service provider may not refuse to accept an invoice because of its format if the invoice corresponds to the format offered in accordance with subsection (2), second sentence.
- (4) The invoice shall identify the works and online rights and their actual uses on the basis of the data provided in accordance with section 61 (2), in so far as this is possible on the basis of the report.
- (5) The collecting society shall have in place suitable regulations in accordance with which the online service provider may object to the invoice.

### **Section 68**

#### **Distribution of rights revenue; information**

- (1) The collecting society shall, without delay following its collection, distribute to the entitled persons the revenue from the multi-territorial licensing of online rights in musical works in accordance with the provisions of the distribution plan, except where this is not possible for reasons attributable to the online service provider.

(2) Together with each payment the collecting society shall provide the entitled person with at least the following information:

1. the period in which the uses took place for which amounts are due to the entitled person and the territories in which the musical works were used;
2. the amounts collected, deductions made and amounts distributed by the collecting society for each online right in any musical work which the entitled person has authorised the collecting society to represent;
3. the amounts collected for the entitled person, deductions made and amounts distributed by the collecting society with a breakdown per online service provider.

(3) Subsections (1) and (2) shall apply mutatis mutandis to distribution to the mandating collecting society under representation agreements. The mandating collecting society shall be responsible for the distribution of such amounts and for the provision of such information to its entitled persons, unless the collecting societies agree otherwise.

#### **Section 69 Obligation to represent**

(1) A collecting society which already grants or offers to grant multi-territorial licences for online rights in musical works for at least one other collecting society shall be obliged, at the request of a collecting society which itself does not grant or offer to grant any multi-territorial licences for online rights in musical works, to conclude a representation agreement. The obligation shall exist only in respect of the category of multi-territorial licences in online rights in musical works which the collecting society already grants.

(2) The collecting society shall respond to a request made in accordance with subsection (1) in writing and without undue delay and shall thereby provide information on the key conditions under which it grants or offers to grant multi-territorial licences for online rights in musical works.

(3) Representation agreements under which a collecting society is mandated with the exclusive multi-territorial grant of online rights in musical works shall not be admissible.

#### **Section 70 Provision of information by the mandating collecting society**

(1) The mandating collecting society shall provide the mandated collecting society with that information on its musical works which is needed for the multi-territorial licensing of online rights.

(2) Where the information referred to in subsection (1) is insufficient or the mandating collecting society provides the information in a manner such that the mandated collecting society cannot fulfil the requirements under this Part, the mandated collecting society shall be entitled to

1. charge the mandating collecting society for the costs reasonably incurred in meeting such requirements or
2. exclude those works from management for which only insufficient or unusable information is available.

#### **Section 71 Provision of information to members and entitled persons in the case of representation**

The mandating collecting society shall provide its members and its entitled persons with information on the key conditions of the representation agreements it has concluded.

#### **Section 72 Access to the multi-territorial licensing of online rights in musical works**

A collecting society which does not grant or offer to grant multi-territorial licences for online rights in musical works or has not concluded any representation agreement in accordance with section 69 by 10 April 2017 shall enable the entitled person to otherwise grant his multi-territorial licences in online rights. The collecting society shall thereby be obliged, at the request of the entitled person, to continue to manage online rights in musical works for licensing in individual territories.

#### **Section 73 Management in the case of representation**

- (1) The mandated collecting society shall manage the online rights in the musical works of the mandating collecting society on the same conditions as the online rights of its entitled persons.
- (2) The mandated collecting society shall include the musical works of the mandating collecting society in all offers it makes to an online service provider.
- (3) Management fees may not exceed the costs reasonably arising to the mandating collecting society.

#### **Section 74**

##### **Derogation for radio and television programmes**

The requirements under this Part shall not apply to a collecting society when it grants, on the basis of a voluntary aggregation of the required online rights, in compliance with the competition rules under Articles 101 and 102 of the Treaty on the Functioning of the European Union, multi-territorial licences for online rights in musical works to broadcasting organisations required by the broadcaster to communicate or make available to the public its radio or television programmes simultaneously with or after the broadcast as well as any online material, including previews, produced by or for the broadcaster which is ancillary to the initial broadcast.

#### **Part 4**

##### **Supervision**

#### **Section 75**

##### **Supervisory authority**

- (1) The supervisory authority shall be the German Patent and Trade Mark Office.
- (2) The supervisory authority shall perform its duties and exercise its powers only in the public interest.

#### **Section 76**

##### **Scope of supervision**

- (1) The supervisory authority shall ensure that the collecting society properly fulfils the obligations incumbent upon it under this Act.
- (2) If the collecting society is established in another Member State of the European Union or in another Contracting Party to the Agreement on the European Economic Area and is active in Germany, the supervisory authority shall ensure that the collecting society properly complies with the provisions of the other Member State or Contracting Party on the implementation of Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72).
- (3) In so far as supervision of the collecting society is exercised on the basis of other statutory provisions, it shall be exercised in consultation with the supervisory authority referred to in section 75 (1). The independence of the supervisory authorities responsible for data protection shall remain unaffected.

#### **Section 77**

##### **Authorisation**

- (1) A collecting society shall require authorisation to manage copyright or related rights deriving from the Copyright Act.
- (2) In derogation of subsection (1), a collecting society established in another Member State of the European Union or another Contracting Party to the Agreement on the European Economic Area shall require authorisation only for the management of
  1. the claims to remuneration referred to in section 49 (1),
  2. the right referred to in section 50 or
  3. the rights in out-of-commerce works referred to in section 51.

#### **Section 78**

##### **Application for authorisation**

Authorisation shall be granted by the supervisory authority on the written application of the collecting society. The application shall be accompanied by:

1. the statute of the collecting society,
2. the name and address of the persons authorised by law or under the statute to represent the collecting society,
3. a declaration stating the number of entitled persons as well as the number and commercial significance of the rights which the collecting society is entrusted with managing and
4. a viable business plan for the first three full financial years after commencing business operations which, in particular, indicates the expected income and expenses as well as the organisational structure of the collecting society.

#### **Section 79**

##### **Refusal of authorisation**

- (1) The authorisation under section 77 (1) may be refused only if
1. the statute of the collecting society does not comply with the provisions of this Act,
  2. there is reason to believe that a person authorised by law or under the statute to represent the collecting society does not possess the reliability needed for the exercise of his activity or
  3. the collecting society cannot, in view of its economic basis, be expected effectively to manage the rights.
- (2) Subsection (1) shall apply mutatis mutandis to the authorisation under section 77 (2); the grounds for refusal under subsection (1) nos 1 and 2 shall not apply.

#### **Section 80**

##### **Revocation of authorisation**

- (1) The supervisory authority may revoke the authorisation under section 77 (1) if
1. one of the grounds for refusal referred to in section 79 (1) was not known to the supervisory authority at the time of the grant of authorisation or it occurred subsequently and the deficiency is not remedied within a period to be laid down by the supervisory authority or
  2. the collecting society repeatedly contravenes one of the obligations incumbent upon it under this Act, despite a warning from the supervisory authority.
- (2) The supervisory authority may not revoke the authorisation under section 77 (2) in accordance with subsection (1) no. 2.

#### **Section 81**

##### **Cooperation on the grant and revocation of authorisation**

The supervisory authority shall take decisions in consultation with the Federal Cartel Office on applications for the grant of authorisation and on the revocation of such authorisation. Where consensus cannot be reached, the supervisory authority shall submit the matter to the Federal Ministry of Justice and Consumer Protection; its instructions, which shall be issued in consultation with the Federal Ministry for Economic Affairs and Energy, shall take the place of the consensus.

#### **Section 82**

##### **Notification**

If the collecting society does not require authorisation in accordance with section 77, it shall notify the supervisory authority, in writing and without undue delay, of its taking up a management activity if

1. it is established in another Member State of the European Union or in another Contracting Party to the Agreement on the European Economic Area and it manages copyright or related rights deriving from the Copyright Act or
2. it is established in Germany and is active in another Member State of the European Union or in another Contracting Party to the Agreement on the European Economic Area.

### **Section 83** **Public notice**

Notice of the grant of authorisation, the non-appealable revocation of authorisation and notification in accordance with section 82 shall be published in the Federal Gazette.

### **Section 84** **Management activity without authorisation or notification**

If a collecting society acts without the required authorisation or notification, it cannot assert the copyright and related rights it manages which derive from the Copyright Act. It shall not have the right to apply for criminal prosecution (section 109, Copyright Act).

### **Section 85** **Powers of the supervisory authority**

(1) The supervisory authority may take all necessary measures to ensure that the collecting society properly fulfils the obligations incumbent upon it under this Act.

(2) The supervisory authority may forbid a collecting society from continuing its business operations if the collecting society

1. acts without authorisation or
2. repeatedly contravenes one of the obligations incumbent upon it under this Act, despite a warning from the supervisory authority.

(3) The supervisory authority may require the collecting society to provide information at any time regarding all matters concerning the management and to produce the books and other business documents.

(4) The supervisory authority shall be entitled to participate, through entitled persons, in the general assembly of members as well as in the meetings of the supervisory board, of the management board, of the supervisory body, of the representation of delegates (section 20) and of all the committees of these bodies. The collecting society shall inform the supervisory body in good time of the dates of the meetings referred to in the first sentence.

(5) Where there is reason to believe that a person authorised by law or under the statute to represent the collecting society does not possess the reliability needed in the exercise of his activity, the supervisory authority shall set the collecting society a deadline for his dismissal. The supervisory authority may prohibit him from continuing his activity until the expiry of this deadline if this is necessary to prevent serious adverse effects.

(6) Where there are indications that an organisation requires authorisation in accordance with section 77, the supervisory authority may require the information and documents needed to examine the obligation to obtain authorisation.

### **Section 86** **Powers of the supervisory authority in the case of collecting societies established in another Member State of the European Union or another Contracting Party to the Agreement on the European Economic Area**

(1) Where, in the exercise of its activity in Germany, a collecting society which is established in another Member State of the European Union or in another Contracting Party to the Agreement on the European Economic Area infringes a legal provision of that other Member State or other Contracting Party enacted in the implementation of Directive 2014/26/EU, the supervisory authority may submit all the relevant information to the supervisory authority of that Member State or Contracting Party. It may request the supervisory authority of that Member State or Contracting Party to take measures within the scope of its powers.

(2) In the cases referred to in subsection (1), the supervisory authority may also turn to the expert group set up pursuant to Article 41 of Directive 2014/26/EU.

### **Section 87** **Exchange of information with supervisory authorities in other Member States of the European Union or other Contracting Parties to the Agreement on the European Economic Area**

(1) The supervisory authority shall respond without undue delay to a justified request for information from the supervisory authority of another Member State of the European Union or of another



Contracting Party to the Agreement on the European Economic Area in connection with a provision of this Act enacted in the implementation of Directive 2014/26/EU.

(2) The supervisory authority shall, within three months, provide a reasoned response to a request from the supervisory authority of another Member State of the European Union or of another Contracting Party to the Agreement on the European Economic Area to take measures against a collecting society established in Germany on account of its activity in this Member State or Contracting Party.

## **Section 88**

### **Obligation of the collecting society to provide information**

(1) A collecting society which manages copyright or related rights deriving from the Copyright Act shall without undue delay notify the supervisory authority every time there is a change in persons authorised to represent it by law or under the statute.

(2) A collecting society which manages copyright or related rights deriving from the Copyright Act shall without undue delay submit to the supervisory authority a copy of

1. the statute and any changes thereto,
2. the tariffs, standard rates of remuneration, standard license agreements and any changes thereto,
3. the inclusive contracts and any changes thereto,
4. the representation agreements and any changes thereto,
5. the resolutions of the general assembly of members, of the supervisory board, of the administrative board, of the supervisory body, of the body in which the entitled persons who are not members are entitled to vote pursuant to section 20 (2) no. 4 and of all the committees of these bodies,
6. the investment guidelines and any changes thereto, as well as the certification issued by the auditor or the auditing firm pursuant to section 25 (3),
7. the financial statements, the management report, the audit report and the annual transparency report and
8. the decisions taken in court or administrative proceedings to which the collecting society is a party, in so far as the supervisory authority requires them.

(3) Subsections (1) and (2) shall not apply to a collecting society established in another Member State of the European Union or another Contracting Party to the Agreement on the European Economic Area.

## **Section 89**

### **Applicable procedural law**

(1) Unless provided otherwise under this Act, the Administrative Procedure Act shall apply to the supervisory authority's administrative activity.

(2) Any person may inform the supervisory authority that in his opinion a collecting society is violating one of the obligations incumbent upon it under this Act.

(3) The Administrative Enforcement Act shall apply to the enforcement of administrative acts adopted on the basis of this Act, with the proviso that the amount of the administrative fine shall not exceed one hundred thousand euros.

(4) Where there is a justified interest therein, the supervisory authority may also determine that there has been an infringement of this Act even after that infringement has ended.

(5) The supervisory authority may publish on its website decisions on measures taken under this Act, including decisions on the basis of which there is no cause to take any measures in an individual case. This shall also apply to the grounds for such measures and decisions.

## **Section 90**

### **Supervision of dependent management entities**



(1) A dependent management entity (section 3) shall require authorisation only if it manages the rights referred to in section 77 (2). This shall not apply if all the collecting societies holding shares in or controlling this entity have such authorisation.

(2) A dependent management entity shall notify the supervisory authority without undue delay in writing of its commencing management activities if it requires no authorisation and

1. it manages copyright or related rights deriving from the Copyright Act or
2. it is established in Germany and is acting in another Member State of the European Union or another Contracting Party to the European Economic Area.

(3) In other respects, the provisions of this Part shall apply mutatis mutandis to dependent management entities.

### **Section 91**

#### **Supervision of independent management entities**

(1) Sections 75, 76, 85 (1) to (3) and sections 86 and 87 shall apply mutatis mutandis to independent management entities (section 4).

(2) An independent management entity which is established in Germany or which manages copyright or related rights which derive from the Copyright Act shall notify the supervisory authority, in writing and without undue delay, of its commencing management activities. Section 84 shall apply mutatis mutandis.

### **Part 5**

#### **Arbitration Board and assertion of claims in court**

##### **Chapter 1**

##### **Arbitration Board**

##### **Subchapter 1**

##### **General procedural provisions**

### **Section 92**

#### **Jurisdiction relating to disputes under the Copyright Act and to inclusive contracts**

(1) Any party to a dispute to which a collecting society is party may apply to the Arbitration Board (section 124) if the dispute concerns one of the following matters:

1. the use of works or contributions which are protected under the Copyright Act,
2. the obligation to pay remuneration for appliances and storage media in accordance with section 54 of the Copyright Act or to operators in accordance with section 54c of the Copyright Act,
3. the conclusion or amendment of an inclusive contract.

(2) Any party to a dispute to which a broadcasting organisation and a cable operator are party may also apply to the Arbitration Board if the dispute concerns the obligation to conclude a contract concerning cable retransmission (section 87 (5), Copyright Act).

### **Section 93**

#### **Jurisdiction regarding empirical studies**

Collecting societies may apply to the Arbitration Board in order to have an independent empirical study carried out to determine the use relevant in respect of section 54a (1) of the Copyright Act.

### **Section 94**

#### **Jurisdiction relating to disputes regarding the multi-territorial licensing of online rights in musical works**

Each party to a dispute between a collecting society established in Germany which grants multi-territorial licences for online rights in musical works and online service providers, rightholders or other collecting societies may apply to the Arbitration Board, in so far as rights and obligations of the parties under Part 3 or under section 34 (1), second sentence, (2), section 36, section 39 or section 43 are concerned.

## **Section 95**

### **General procedural rules**

- (1) Unless this Act provides deviating regulations, the Arbitration Board shall determine the procedure at its reasonable discretion. It shall at all times contribute to expediting the proceedings as is appropriate for the matter at hand.
- (2) The parties shall be treated equally. Each party shall be granted the right to a fair legal hearing.

## **Section 96**

### **Calculation of time limits**

Section 222 (1) and (2) of the Code of Civil Procedure shall apply mutatis mutandis to the calculation of time limits set in accordance with this Chapter.

## **Section 97**

### **Application to institute proceedings**

- (1) The Arbitration Board shall be seised by written application. The application must contain at least the name and the address of the respondent and a presentation of the facts. It shall be submitted in duplicate.
- (2) The Arbitration Board shall serve the application on the respondent together with the invitation to submit comments in writing within one month.

## **Section 98**

### **Withdrawal of the application**

- (1) The applicant may withdraw the application; in proceedings with a hearing, however, without the consent of the respondent this shall be possible only until the start of the oral proceedings.
- (2) If the application is withdrawn, the applicant shall carry the costs of the proceedings and the respondent's necessary expenses.

## **Section 99**

### **Written procedure and hearing**

- (1) The proceedings shall be conducted in writing, subject to subsection (2).
- (2) The Arbitration Board shall schedule a hearing if one of the parties so requests and the other parties consent thereto or if it deems it to be expedient to clarify the facts or to reach an amicable settlement.

## **Section 100**

### **Procedure in the event of a hearing**

- (1) The parties shall be summoned to the hearing. The notice period shall be at least two weeks.
- (2) The hearing before the Arbitration Board shall not be public. Authorised representatives of the Federal Ministry of Justice and Consumer Protection, of the supervisory authority and of the Federal Cartel Office shall be entitled to participate.
- (3) The Arbitration Board may forbid authorised representatives or advisers who are not practising lawyers from making further submissions if they are not in a position to properly present the facts and the nature of the dispute.
- (4) Minutes of the hearing shall be drawn up and they shall be signed by the chairperson of the Arbitration Board and by the recording clerk.

## **Section 101**

### **Failure to appear**

- (1) If the applicant fails to appear in court, the application shall be deemed to be withdrawn. If the applicant was prevented, through no fault of his own, from appearing at the hearing, he shall be granted restitutio in integrum upon motion. The Arbitration Board shall decide on the motion; its decision shall be non-appealable. In other respects the provisions of the Code of Civil Procedure shall apply mutatis mutandis to restitutio in integrum.
- (2) If the respondent fails to appear at the hearing, the Arbitration Board may propose a settlement on the basis of the files.
- (3) Parties who fail to appear without excuse shall carry the costs arising on account of their failure to appear.

(4) The consequences of their failure to appear shall be indicated to the parties in the summons to the hearing.

### **Section 102**

#### **Amicable dispute resolution; settlement**

- (1) The Arbitration Board shall work towards achieving an amicable resolution of the dispute.
- (2) Where a settlement is reached, it shall be submitted to the files in a separate document and, as well as indicating the date on which the settlement was reached, shall be signed by the chairperson of the Arbitration Board and by the parties. Compulsory enforcement may be pursued in respect of the settlements concluded before the Arbitration Board; section 797a of the Code of Civil Procedure shall apply mutatis mutandis.
- (3) The chairperson may summon the parties, with their consent, to an attempt to reach a settlement without bringing in the assessors. He shall be obliged to do so if both parties so request.

### **Section 103**

#### **Suspension of proceedings**

- (1) The Arbitration Board may suspend the proceedings if it is to be expected that other pending proceedings will have a bearing on the outcome of the proceedings.
- (2) The period in respect of the proposal of a settlement under section 105 (1) shall be stayed during the suspension of the proceedings.

### **Section 104**

#### **Clarification of the facts**

- (1) The Arbitration Board may take the necessary evidence in appropriate form. It shall not be bound by motions to take evidence.
- (2) It may make the summoning of witnesses and the production of evidence by experts dependent upon payment of a sufficient advance to cover expenses.
- (3) The parties are to be given the opportunity to comment on the results of the investigations and of the taking of evidence.
- (4) Sections 1050 and 1062 (4) of the Code of Civil Procedure shall apply mutatis mutandis.

### **Section 105**

#### **Settlement proposal by the Arbitration Board; objection**

- (1) The Arbitration Board shall propose a settlement to the parties within one year following service of the application. The period may be extended, with the consent of all the parties, by six months in each case.
- (2) The settlement proposal shall be reasoned and signed by all the members of the Arbitration Board competent in respect of the dispute. The settlement proposal shall indicate the possibility of lodging an objection and the consequences of missing the deadline for lodging an objection. The settlement proposal shall be served on the parties. The supervisory authority shall at the same time be sent a copy of the settlement proposal.
- (3) The settlement proposal shall be deemed to have been accepted and an agreement corresponding to the content of the proposal shall be deemed to have been reached if the Arbitration Board has received no written objection within a period of one month following service of the proposal. If the action concerns the grant or transfer of rights of use in cable retransmission, the period shall be three months.
- (4) If one of the parties was prevented, through no fault of their own, from lodging the objection in good time, they shall, upon motion, be granted restitutio in integrum. The Arbitration Board shall decide on the motion for restitutio in integrum. An immediate complaint to be filed with the regional court at the place of the applicant's establishment shall be possible against the Arbitration Board's decision to refuse restitutio in integrum. The provisions of the Code of Civil Procedure on restitutio in integrum and the immediate complaint shall apply mutatis mutandis.
- (5) Compulsory enforcement may be pursued in respect of the accepted settlement proposal. Section 797a of the Code of Civil Procedure shall apply mutatis mutandis.

### **Subchapter 2**

#### **Special procedural provisions**

**Section 106**  
**Provisional settlement**

Upon motion of one of the parties, the Arbitration Board may propose a provisional settlement. Section 105 (2) and (3), first sentence, shall apply. The provisional settlement shall apply, if no other agreement is reached, up until the conclusion of the proceedings before the Arbitration Board.

**Section 107**  
**Payment of security**

(1) In proceedings under section 92 (1) no. 2 concerning the obligation to pay remuneration for appliances and storage media, the Arbitration Board may, upon motion of the collecting society, order that the manufacturer, importer or trader concerned pay a security in respect of the fulfilment of the entitlement arising under section 54 (1) of the Copyright Act. The order referred to in the first sentence shall not be issued upon reasonable partial performance.

(2) The application shall stipulate the amount of the security sought.

(3) The Arbitration Board shall decide at its reasonable discretion on the nature and amount of the security. The amount of the security may not exceed that sought in the application.

(4) The competent higher regional court (section 129 (1)) may, upon motion of the collecting society, permit by order the enforcement of an order issued in accordance with subsection (1), except where a motion for a corresponding measure of temporary relief has already been submitted to the court. The competent higher regional court may issue a deviating order if this is necessary in respect of the enforcement.

(5) Upon motion, the competent higher regional court may revoke or amend the order issued in accordance with subsection (4).

**Section 108**  
**Damages**

If the order for payment of a security under section 107 (1) proves to have been unjustified from the outset, the collecting society which effected enforcement of the order shall be obliged to compensate the respondent for the damage arising from the enforcement.

**Section 109**  
**Limitation of the settlement proposal; dispensing with the settlement proposal**

(1) Where, in the case of disputes under section 92 (1) nos 1 and 2, the applicability or the appropriateness of a tariff is in dispute and where other facts are also in dispute, the Arbitration Board may limit its settlement proposal to observations regarding the applicability or appropriateness of the tariff.

(2) Where, in the case of disputes under section 92 (1) nos 1 and 2, the applicability and the appropriateness of a tariff are not in dispute, the Arbitration Board may dispense with proposing a settlement.

**Section 110**  
**Disputes concerning inclusive contracts**

(1) In the case of disputes under section 92 (1) no. 3, the settlement proposal shall contain the content of the inclusive contract. The Arbitration Board may propose an inclusive contract only with effect from 1 January of the year in which the application was made to the Arbitration Board.

(2) The Arbitration Board shall inform the Federal Cartel Office of the proceedings. Section 90 (1), fourth sentence, and (2) of the Act Against Restraints of Competition shall apply mutatis mutandis.

**Section 111**  
**Disputes concerning rights to cable retransmission**

Section 110 shall apply mutatis mutandis in the case of disputes under section 92 (2).

**Section 112**  
**Empirical survey in respect of appliances and storage media**

(1) In proceedings under section 93, the application by means of which the Arbitration Board is seised must contain a list of the associations of the manufacturers, importers and traders affected, in so far as these are known to the applicant.

(2) The Arbitration Board shall serve the application on the associations referred to therein, together with the invitation to comment in writing within one month in regard to whether they wish to participate in the proceedings. The Arbitration Board shall at the same time publish the application in suitable form, together with a reference to the fact that associations of manufacturers, importers and traders affected on whom the application was not served may participate in the proceedings by making written declaration to the Arbitration Board within one month of publication of the application.

### **Section 113**

#### **Conduct of the empirical survey**

Section 104 shall apply to the conduct of the empirical survey pursuant to section 93, with the proviso that the Arbitration Board may not refuse the conduct of the empirical survey. The Arbitration Board is not to commission the conduct of this survey until the collecting society has paid an advance. It is to work towards the result of the empirical survey being available no later than one year following receipt of the application referred to in section 112 (1).

### **Section 114**

#### **Result of the empirical survey**

(1) The Arbitration Board shall determine that the result of the empirical survey meets the requirements which are to be made in respect of the setting of a tariff pursuant to section 40. Otherwise it shall mandate its supplementation or amendment.

(2) It shall serve the result which meets the requirements on the parties and shall publish it in a suitable form. Section 105 shall not apply.

### **Section 115**

#### **Utilisation of the results of the survey**

In proceedings under section 92 (1) nos 2 and 3 the result of an empirical survey originating in proceedings under section 93 may be drawn on for the clarification of the facts (section 104).

### **Section 116**

#### **Participation of consumer associations**

In proceedings under section 92 (1) nos 2 and 3 and section 93, the Arbitration Board shall give the national umbrella organisations of the publicly funded consumer associations the opportunity to comment in writing. If they submit comments, section 114 (2), first sentence, shall apply mutatis mutandis.

## **Subchapter 3**

### **Costs; compensation and remuneration of third parties**

### **Section 117**

#### **Costs of the proceedings**

(1) The supervisory authority shall impose fees and expenses (costs) in respect of proceedings before the Arbitration Board.

(2) The fees shall be based on the value in dispute. The amount shall be determined on the basis of section 34 of the Court Fees Act. The value in dispute shall be determined by the Arbitration Board. It shall be calculated on the basis of the provisions applicable to proceedings before the ordinary courts under the Code of Civil Procedure.

(3) In the case of proceedings under section 92 (1) nos 2 and 3 and (2) and under section 94, fees shall be levied at a rate of 3.0. If the proceedings are terminated by means other than a settlement proposal submitted by the Arbitration Board, the fees shall be reduced to a rate of 1.0. The same shall apply if the parties accept the settlement proposal made by the Arbitration Board.

(4) In the case of proceedings under section 92 (1) no. 1 and section 93, fees shall be levied at a rate of 1.0.

(5) Expenses shall be levied in application mutatis mutandis of nos 9000 to 9009 and 9013 of the Fee Schedule to the Court Fees Act.

### **Section 118**

#### **Due date and advance**

(1) Fees shall be due upon termination of the proceedings; expenses shall be due immediately upon their arising.

(2) Service of the application to initiate proceedings is to be made dependent on payment of an advance by the applicant in the amount of one third of the fees.

#### **Section 119**

##### **Application mutatis mutandis of the Court Fees Act**

Section 2 (1), (3) and (5) of the Court Fees Act, in so far as these provisions are applicable to proceedings before the ordinary courts, sections 5, 17 (1) to (3), sections 20, 21, 22 (1), section 28 (1) and (2), sections 29, 31 (1) and (2) and section 32 of the Court Fees Act on exemption from costs, limitation and interest on costs, on the dependency of the activity of the Arbitration Board on payment of an advance on costs, additional charges and non-imposition of costs, as well as the party liable to pay costs shall apply mutatis mutandis.

#### **Section 120**

##### **Decision on objections**

The local court in whose district the supervisory authority has its seat shall decide on objections to administrative acts in the enforcement of the provisions on costs. Objections shall be lodged with the Arbitration Board or with the supervisory authority. Section 19 (5) and section 66 (5), first sentence, fifth sentence, and (8) of the Court Fees Act shall apply mutatis mutandis; the next highest court shall decide on the appeal. The lodging of objections and the appeal shall not have suspensive effect.

#### **Section 121**

##### **Decision on the obligation to pay costs**

(1) The Arbitration Board shall decide at its reasonable discretion on the allocation of the costs of the proceedings, unless provided otherwise. The Arbitration Board may order that, where reasonable, one of the opposing parties shall reimburse, in full or in part, the necessary expenses arising for a party.  
(2) The decision on the costs may be contested by means of a request for a judicial decision, even if the settlement proposal made by the Arbitration Board is accepted. The local court in whose district the Arbitration Board has its seat shall decide on the request.

#### **Section 122**

##### **Assessment of costs**

(1) The supervisory authority shall assess the costs of the proceedings (section 117) and the necessary expenses to be reimbursed to one of the parties (section 121 (1), second sentence). The assessment shall be served on the party liable to pay the costs and, if necessary expenses to be reimbursed in accordance with section 121 (1), second sentence, have been assessed, also to the party entitled to reimbursement.  
(2) Each party may, within a period of two weeks following service, apply for the court to assess the costs and the necessary expenses to be reimbursed. The local court in whose district the supervisory authority has its seat shall have jurisdiction. The application shall be submitted to the supervisory authority. The supervisory authority may deal with the application.  
(3) Compulsory enforcement may be pursued in respect of the decision assessing costs in application mutatis mutandis of the Code of Civil Procedure.

#### **Section 123**

##### **Compensation of witnesses and remuneration of experts**

(1) Witnesses shall receive compensation and experts shall receive remuneration under the provisions of sections 3, 5 to 10, 12 and 19 to 22 of the Judicial Remuneration and Compensation Act; sections 2 and 13 (1) and (2), first to third sentences, of the Judicial Remuneration and Compensation Act shall apply mutatis mutandis.  
(2) The supervisory authority shall determine the amount of the compensation.  
(3) Witnesses and experts may apply for the court to determine the amount of the compensation. The local court in whose district the Arbitration Board has its seat shall decide on the application. The application shall be submitted to the supervisory authority or recorded with the registry for the files of the local court. The supervisory authority may deal with the application. No costs shall be reimbursed.

#### **Subchapter 4**

##### **Organisational structure of and taking of decisions by the Arbitration Board**



## **Section 124**

### **Structure and composition of the Arbitration Board**

- (1) The Arbitration Board shall be constituted at the supervisory authority (section 75). It shall comprise the chairperson or his deputy and two assessors.
- (2) The members of the Arbitration Board must be qualified under the terms of the German Judiciary Act to hold judicial office. They shall be appointed by the Federal Ministry of Justice and Consumer Protection for a specific period of time, which shall be at least one year; they may be reappointed.
- (3) Several chambers may be constituted at the Arbitration Board. The composition of the chambers shall be determined in accordance with subsection (1), second sentence, and (2).
- (4) The allocation of court business among the chambers shall be regulated by the President of the German Patent and Trade Mark Office.

## **Section 125**

### **Supervision**

- (1) The members of the Arbitration Board shall not be bound by instructions.
- (2) The President of the German Patent and Trade Mark Office shall exercise administrative supervision over the Arbitration Board.

## **Section 126**

### **Taking of decisions**

The Arbitration Board shall take its decisions by majority vote. Section 196 (2) of the Courts Constitution Act shall apply.

## **Section 127**

### **Exclusion of and objection to members of the Arbitration Board**

The local court in whose district the Arbitration Board has its seat shall decide on the exclusion of and objection to members of the Arbitration Board. The objection request shall be submitted to the Arbitration Board. In other respects sections 41 to 48 of the Code of Civil Procedure shall apply *mutatis mutandis*.

## **Chapter 2**

### **Assertion of claims in court**

## **Section 128**

### **Assertion of claims in court**

- (1) In the case of disputes under section 92 (1) and (2), an action shall be permissible only where proceedings before the Arbitration Board have preceded it or have not been concluded within the period provided for under section 105 (1). Section 103 (2) shall apply in respect of the period.
- (2) In the case of disputes under section 92 (1) nos 1 and 2, subsection (1) shall apply only where the applicability or the appropriateness of the tariff is in dispute. Where it does not become apparent until the action is pending that the applicability or the appropriateness of the tariff is in dispute, the court shall suspend the action by order so as to enable the parties to apply to the Arbitration Board. If the party disputing the applicability or the appropriateness of the tariff does not furnish proof within two months from the promulgation or service of the order to suspend the action that a request has been submitted to the Arbitration Board, the action shall continue; in such cases the applicability and the appropriateness of the disputed tariff shall be deemed to have been conceded.
- (3) Subsection (1) shall not apply to motions for the order of attachment or for an injunction. Once a writ of attachment or an injunction has been issued, the action shall be permissible without the limitation set in subsection (1) if the party has been set a time limit for the bringing of the action in accordance with sections 926 and 936 of the Code of Civil Procedure.

## **Section 129**

### **Jurisdiction of the higher regional court**

- (1) In disputes under section 92 (1) nos 2 and 3 as well as (2), under section 94 and on claims under section 108, the higher regional court with jurisdiction over the place at which the Arbitration Board has its seat alone shall decide as the court of first instance.
- (2) Chapter 1 of Book 2 of the Code of Civil Procedure shall apply *mutatis mutandis* to the proceedings. Section 411a of the Code of Civil Procedure shall apply, with the proviso that the result



of an empirical survey resulting from proceedings under section 93 may also take the place of the written report.

(3) An appeal on points of law shall be possible, in accordance with the provisions of the Code of Civil Procedure, against final judgments handed down by the higher regional court.

(4) In the cases referred to in section 107 (4) and (5), the higher regional court with jurisdiction over the place at which the Arbitration Board has its seat shall issue a non-appealable decision. The opposing party shall be heard before a decision is taken.

### **Section 130**

#### **Decision on inclusive contracts**

The higher regional court shall, at its reasonable discretion, determine the content of the inclusive contracts, in particular the nature and amount of the remuneration. The determination shall take the place of the corresponding agreement between the parties. The determination of an agreement shall be possible only with effect from 1 January of the year in which the application is submitted to the Arbitration Board.

### **Section 131**

#### **Exclusive jurisdiction**

(1) In the case of litigation concerning the claims of a collecting society resulting from an infringement of a right of use or authorisation right managed by it, that court shall have exclusive jurisdiction in whose district the infringing act was committed or with which the infringer has its general venue. Section 105 of the Copyright Act shall remain unaffected.

(2) Where, in accordance with subsection (1), first sentence, different courts have jurisdiction in respect of several actions against the same infringer, the collecting society may assert all the claims before one of these courts.

## **Part 6**

### **Transitional and concluding provisions**

#### **Section 132**

##### **Transitional provision on authorisations**

(1) Collecting societies which have, upon the entry into force of this Act, already been granted authorisation in accordance with Chapter 1 of the Copyright Administration Act in the version applicable until 31 May 2016 shall be deemed to have been granted authorisation in accordance with section 77.

(2) Organisations which are, upon the entry into force of this Act, already managing copyright and related rights and which require authorisation for the first time in accordance with section 77 shall be entitled to continue their management activities without the required authorisation up until the decision on the application for the grant of the authorisation becomes final if they

1. give notice to the supervisory authority of the management activity in writing without undue delay and
2. submit an application for the grant of the authorisation (section 78) no later than 31 December 2016.

#### **Section 133**

##### **Notification period**

If an organisation is obliged pursuant to sections 82, 90 or 91 to give notice of commencing a management activity, it shall give notice thereof to the supervisory authority no later than 1 December 2016.

#### **Section 134**

##### **Transitional provision on adapting the statute to the requirements of this Act**

The collecting society shall, without undue delay and no later than 31 December 2016, adapt the statute, the conditions of management and the distribution plan to the requirements of this Act.

### **Section 135**

#### **Information requirements of the collecting society upon the entry into force of this Act**

- (1) The collecting society shall inform its entitled persons no later than 1 December 2016 of their rights under sections 9 to 12, including the conditions referred to in section 11.
- (2) Sections 47 and 54 shall apply for the first time to financial years commencing after 31 December 2015.

### **Section 136**

#### **Transitional provision on statements by the management and by the supervisory body**

The statements referred to in sections 21 and 22 shall be made for the first time in respect of financial years commencing after 31 December 2015.

### **Section 137**

#### **Transitional provision on accounting and transparency report**

- (1) Sections 57 and 58 on accounting and the annual transparency report shall apply for the first time to financial years commencing after 31 December 2015.
- (2) Section 9 of the Copyright Administration Act in the version applicable until 31 May 2016 shall continue to apply to accounting and audits in respect of financial years ending before 1 January 2016.

### **Section 138**

#### **Transitional provision on supervisory authority proceedings**

Supervisory authority proceedings which were not concluded before the entry into force of this Act shall be continued under the provisions of this Act.

### **Section 139**

#### **Transitional provision on proceedings before the Arbitration Board and on the assertion of claims in court**

- (1) Sections 92 to 127 shall not apply to proceedings pending with the Arbitration Board on 1 June 2016; sections 14 and 15 of the Copyright Administration Act and the Ordinance on the Copyright Arbitration Board in the versions applicable until 31 May 2016 shall continue to apply to these proceedings.
- (2) In derogation of section 40 (1), second sentence, the collecting societies may also set tariffs on the basis of an empirical survey conducted before 1 June 2016 in proceedings before the Arbitration Board if the result of the survey meets the requirements set out in section 114 (1), first sentence. The same shall apply to empirical surveys carried out in proceedings conducted pursuant to subsection (1) on the basis of previously applicable law.
- (3) Sections 128 to 131 shall not apply to proceedings pending before a court on 1 June 2016; sections 16, 17 and 27 (3) of the Copyright Administration Act in the version applicable until 31 May 2016 shall continue to apply to these proceedings.

### **Annex (to section 58 (2))**

#### **Content of the annual transparency report**

(Publication source: Federal Law Gazette I 2016 p. 1214–1215)

1. The annual transparency report referred to in section 58 (1) shall contain
  - a) the financial statements, including the cash-flow statement;
  - b) a report on activities carried out in the financial year;
  - c) information on requests from users regarding the grant of rights of use which were refused;
  - d) a description of the legal form and organisational structure;
  - e) information on the collecting society's dependent management entities, including the information referred to in point 1 (b) to (d) concerning these entities;

- f) information on the total amount of remuneration paid to persons referred to in section 18 (1) in the previous year and other benefits granted to them;
  - g) the financial information referred to in point 2, with a breakdown in each case per collecting society and the collecting society's dependent management entities (section 3);
  - h) a special report as referred to in point 3, with a breakdown in each case per collecting society and the collecting society's dependent entities (section 3).
2. For the purposes of point 1 (g), "financial information" means
- a) information on rights revenue per category of rights managed and the type of use (e.g. radio and television, online use, performance) and the use of that revenue, i.e. whether it was paid to the entitled persons or other collecting societies or used for other purposes;
  - b) comprehensive information on the costs of rights management and on the costs of other services which the collecting society provides to its entitled persons and members, in particular
    - aa) all operating and financial costs, with a breakdown per category of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate these costs to the categories of rights;
    - bb) operating and financial costs associated with the rights managed, including the management fees deducted from the rights revenue, with a breakdown per category of rights managed and, where the costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate these costs to the categories of rights;
    - cc) operating and financial costs which are not related to the rights managed, including those for social and cultural services;
    - dd) resources used to cover costs, in particular information on to what extent costs were covered by means of rights revenue, from own assets or other resources;
    - ee) deductions made from the rights revenue, with a breakdown per category of rights managed and per type of use and the purpose of the deductions, such as costs relating to the management of rights or for social and cultural services;
    - ff) the percentages of all the costs for the management of rights and for other services provided to entitled persons and members in relation to the rights revenue in the relevant financial year, with a breakdown per category of rights managed and, if the costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate these costs to the categories of rights;
  - c) comprehensive information on amounts due to the entitled persons, in particular
    - aa) the total amount attributed to the entitled persons, with a breakdown per category of rights managed and type of use;
    - bb) the total amount paid to the entitled persons, with a breakdown per category of rights managed and type of use;
    - cc) the date of payment, with a breakdown per category of rights managed and type of use;
    - dd) the total amounts not yet attributed to the entitled persons, with a breakdown per category of rights managed and type of use, indicating the financial year in which the amounts were collected;

- ee) the total amount attributed but not yet paid to the entitled persons, with a breakdown per category of rights managed and type of use, indicating the financial year in which the amounts were collected;
  - ff) reasons for delays in payment if the collecting society has not distributed the amounts within the deadline set (section 28);
  - gg) the total non-distributable amounts, along with an explanation of the use of these amounts;
- d) information on relationships with other collecting societies, in particular
- aa) amounts received from other collecting societies or amounts paid to other collecting societies, with a breakdown per category of rights managed and type of use;
  - bb) management fees and other deductions from the rights revenue due to other collecting societies, with a breakdown per category of rights managed and type of use;
  - cc) management fees and other deductions from amounts received from other collecting societies, with a breakdown per category of rights managed;
  - dd) amounts which the collecting society distributed directly to rightholders represented by other collecting societies, with a breakdown per category of rights managed.
3. The special report referred to in point 1 (h) shall contain the following information:
- a) the amounts deducted from the rights revenue for social and cultural services in the financial year, with a breakdown per type of purpose, and for each type of purpose with a breakdown per category of rights managed and type of use;
  - b) an explanation of the use of these amounts, with a breakdown per type of purpose, including
    - aa) the amounts used to cover those costs arising in connection with the administration of the social and cultural services and
    - bb) the actual amounts used for social or cultural services.