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Ordinance on Copyright and Related Rights (Copyright Ordinance, CopO)

of 26 April 1993 (Status as of 1 January 2018)

The Swiss Federal Council,

on the basis of Articles 39b, 55 paragraph 2 and 78 of the Copyright Act of 9 October 1992¹ (CopA), Article 2 paragraph 2 of the Federal Act of 24 March 1995² on the Statute and Tasks of the Swiss Federal Institute of Intellectual Property (IPIA) and Article 46a of the Federal Act of 21 March 1997³ on the Organisation of the Government and the Administration (GAOA),⁴

ordains:

Chapter 1 Federal Arbitration Commission for the Exploitation of Copyrights and Related Rights Section 1 Organisation

Art. 1 Appointment

¹ When appointing the members of the Federal Arbitration Commission for the Exploitation of Copyrights and Related Rights (Arbitration Commission), the Federal Council shall ensure that there is a balanced composition of members that takes appropriate account of specialist knowledge, the four linguistic communities, the regions of the country as well as both genders.

² The Federal Council shall designate the chair, the co-arbitrators, their deputies and additional arbitrators. The vice-chair is chosen from the co-arbitrators.

³ The Federal Department of Justice and Police (the Department) shall publish the surnames, first names and places of residence of the newly-appointed members in the Federal Gazette.

⁴ The Department shall submit proposals to the Federal Council insofar as appointments and administrative matters fall within its competence.

RU **1993** 1821

¹ SR **231.1**

² SR **172.010.31**

³ SR **172.010**

⁴ Amended by No I of the O of 21 May 2008, in force since 1 July 2008 (AS **2008** 2427).

Art. 2⁵ Legal status

¹ The term of office, resignation from the Arbitration Commission and entitlement to remuneration of members of the Commission are governed by the Commissions Ordinance of 3 June 1996⁶.

² The members of the Commission are bound by official secrecy.

Art. 3 Administrative management

¹ The chair is responsible for the administrative management of the Arbitration Commission. If the chairperson is unable to carry out this task, it shall be undertaken by the vice-chair.

² The secretariat (Art. 4) may be called upon for support in administrative activities.

Art. 4 Secretariat

¹ In agreement with the chair of the Arbitration Commission, the Department shall appoint the secretariat of the Arbitration Commission, which shall be headed by a legal secretary. The Department shall provide the necessary infrastructure.⁷

^{1bis} The employment relationship of the secretariat personnel is governed by federal legislation on the personnel of the Confederation.⁸

² The secretariat is independent from the administrative authorities in carrying out its functions and is only bound to the instructions of the chair.

³ The legal secretary shall carry out the following tasks, in particular:

- a. drafting decisions, consultations and communications addressed to parties and authorities;
- b. taking minutes;
- c. maintaining documentation, providing the public with information about the Arbitration Commission and editing decisions intended for publication.

⁴ The legal secretary acts in an advisory capacity in procedures in which he or she is taking minutes.

Art. 5⁹ Information

¹ The Arbitration Commission shall publish its decisions of fundamental importance in official or non-official organs that provide information on administrative justice.

² It may publish its decisions in a database on its website.

⁵ Amended by No I of the O of 21 May 2008, in force since 1 July 2008 (AS **2008** 2427).

⁶ [AS **1996** 1651, **2000** 1157, **2008** 5949 No II, AS **2009** 6137 No II 1]. See now: Art. 8a et seq. of the Ordinance of 25 Nov. 1998 on the Organisation of the Government and the Federal Administration (SR **172.010.1**).

⁷ Amended by No I of the O of 25 Oct. 1995, in force since 1 Jan. 1996 (AS **1995** 5152).

⁸ Inserted by No I of the O of 25 Oct. 1995 (AS **1995** 5152). Amended by No I of the O of 21 May 2008, in force since 1 July 2008 (AS **2008** 2427).

⁹ Amended by No I of the O of 21 May 2008, in force since 1 July 2008 (AS **2008** 2427).

Art. 6 Seat

The Arbitration Commission has its seat in Bern.

Art. 7¹⁰ Accounting

For the purposes of accounting, the Arbitration Commission is considered an administrative unit of the Department. The Department shall enter the Commission's revenue and expenditure in the budget; the expenditure shall be separated into personnel costs and material costs.

Art. 8¹¹**Section 2 Procedure****Art. 9** Submission of a request

¹ With the request for approval of a tariff, the collective rights management organisations shall submit the necessary documents and a short report on the negotiations with the relevant user associations (Art. 46 para. 2 CopA).

² Requests for approval of a new tariff must be presented to the Arbitration Commission at least seven months prior to the intended entry into force of the tariff. In justified cases, the chair may derogate from this time limit.

³ If the negotiations have not been carried out with the required diligence, the chair may return the documents and set another time limit.

Art. 10 Initiation of the procedure

¹ Based on Article 57 CopA, the chair shall initiate the approval procedure by appointing the members of the Arbitration Board and issuing them with copies of the submissions with annexes and other documents if necessary.

² The chair shall send the request for approval of a tariff to the relevant user associations participating in the negotiations with the collective rights management organisations and set an appropriate time limit for them to comment in writing.

³ If it is clear from the request for approval that the negotiations with the relevant user associations (Art. 46 para. 2 CopA) have resulted in an agreement, it is not necessary for the associations to comment.

¹⁰ Amended by No I of the O of 25 Oct. 1995, in force since 1 Jan. 1996 (AS 1995 5152).

¹¹ Repealed by No I of the O of 25 Oct. 1995, with effect from 1 Jan. 1996 (AS 1995 5152).

Art. 11¹² Decisions by circulation

Decisions are made by circulation provided that the relevant associations of users have agreed to the tariff and if no member of the Arbitration Board has submitted a request to convene a meeting; interim decisions are made by circulation.

Art. 12 Convening a meeting

¹ The chair shall determine the date of the meeting, convene the members of the Arbitration Board and notify the collective rights management organisations and user associations involved in the procedure in a timely manner.

² The meetings generally take place at the seat of the Arbitration Commission (Art. 6).

Art. 13 Hearing

The parties involved have the right to a hearing.

Art. 14 Deliberation

¹ If the hearing does not result in an agreement among the parties, the Arbitration Board shall immediately begin its deliberation.

² The deliberation and the subsequent vote shall take place in the absence of the parties.

³ In the event of a tied vote, the chair shall have the casting vote.

Art. 15 Adjustment of the tariff proposal

¹ If the Arbitration Board finds that a tariff or individual provisions of a tariff cannot be approved, it shall give the collective rights management organisation the opportunity to amend its tariff proposal before a decision is made so that it may be approved.

² If the collective rights management organisation does not use this opportunity, the Arbitration Board may make the necessary modifications itself (Art. 59 para. 2 CopA).

Art. 16 Notification of the decision

¹ The chair shall give notice of the decision following the deliberation, orally or in the form of written conclusions.¹³

² The chair shall independently examine and approve the written statement of reasons; if the wording raises questions, it may be presented to the other members of the Arbitration Board by circulation.¹⁴

¹² Amended by No I of the O of 25 Oct. 1995, in force since 1 Jan. 1996 (AS **1995** 5152).

¹³ Amended by No I of the O of 25 Oct. 1995, in force since 1 Jan. 1996 (AS **1995** 5152).

¹⁴ Amended by No I of the O of 25 Oct. 1995, in force since 1 Jan. 1996 (AS **1995** 5152).

³ The period within which an appeal may be filed begins with the service of the reasoned written decision.¹⁵

⁴ The members of the Arbitration Board and the legal secretary shall be named in the decision; it shall be signed by the chair and the legal secretary.

Section 3¹⁶ Fees

Art. 16a Fees and expenses

¹ The fees for the examination and approval of the collective rights management organisations' tariffs (Art. 55–60 CopA) are governed *mutatis mutandis* by Articles 1 letter a, 2 and 14–18 of the Ordinance of 10 September 1969¹⁷ on Fees and Costs in Administrative Procedures.

² The expenses of the Arbitration Commission shall be invoiced separately. The following are considered expenses:

- a. daily allowances and remuneration;
- b. costs of gathering evidence, scientific investigations, special examinations and obtaining necessary information and documents;
- c. costs of work which the Arbitration Commission commissions third parties to carry out;
- d. transmission and communication costs.

Art. 16b Payment obligation

¹ The collective rights management organisation submitting the tariff for approval must pay the fees and expenses.

² If two or more collective rights management organisations are obliged to pay the same costs, they are jointly and severally liable.

³ In justified cases, the Arbitration Commission may impose part of the costs on the user associations involved in the proceedings.

Art. 16c Due date

The fees and expenses become due with the service of the reasoned written decision.

Art. 16d Applicability of the General Fees Ordinance

In the absence of any specific provision in this Ordinance, the provisions of the General Fees Ordinance of 8 September 2004¹⁸ apply.

¹⁵ Amended by No I of the O of 25 Oct. 1995, in force since 1 Jan. 1996 (AS **1995** 5152).

¹⁶ Amended by No I of the O of 21 May 2008, in force since 1 July 2008 (AS **2008** 2427).

¹⁷ SR **172.041.0**

¹⁸ SR **172.041.1**

Chapter 1a.¹⁹ Monitoring Office for Technological Measures

Art. 16e Organisation

¹ The Swiss Federal Institute of Intellectual Property shall carry out the tasks of the monitoring office under Article 39b paragraph 1 CopA.²⁰

² and ³ ...²¹

⁴ The monitoring office does not charge fees for its activities.

Art. 16f Execution of tasks

¹ Based on its own observations (Art. 39b para. 1 let. a CopA) or based on reports (Art. 16g), the monitoring office shall investigate whether there are indications of misuse of technical measures.

² If it discovers such indications, (Art. 39b para. 1 let. b CopA), it shall, as liaison body, seek an amicable agreement with the parties involved.

³ It does not have the power to make decisions or give instructions.²²

⁴ In exercising its powers, it may also call upon agents who do not form part of the Federal Administration; these persons are bound by a duty of confidentiality.

Art. 16g Reports

¹ Any person who suspects that technological measures are being misused may report this in writing to the monitoring office.

² The monitoring office shall confirm receipt of the report and examine it in accordance with Article 16f paragraph 1.

³ It shall inform the concerned parties of the result of its investigations.

Chapter 2 Protection of Computer Programs

Art. 17

¹ The permitted use of a computer program in accordance with Article 12 paragraph 2 CopA includes:

- a. the use of the program in accordance with its intended purpose including loading, displaying, running, transmitting or storing the program as well as producing a copy of the work as required for carrying out these activities by the lawful acquirer;

¹⁹ Inserted by No I of the O of 21 May 2008, in force since 1 July 2008 (AS **2008** 2427).

²⁰ Amended by No I of the O of 29 Sept. 2017, in force since 1 Jan. 2018 (AS **2017** 6213).

²¹ Repealed by No I of the O of 29 Sept. 2017, in effect since 1 Jan. 2018 (AS **2017** 6213).

²² Amended by No I of the O of 29 Sept. 2017, in force since 1 Jan. 2018 (AS **2017** 6213).

- b. observing, studying or testing the functioning of the program for the purpose of determining the ideas and principles underlying a program element when this is done in the context of performing acts of use of the program in accordance with its intended purpose.

² Necessary information on interfaces under Article 21 paragraph 1 CopA is information which is essential for establishing the interoperability of an independently developed program with other programs and which is not readily accessible to users of the program.

³ Unreasonable prejudice of the normal exploitation of the program within the meaning of Article 21 paragraph 2 CopA occurs in particular when the interface information obtained by decoding is used to develop, produce or commercialise a program that is expressed in a largely similar form.

Chapter 2a ...

Art. 17a²³

Chapter 3 Assistance provided by the Customs Administration

Art. 18²⁴ Scope

The assistance provided by the Customs Administration shall extend to the movement of goods into or out of the customs territory if it is suspected that their distribution infringes applicable legislation in Switzerland on copyright and related rights.

Art. 19 Application for assistance

¹ The holders of the copyright or related rights or licensees entitled to initiate proceedings (applicants) must submit the application for assistance to the Directorate General of Customs.²⁵

^{1bis} The Directorate General of Customs shall make a decision on the application no later than 40 days after receipt of the complete documentation.²⁶

² The application is valid for a period of two years unless a shorter period of validity is requested. It may be renewed.

²³ Inserted by Annex 2 No 3 of the Ordinance on Equality for People with Disabilities of 19 Nov. 2003 (AS **2003** 4501). Repealed by No I of the O of 21 Mar. 2008, with effect from 1 July 2008 (AS **2008** 2427).

²⁴ Amended by No I of the O of 21 May 2008, in force since 1 July 2008 (AS **2008** 2541).

²⁵ Amended by No I of the O of 21 May 2008, in force since 1 July 2008 (AS **2008** 2541).

²⁶ Inserted by No I 1 of the Ordinance of 6 June 2014 on Official Processing Times for Matters within the Jurisdiction of the Federal Customs Administration, in force since 1 Sept. 2014 (AS **2014** 2051).

Art. 20 Withholding of goods

¹ If the customs office withholds goods, it shall retain the goods for a fee or shall place them in the custody of a third party at the cost of the applicant.²⁷

² It shall provide the applicant with the name and address of the declarant, holder or owner, a precise description, and details of the quantity and the sender of the goods withheld in Switzerland or abroad.²⁸

³ If it is established prior to the expiry of the time limit under Article 77 paragraph 2 or paragraph 2^{bis} ²⁹ CopA that the applicant will be unable to obtain preliminary measures, the goods shall be released immediately.³⁰

Art. 20a³¹ Samples

¹ The applicant may request that samples are handed over or delivered to them for examination or that the goods are inspected. Instead of samples, the Customs Administration may provide the applicant with photographs of the goods withheld if this enables the applicant to assess the goods.

² The request may be submitted with the application for assistance to the Directorate General of Customs or, while the goods are being withheld, directly to the customs office that is withholding the goods.

Art. 20b³² Safeguarding of manufacturing and trade secrets

¹ The Customs Administration shall inform the declarant, holder or owner of the goods of the possibility of submitting a reasoned request for refusal to take samples. It shall set a suitable time limit for him or her to submit the request.

² If the Customs Administration permits the applicant to inspect the withheld goods, it shall take appropriate consideration of the interests of the applicant and declarant, holder or owner when determining the date of inspection.

Art. 20c³³ Safekeeping of evidence in the event of destruction of goods

¹ The Customs Administration shall keep the samples collected for a period of one year starting from the date of notification of the declarant, holder or owner in accordance with Article 77 paragraph 1 CopA. After this time limit expires, the Customs Administration shall request the declarant, holder or owner to take possession of the samples or bear the costs of their continued safekeeping. If the declarant, holder or owner is not willing to do so or does not respond to this request within 30 days, the Customs Administration shall destroy the samples.

²⁷ Amended by Annex 4 No 1 of the Customs Ordinance of 1 Nov. 2006, in force since 1 May 2007 (AS 2007 1469).

²⁸ Amended by No 1 of the O of 21 May 2008, in force since 1 July 2008 (AS 2008 2541).

²⁹ Now para. 2 and 3.

³⁰ Amended by No I of the O of 17 May 1995, in force since 1 July 1995 (AS 1995 1778).

³¹ Inserted by No I of the O of 21 May 2008, in force since 1 July 2008 (AS 2008 2541).

³² Inserted by No I of the O of 21 May 2008, in force since 1 July 2008 (AS 2008 2541).

³³ Inserted by No I of the O of 21 May 2008, in force since 1 July 2008 (AS 2008 2541).

² Instead of collecting samples, the Customs Administration may take photographs of the destroyed goods, provided this serves the purpose of preserving evidence.

Art. 21³⁴ Fees

The fees for assistance provided by the Customs Administration are governed by the Ordinance of 4 April 2007³⁵ on Federal Customs Administration Charges.

Chapter 4 ...

Art. 21a–21³⁶

Chapter 5³⁷ Final Provisions

Art. 22 Repeal of current law

The following are repealed:

- a. the Implementing Ordinance of 7 February 1941³⁸ to the Federal Act on the Collection of Copyright Royalties;
- b. the Ordinance of the FDJP of 8 April 1982³⁹ on the Granting of Authorisations for the Exploitation of Copyrights;
- c. the Regulations of 22 May 1958⁴⁰ of the Federal Arbitration Commission on the Exploitation of Copyrights.

Art. 23 Commencement

This Ordinance comes into force on 1 July 1993.

³⁴ Amended by No I of the O of 21 May 2008, in force since 1 July 2008 (AS **2008** 2541).
³⁵ SR **631.035**

³⁶ Inserted by No I of the O of 17 May 1995 (AS **1995** 1778). Repealed by No I of the O of 21 May 2008, with effect from 1 July 2008 (AS **2008** 2427).

³⁷ Originally Chapter 4.

³⁸ [BS **2** 836; AS **1956** 1692, **1978** 1692, **1982** 523]

³⁹ [AS **1982** 525]

⁴⁰ [AS **1958** 273]

