

Disbursement regulations

Stichting Reprorecht: the Disbursement Regulations [Reglement Uitkeringen] referred to in Article 14 of the organisation's articles of incorporation approved in a meeting of the Board of Management of Stichting Reprorecht on 1 December 2004 as amended on 1 March 2005 and approved by the Supervisory Authority in March 2005.

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I Groups and payment duties

- 1.1 Based on or pursuant to the provisions of Sections 16h to 16m of the *Auteurswet* [Copyright Act] those persons who have a duty to pay a legally prescribed fee for reprographic reproduction are divided into groups.
- 1.2 A distinction is drawn between the following groups:
 - a. the government and those institutions serving the general interest;
 - b. non-profit educational organisations;
 - c. the business sector and other organisations.
- 1.3 The breakdown referred to in Article 1.2 may be adjusted in the interim should it appear advisable to do so based on experience acquired in the course of collection and/or distribution, or on any other grounds.

II Categories of written works

- 2.1 Those written works which are covered by a legally prescribed reprographic reproduction fee under the terms of the government legislation governing reprography referred to in Article 1.1 of these regulations, shall be broken down into categories.
- 2.2 A distinction shall be drawn between the following categories:
 - a. written works published in the Netherlands, namely:
 - a1. professional and scientific books: those books which are primarily intended for study, the pursuit of a trade, occupation or profession, or for scientific research;
 - a2. professional and scientific magazines: those magazines and periodicals which are primarily intended for study, the pursuit of a trade, occupation or profession, or for scientific research;
 - a3. educational works: those written works which are primarily intended for the purposes of education, training, courses and lessons with the exception of academic education;
 - a4. newspapers: newspapers such as national and regional dailies, and free home-delivered newspapers;
 - a5. consumer magazines: all those magazines which are not intended for study, the pursuit of a trade, occupation or profession, or for scientific research.
 - a6. sheet music: published pieces of music;
 - a7. general-interest books and other works published in so far as they are not covered by Clauses (a1) to (a6);
 - a8. visual works: the visual works covered by Clauses (a1) to (a7);
 - b. those written works referred to in Clauses (a1) to (a8) which are not published in the Netherlands.
- 2.3 The breakdown referred to in Article 2.2 may be adjusted in the interim should it appear advisable to do so based on experience acquired in the course of collection and/or distribution, or on any other grounds.

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III Category accounts

- 3.1 Stichting Reprorecht shall open a separate account in its books for every category referred to in Article 2.2.
- 3.2 The fees received from every group of people who have a duty to pay same as provided for in Article 1.2, shall be distributed amongst those accounts which qualify for same following the deduction of the collection costs directly attributable in this respect.
- 3.3 The degree to which a group produces copies of the categories of written works referred to in Article 2.2, shall constitute the criterion for this distribution.
- 3.4 A distribution criterion shall be determined on the basis of research for each of the groups referred to in Article 1.2.
- 3.5 The relevant distribution criterion shall be adjusted, should it appear advisable to do so based on experience acquired in the course of collection and/or distribution, or on any other grounds.
- 3.6 The distribution costs which can be directly attributed to a category, shall be charged to the latter. Those costs which cannot be directly attributed to a category, may be charged to it based on a costing percentage to be determined by Stichting Reprorecht for each category every year.

IV Distribution of the funds allocated to the category accounts for those categories of written works published in the Netherlands

- 4.1 Stichting Reprorecht shall distribute the fees it receives, to creators and publishers in the manner which it deems to be the most efficient for each category, and shall do so to those publishers that Stichting Reprorecht accepts as eligible for this purpose, partly for the benefit of their authors, or to those organisations accepted by Stichting Reprorecht as ones representing right holders, or directly to those right holders whom it accepts as eligible for this purpose.
- 4.2 Those publishers, organisations and right holders who wish to qualify for a share in the distribution of funds allocated to any of the categories referred to in Article 2.2(a), shall be required to register as an eligible party in respect of the relevant category or categories, and to be accepted as such by Stichting Reprorecht.
- 4.3 Any eligible party shall be precluded from acceptance by Stichting Reprorecht, if he is unwilling to declare in writing that he consents to these disbursement regulations and that he undertakes to comply with their provisions faithfully in so far as they apply to him.
- 4.4 A distribution criterion shall be determined for each category for the purposes of apportionment amongst those publishers and organisations that Stichting Reprorecht accepts as eligible parties. It shall be based on information which is relevant for the purposes of such apportionment, such as turnover and/or the number of published pages or contributions (containing editorial content) and/or the fees received by the relevant creators.
- 4.5 In order to be considered for acceptance by Stichting Reprorecht as a publisher an eligible party shall be required to show that it is reasonable to assume that he regularly acts as the publisher of one or more of the categories of written works referred to in Article 2.2(a). Stichting Reprorecht shall be entitled to require the submission of written evidence for this purpose. Stichting Reprorecht may accept membership of a professional association of publishers as proof.
- 4.6 In order to be considered for acceptance by Stichting Reprorecht as an organisation an eligible party shall be required to show that it is reasonable to assume that it represents a significant group of right holders in relation to one or more of the categories referred to in Article 2.2(a). Stichting Reprorecht shall be entitled to require the submission of written evidence for this purpose, such as articles of incorporation, or lists of members, clients or affiliates. Stichting Reprorecht may accept membership of an umbrella copyright organisation as proof.
- 4.7 Disbursements to publishers and organisations accepted as eligible parties for a category shall be effected annually, preferably within 12 months after the end of the calendar year to which the funds allocated to the relevant category

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account pertain. As a rule the disbursement of funds collected in the calendar year which has expired, to publishers and organisations as referred to in the foregoing sentence shall occur once each year. Stichting Reprecht shall not recognise any subsequent claims.

- 4.8 Stichting Reprecht may stipulate that, in connection with the limited amount of the funds to be distributed amongst the eligible parties, their disbursement shall be postponed until the next year.
- 4.9 Any funds allocated to an account after the apportionment of the funds held in it have been finalised, may be assigned for disbursement in a subsequent year even though they pertain to one or more previous calendar years.
- 4.10 Contrary to the provisions of Article 4.8, Stichting Reprecht may act on a joint proposal made by a sufficient number of representative organisations of publishers and creators in relation to a particular category account by deciding not to consider all of part of the funds allocated to this account for disbursement, and instead to earmark it for a purpose which Stichting Reprecht deems acceptable in accordance with the aforementioned proposal.
- 4.11 In the event that the funds held on an account are not distributed for three consecutive years in accordance with the provisions of Article 4.8, and the option provided for in Article 4.10 is not utilised either, the funds held on this account shall accrue to Stichting Reprecht. The latter shall have a duty to allocate them for a purpose which accords with its objectives.
- 4.12 The principle underlying apportionment to a creator and publisher shall entail a 50-50 ratio, which may not be varied at the expense of the creator, even if the latter has assigned his copyright.

V Duties of the publishers referred to in Part IV

- 5.1 Any publisher whom Stichting Reprecht has accepted as an eligible party, shall have a duty to supply information within three months following the end of the relevant calendar year to an accountant referred to in Section 393 of the

Civil Code, Vol. 2, and appointed by Stichting Reprecht for the purposes of determining the distribution criterion referred to in Article 4.4 in relation to the calendar year which has ended, or the financial year which ended during the calendar year concerned. This information shall be accompanied by an auditor's report as referred to in Section 393 of the Civil Code, Vol. 2, confirming their accuracy. In the event that the turnover cited by a publisher is less than the amount determined by Stichting Reprecht, the publisher concerned need not do more than submit his entire audited annual accounts. Stichting Reprecht may permit a publisher to take part of the cost of such an auditor's report representing 10% of the sum disbursed up until a maximum sum which Stichting Reprecht determines, and to deduct it from the overall figure, that is to say before the funds received for the purposes of distribution are apportioned to produce a sum for the authors and one for the publisher, provided that evidence of the accountant's fees are presented which is satisfactory to Stichting Reprecht.

- 5.2 An accountant referred to in Article 5.1 who is appointed by Stichting Reprecht, shall have a duty – also towards Stichting Reprecht – not to disclose any information provided to him by the publishers and shall only be permitted to submit those proportionate figures to Stichting Reprecht which are relevant for the purposes of distribution.
- 5.3 A publisher shall be required to pay no less than 50% of the funds which he receives for distribution purposes to any person who is deemed to be a creator under the terms of the Auteurswet 1912 of a written work which he published in the previous calendar year as part of the category covered by the funds which he has received, or such person's legal successor under universal title, such as an heir, and to do so based on the distribution criterion specified by Stichting Reprecht. Such a distribution criterion shall be determined for each category and shall preferably be based on the sum of the fees disbursed in the relevant calendar year and/or the number of pages or contributions of editorial content published.

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- 5.4 Payment as required of a publisher under the terms of Article 5.3 shall be effected within three months after he receives the amount that is to be distributed. If so requested, Stichting Reprorecht may grant a publisher dispensation in the sense that disbursement be effected simultaneously with the next annual payment of fees but no later than within one year. A publisher shall only receive funds for a subsequent year from Stichting Reprorecht for distribution, after he has notified the latter in writing that he has completed disbursement in respect of the previous year or has deposited any funds intended for creators which amount to less than the sum stipulated by Stichting Reprorecht for each author, into the special account referred to in Article 5.6 below for a purpose which accords with the provisions of that article.
- 5.5 The funds which are to be disbursed may not be made subject to any withholdings or deductions on any grounds whatsoever with the exception of the provisions of Article 5.1.
- 5.6 A publisher shall take any amount which is smaller than that stipulated by Stichting Reprorecht, and which he is unable to disburse within the period of three months referred to in Article 5.4, and shall deposit it into a special account called the *Auteursfonds* [Writers Fund] administered by Stichting Reprorecht within three months, and it shall be used to pay individual creators and for the collective purposes of the latter. The board of management of Stichting Reprorecht shall appoint a body representing authors, which shall present advice for the use of such funds for collective purposes, following which Stichting Reprorecht shall decide how these funds are to be spent. The prior written consent of Stichting Reprorecht shall be required for any form of payment and disbursement by a publisher which does not comply with the provisions of Articles 5.4 and 5.6.
- 5.7 Any person who is of the opinion that he is entitled to payment by a publisher in accordance with the provisions of these regulations, may, in the event that he believes that the publisher concerned is failing to comply with his obligations pursuant to these regulations, address a complaint to Stichting Reprorecht, if he cannot reach agreement with the publisher.
- 5.8 Either in response to a complaint or of its own accord, Stichting Reprorecht shall have the power to arrange for an accountant referred to in Section 393 of the Civil Code, Vol. 2, whom it has appointed for this purpose, to ascertain whether a publisher fully complies with his duties pursuant to these regulations.
- 5.9 Before having an accountant conduct an audit as provided for in Article 5.8, Stichting Reprorecht may require the complainant to tender security for the cost of such an audit, which amount the complainant shall forego in the event that his complaint is shown to be without grounds.
- 5.10 Any creator who is entitled to the disbursement of funds by a publisher under the terms of these regulations, may apply to the *Auteursfonds* which is referred to in Articles 5.4 and 5.6 and which is appointed and maintained by Stichting Reprorecht, in order to obtain an equitable payment. Such a creator may apply to this *Auteursfonds* in the event that his publisher has not registered with Stichting Reprorecht as an eligible party and is consequently not participating in the distribution, and this creator does not receive equitable payment from a dispensing organisation in his capacity as such, or if his publisher has deposited the creator's equitable payment in the *Auteursfonds* pursuant to the operation of Article 5.6. Stichting Reprorecht may deduct the cost of such abnormal disbursement, such as advertising and administrative expenses, from the relevant publisher. In order to be considered by Stichting Reprorecht in the capacity of a creator, an eligible party must show that it is reasonable to assume that he is the creator of what Stichting Reprorecht deems to be a relevant part of one or more of the categories of written works referred to in Article 2.2(a). Stichting Reprorecht shall have the power to require the submission of written evidence for this purpose.
- VI Duties of the dispensing organisations referred to in Part IV**
- 6.1 In order to be accepted by Stichting Reprorecht as an organisation involved in

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distribution – hereinafter referred to as a dispensing organisation – an eligible organisation shall be required to submit a plan to Stichting Reprorecht. This plan must provide an insight into the manner in which the funds received in respect of the relevant categories will be distributed, with regard to all relevant aspects, such as the determination of the group of right holders on whose behalf the organisation wishes to act, the way in which funds are to be allocated to right holders, the costs to be deducted from the funds that are to be disbursed, any withholding of a levy for collective social and cultural purposes, additions to reserves if applicable, the manner and time of disbursement and subsequent reporting to Stichting Reprorecht, any collective goals, petty cash arrangements if any, complaints management and any other matter which Stichting Reprorecht wishes to ascertain for the purposes of distribution, before it proceeds to designate the organisation as a dispensing one. Stichting Reprorecht may request information in addition to a plan from an eligible organisation.

- 6.2 Even then a dispensing organisation shall only receive funds from Stichting Reprorecht for distribution to the group of right holders referred to in Article 6.1, on whose behalf the organisation wishes to act, if written indemnification against any relevant claim is granted to Stichting Reprorecht in this respect beforehand, and the indemnification that is granted, shall under no circumstances exceed the amount of funds which the dispensing organisation has received from Stichting Reprorecht to distribute.
- 6.3 Any dispensing organisation that has been accepted as such, shall be required to provide Stichting Reprorecht with a breakdown of the outcome of its further distribution and the costs involved at regular intervals or if so required, for example, by means of its annual reports and the provision of any other information requested by Stichting Reprorecht, which shall at any rate include all of the information which the latter requires for the purposes of fulfilling its duties towards the College van Toezicht Auteursrechten. Furthermore, any annual amendment of a plan referred to in Article 6.1 must be reported

to Stichting Reprorecht. Following each amendment, Stichting Reprorecht shall decide whether the relevant dispensing organisation will be involved in distribution or whether it will forego its designation as such an organisation. A decision to revoke a dispensing organisation's status as an accepted one and not to involve it in distribution on this basis, may only be taken if the organisation concerned fails to act in accordance with the rules set out in these regulations or otherwise acts contrary to the interests of Stichting Reprorecht and/or any right holders, if it fails to comply with its duty to submit information as provided for in the first sentence of this article, and if the relevant dispensing organisation does not distribute anything and does not in some other way act in accordance with the plan which it has submitted as provided for in Article 6.1.

- 6.4 The funds which are to be disbursed may not be made subject to any withholdings or deductions other than those accepted by Stichting Reprorecht as part of a plan referred to in Article 6.1.
- 6.5 Any person who is of the opinion that he is entitled to payment by a dispensing organisation in accordance with the provisions of these regulations, may, in the event that he believes that the organisation concerned is failing to comply with his obligations pursuant to these regulations, address a complaint to Stichting Reprorecht, if he cannot reach agreement with that organisation.
- 6.6 Either in response to a complaint or of its own accord, Stichting Reprorecht shall have the power to arrange for an accountant referred to in Section 393 of the Civil Code, Vol. 2, whom it has appointed for this purpose, to ascertain whether the relevant organisation fully complies with his duties pursuant to these regulations.
- 6.7 Before having an accountant conduct an audit as provided for in Article 6.6, Stichting Reprorecht may require the complainant to tender security for the cost of such an audit, which amount the complainant shall forego in the event that his complaint is shown to be without grounds.

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VII Distribution of the funds allocated to the category accounts for those categories of written works not published in the Netherlands

- 7.1 The account for the category, 'not published in the Netherlands', shall be broken down into country accounts.
- 7.2 The provisions of Part III shall apply *mutatis mutandis* subject to the proviso that distribution shall occur by country of publication and not by category of written works.
- 7.3 Only those organisations which Stichting Reprorecht considers to be sufficiently representative, which are actively involved in the distribution of copyright fees pertaining to written works, and which Stichting Reprorecht has accepted as eligible parties after registering with it in this capacity, shall be deemed to be parties that are eligible for allocation of any funds held on a country account.
- 7.4 Disbursement to an organisation that has been accepted as an eligible party, shall be effected annually, preferably within 12 months following the expiry of the calendar year to which the funds allocated to a country account relate.
- 7.5 After disbursement has occurred, any funds that have been allocated to a country account, may be set aside for disbursement in a subsequent year even though they may pertain to one or more previous calendar years.
- 7.6 Disbursement shall not be effected if the recipient organisation has not given Stichting Reprorecht a written undertaking to indemnify the latter from any further claim of a right holder to the funds allocated to the relevant country account.
- 7.7 Where Stichting Reprorecht has not accepted any eligible party for a country account, the funds allocated to the latter account shall accrue to Stichting Reprorecht upon and in accordance with the expiry of the deadline which applies to Stichting Reprorecht in relation to the collection of these funds. Stichting Reprorecht shall have a duty to allocate these funds for a purpose which accords with its aims.

VIII Sanctions

- 8.1 Stichting Reprorecht shall have the power to impose a penalty on any publisher or organisation which fails to comply in full with those provisions of these regulations which apply to them, such to be determined at Stichting Reprorecht's discretion, which penalty shall not exceed five times the amount that has been disbursed to such publisher or organisation in the past three years.
- 8.2 In the event of a repeat offence, the relevant publisher may be precluded from distribution as provided for in Part IV for a term that is still to be specified, and a decision to this effect shall be published. Where a publisher is precluded from distribution as provided for in Part IV or, if in his capacity as a party being considered for eligibility he is not prepared to provide the written declaration referred to in Article 4.3 to the effect that he consents to these disbursement regulations and the provisions contained in them, Stichting Reprorecht shall explicitly acknowledge the relevant creators' entitlement to payment. The rules applicable in such a case shall be set out in the form of separate regulations.

IX Appeal

- 9.1 Any interested party may appeal to the Commissie van Beroep [Appeal Board] against any decision taken by Stichting Reprorecht in relation to the application of these regulations.
- 9.2 The rulings of the Commissie van Beroep shall be binding on both the relevant interested party and on Stichting Reprorecht.
- 9.3 The provisions of the Reglement *van Beroep* [Regulations Governing Appeals] shall apply.

X Final provisions

In any case which is not covered by these regulations Stichting Reprorecht's decision shall be final.