

Law concerning the use of orphan and out of commerce works and a further amendment of the Copyright Law (UrhGuaÄndG)

Article 2: The Amendment of the Copyright Administration Act 1965 as last amended by article 2 of the law of 26 October 2007 is amended by the addition of a new § 13d and e as follows with effect from 1 April 2014:

§ 13d Out of Commerce Works

- (1) It shall be presumed that a collecting society which administers the rights of reproduction (§ 16 of the Copyright Law) and making available to the public (§19a of the Copyright Law) in out of commerce works is entitled as part of its activities also to administer these rights in works of rightholders who have not authorized it to administer their rights provided:
 1. it involves out of commerce works which were published before 1 January 1966 in books, scientific journals, newspapers, magazines or other writings.
 2. the works are to be found in the collections of publically accessible libraries, educational institutions, museums, archives and institutions concerned with film or audio heritage,
 3. the copying and making available to the public do not serve commercial purposes,
 4. the works are included in the Register of Out of Commerce Works (§ 13e) on the application of the collecting society and
 5. the rightholder has not objected to the proposed administration of his rights by the collecting society within six weeks of the notification of the entry in the Register.
- (2) Rightholders can object to the administration of their rights by the collecting society at any time.
- (3) If more than one collecting society administers the rights in accordance with paragraph (1), the presumption in paragraph (1) shall only apply if the rights are administered by all collecting societies together.
- (4) In so far as the collecting society receives remuneration for rightholders who have not entrusted the administration of their rights to the collecting society, the collecting society shall give an indemnity against claims by such rightholders to those liable to pay the remuneration. If it is presumed in accordance with paragraphs (1) and (2) that a collecting society is entitled to administer rights, a rightholder shall have the same rights and obligations towards the collecting society as if he had transferred his rights for administration.

§ 13e Register of Out of Commerce Works

- (1) The Register of Out of Commerce Works shall be maintained by the German Patent and Trademark Office. The Register shall contain the following information:
 1. Title of the work,
 2. Name of the author,
 3. Publishing house which published the work,
 4. Date of publication of the work,
 5. Identification of the collecting society which made the application under § 13d paragraph 1 number 4,
 6. Statement as to whether the rightholder has objected to the administration of his rights through the collecting society.

- (2) The German Patent and Trademark Office shall make the entries without obligation to check the right of the applicant to make them, or as to whether they are correct. The costs of the the entry shall be paid in advance.
- (3) The entries shall be made available on the website of the German Patent and Trademark Office, www.dpma.de,
- (4) Everyone shall be entitled to inspect the Register via the website of the German Patent and Trademark Office, www.dpma.de,
- (5) The Federal Ministry of Justice shall be authorized by regulation, without the consent of the Bundesrat
 1. to make provisions as to the requirements for the application for an entry in the Register and as to the management of the Register,
 2. to regulate the charging of costs (fees and disbursements) to cover the administrative costs of the entry and as to liability to pay costs, when costs are to be paid, the obligation to pay costs in advance, exemption from costs, as to limitation, proceedings to determine costs and as to obtaining legal assistance to appeal against the determination of costs.