



BILD-KUNST

Collecting Society BILD-KUNST 53113 Bonn Weberstraße 61

Legal society by state award

Main Office Frankfurt am Main

Directive for co-authors film

Version according to the decision of the Administrative Council of 25 January 2018

– Valid from 26 January 2018 –

Any section information refers to the distribution plan of VG Bild-Kunst unless stated otherwise.

A. Subject matter of the directive

VG Bild-Kunst administers legal claims to remuneration and, in exceptional cases, exclusive usage rights for film co-authors. Directors, camera crew, editors as well as set and costume designers are recognised by the distribution plan as regular film co-authors, as far as their contribution in the film work corresponds to the usual level of cooperation. Other contributors to the film can be considered according to sections 40(2), 47(6), 48(6) and 49 annex 2 on request of the co-authorship of individual film works in the distribution lines “film (individual)”, “cable retransmission (film)” and “private copying royalties (film)”. This directive regulates the process for the individual recognition of the co-authorship of a potential other film author (“applicant”) as defined in the distribution plan.

B. Application process

1. Entitlement

Those contributors to a film work who are entitled to apply are neither associated with regularly recognised works of VG Bild-Kunst (sections 47(1) and 48(1)), nor represented by another German collecting society for authors. An entitlement to apply further presupposes that the film work was broadcast on an accountable TV channel (sections 47(2) and 48(2)) or it can be proven that the broadcast is pending.

2. Recipient

The application should be sent to:

VG Bild-Kunst
Bonn Office
Weberstraße 61
53113 Bonn

3. Formal requirements and deadline

a) The application must be made in writing (and signed) using the forms provided on the website by VG Bild-Kunst and sent to VG Bild-Kunst by mail. An application by fax or email is not possible.

b) Alternatively, an online application process can be used as far as VG Bild-Kunst offers one. In this case, the form provided must be signed and sent by mail within two weeks. Otherwise the application will be considered void.

c) The applicant must duly submit the application by 31 March of the year following the TV broadcast in order to receive a payout for a film work on the regular distribution date. Legal claims remain unaffected.

4. Content of the application

The application must include the following information:

- a) Name, date of birth, postal address, email address, bank details and a separately signed data privacy statement according to annex 1;
- b) title, year of production and country of production of the film work for which the co-authorship is to be determined;
- c) preceding broadcasting date on an accountable TV channel or proof of a planned pending broadcast;
- d) description of the type of work on which the acceptance of co-authorship in the film work is based;
- e) a detailed description of the meeting of criteria for co-authorship according to section D.1;
- f) evidence for the function itself and for meeting the criteria, see section D.2.

The applicant needs to enclose six copies of the film work in a common file format on digital media (e.g. DVD, Blue-ray).

In the case of the acceptance of co-authorship in the film work, VG Bild-Kunst must have received a collection agreement at the time when the application was made, in accordance with the sample in **Annex 2**. (The executive board is authorised to update the sample.)

5. Service charge

The applicant needs to pay/transfer a service charge of EUR 50 (inclusive of 19 % VAT) per film work to VG Bild-Kunst:

Commerzbank Köln
IBAN: DE08 3708 0040 0207 2695 00
BIC: DRESDEFF370

Please indicate name, film work and the date of the application in the reference line.

Should the service charge not be received on the bank account of VG Bild-Kunst or the information on the reference line is missing, the payment cannot be assigned to any application and the application is considered void.

6. Multiple applicants

If multiple entitled applicants have jointly made a copyright-relevant contribution to a film work as a co-author (section 8 German Copyright Act (UrhG)), they can submit a joint application if they jointly and mutually state the percentage of the contribution to the work of each contributor. If the application is accepted, VG Bild-Kunst will make a distribution of the respective proportion to all parties.

C. Evaluation process

1. Formal evaluation

As a rule, the office of VG Bild-Kunst verifies the existence of formal requirements for the application within two weeks of receipt of the service charge, see sections B.1 to B.4 above.

If the requirements are met, the applicant receives a positive interim decision by email. If the requirements are not met, the application will receive an email with information on what steps need to be taken to submit a correct application.

2. Substantive evaluation

The office will promptly transfer complete applications to members of the evaluation committee of the professional group III. The management of the committee (see sections 47(8) and 48(8)) decides on how to further carry out the evaluation process. A decision should be made no later than five months upon receipt of the service charge.

The evaluation committee decides on the application by majority vote.

3. Other expertises

If there is a representative professional association for the respective applicant's professional class, the evaluation committee may ask for an opinion on expert questions.

4. Notice

Upon completion of the evaluation process, the applicant will receive a written decision on the resolution. If the application is accepted, the service charge will be reimbursed to the applicant. If the application is rejected, respective reasons will be communicated to the applicant and the flat rate service charge will be retained.

5. Possibility to file a complaint

The applicant has the possibility to appeal against the decision of the evaluation committee according to the general rules of the complaints procedure of VG Bild-Kunst.

D. Obligations of presentation and proof

1. Criteria of a co-authorship

The applicant needs to provide extensive details on the following criteria:

- a) The contribution of the applicant in the film work represents an intellectual creation which goes beyond a manual and/or technical/organisational contribution.

In order to illustrate this criterion (section 2(2) German Copyright Act (UrhG)), it needs to be explained in which concrete way the applicant is involved in the present film work and the question asked, whether and to what extent the contribution in the respective individual case was copyright-relevant. The applicant's contribution should have had a significant and perceptible impact on the film work's narrative.

- b) The copyright-relevant contribution in the film work described under a) must have been provided by the applicant in person and on his/her own responsibility. It cannot be a mere execution of the instructions of a third party.

2. Proving the existence of the criteria

The applicant must prove the statements made in the previous section. The following instructions should be observed:

- a) The application must prove his/her contribution in the film work. If his/her name is listed in the credits of the film, this is considered as proof.
- b) The concreted classification of the applicant's copyright-relevant contribution in the film work is generally denied if the concrete film work falls into one of the genres "magazine contribution", "soap", "documentary-style soap", "fictional series", "filmed staging", "TV recording", "musical broadcast" or "live show" (see sections 47(4) and 48(4) on genres). This applies unless it can be proven that the film work will yield economically comparable distributions by VG Bild-Kunst, such as film works of the genres "feature film", "animated film", "miniseries" or "documentary films" of at least 40 minutes in length, e.g. as the film is broadcast particularly often in TV programmes with large market shares. If such proof is missing, the acceptance of a co-authorship can be rejected for economic reasons.
- c) The proof of the concrete copyright-relevant contribution can be provided when the applicant points out perceptible aspects of the film work where the design is based on his/her contribution and which are beyond manual and or technical/organisational aspects.
- d) In addition, it is necessary to differentiate the functions of the director and other contributors to the film who also worked in a comparable role in the applicant's field of work. Example: This proof of the independent function can be provided when a corresponding confirmation of those responsible for the production process (e.g. producer, director) is given.

Annex 1: Data Privacy Statement

Data collection, use and processing

You have instructed us to administer the claims to remuneration for a film work. We need to collect personal data in order to fulfil your request. According to the German Act on the Management of Copyright and Related Rights by Collecting Societies (VGG), we are obliged to record the details mentioned below and to make them available to the named recipients. Nevertheless, according to the Federal Data Protection Act, you must expressly agree to each of these uses.

You can revoke your consent at any time. However, this could mean that we can only guarantee the protection of your rights to a limited extent or under certain circumstances.

1. For the billing and settlement of all your claims, we must record your name, nationality, date of birth, address and contact details (telephone number, email) as well as bank details and possibly further information for tax-processing purposes. You need to provide this information upon conclusion of the contract. If required, this information can also be supplemented or corrected. This information will be stored in our membership database. The data will be deleted and all your claims for payout completed if the contract is terminated or after the end of the applicable legal retention periods.
2. VG Bild-Kunst can only administer its rights in Germany. We work closely with collecting societies abroad who represent the rights of our members in their respective countries. For the standardisation of billing and data exchange between collecting societies and to ensure that there is no overlap or conflict

in representing rights, all collecting societies organised under CISAC have common databases which register right holders, the rights exercised by right holders and if applicable, the individual rights per work. We can only administer your rights if we register your name, date of birth, nationality and the rights assigned to us as well as the countries for which you have entrusted us to administer your rights in. All, and only those collecting societies affiliated have access to these databases.

3. We must inform users that we are administering your rights so that you can exercise your rights. For this purpose, we create directories (including electronically) for the individual rights we administer for authors represented by us that potential users can see. These directories include name, first name and all artist names/pseudonyms. If you have a registered artist name, you must let us know which name can be published. Our sister societies abroad also publish this information if they work in a country for which you have assigned us (or another collecting society) to represent your rights. Other data protection regulations may apply abroad than in Germany.

I agree to the storage and processing of my data according to clause 1 to 3.

Place, Date, Signature

Annex 2: Collection agreement

The applicant hereby transfers the rights and claims to remuneration to the collecting society VG Bild-Kunst – as a trustee for all countries – in the case of acceptance of his/her co-authorship in the film work referred to in the application, the rights and claims to remuneration which he/she currently has or will have in future, as set out below, and the collection against any third party according to the following conditions:

- a) The claim to remuneration for the acceptance of new types of usage according to section 137 I German Copyright Act (UrhG).
- b) The right of the public reproduction of TV programmes according to section 22 German Copyright Act (UrhG).
- c) Claims to remuneration arising from rental and lending rights for reproductions including image carriers or in lieu thereof.
- d) The claim to remuneration for the acceptance of works from school broadcasts according to section 47(2) German Copyright Act (UrhG).
- e) The claim to remuneration against manufacturers, importers and operators of image recording and reproduction equipment and similar devices as well as manufacturers of carrier materials according to sections 53 and 54 German Copyright Act (UrhG).
- f) The current and future statutory claim to remuneration for simultaneous and unchanged broadcasts of TV programmes (wired/wireless).
- g) The reproduction and circulation of event-related and reporting TV programmes for educational and training purposes, provided that the total length of the works to be recorded does not exceed 10 minutes in each case.
- h) The broadcasting right of film authors for the use of their works in countries in which broadcasting rights are usually administered by collecting societies (e.g. France).
- i) For authors: The right to digitalise audiovisual works produced in analogue formats and to broadcast, publicly present or further electronically transmit these versions.
- j) For authors: The right to store audiovisual works in databases and the right to electronically transmit such stored works from these databases, in particular through video-on-demand portals including media libraries and virtual video recorders. These rights are reassigned to the author as far as and as long as they are granted to collecting societies on the basis of tariff agreements or if a remuneration is paid to the author by the collecting society, which is based on remuneration rules between copyright associations and collecting societies.
- k) The claim to remuneration according to section 52 German Copyright Act (UrhG).
- l) The claim to remuneration according to section 45a German Copyright Act (UrhG).
- m) The claim to remuneration for the reproduction of works on electronic reading stations in public li-

braries, museums and archives (section 25b German Copyright Act (UrhG)).

- n) The broadcasting right of film authors for the use in countries in which the broadcasting rights are usually administered on a contractual or legal basis by collecting societies.
- o) The claim to remuneration according to section 52a German Copyright Act (UrhG).

The beneficiary may request that rights be reassigned to him/her for use in a particular individual case for non-commercial use by a third party, limited to certain types of usage or to specific countries. VG BILD-KUNST can refuse this reassignment if this opposes the broader interests of the society.

The delegation of rights also applies in the case of the usage of works in parts, extracts, edits and redesign. The collecting society BILD-KUNST will only have these rights with the consent of the beneficiary.

VG BILD-KUNST is entitled to administer the rights assigned to it by the beneficiary in its own name, to evaluate them, to receive the return to be paid and to legally acknowledge receipt of the rights assigned, to further transfer the rights assigned to it in full or in parts as part of contracts with foreign collecting societies or to prohibit the use of any rights. It is also entitled to assert the rights to which it is entitled to in its own name in every manner deemed appropriate by the collecting society Bild-Kunst.

Billing and payout are determined by the terms of the statute and distribution plans. Statutes and distribution plans form an integral part of this contract, also if these should be amended in future.

If, in the context of their responsibilities, the General Assembly or Administrative Council make changes in future, i.e. additions to the contract and the collection agreement for foreign countries, these shall form part of this contract. This also applies in particular to types of usage not known at the time the contract was concluded. The beneficiary needs to be informed in writing about amendments or additions. The consent of the right holders to make changes or additions shall be deemed granted unless he/she expressly objects within two months of delivery. He/she must be informed of this legal consequence in the notification.

The beneficiary commits to notify the collection society BILD-KUNST immediately of any change of address or nationality and any change in the company, i.e. changes in ownership or shareholder structure or the company's business as well as any transfer of the subsidiary.

In addition, he/she commits to inform VG BILD-KUNST of the currently valid tax number under which he/she is registered for VAT at the respective tax office. In this respect, he/she releases VG BILD-KUNST from VAT reclaims of the tax offices, as these were caused by false or omitted information about the beneficiary's tax number.

If the beneficiary, or in the event of death, his/her legal successor, does not inform us about a change of address

and the new address of the beneficiary cannot be determined via the registration office responsible for the last place of residence, then the collecting society BILD-KUNST is entitled to prematurely terminate the collection agreement at the end of the financial year, in which the negative news has been received from the registration office. In this case, the notice of termination shall be sent to the last address known to the collecting society BILD-KUNST by registered letter. At the end of another financial year, the administrative council may, at its own discretion, decide on a credit available until the end of the contract if the beneficiary has not given his/her own provision.

For legal succession in the contractual relationship, the general statutory provisions shall prevail, unless the statute and contract state different conditions. In the event of the death of the beneficiary, the agreement will be continued with the successors. If there are several successors, they must exercise their rights through one of them who acts as the authorised representative in the legal position of the testator.

The collecting society BILD-KUNST is not obliged to pay until proof of succession has been sent and the appointment of a representative has been completed. The collecting society BILD-KUNST may demand proof of inheritance through a certificate of inheritance, submission of a grant of probate or other certificates to be issued by the probate court. It may also require that the power of representation be proven by officially certified documents.

The contract is valid for an unlimited time. It can be ordinarily terminated by giving six months notice at the end of the year. A notice of termination of this contract must be sent in writing. Partial terminations of individual rights or individual rights for certain countries, even with regard to individual creation classes within the meaning of section 2(1) German Copyright Act (UrhG) are possible.

Upon termination of the contract, the rights are reassigned to the previous beneficiary, without any need for a special reassignment. [↴](#)