

Max Planck Institute  
for Innovation and Competition, Munich, Germany

# Copyright Conference for the BE Presidency The Action of the EU and its Member States in Favor of Fair Remuneration for Authors, Performers and Creative Industries in the Digital Content Landscape

Remuneration of authors and performers on platforms  
in Germany  
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Prof. Dr. Silke von Lewinski



# Remuneration of authors and performers on platforms

- **I. UGC platforms according to the implementation of Art. 17 (and 18) of Directive 2019/790**
  - § 4 (3) UrhDaG: "right to direct remuneration" (residual right)
  - § 5 (2) UrhDaG: right to remuneration in the context of limitations
  - § 12 (1) UrhDaG: right to remuneration for presumed permitted uses (blocking procedure)
- **II. Legal streaming platforms (e.g. Netflix)**
  - „Joint remuneration agreements" (§§ 32 et seq. UrhG)
  - Studies



## Remuneration on platforms in accordance with § 4 (3) UrhDaG: Right to direct remuneration

### *Preconditions:*

- The author or performer and the photographer protected by a related right (§ 21 (2) UrhDaG) must have **granted a licence** for communication to the public **to a third party**.
- The third party grants a **licence to the platform**; contractual uses
- The third party must not be a CMO and the author must not have employed the third party as a digital distributor.

### *Legal consequence:*

- The **platform** (e.g. YouTube) must pay the **author, performer or photographer equitable remuneration** for the contractual use of communication to the public.



## I. Remuneration on platforms in accordance with § 4 (3) UrhDaG: Right to direct remuneration

- These right owners **cannot waive** this right to remuneration; transfer in advance is only possible to a CMO
- The right is subject to **mandatory collective management**.

### *The model:*

- Origin: Directive **1992/100/EC**, art. 4, rental right (= art. 5 Dir. 2006/115)
- Model used in other contexts:
  - e.g. cable retransmission in Germany; the right of making available via the Internet in Spain;
  - discussed i.a. in context of art. 18 of the DSM Directive, see, e.g., the "fair Internet" campaign



# I. Remuneration on platforms in accordance with § 4 (3) UrhDaG: Right to direct remuneration

## *Explanatory memorandum of UrhDaG:*

- In the event of a licence agreement, the authors (or the other entitled party) must receive appropriate and proportional remuneration (**art. 18 DSM Directive!**).
- Previous copyright - partly because of the complexity of digital exploitation - could not guarantee such fair remuneration.
- The **aim** of this direct remuneration right is to ensure fair remuneration for a contractual licence by means of collectivisation and by a right addressed directly to the end-user to remedy the known weaknesses of individual copyright contract law



## I. Remuneration on platforms in accordance with § 5 (2) UrhDaG: Context of particular limitations

- In general: combination of limitations with statutory rights to remuneration: frequent in Germany (not only private copy)
- § 5 (1) UrhDaG: certain **limitations** of the right of communication to the public where act is performed by the user of a platform.
- § 5 (2) UrhDaG: right to remuneration for communication to the public of **caricatures, parodies and pastiches** for the author (and holders of related rights)



## I. Remuneration on platforms in accordance with § 5 (2) UrhDaG: Context of special limitations

*The terms and conditions correspond to those of § 4 (3) UrhDaG:*

- The author may **not waive** this right but may transfer it in advance only to a CMO.
- **Mandatory collective management**
- The platform must pay, as it economically benefits from the uses (attractiveness) even if they are exempt



## I. Remuneration on platforms in accordance with § 12 (1) UrhDaG for presumed permitted uses (§§ 9-11 UrhDaG)

- Remuneration in the context of the **automated blocking procedure**
  - Prohibition on qualified blocking ("stay down") until the end of the blocking procedure
  - in certain cases where the law **presumes that uses are permitted**
- For example, marginal uses and uses marked by the user as being permitted by law (§§ 9-11 UrhDaG)
- In these cases: **statutory right to equitable remuneration** for the author (and holder of related rights) to be paid by the **platform** (until the end of the blocking procedure)
- Right **non-waiveable**, transferable only to a CMO; **mandatory collective management** (§ 12 (1) UrhDaG)





## II. Remuneration for use on legal streaming platforms (e.g. Netflix)

- §§ 32 et seq. UrhG: “Joint remuneration agreements” for establishing equitable remuneration for authors and performers in individual contracts
- “Joint remuneration agreements” between ver.di/BFFS and Netflix (2020 and 2022)
- Negotiations also with BVR (stage managers, scriptwriters)
- Studies: Ministry of Justice; Federal Government Commissioner for Culture and the Media



THANK YOU!  
svl@ip.mpg.de

