

INFORMATION BROCHURE

Collective Distribution to Sister Societies

Plastic, Graphic and
Photographic Works

A. Section 1 – Introduction

This brochure is a practical guideline explaining the collective distribution of Bild-Kunst in the field of plastic, graphic and photographic works (“image works”)¹.

The long-standing distribution plan of Bild-Kunst had undergone a complete reform between 2016 and 2018. National requirements based on the EU CMO Directive had to be considered. In addition, the consistency and transparency of the new set of rules had been considerably improved.

After an intensive review that took into account the experience with the reform, the membership assembly of Bild-Kunst approved a second reform in December 2021. The collective distribution to fine artists, photographers, illustrators, and designers is now based on one paramount principle: simplicity. We went as far as the legal requirement would allow us. The following major principles were implemented:

- The distinction between fine artists and other image authors has been abandoned.
- All image authors are treated equally. That means, every author has access to every distribution line and can claim every one of his or her own works in those lines.
- All works are treated equally. All value factors that were based on the different kinds of works have been abandoned.
- The distribution lines for collective distribution are reduced to four: book, periodicals, websites and TV. All income from remuneration rights for image works is attributed to these four lines. In the future, Bild-Kunst will create a fifth line for Social Media.
- The distribution plan itself has been restructured with the aim to be better readable.

The reform will become effective for the distribution of proceeds for 2021 for the first time.

This guideline has the following objectives:

- Firstly, sister societies receive an overview of the different payouts of the collective distribution in the image field. Thus, sister societies can retrace the current status of payouts of Bild-Kunst for the different distribution lines.
- Secondly, sister societies will receive information on the payouts made on the basis of claims by beneficiaries. Based on this information sister societies can decide whether it is economically worthwhile to collect claims from their own members and submit them to Bild-Kunst.
- Thirdly, this brochure clarifies how sister societies can deal with flat-share distributions, which are made by Bild-Kunst automatically (without any submission of claims).

This brochure does not explain the logic of the distribution plan of Bild-Kunst. The distribution plan is available in German and in English and can be accessed via the web page of Bild-Kunst (www.bildkunst.de) or via the Governance Portal of CISAC, if required.

¹ Bild-Kunst distinguishes “direct distribution” from “collective distribution”. Payments to Bild-Kunst that are attributed to a specific author or a specific work are paid out by direct distribution. In turn, for flat share proceeds without any usage information, collective distribution applies. This is relevant mostly for proceeds from statutory claims to remuneration (private copy remuneration, public lending rights). Statutory claims to remuneration play an important role in Germany. It is, therefore, important that the Sister societies of Bild-Kunst need to be fully aware of the distribution rules so that they can ensure an appropriate level of participation for their beneficiaries.

B. Section 2 – General rules of the distribution plan of Bild-Kunst

Proceeds are combined in “distribution lines”.

The four distribution lines of the collective distribution in the image field for authors are found in the following sections of the distribution plan:

Distribution Line	Distribution Logic	Rules for claims
Book	§ 26	§ 34
Periodicals	§ 28	§§ 37, 38, 39
Websites	§ 30	
TV (cable retransmission)	§ 31	

Bild-Kunst will deduct administrative costs from the payouts. These comply with the distribution lines and are disclosed in an Annex to the distribution plan.

Beneficiaries of sister societies are charged with deductions for social and cultural purposes only if this has been agreed upon or if the respective sister society also applies these deductions when paying out to Bild-Kunst (principle of reciprocity). The level of deductions is disclosed in an Annex to the distribution plan.

Bild-Kunst distributes its proceeds appropriate to the period, i. e., for the year for which they were paid. Example: If, in 2019, Bild-Kunst receives an additional payment for the year 2010, this additional payment will be distributed according to the rules of the distribution plan for 2010 (principle of periodicity).

In its quality as a collective management organization, Bild-Kunst does not make any profits and thus only deducts the above-mentioned positions. However, it may become necessary to create reserves, this happens in the following cases:

- Commercially necessary reserves;
- reserves for outsiders;
- reserves for obstacles hindering a payout.

The detailed rules for reserves can be found in the document “Bild-Kunst Distribution Reserve Policy 2019”, which is available via the Governance Portal of CISAC.

C. Section 3 – No differentiation between creation classes

Bild-Kunst represents authors who are creating works in the entire creation class “image”, i. e. fine art artists, photographers, illustrators, caricaturists, cartoonists and designers.

Inside Bild-Kunst, fine art artists are assigned to the professional group I (15,698 members), other image authors are assigned to the professional group II (38,648 members)². All authors delegate their statutory claims to remuneration to Bild-Kunst. In addition, and as a rule, fine art artists delegate their exclusive rights (reproduction, online and broadcasting rights) to Bild-Kunst. Photographers and other image authors, however, exercise their exclusive rights on their own with one exemption: the online rights for Social Media Platforms according to Art. 17 DSM-Directive.

For the collective distribution, the distribution lines in the image field do not make any distinctions between creation classes.

² As per 12/31/2021.

D. Section 4 – Overview of distributions

From a practical point of view, the payouts of the collective distribution can again be divided into two groups:

- Automatic flat-share distributions and
- claim-based distributions.

Sister societies may automatically receive flat-share distributions for specific circumstances without having to submit claims of their beneficiaries to Bild-Kunst. In contrast to this, claim-based distributions will only be made if the sister society has submitted claims for its beneficiaries up to the closing date. Closing date of a certain year is always 30th June of the following year.

The following description gives an overview of the different distribution lines, divided again into “automatic distributions” and “claim-based distributions”:

1. Automatic distributions

1.1 Non-German books

This distribution refers to visual works in non-German books.

The available amount for payout is distributed to the sister societies according to a split, which can be found in the Annex FB to the distribution plan.

The distribution is made as a flat share. If possible, the sister society should allocate the amount to a distribution line of her own that covers the uses of images in books. The money will not only be available to beneficiaries of the sister society, but to all beneficiaries whose visuals were used in books that are published in the country of the sister society.

The regulation is located in § 26 section 8.1 of the distribution plan.

1.2 Non-German periodicals

This distribution refers to visual works in non-German newspapers and magazines.

The available amount for payout is distributed to the sister societies according to a split, which can be found in the Annex FP to the distribution plan.

The distribution is made as a flat share. If possible, the sister society should allocate the amount to a distribution line of her own that covers the uses of images in newspapers and magazines. The money will not only be available to beneficiaries of the sister society, but to all beneficiaries whose visuals were used in periodicals that are published in the country of the sister society.

The regulation is located in § 28 section 8.1 of the distribution plan.

1.3 Non-German web pages

This distribution refers to visual works on non-German websites.

The available amount for payout is distributed to the sister societies according to a split, which can be found in the Annex FW to the distribution plan.

The distribution is made as a flat share. If possible, the sister society should allocate the amount to a distribution line of her own that covers the uses of images on websites. The money will not only be available to beneficiaries of the sister society, but to all beneficiaries whose visuals were used on websites related to the country of the sister society.

The regulation is located in § 30 sections 8.1 and 8.2 of the distribution plan.

2. Claim-based distributions

2.1 German Books

A specific share of the proceeds of Bild-Kunst for statutory claims to remuneration will be distributed according to the works of the authors that are printed in German books. From 2022 onward, also e-books shall be taken into account³.

This is a claim-based distribution. Consequently, sister societies need to report claims of their beneficiaries to Bild-Kunst in order to receive a distribution. In turn, this presupposes that the sister societies query or otherwise identify the information on claims (outlined below) from their beneficiaries.

Approximately 33% of Bild-Kunst's income for collective rights in the field of images will be available for the distribution on books, excluding any special payments. This is one of the main distributions of Bild-Kunst. An up-front deduction of 22,5% is applied for the new publisher's share, that was reintroduced into German law in 2021.

Distributions of Bild-Kunst to its sister societies relate to the artist and can be paid out by the sister societies via a direct distribution to their beneficiaries.

The regulation is located in § 26 of the distribution plan.

2.2 German periodicals

Another share of the proceeds of Bild-Kunst for statutory claims to remuneration is distributed according to the works of the authors that are printed in German newspapers and magazines. Both print and online periodicals are taken into account.

This is also a claim-based distribution such as the distribution on books, which presupposes that the sister societies need to take action. Details can be found further on.

Approximately 27% of Bild-Kunst's income for collective rights in the field of images will be available for the distribution on periodicals, excluding any special payments. This is one of the main distributions of Bild-Kunst. The publisher's share is 10%.

Distributions of Bild-Kunst to its sister societies relate to the artist and can be paid out by the sister societies via a direct distribution to their beneficiaries.

The regulations can be found in § 28 of the distribution plan.

2.3 German web pages

The largest share of the proceeds of Bild-Kunst for statutory claims to remuneration will be distributed according to the works of the authors that are used on German web pages.

Again, this is a claim-based distribution, which presupposes that the sister societies need to take action. Details can be found further on.

Approximately 40% of Bild-Kunst's income for collective rights in the field of images will be available for the distribution on websites, excluding any special payments. This is one of the main distributions of Bild-Kunst. No publisher's share is applied.

Distributions of Bild-Kunst to its sister societies relate to the artist and can be distributed by the sister societies via a direct distribution to their beneficiaries.

The regulations are located in § 30 of the distribution plan.

2.4 TV (cable retransmission)

The proceeds of Bild-Kunst for the cable retransmission of visual works amount to less than one million euros per year. No publisher's share is applied, though.

They are distributed on the basis of claims by beneficiaries. Thus, sister societies need to take action to receive a distribution. Details can be found further on.

If there is a distribution, it relates to the artist and the payout can be made via a direct distribution.

The regulations are located in § 31 of the distribution plan.

³ This has yet to be approved by the membership assembly.

E. Section 5 – Claim-based distributions – reporting content

This section explains which reporting format is required by the distribution plan of Bild-Kunst for the different claim-based distributions. For an overview, please consult this table:

Distribution Line	Claim Format
German Books	Works in Books
German Periodicals	<ul style="list-style-type: none"> · Professional fees from press publishers and picture agencies and/or · Images in (a) print newspapers/magazines or (b) online press media and/or · Presentations of Image Works
German Websites	<ul style="list-style-type: none"> · Professional fees from TV companies, picture agencies and “other companies” and/or · Images on websites and/or · Presentations of Image Works
TV (cable retransmission)	<ul style="list-style-type: none"> · Professional fees from TV companies and/or · Images in TV programs with over 1% market share in Germany

1. Reporting Format: Works in Books

1.1 For a book to be considered, the following conditions apply:

- Currently, only physical books can be reported, no e-books.
- Books need to have a minimum print run of 250 books.
- The ISBN needs to be indicated or – in case that the book comes without ISBN - a trial copy including proof of the print run has to be submitted.
- The book can be reported for the year of publication and for the four subsequent years. It has to be reported only once in this period and will be considered automatically in the subsequent years.
- The book was published in German or, for the category “scientific work”, in English. Schoolbooks that are officially accredited for German public schools may come in any language.
- In the sense of the distribution plan the following print products are no books: activity books, blank books, brochures, operating instructions, voucher booklets, colouring books, music books, programme booklets, diaries/pocket calendars, wall calendars, phone books and catalogues.

1.2 The book type must be specified for the reported book:

- Children’s and youth literature
- Non-fiction and specialist book
- Fiction and other books
- illustrated books and art books, exhibition catalogue
- School book
- Scientific works
- Museum catalogue (Catalogues of museums are labeled „museum catalogues” – catalogues of galleries, art associations etc. are labeled “exhibition catalogues”.)

1.3 For a visual work in a book to be considered, the following conditions apply:

- If a work of design is reported, it needs to be indicated if it relates to a title design or the overall graphic design.

- Visuals of text authors who use their own visual works in scientific works, non-fiction and reference books cannot be claimed as VG Wort will be responsible for the respective distribution in Germany.
- A maximum of 200 visuals per book will be recognized.
- If a work in a museum catalogue has been part of an exhibition, this must be indicated to be eligible for a special distribution of remunerations from museums.

2. Reporting Format: Professional Fees

2.1 If beneficiaries of a sister society that manage their exclusive rights on their own⁴ generated substantial fees for the following usages, these fees can be claimed.

This refers to the following payments of fees:

- Fees for image works if they have been paid for printing in a German newspaper or magazine (print or online) that was (also) sold in Germany.
- Fees for image works if they were paid for broadcasts on German television.
- Fees for image works if they were paid for being posted on a German web page.

2.2 The fees have to be attributed to one or more of the following client categories:

- Press publishers;
- TV companies (including film production companies);
- Picture Agencies (only for sales in Germany);
- other commercial or non-commercial companies and/or entities.

This categorization is important for allocating the fee to the correct distribution line. Fees from book publishers are not claimable because claims for books are made by using the claim format for books (see above).

2.3 Only net fees (exclusive of VAT) are reported.

2.4 The year for which the fee was paid needs to be visible on the invoice.

2.5 Fees exceeding 24,000 EUR per year must be confirmed by a tax advisor or a certified accountant.

2.6 Salaries can only be reported if the author is employed at a German publishing house or a German picture agency. We would ask you to consult us in this case.

3. Reporting Format: Presentations of Works

3.1 A presentation of a visual work in the sense of the distribution plan is a presentation of one or more works of art, photography, illustration or design, which is organized and promoted by a third party and is typically open to the public. The presentation of art needs to take place in Germany or on German territory to be considered. Examples:

- Presentation of visual works in museums, art clubs, galleries or community institutions;
- festive unveiling of visual works in public places and of art-in-architecture (presentation = “opening event”);
- Performances, participatory projects and video art (when organized by a third party);
- Artistic interventions, street art, spontaneous performances (only before unusually large public).

3.2 Parameter:

- The number of visual authors/artists that are featured in the presentation (not the number of works) has to be indicated. Eligible are the following categories: (1–2) – (3–10) – (11 and more).
- A maximum number of 12 presentations can be claimed per year and artist.
- Presentations of one of the Goethe institutes, the ifa institute or one of the German embassies are always considered as “in Germany” even if they take place abroad.

⁴ This is usually the case with photographers, illustrators and designers. Also fine artists may take these fees if they manage their exclusive rights alone. The royalties that Bild-Kunst takes for the fine artists she represents, are taken into account automatically, both for her own members and for the beneficiaries of her sister societies.

3.3 “Art-in-architecture”

- If a specific work of art (any creation class) has been commissioned for a placement in a specific building or on the premises of a specific building to remain in this position permanently, it is labeled “Kunst am Bau” (art-in-architecture) for the purposes of the distribution plan.
- The place must be in Germany or on the premises of a German embassy.
- The date of finalization and placement has to be 1/1/2021 or later.

4. Reporting Format: Single frame

4.1 Single frames of visual works can be reported if neither a fee for the corresponding image is claimed (see above) nor it is subject to a presentation that is claimed (see above).

4.2 Different creation classes are inquired in the claim format, but also for statistical purposes.

4.3 The work has to be published in one or more of the following categories:

- Newspapers or magazines (Print)
- Newspapers or magazines (Online)
- Websites
- TV

4.4 Specific rules for newspapers and magazines (Print):

- The print periodicals had to be published in German language in the respective year of usage and distributed in Germany.
- E-papers are treated as print versions for the purposes of the distribution.
- The ISSN of the newspaper has to be provided in the claim form. Alternatively, the ZDB-ID of the German National Library can be provided which can be retrieved from this website: www.zdb-katalog.de.
- Visuals of text authors who use their own visual works in scientific periodicals cannot be claimed as VG Wort will be responsible for the respective distribution in Germany.

4.5 Specific rules for newspapers and magazines (Online):

- The online periodicals had to be published in German language in the respective year of usage on a website with the following characteristics:

a) Top-level domain features “de” or

b) it is a generic top-level domain and the content of the pages is in German and addresses a German audience. Generic top-level domains are e.g. “EU”, “ORG”, “INFO”, “COM”, “NET”, “BIZ”, “EDU”, “INT”.

- The ISSN of the paper has to be provided in the claim form. Alternatively, the ZDB-ID of the German National Library can be provided which can be retrieved from this website: www.zdb-katalog.de. If no such number is provided, the works can be reported as uses on websites (see below).
- Visuals of text authors who use their own visual works in scientific periodicals cannot be claimed as VG Wort will be responsible for the respective distribution in Germany.
- Up to 200 works can be reported per year as “periodicals online”.

4.6 Specific rules for TV (cable retransmission):

- The visual works can be claimed by an author if they were broadcast on television with an average total German coverage in the usage year of at least 1.0%. Bild-Kunst is providing a list of the accountable channels on request.

4.7 Specific rules for websites:

- Visual Works can be claimed for an author if they were placed on a German web page for a period of six months or more during the usage year to be billed.

- A web page will be classified as “German” if its top-level domain features “de”. It is also classified as “German” if a generic top-level domain was used and the content of the pages is also in German and addresses a German audience. Generic top-level domains are e.g. “EU”, “ORG”, “INFO”, “COM”, “NET”, “BIZ”, “EDU”, “INT”.
- A single image can only be claimed once per domain.
- In total, only 200 single images on web pages can be reported per author and year.
- Single frames on social media pages or in e-books can currently not be reported.

F. Section 6 – Reporting procedure

1. Deadline for claims

The deadline for submission of claims relating to a specific year of use is always 30th June of the subsequent year, according to the distribution plan of Bild-Kunst.

Example: Claims for 2021 need be submitted by 30th June 2022 at the latest.

2. Content of claims

This document summarizes the content of reports for the different distribution lines. If a sister society intends to submit claims for one or more distribution lines to Bild-Kunst, they should contact Bild-Kunst in advance to discuss all necessary details. This document only serves to provide an overview for sister societies to assess whether a submission of claims to Bild-Kunst is worthwhile. The binding requirements for the content of claims can solely be found in the distribution plan of Bild-Kunst.

3. Claims procedure

Sister societies should report their claims electronically to Bild-Kunst.

