

Übersetzung durch Ute Reusch

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

### **(Verwertungsgesellschaftengesetz – VGG)**

Collecting Societies Act of 24 May 2016 (Federal Law Gazette I, p. 1190), as last amended by Article 2 of the Act of 31 May 2021 (Federal Law Gazette I, p. 1204)

\*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).

#### **Part 1**

#### **Subject matter; 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) Insofar as the dependent management entity carries out the activities of a collecting society, the provisions of this Act applicable to those activities apply accordingly. The provisions concerning management in section 21 (1) and (2) apply accordingly, irrespective of which activities of a collecting society the dependent management entity carries out. Section 90 applies 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 in full nor in part, by its entitled persons (section 6) or the management entity is controlled neither directly nor indirectly, neither in full 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 apply accordingly to independent management entities. Section 91 applies 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 7a External rightholder**

For the purposes of this Act, 'external rightholder' means a rightholder who, in respect of the use in question, does not have a contractual relationship with a collecting society concerning management of his or her rights.

#### **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 collecting societies**

#### **Division 1 Internal relationship**

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

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

Collecting societies are obliged, at the request of a rightholder, to manage rights of that rightholder's choice in types of works and other subject matter of that rightholder's choice, in territories of that rightholder's choice if

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

2. there are no objective reasons precluding the management.

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

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

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

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

Collecting societies lay down conditions under which an entitled person may grant any person the right to use their works or other subject matter for non-commercial purposes, even if that entitled person has granted or transferred authorisation for the management of the rights in them to a collecting society.

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

(1) Collecting societies lay down in the conditions of management that an 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 that entitled person's choice in types of works and other subject matter of that entitled person's choice, for territories of that entitled person's choice in each case.

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

(3) The collecting society is to continue to collect, manage and distribute rights revenue under 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) Collecting societies lay down in their memorandum, articles of association or other rules of constitution (statute) that entitled persons and entities representing rightholders are to be admitted as members if they fulfil their membership requirements. The requirements must be objective, transparent and non-discriminatory, and they are to be laid down in the statute.

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

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

Collecting societies offer all their members and entitled persons access to electronic communication.

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

Collecting societies keep an up-to-date record of their members and entitled persons.

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

Collecting societies make provision, in their statute, for appropriate and effective mechanisms for the participation of members and of entitled persons in their decision-making processes. The representation of the different categories of members and entitled persons, such as authors of musical works, phonogram producers and performers, must be fair and balanced.

## **Section 17**

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

(1) The general assembly of members constitutes the body in which the members participate and exercise their voting rights. Collecting societies lay down in their statute that the general assembly of members decides at least on the following issues:

1. their statute (section 13);
2. their annual transparency report (section 58);
3. the appointment and removal of an 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. their risk management policy;
6. their distribution plan (section 27);
7. their use of non-distributable rights revenue (section 30);
8. their general investment policy with regard to rights revenue (section 25);
9. their 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, sale and hypothecation of immovable property;
11. the taking out and granting of loans and the provision of securities for loans;
12. the conclusion, content and termination of representation arrangements (section 44);
13. their conditions of management (section 9 sentence 2);
14. their tariffs (sections 38 to 40);
15. the rights belonging to the scope of activity;
16. the conditions under which entitled persons may grant any person the right to non-commercial use of their works or other subject matter (section 11).

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

## **Section 18**

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

(1) Collecting societies lay down in their statute that the general assembly of members decides 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 their 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), insofar 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 referred to in subsection (1) as regards those persons authorised to represent by law or under their statute are to be delegated to the supervisory board or to the supervisory body as referred to in section 22.

### **Section 19**

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

- (1) The general assembly of members is to be convened at least once a year.
- (2) All the members of a collecting society are entitled both to participate in and to vote at the general assembly of members.
- (3) Collecting societies lay down in their statute the conditions under which the members may 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. Collecting societies may permit the exercise of other membership rights by electronic means.
- (4) Members must each be entitled by law or under the collecting society's statute to also have their 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 in particular arises where the same proxy represents members of various categories as laid down in the statute. Collecting societies may limit in their statute the number of members which may be represented by the same proxy, though this number may not fall below 10. Authorisation to act as proxy at a general assembly of members is effective only if it is limited to representing the member at this general assembly of members. Proxies are obliged to vote in accordance with the instructions of the member appointing them as proxy.

### **Section 20**

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

- (1) Those entitled persons who are not members elect delegates from among their number at least every four years.
- (2) A collecting society's statute is, at a minimum, to regulate
  1. the number and composition of delegates;
  2. the procedure for electing delegates;
  3. that delegates are authorised to participate in the general assembly of members;
  4. that delegates are entitled to vote, at a minimum, on decisions concerning the matters referred to in section 17 (1) sentence 2 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 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) applies accordingly to the participation of delegates in the general assembly of members.

### **Subdivision 2**

#### **Management and supervision**

### **Section 21**

#### **Management**

- (1) Collecting societies take measures to ensure that those persons who, by law or under their 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 puts in place and applies procedures to prevent adverse effects for members and entitled persons. The collecting society thereby also stipulates 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 make an individual statement to the general assembly of members at least once a year which must contain the following information:

1. their interests in the collecting society,
2. the amount of remuneration and other benefits they received from the collecting society in the preceding financial year,
3. the amounts they received from the collecting society in the preceding financial year in their capacity as 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) Collecting societies may, for the purposes of an individual statement, determine appropriate increments in respect of the amounts referred to in subsection (3) no. 3.

## **Section 22**

### **Supervisory body**

(1) Each collecting society has a body which is entrusted with continuously monitoring those persons who, by law or under its statute, are authorised to represent it (supervisory body).

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

(3) The supervisory body, at a minimum, has 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, insofar as the dependent management entity carries out the activities of a collecting society.

(4) The supervisory body meets regularly and, at least once a year, reports on its activities to the general assembly of members.

(5) At least once a year, the members of the supervisory body make a statement as referred to in section 21 (3) to the general assembly of members. Section 21 (4) applies accordingly.

## **Subdivision 3**

### **Rights revenue**

#### **Section 23**

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

Collecting societies are to exercise due diligence when collecting, managing and distributing, under the provisions of this Subdivision, rights revenue, including the revenue from rights which it manages under a representation agreement (section 44), unless otherwise provided under this Act. For the purposes of this Act, 'rights revenue' includes any investment returns earned on such revenue.

## **Section 24**

### **Separate accounts**

Collecting societies keep separate in their accounts:

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

## **Section 25**

### **Investment of rights revenue**

(1) If a collecting society invests rights revenue, it does so in the sole and best interests of the entitled persons. The collecting society lays down guidelines for the purposes of investing the rights revenue (investment guidelines) and complies with these whenever it invests rights revenue.

(2) The investment guidelines must

1. be consistent with the general investment policy (section 17 (1) sentence 2 no. 8) and the risk management policy (section 17 (1) sentence 2 no. 5);
2. guarantee that the investment is made in accordance with the statutory instrument referred to in section 240a (1) no. 2 of the Civil Code (*Bürgerliches Gesetzbuch*) or is another type of investment complying with the principles of the efficient management of assets pursuant to section 1798 (1) sentence 1 of the 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) Collecting societies have an auditor or an auditing firm assess and certify, without delay, whether the investment guidelines and any changes thereto comply with the requirements set out in subsection (2).

### **Section 26** **Use of rights revenue**

Collecting societies are permitted to use 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) sentence 2 no. 7, insofar as the rights revenue is non-distributable;
3. pursuant to a decision taken in accordance with section 17 (1) sentence 2, no. 9 on deductions in respect of management fees;
4. pursuant to a decision taken in accordance with section 17 (1) sentence 2 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) Collecting societies establish rules to preclude arbitrary acts of distribution of rights revenue (distribution plan).

(2) If a collecting society jointly manages rights for several groups of 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 author's statutory remuneration rights**

(1) After the release of a published work or upon its registration with a 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 (1) of the Copyright Act (*Urheberrechtsgesetz*).

(2) Collecting societies determine the amount of the publisher's share as referred to in subsection (1).

(3) Subsections (1) and (2) apply accordingly to revenue from the remuneration rights under section 27 (2) of the Copyright Act.

### **Section 27b** **Author's minimum participation**

If the appropriate remuneration in accordance with section 63a (2) and (3) of the Copyright Act or in accordance with section 27a of this Act is to be shared with a publisher, then the author is entitled to at least two thirds of the revenue, unless the collecting society determines another arrangement.

## **Section 28**

### **Time limit for distribution**

- (1) Collecting societies set deadlines in their distribution plan or in their conditions of management by which rights revenue is to be distributed.
- (2) Collecting societies set the deadlines so that rights revenue is distributed no later than nine months from the end of the financial year in which it was collected.
- (3) Collecting societies may provide that a deadline does not expire as long as the collecting society is prevented from distributing rights revenue for objective reasons.
- (4) Collecting societies keep separate account of rights revenue which is not paid before the expiry of the deadline set because an 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 takes reasonable measures to identify or locate the entitled person.
- (2) In particular, the collecting society, where applicable, provides 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 matter 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 might assist in identifying the entitled person.
- (3) Collecting societies 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 is 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) Collecting societies set general rules on the use of non-distributable rights revenue.
- (3) The rights of the entitled person arising from the management relationship remain unaffected.

## **Section 31**

### **Deductions from rights revenue**

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

## **Section 32**

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

- (1) Collecting societies are, as a rule, to promote culturally important works and contributions.
- (2) Collecting societies are, as a rule, to establish welfare and assistance schemes for their entitled persons.
- (3) If a collecting society finances cultural promotion and welfare and assistance schemes through deductions from rights revenue, it is to 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.

**Subdivision 4**  
**Complaints procedures**

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

- (1) Collecting societies lay down rules in respect of effective and timely complaints procedures.
- (2) The following, in particular, are to 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 conditions of management,
  3. the collection, management and distribution of rights revenue,
  4. the deductions from rights revenue.
- (3) Collecting societies respond to complaints in writing. If a collecting society rejects a complaint, it is to provide reasons therefor.

**Division 2**  
**External relationship**

**Subdivision 1**  
**Agreements and tariffs**

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

- (1) Collecting societies are obliged, on the basis of the rights they manage, to grant any person, upon request, rights of use at reasonable conditions. In particular, the conditions must be objective and non-discriminatory and must provide for appropriate remuneration.
- (2) Collecting societies are not already in violation of their obligation to be non-discriminatory because they do not also grant the conditions agreed between themselves and the provider of a new type of online service to another provider of a similar new type of online service. An online service is new if it has been available to the public in the European Union or in another Contracting Party of the Agreement on the European Economic Area for less than three years.

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

Collecting societies are obliged to conclude an inclusive contract with associations of users at reasonable conditions in respect of the rights they manage, except where a 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) Collecting societies and users or associations of users conduct negotiations in good faith on the rights managed by a collecting society. The parties provide each other with all the information required in negotiations.
- (2) Collecting societies reply without delay to enquiries made by a user or an association of users and inform them of which information is required in order to make a contractual offer. Without delay after receipt of all the necessary information a collecting society makes an offer as regards the grant of the rights it manages, or it makes 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 rights of use, the rights of use are 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 collecting society's claim or has been deposited for its benefit.

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

Collecting societies set tariffs in respect of that remuneration which they claim for the rights they manage. If inclusive contracts have been concluded, the rates of remuneration agreed in them constitute the applicable tariffs.

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

(1) Tariffs are, as a rule, to be calculated on the basis of the pecuniary benefits derived on account of 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 is to 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) Collecting societies are, as a rule, to pay reasonable consideration when setting tariffs and collecting remuneration to the religious, cultural and social concerns of the users, including the concerns of the youth services.

(4) Collecting societies inform the users concerned of the criteria applied to the setting of tariffs.

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

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

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

### **Subdivision 2** **Duties of notification**

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

(1) Collecting societies may require users to provide information about the use of works and other subject matter in which they have granted the user the right of use or for uses for which they assert remuneration rights under the Act on the Copyright Liability of Online Content Sharing Service Providers (*Urheberrechts-Diensteanbieter-Gesetz*), insofar as the information is necessary for the collection of rights revenue or for its distribution. This does not apply if providing the information would involve disproportionately large effort on the part of the user.

(2) The collecting society and users agree, in licence agreements, on 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, as a rule, to take into account industry standards.

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

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

(2) After the event, the organiser is to send the collecting society a list of the works used at the event. This does 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, generally, non-copyrighted or only insignificantly adapted non-copyrighted works of music are performed.

(3) Where information is required from the broadcasting organisations which organised the broadcasts in order to distribute revenue from the management of rights to communicate broadcasts to the public,

such broadcasting organisations provide such information to the collecting society against reimbursement of their expenses.

### **Section 43 Electronic communication**

Collecting societies offer all users access to electronic communication, including for the reporting of the use of the rights.

### **Division 3 Special provisions on 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 mandated collecting society's distribution plan is authoritative, unless the collecting societies have agreed deviating arrangements in the representation agreement. Deviating arrangements in the representation agreement must preclude arbitrary acts of distribution.
- (2) The representation agreement may not derogate from the provisions on the time limit for distribution (section 28) to the detriment of the mandating collecting society.
- (3) If the representation agreement refers to rights and works or other subject matter belonging to the area of activity of both collecting societies, the mandating collecting society is to determine the time limit for distribution (section 28) so that rights revenue is distributed to the entitled persons it represents no later than six months after receipt.

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

No later than 12 months following the end of each financial year the mandated collecting society informs 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, broken down by categories of rights managed and 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, broken down by categories of rights managed and 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 and on applications by users which were refused, insofar as the agreements and applications refer to works and other subject matter covered by the representation agreement and

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

#### **Division 4**

### **Presumptions; external rightholders in respect of retransmission and direct injection**

#### **Section 48**

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

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

#### **Section 49**

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

(1) If a collecting society asserts a right to remuneration in accordance with section 27, section 54 (1), section 54c (1), section 77 (2), section 85 (4), section 94 (4) or section 137l (5) of the Copyright Act, it is presumed that it manages the rights of all the rightholders.

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

(3) Insofar as the collecting society also receives payments for those rightholders whose rights it does not manage, it is to release the user from the remuneration rights of these rightholders.

#### **Section 50**

##### **External rightholders in respect of retransmission and direct injection**

(1) If a rightholder has not delegated the management of his or her right to retransmission within the meaning of section 20b (1) sentence 1 of the Copyright Act or to direct injection within the meaning of section 20d (1) 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) is deemed to be authorised to manage that rightholder's rights. Where several collecting societies come into consideration, they are deemed to be jointly authorised; if the rightholder chooses one of them, then only that collecting society is deemed to be authorised. Sentences 1 and 2 do not apply to rights held by the broadcasting organisation whose programme is retransmitted.

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

#### **Division 5**

### **Collective licensing with extended effect**

#### **Section 51**

##### **Collective licensing with extended effect**

(1) If a collecting society concludes an agreement concerning the use of its repertoire, it may also, in accordance with the provisions of this Division, grant corresponding rights of use in the work of an external rightholder (section 7a).

(2) External rightholders may at any time file an objection to the grant of rights in accordance with subsection (1) with the collecting society.

(3) In respect of the grant of rights, external rightholders have the same rights and obligations in their relationship with the collecting society as if those rights were being managed by contractual arrangement.

#### **Section 51a**

##### **Effectiveness of grant of rights and ongoing provision of information**

(1) The grant of rights in the work of an external rightholder is effective under the following conditions:

1. the collecting society is representative (section 51b),

2. it is unreasonable to expect the user or the collecting society to obtain authorisation for use from all the external rightholders concerned,
  3. the grant of rights is limited to uses within Germany,
  4. the collecting society publishes the following information on its website for an appropriate period of at least three months prior to the grant of rights:
    - a) the fact that it is in a position to grant collective licences with an extended effect,
    - b) the effects of collective licences with an extended effect for external rightholders,
    - c) the types of use, types of work and groups of rightholders which are to be included in the collective licences with an extended effect,
    - d) the right of external rightholders to object,
  5. the external rightholder has not objected to the grant of rights within the period set in no. 4.
- (2) The collecting society makes the information referred to in subsection (1) no. 4 available on its website on a permanent basis.

#### **Section 51b** **Representativity of collecting society**

- (1) A collecting society is representative if it manages, by contractual arrangement, the rights of a sufficiently large number of rightholders which are to be made the subject of the collective licence.
- (2) If only one collecting society which has been granted authorisation (section 77) manages rights in accordance with subsection (1), it is refutably presumed to be representative.

#### **Section 52** **Collective licensing with extended effect in relation to unavailable works**

- (1) If a collecting society concludes an agreement relating to uses of works in its repertoire which are unavailable (section 52b) with a German cultural heritage institution (section 60d of the Copyright Act), it must also grant the corresponding rights of use in the work of an external rightholder (section 7a) in accordance with the provisions set forth below.
- (2) External rightholders may at any time file an objection to the grant of rights with the European Union Intellectual Property Office.
- (3) In respect of the grant of rights, external rightholders have the same rights and obligations in their relationship with the collecting society as if those rights were being managed by contractual arrangement.

#### **Section 52a** **Effectiveness of grant of rights and ongoing provision of information in relation to unavailable works**

- (1) The grant of rights in the work of an external rightholder pursuant to section 52 is effective under the following conditions:
  1. the collecting society is representative (section 51b),
  2. the grant of rights is limited to reproduction, distribution, making available to the public and other communication to the public for non-commercial purposes,
  3. the work concerned is part of a cultural heritage institution's holdings,
  4. the collecting society publishes information on the following on the European Union Intellectual Property Office's online portal six months prior to the start of the grant of rights:
    - a) the work concerned,
    - b) the contracting parties, the rights of use concerned, their scope of application,
    - c) the right of the external rightholder to object,

5. the external rightholder has not objected to the grant of rights within the period set in no. 4.

In derogation from sentence 1 no. 5, it is permissible for the grant of the right of reproduction to be effective from the time when the information is published on the European Union Intellectual Property Office's online portal.

(2) The collecting society leaves the information referred to in subsection (1) sentence 1 no. 4 available on the European Union Intellectual Property Office's online portal on a permanent basis.

#### **Section 52b** **Unavailable works**

(1) A work is unavailable if it is not offered to the general public through customary channels of commerce in a complete version.

(2) It is irrefutably presumed that a work is unavailable if the cultural heritage institution undertook a reasonable effort, in a timely manner but without success, before publishing the information required under section 52a (1) sentence 1 no. 4 to establish whether a work is available within the meaning of subsection (1).

(3) Works which were published in books, journals, newspapers, magazines and other published writings are, in addition to the requirements of subsection (1), only deemed unavailable if they were, furthermore, last published at least 30 years prior to the publication of the information as required by 52a (1) sentence 1 no. 4.

#### **Section 52c** **Representativity of collecting society in case of sets of works from third countries**

If the intended use is to encompass sets of works and the majority of those works originate from states which are neither Member States of the European Union nor Contracting Parties of the Agreement on the European Economic Area (third countries), then the grant of rights in accordance with section 52 is effective only if the collecting society is also representative in respect of rightholders from the relevant third country.

#### **Section 52d** **Authorisation to issue statutory instruments**

The Federal Ministry of Justice and Consumer Protection is authorised to regulate, by statutory instrument not requiring the approval of the Bundesrat, further details concerning the following:

1. the exercise and legal consequences of an objection lodged by an external rightholder (section 51 (2) and section 52 (2)),
2. the unreasonableness of the obtaining of authorisation (section 51a (1) no. 2),
3. information requirements (section 51a (1) no. 4 and section 52a (1) sentence 1 no.4),
4. the appropriateness of the period set (section 51a (1) no. 4),
5. the representativity of collecting societies, including the effectiveness of the presumption and joint action by several collecting societies (section 51b),
6. further requirements relating to the availability of works, including the reasonable effort required when establishing their availability and the protection of the moral rights of the author, in particular in the case of unpublished works (section 52b),
7. the use of sets of works from third countries (section 52c).

#### **Section 52e** **Application to related rights**

The provisions of this Division also apply to related rights within the meaning of the Copyright Act and to the holders of such rights.

### **Division 6** **Information requirements; accounting and transparency report**

## **Subdivision 1 Information requirements**

### **Section 53**

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

(1) Before a collecting society obtains the consent of a rightholder to manage his or her rights it informs the rightholder about

1. his or her rights under sections 9 to 12, including the conditions specified in section 11 and
2. the deductions made from rights revenue, including deductions in respect of management fees.

(2) Collecting societies list the rights under sections 9 to 12 in their statute or conditions of management.

### **Section 54**

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

No later than 12 months following the end of each financial year each collecting society provides 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 that 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, by categories of rights managed and type of use,
4. the period in which the uses for which 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 from rights revenue made in that financial year in respect of management fees,
6. deductions made from 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 matter**

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

1. the works or other subject matter 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 matter 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 matter 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 insofar as this is appropriate.

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

(1) Collecting societies publish at least the following information on their website:

1. their statute,
2. their conditions of management, including the conditions for the termination of the management relationship and the withdrawal of rights,
3. their standard license agreements,
4. their tariffs and standard rates of remuneration, in each case including discounts,
5. their inclusive contracts concluded,
6. a list of those persons who, by law or under their statute, are authorised to represent the collecting society,
7. their distribution plan,
8. their general policy on deductions made from rights revenue in respect of management fees,
9. their general policy on deductions made from 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. their general policy on the use of non-distributable rights revenue,
11. a list of representation agreements entered into and the names of the collecting societies with which 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 as referred to in section 62 (1).

(2) Collecting societies keep the information up to date.

**Subdivision 2**  
**Accounting and transparency report**

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

(1) Even if they are not operated in the legal form of a corporation, collecting societies are required to 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 (*Handelsgesetzbuch*). The disclosure is to be effected no later than eight months following the end of the financial year. The full wording of the certification of the financial statements is to be reproduced.

(2) The audit of financial statements also encompasses 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) sentence 2). The result is to be included in the audit report.

(3) Statutory provisions on accounting and auditing over and above this remain unaffected.

## **Section 58**

### **Annual transparency report**

- (1) No later than eight months following the end of a financial year the collecting society draws up a transparency report (annual transparency report) for that financial year.
- (2) The annual transparency report must contain at least the information set out in the Annex.
- (3) The financial information referred to in point 1 (g) of the Annex and the content of the special report referred to in point 1 (h) of the Annex is audited by an auditor. The provisions on the appointment of the auditor apply accordingly to the audit. The auditor summarises the result of the audit in a certificate in respect of the annual transparency report.
- (4) Collecting societies publish the annual transparency reports on their website, including the certification of the financial statements and the certificate in respect of the annual transparency report in accordance with subsection (3) or any objections, in full in each case, within the period referred to in subsection (1). Annual transparency reports must remain available to the public on the website for at least five years.

## **Part 3**

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

## **Section 59**

### **Scope**

- (1) The special provisions of this Part 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 of the Agreement on the European Economic Area.

## **Section 60**

### **Non-applicable provisions**

- (1) Section 9 sentence 2 does not apply in relation to rightholders.
- (2) Section 34 (1) sentence 1 and sections 35, 37 and 38 do not apply in relation to users. Section 39 applies accordingly in respect of the remuneration which a collecting society charges on the basis of the rights it manages.

## **Section 61**

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

- (1) Collecting societies must 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) Collecting societies must, in particular,
  1. have the ability accurately to identify each musical work whose online rights they manage;
  2. have the ability to identify, in respect of each musical work and each part of a musical work whose online rights they manage, the online rights, in full 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) In response to a sufficiently justified request, collecting societies provide to online service providers, entitled persons, rightholders whose rights they manage under a representation agreement and other collecting societies information, by electronic means, about

1. the musical works whose online rights they currently manage,
2. the online rights they currently manage in full or in part and
3. the territories currently covered by the management.

(2) Collecting societies 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) Collecting societies 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 without delay corrects the data or information.

## **Section 64**

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

(1) Collecting societies provide each entitled person with the means of submitting in electronic form information concerning their musical works, online rights in those works and the territories in respect of which they have authorised the collecting society. In doing so the collecting society and entitled persons take into account, as far as possible, the voluntary industry standards and practices for the exchange of data developed at international level.

(2) Under representation agreements, subsection (1) also applies 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**

Collecting societies monitor the use of musical works by online service providers insofar as they have granted a multi-territorial licence for the musical works.

## **Section 66**

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

(1) Collecting societies offer online service providers the possibility of reporting by electronic means the use of musical works. They 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) Collecting societies may refuse to accept a report if it does not correspond to a method of reporting offered in accordance with subsection (1) sentence 2.

## **Section 67**

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

(1) Collecting societies invoice online service providers without delay following reporting of the actual use of musical works, except where this is not possible for reasons attributable to the online service provider.

(2) Collecting societies settle accounts by electronic means. They offer the use of at least one invoicing format which takes into account the voluntary industry standards and practices developed at international level.

(3) An 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) sentence 2.

(4) The invoice is to identify the works and online rights and their actual uses on the basis of the data provided in accordance with section 61 (2), insofar as this is possible on the basis of the report.

(5) Collecting societies have in place suitable regulations in accordance with which an online service provider may object to the invoice.

#### **Section 68** **Distribution of rights revenue; information**

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

(2) Together with each payment, collecting societies 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, broken down by online service provider.

(3) Subsections (1) and (2) apply accordingly to distribution to a mandating collecting society under representation agreements. The mandating collecting society is 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 is 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 exists 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 responds to a request made in accordance with subsection (1) in writing and without delay and thereby provides 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 are not admissible.

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

(1) The mandating collecting society provides 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 is 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 case of representation**

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

#### **Section 72** **Access to 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 enables entitled persons to otherwise grant their multi-territorial licences in online rights. The collecting society is thereby obliged, at the request of an entitled person, to continue to manage online rights in musical works for licensing in individual territories.

### **Section 73**

#### **Management in case of representation**

- (1) The mandated collecting society manages 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 includes 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 do not apply to a collecting society insofar as 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 is the German Patent and Trade Mark Office.
- (2) The supervisory authority performs its duties and exercise its powers only in the public interest.

### **Section 76**

#### **Scope of supervision**

- (1) The supervisory authority ensures that collecting societies properly fulfil the obligations incumbent upon them under this Act.
  - (2) Where a collecting society is established in another Member State of the European Union or in another Contracting Party of the Agreement on the European Economic Area and is active in Germany, the supervisory authority ensures that it 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) Insofar as supervision of the collecting society is exercised on the basis of other statutory provisions, it is to be exercised in consultation with the supervisory authority referred to in section 75
- (1). The independence of the supervisory authorities responsible for data protection remains unaffected.

### **Section 77**

#### **Authorisation**

- (1) A collecting society requires authorisation to manage copyright or related rights deriving from the Copyright Act.
- (2) In derogation from subsection (1), a collecting society established in another Member State of the European Union or another Contracting Party of the Agreement on the European Economic Area requires 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 of external rightholders referred to in sections 51 and 52.

### **Section 78** **Application for authorisation**

Authorisation is granted by the supervisory authority on the collecting society's written application. The application must be accompanied by:

1. the collecting society's statute,
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 collecting society's expected income and expenses and organisational structure.

### **Section 79** **Refusal of authorisation**

(1) The authorisation under section 77 (1) may be refused only if

1. the collecting society's statute 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 in the exercise of their activity or
3. the collecting society cannot, in view of its economic basis, be expected effectively to manage the rights.

(2) Subsection (1) applies accordingly to the authorisation under section 77 (2); the grounds for refusal under subsection (1) no. 1 and no. 2 do 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 grant and revocation of authorisation**

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

### **Section 82** **Notification**

If a collecting society does not require authorisation in accordance with section 77, it notifies the supervisory authority, in writing and without 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 of 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 of 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 are to 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 does not have the right to apply for criminal prosecution (section 109 of the Copyright Act).

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

- (1) The supervisory authority may take all necessary measures to ensure that a 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 relating to the management and to produce the books and other business documents.
- (4) The supervisory authority is 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 these bodies' committees. Collecting societies are to inform the supervisory body in good time of the dates of the meetings referred to in sentence 1.
- (5) Where there is reason to believe that a person authorised by law or under the collecting society's statute to represent a collecting society does not possess the reliability needed in the exercise of their activity, the supervisory authority sets the collecting society a deadline for that person's dismissal. The supervisory authority may prohibit that person from continuing their 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 supervisory authority in case of collecting societies established in another Member State of European Union or another Contracting Party of Agreement on 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 of 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 European Union or other Contracting Parties of Agreement on European Economic Area**

(1) The supervisory authority responds without delay to a justified request for information from the supervisory authority of another Member State of the European Union or of another Contracting Party of 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 provides a reasoned response, within three months, to a request from the supervisory authority of another Member State of the European Union or of another Contracting Party of the Agreement on the European Economic Area to take measures against a collecting society established in Germany on account of its activity in that Member State or Contracting Party.

#### **Section 88**

##### **Obligation of collecting societies to provide information**

(1) Collecting societies which manage copyright or related rights deriving from the Copyright Act notify the supervisory authority without delay every time there is a change in persons authorised to represent them by law or under their statute.

(2) Collecting societies which manage copyright or related rights deriving from the Copyright Act without delay submit to the supervisory authority a copy of

1. their statute and any changes thereto,
2. their tariffs, standard rates of remuneration, standard license agreements and any changes thereto,
3. their inclusive contracts and any changes thereto,
4. their 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. their investment guidelines and any changes thereto, as well as certification issued by the auditor or the auditing firm pursuant to section 25 (3),
7. their financial statements, management report, audit report and annual transparency report and
8. the decisions taken in court or administrative proceedings to which the collecting society is a party, insofar as the supervisory authority requires them.

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

#### **Section 89**

##### **Applicable procedural law**

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

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

(3) The Administrative Enforcement Act (*Verwaltungs-Vollstreckungsgesetz*) applies to the enforcement of administrative acts adopted on the basis of this Act, with the proviso that the amount of the administrative fine may not exceed 100,000 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 also applies to the grounds for such measures and decisions.

## **Section 90**

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

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

(2) The dependent management entity is to notify the supervisory authority without delay and 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 of the Agreement on the European Economic Area.

(3) In all other cases, the provisions of this Part apply accordingly to dependent management entities.

## **Section 91**

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

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

(2) An independent management entity which is established in Germany or which manages copyright or related rights deriving from the Copyright Act notifies the supervisory authority, in writing and without delay, of its commencing management activities. Section 84 applies accordingly.

## **Part 5**

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

#### **Division 1**

#### **Arbitration Board**

##### **Subdivision 1**

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

## **Section 92**

### **Jurisdiction regarding disputes under Copyright Act and regarding 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 retransmission service are party may also apply to the Arbitration Board if the dispute concerns the obligation to conclude a contract concerning retransmission (section 87 (5) of the Copyright Act).

## **Section 93**

### **Jurisdiction regarding empirical studies**

Collecting societies may apply to the Arbitration Board 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 regarding disputes regarding 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, insofar as rights and obligations of the parties under Part 3 or under section 34 (1) sentence 2 and (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 determines the procedure at its reasonable discretion. It at all times contributes to expediting the proceedings as is appropriate for the matter at hand.
- (2) The parties are to be treated equally. Each party is to 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 (*Zivilprozeßordnung*) applies accordingly to the calculation of time limits set in accordance with this Division.

**Section 97**  
**Application to institute proceedings**

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

**Section 98**  
**Withdrawal of application**

- (1) Applicants may withdraw their application; in proceedings with a hearing, however, without the consent of the respondent this is possible only until the start of the oral proceedings.
- (2) Where an application is withdrawn, the applicant carries the costs of the proceedings and the respondent's necessary expenses.

**Section 99**  
**Written procedure and hearing**

- (1) Proceedings are conducted in writing, subject to subsection (2).
- (2) The Arbitration Board schedules 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 event of hearing**

- (1) The parties are to be summoned to the hearing. The notice period is at least two weeks.
- (2) Hearings before the Arbitration Board are not public. Authorised representatives of the Federal Ministry of Justice and Consumer Protection, of the supervisory authority and of the Federal Cartel Office are entitled to participate.
- (3) The Arbitration Board may forbid authorised representatives or advisers who are not practising lawyers (*Rechtsanwälte*) 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 hearings are to be drawn up and 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 is deemed to be withdrawn. If the applicant was prevented, through no fault of his or her own, from appearing at the hearing then, the applicant is to be granted restoration of the status quo ante upon motion. The Arbitration Board decides on the motion; its decision is non-appealable. In all other respects, the provisions of the Code of Civil Procedure apply accordingly to restoration of the status quo ante.
- (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 carry the costs arising on account of their failure to appear.
- (4) The consequences of their failure to appear are to be indicated to the parties in the summons.

### **Section 102**

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

- (1) The Arbitration Board works towards achieving an amicable resolution of the dispute.
- (2) Where a settlement is reached, it must be submitted to the files in a separate document and, as well as indicating the date on which the settlement was reached, must 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 applies accordingly.
- (3) The chairperson may summon the parties, with their consent, to an attempt to reach a settlement without bringing in the assessors. The chairperson is 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) is stayed while the proceedings are suspended.

### **Section 104**

#### **Clarification of facts**

- (1) The Arbitration Board may take the necessary evidence in appropriate form. It is not 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 apply accordingly.

### **Section 105**

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

- (1) The Arbitration Board proposes 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 must be reasoned and signed by all the members of the Arbitration Board competent in respect of the dispute. The settlement proposal must indicate the possibility of lodging an objection and the consequences of missing the deadline for lodging an objection. The settlement proposal is to be served on the parties. The supervisory authority is at the same time to be sent a copy of the settlement proposal.
- (3) The settlement proposal is deemed to have been accepted and an agreement corresponding to the content of the proposal is 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 retransmission, the period is three months.
- (4) If one of the parties was prevented, through no fault of their own, from lodging the objection in good time, they are, upon motion, to be granted restoration of the status quo ante. The Arbitration Board decides on the motion for the restoration of the status quo ante. An immediate complaint (*sofortige Beschwerde*), to be filed with the regional court at the place of the applicant's establishment, is possible against the Arbitration Board's decision to refuse restoration of the status quo ante. The provisions of the Code of Civil Procedure on restoration of the status quo ante and the immediate complaint apply accordingly.
- (5) Compulsory enforcement may be pursued in respect of the accepted settlement proposal. Section 797a of the Code of Civil Procedure applies accordingly.

### **Subdivision 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) sentence 1 applies. The provisional settlement applies, 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 sentence 1 is not to be issued upon reasonable partial performance.

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

(3) The Arbitration Board decides 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 is obliged to compensate the respondent for the damage arising from the enforcement.

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

(1) Where, in the case of disputes under section 92 (1) no. 1 and no. 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) no. 1 and no. 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 contains 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 informs the Federal Cartel Office of the proceedings. Section 90 (1) sentence 4 and (2) of the Act against Restraints of Competition (*Gesetz gegen den unlauteren Wettbewerb*) applies accordingly.

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

Section 110 applies accordingly 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 manufacturers, importers and traders affected, insofar as these are known to the applicant.

(2) The Arbitration Board serves the application on the associations referred to therein, together with the invitation to comment in writing within one month as to whether they wish to participate in the proceedings. The Arbitration Board at the same time publishes 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 following publication of the application.

### **Section 113** **Conduct of empirical survey**

Section 104 applies 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, as a rule, not to commission the conduct of this survey until the collecting society has paid an advance. It is, as a rule, 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 empirical survey**

(1) The Arbitration Board determines 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 mandates its supplementation or amendment.

(2) It serves the result which meets the requirements on the parties and publishes it in a suitable form. Section 105 does not apply.

### **Section 115** **Utilisation of results of survey**

In proceedings under section 92 (1) no. 2 and no. 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) no. 2 and no. 3 and section 93, the Arbitration Board gives the national umbrella organisations of the publicly funded consumer associations the opportunity to comment in writing. If they submit comments, section 114 (2) sentence 1 applies accordingly.

## **Subdivision 3** **Costs; compensation and remuneration of third parties**

### **Section 117** **Costs of proceedings**

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

(2) The fees are based on the value in dispute. The amount is determined on the basis of section 34 of the Court Fees Act (*Gerichtskostengesetz*). The value in dispute is determined by the Arbitration Board. It is 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) no. 2 and no. 3 and (2) and under section 94, fees are 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 are reduced to a rate of 1.0. The same applies 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 are levied at a rate of 1.0.

(5) Expenses are levied applying nos. 9000 to 9009 and 9013 of the Fee Schedule to the Court Fees Act accordingly.

### **Section 118** **Due date and advance**

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

(2) Service of the application to initiate proceedings is, as a rule, 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 Court Fees Act**

Section 2 (1), (3) and (5) of the Court Fees Act, insofar 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 apply accordingly.

#### **Section 120**

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

The local court in whose district the supervisory authority has its seat decides on objections to administrative acts in the enforcement of the provisions on costs. Objections are to be lodged with the Arbitration Board or with the supervisory authority. Section 19 (5) and section 66 (5) sentence 1 sentence 5 and (8) of the Court Fees Act apply accordingly; the next highest court decides on the appeal. The lodging of objections and the appeal do not have suspensive effect.

#### **Section 121**

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

(1) The Arbitration Board decides at its reasonable discretion on the allocation of the costs of the proceedings, unless otherwise provided. The Arbitration Board may order that, where reasonable, one of the opposing parties is to 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 decides on the request.

#### **Section 122**

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

(1) The costs of the proceedings (section 117) and the necessary expenses to be reimbursed to one of the parties (section 121 (1) sentence 2) are assessed by the supervisory authority. The assessment is to be served on the party liable to pay the costs and, if necessary expenses to be reimbursed in accordance with section 121 (1) sentence 2 have been assessed, also on 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 has jurisdiction. The application is to be submitted to the supervisory authority. The supervisory authority may deal with the application.  
(3) Applying the Code of Civil Procedure accordingly, compulsory enforcement may be pursued in respect of the decision assessing costs.

#### **Section 123**

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

(1) Witnesses receive compensation and experts receive remuneration under the provisions of sections 3, 5 to 10, 12 and 19 to 22 of the Judicial Remuneration and Compensation Act (*Justizvergütungs- und -entschädigungsgesetz*); sections 2 and 13 (1) and (2) sentences 1 to 3 of the Judicial Remuneration and Compensation Act apply accordingly.  
(2) The supervisory authority determines 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 decides on the application. The application is to 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 are reimbursed.

#### **Subdivision 4**

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

## **Section 124**

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

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

## **Section 125**

### **Supervision**

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

## **Section 126**

### **Taking of decisions**

The Arbitration Board takes its decisions by majority vote. Section 196 (2) of the Courts Constitution Act (*Gerichtsverfassungsgesetz*) applies.

## **Section 127**

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

The local court in whose district the Arbitration Board has its seat decides on the exclusion of and objection to members of the Arbitration Board. The objection request is to be submitted to the Arbitration Board. In all other respects, sections 41 to 48 of the Code of Civil Procedure apply accordingly.

## **Division 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 is admissible 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) applies in respect of the period.
- (2) In the case of disputes under section 92 (1) no. 1 and no. 2, subsection (1) only applies 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 suspends 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 continues; in such cases the applicability and the appropriateness of the disputed tariff are deemed to have been conceded.
- (3) Subsection (1) does 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 is admissible 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 higher regional court**

- (1) In disputes under section 92 (1) no. 2 and no. 3, and (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 decides as the court of first instance.

(2) Book 2 Division 1 of the Code of Civil Procedure applies accordingly to the proceedings. Section 411a of the Code of Civil Procedure applies, 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 (*Revision*) is 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 issues a non-appealable decision. The opposing party is to be heard before a decision is taken.

### **Section 130**

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

The higher regional court determines, at its reasonable discretion, the content of the inclusive contracts, in particular the nature and amount of the remuneration. The determination takes the place of the corresponding agreement between the parties. The determination of an agreement is 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 has exclusive jurisdiction in whose district the infringing act was committed or in which the infringed party has its general venue. Section 105 of the Copyright Act remains unaffected.

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

## **Part 6**

### **Transitional and final provisions**

#### **Section 132**

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

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

(2) Organisations which, upon the entry into force of this Act, are already managing copyright and related rights and which require authorisation for the first time in accordance with section 77 are entitled to continue their management activities without the required authorisation up until the decision on the application for the grant of 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 authorisation (section 78) no later than 31 December 2016.

#### **Section 133**

##### **Notification period**

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

#### **Section 134**

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

Collecting societies, without delay and no later than 31 December 2016, adapt their statute, conditions of management and distribution plan to the requirements of this Act.

### **Section 135**

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

- (1) Collecting societies inform their 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 apply for the first time to financial years commencing after 31 December 2015.

### **Section 136**

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

The statements referred to in sections 21 and 22 are to 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 apply for the first time to financial years commencing after 31 December 2015.
- (2) Section 9 of the Copyright Administration Act in the version in force until 31 May 2016 continues to apply to accounting and audits in respect of financial years ending before 1 January 2016.

### **Section 138**

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

The supervisory authority's proceedings which were not concluded before the entry into force of this Act are to be continued under the provisions of this Act.

### **Section 139**

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

- (1) Sections 92 to 127 do 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 (*Urheberrechtsschiedsstellenverordnung*) in the versions in force until 31 May 2016 continue to apply to these proceedings.
- (2) In derogation from section 40 (1) sentence 2, 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) sentence 1. The same applies to empirical surveys carried out in proceedings conducted pursuant to subsection (1) on the basis of previously applicable law.
- (3) Sections 128 to 131 do 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 in force until 31 May 2016 continue to apply to these proceedings.

### **Section 140**

#### **Transitional provision on publishers' share as from 7 June 2021**

Section 27b only applies to revenue which collecting societies receive as from 7 June 2021.

### **Section 141**

#### **Transitional provision on out-of-commerce works; authorisation to issue statutory instruments**

- (1) Sections 51 to 52a in the version in force up to and including 6 June 2021 continue to apply up to and including 31 December 2025, subject to subsections (2) to (4).
- (2) As from 7 June 2021, applications for works to be entered in the Register of Out-of-Commerce Works held by the German Patent and Trade Mark Office are inadmissible.
- (3) Rights of use which were granted in accordance with sections 51 to 52a in the version in force up to and including 6 June 2021 cease upon the expiry of 31 December 2025 at the latest.
- (4) Where uses which were permitted in accordance with sections 51 to 52a in the version in force up to and including 6 June 2021 were also permitted under sections 52 to 52e or were permitted by law under sections 61d and 61e of the Copyright Act, the German Patent and Trade Mark Office must be notified thereof and a note made thereof in the Register. The collecting society (section 52a (1) sentence 1 no. 4) or the cultural heritage institution (section 61d (3) of the Copyright Act) is responsible for such notification.

(5) The Federal Ministry of Justice and Consumer Protection is authorised, by statutory instrument not requiring the approval of the Bundesrat, to regulate further details concerning the transmission of entries from the Register of Out-of-Commerce Works held by the German Patent and Trade Mark Office to the European Union Intellectual Property Office's online portal.

(6) The Register is to be closed and online publication is to cease upon the expiry of 31 December 2025.

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

**Content of annual transparency report**

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

1. The annual transparency report referred to in section 58 (1) must contain
  - a) the collecting society's financial statements, including 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 collecting society's 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 as referred to in point 2, in each case broken down by collecting society and the collecting society's dependent management entities (section 3);
  - h) a special report as referred to in point 3, in each case broken down by 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 by categories of rights managed and 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, broken down by categories 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, broken down by categories 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 the extent to which costs were covered by means of rights revenue, from own assets or other resources;
  - ee) deductions made from rights revenue, broken down by categories of rights managed and 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, broken down by categories 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, broken down by categories of rights managed and type of use;
  - bb) the total amount paid to the entitled persons, broken down by categories of rights managed and type of use;
  - cc) the date of payment, broken down by categories of rights managed and type of use;
  - dd) the total amounts not yet attributed to the entitled persons, broken down by categories 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, broken down by categories 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 time limit for distribution (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, broken down by categories of rights managed and type of use;
  - bb) management fees and other deductions from the rights revenue due to other collecting societies, broken down by categories of rights managed and type of use;
  - cc) management fees and other deductions from amounts received from other collecting societies, broken down by categories of rights managed;
  - dd) amounts which the collecting society distributed directly to rightholders represented by other collecting societies, broken down by categories of rights managed.
3. The special report referred to in point 1 (h) must contain the following information:
- a) the amounts deducted from rights revenue for social and cultural services in the financial year, broken down by type of purpose, and for each type of purpose broken down by categories of rights managed and type of use;
  - b) an explanation of the use of these amounts, broken down by 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.