

# [ENGLISH TRANSLATION]



## CODE OF CONDUCT

Clearingstelle Urheberrecht im Internet (CUII)

[Clearing Body for Copyright on the Internet]

of 18 January 2021

as amended by the 1<sup>st</sup> amendment of 25 August 2023

Anlage 1 – Rules of Procedure

Anlage 2 – Members Steering Committee

Anlage 3 – Compliance Declaration

between

- a) Börsenverein des Deutschen Buchhandels e.V., Bundesverband Musikindustrie e.V., Deutsche Fußball Liga e.V., game – Verband der deutschen Gamesbranche e.V., Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA), International Association of Scientific Technical and Medical Publishers, Motion Picture Association, Sky Deutschland GmbH, Verband der Filmverleiher e.V.

hereinafter collectively: „Rightholders“

on the one side and

- b) 1&1 (1&1 Telecom GmbH, Drillisch Online GmbH), Telekom Deutschland GmbH, Mobilcom Debitel GmbH, Telefónica Germany GmbH & Co. OHG, Vodafone (Vodafone Kabel Deutschland GmbH, Vodafone GmbH)

hereinafter collectively: “Internet Access Providers”

Rightholders and Internet Access Providers hereinafter also the “Party” or, collectively, the “Parties”

on the other side.

#### Preamble

The Parties to this Code of Conduct “Clearingstelle Urheberrecht im Internet (CUII)” [Clearing Body for Copyright on the Internet] (hereinafter: “Code of Conduct”) intend with this document, without prejudice to the factual and legal situation and by way of mutual compromise, to establish a procedure with which, in relation to *structurally copyright infringing websites*, court disputes can be avoided and DNS blocks can be effectively and swiftly implemented against such websites. The operation of *structurally copyright infringing websites* commit clear infringements of the German Copyright Act. Parties to this Code of Conduct are, on the Internet Access Provider side, individual undertakings which provide internet connections to internet users in Germany. On the Rightholder side, these are undertakings whose rights are infringed by structurally copyright infringing websites or associations of such undertakings (“Associations”).

The Parties are aware that both the drafting of this Code of Conduct and its provisions and their execution requires a special degree of trust between those involved. All Parties therefore agree that the execution of this Code of Conduct must be accompanied by a particular degree of good faith in order to duly respect the mutual compromises made by each side involved. This will include, among other things, the Parties having agreed upon a technical process, the so-called DNS block, the appropriateness and effectiveness of which the Parties intend to include within the evaluation of the Code of Conduct. The proper conduct of the procedure requires the involvement of the German Federal Network Agency (hereinafter: “Bundesnetzagentur”), as far as the measures laid down in Regulation (EU) 2015/2120 are



concerned. The details of this participation shall be determined by the Bundesnetzagentur and the Parties in an exchange of letters. The Parties will provide the Bundesnetzagentur with all facts in full relevant to the decision, duly ordered and prepared in such a way that the Bundesnetzagentur can concentrate on the essence of its sovereign responsibility and avoid any unnecessary time and effort.

In this spirit, the Parties have agreed as follows:

## 1. Subject matter of the Code of Conduct

a) The subject matter of this Code of Conduct consists exclusively of provisions governing the blocking of structurally copyright infringing websites.

b) Blocks under this Code of Conduct will be implemented exclusively by means of so-called DNS blocks.

c) DNS blocks under this Code of Conduct will only be implemented on request and in accordance with the provisions of the Code of Conduct.

d) The Code of Conduct provides for a procedure according to which a review committee, under a highly qualified, independent chair, issues, on the basis of a unanimous vote in line with the case law of the highest court, taking into account lower instance court case law specifying this highest court case law, a well-founded recommendation as to which structurally copyright infringing websites must be blocked. Recommendations in favour of a DNS block will be forwarded to the Bundesnetzagentur for the purpose of checking compliance with the requirements of net neutrality according to Regulation (EU) 2015/2120. The Parties conclude the Code of Conduct under the condition that the Bundesnetzagentur issues an informal statement to the Clearing Body, in line with its findings, that there are no concerns regarding the DNS block in respect of Regulation (EU) 2015/2120.

e) The procedure is based on the assumption of a maximum limit of requests per year, with the details as to that figure set out in the Rules of Procedure. The current Rules of Procedure are included as Annex 1 to this Code of Conduct.

f) The Parties are obliged to carry out the procedure within the meaning of the Code of Conduct and the Rules of Procedure, before they attempt to enforce any claims through the courts. To the extent a Party is themselves not entitled to make a request under this Code of Conduct, rather only their members are, that Party will encourage its respective members to comply with this obligation.

g) The Parties that are already involved in ongoing court cases will separately agree on whether the subject matter of those court cases will be transferred to the procedure according to this Code of Conduct. In addition, the Parties can mutually agree, in specific cases, to refrain from using the procedure under the Code of Conduct.

## 2. Definitions

a) “Structurally copyright infringing website” within the meaning of this Code of Conduct (hereinafter: “SCIW”) means a website, accessible via one or more domain, that cumulatively fulfils the following conditions:

- The SCIW is aimed, at least in part, at internet users in Germany.



- Content which infringes the German Copyright Act is being communicated to the public via the SCIW. The infringements concerned are clear infringements of the German Copyright Act.

Should legal content also be communicated to the public on an SCIW, this shall not preclude its classification as an SCIW if, as far as the overall ratio of legal to illegal content is concerned, the quantity of legal content is insignificant (see BGH [German Federal Court of Justice], judgment of 26 November 2015 - I ZR 174/14, para. 55) and internet users are not unnecessarily deprived, via a block of the website, of the possibility of gaining access to the available information by lawful means (see CJEU judgment of 27 March 2014 - case C-314/12, para. 63).

b) “DNS block” means the prevention of the attribution of the domain name and IP address on the Internet Access Provider’s DNS server, such that the affected domain name no longer leads to the corresponding SCIW (see BGH judgment of 26 November 2015 - I ZR 174/14, para. 62).

c) “Other Domains” means domains which an SCIW uses in addition to or as an alternative to the domains for which a DNS block has already been installed for that SCIW under the provisions of this Code of Conduct.

d) “Mirror Domains” means domains which do not communicate any content of their own to the public but which completely copy the content of the SCIW for which a DNS block has already been installed or is simultaneously requested under the provisions of this Code of Conduct. It is not a requirement, that the contents of the copied SCIW are constantly updated, such that obsolete Mirror Domains which do not upload any further content fall under this definition.

### 3. Clearing Body for DNS Blocks

a) The Parties to this Code of Conduct will set up a “Clearingstelle Urheberrecht im Internet (CUII)” [Clearing Body for Copyright on the Internet] (hereinafter: “Clearing Body”). The Clearing Body will consist of a dedicated office and a review committee. It will be monitored and directed by a steering committee (Section 4). The Parties have set out Rules of Procedure, detailing the procedures of the Clearing Body as well as the composition and responsibilities of the dedicated office and of the review committee.

b) The Clearing Body reviews requests for implementation of DNS blocks in respect of SCIWs. It assesses whether the requirements for the implementation of the requested DNS blocks are met, issues a recommendation and forwards it to the German Federal Network Agency (Bundesnetzagentur).

c) The Clearing Body shall accept submissions from third parties, e.g. internet users or operators of SCIWs, in relation to implemented DNS blocks and forward these to the Parties. The operator of an SCIW, after implementation of a DNS block in respect of that SCIW, has a right of appeal in accordance with Section 10a, without any time limit applying. The Clearing Body will inform the operator of that right of appeal as soon as a submission from the operator has been received. Further details in this respect are set out in the Rules of Procedure.

d) The Clearing Body will produce an annual report on its activities and send this report to all Parties.

e) The Clearing Body will maintain a website, accessible to the public, on which information on the Code of Conduct for DNS blocks and the Clearing Body’s activities are kept up to date.



#### 4. Steering Committee

a) The Parties shall establish a Steering Committee for specific tasks, in accordance with this Code of Conduct and the Rules of Procedure, which shall be made up of equal numbers of Rightholders and Internet Access Providers. The Parties shall entrust the Steering Committee with management responsibility to the extent tasks are assigned to it under this Code of Conduct and the Rules of Procedure.

b) The Steering Committee shall consist of six members who will each be appointed for a period of two years by the Parties to the Code of Conduct. Such members may also be subsequently reappointed. Three members will be appointed by the Rightholders and three members by the Internet Access Providers.

c) For the initial period up to the expiry of the term of the Code of Conduct as per Section 16 a), the Steering Committee shall consist of the members listed in **Annex 2** to this Code of Conduct.

d) The Steering Committee will elect a chair and a vice-chair from within its members. Three months prior to expiry of the term under Section 16 a) or of the respective term under Section 16 b), the chair shall send a request, in text form, to all Rightholders and all Internet Access Providers, asking that the Steering Committee members be appointed in due time for the following period. The existing members shall remain in office until such time as the Rightholders' and/or Internet Access Providers' members have been appointed. If a member of the Steering Committee resigns or leaves their position due to ill health or death, the chair shall send a request, in text form, to all Rightholders or all Internet Access Providers, depending on which group the member concerned was appointed by, asking them to appoint a successor. Until such time as a successor is appointed, the Steering Committee shall remain quorate in its existing composition.

e) The Steering Committee shall meet regularly, twice a year, and beyond that as required. Meetings can be held in person in one location or as a video or telephone conference, whereby one regular meeting shall take place in person and the others as video conferences. The chair shall issue invites to and preside over the meetings. The Chair of the Steering Committee will send an agenda together with the invitation prior to every meeting which will be agreed between the Chair and the Chair's deputy and which will only include items which meet the requirements under f) below. The members will have the opportunity to review the agenda.

f) The meetings of the Steering Committee serve solely as a forum for discussion of topics which have to be discussed among the members for a due and proper operation or further development of the Clearing Body and which do not involve issues which could raise anti-trust concerns. Members of the Steering Committee have the option of inviting, at their own cost, an anti-trust law expert to the meetings; several members can jointly agree on the anti-trust law expert.

g) Prior to the start of each meeting of the Steering Committee, a compliance declaration will be read out. This is attached to the Code of Conduct as Annex 3.

h) The Steering Committee has the following tasks:

- (1) Selecting the members of the three pools, from which the members of the Clearing Body's review committee are selected, and carrying out an annual review of the composition of the pools. A review committee shall consist of three reviewers, specifically two reviewers and one chair. The chair is impartial, has the qualifications required for appointment to judicial office and has proven their impartiality in the exercise of that office through their judicial, administrative or scientific activity. The Rules of Procedure sets out details on the appointment of the review committee.



- (2) Staffing the dedicated office and concluding all necessary contracts for the operation of the dedicated office. It shall oversee the financing of the Clearing Body and the funds managed by the dedicated office. In particular, it may terminate the contracts concerning the setting up of the dedicated office and reassign them.
  - (3) The Steering Committee manages the business of the dedicated office. In particular, the Steering Committee may revocably transfer day-to-day business to the dedicated office. The details in this respect are set out in the Rules of Procedure. The Steering Committee shall at all times retain the authority to issue instructions to the dedicated office.
  - (4) The Steering Committee will decide, in the scope of the provisions under Section 12, on the costs for the Dedicated Office and the costs of the review procedure.
  - (5) It shall carry out the evaluation as per Section 15.
  - (6) Requests and terminations as per Section 17 a) and c).
    - i) The Steering Committee is bound by the Rules of Procedure. It can decide changes to the Rules of Procedure.
    - j) The Steering Committee is quorate when all members participate in the meeting. One member of the Steering Committee can have themselves represented by another member of the Steering Committee by way of a written power of authority.
    - k) The Steering Committee shall make decisions unanimously, whereby at least 75% of all votes of its members must be cast. Abstentions shall be deemed votes not cast.
    - l) As far as the tasks set out in Section 4 h) (2) and (3) above are concerned, the Steering Committee is authorised to represent the Parties in dealings with third parties. The Steering Committee's written declarations must be signed by the chair and one other member of the Steering Committee.
    - m) The Steering Committee members' costs for participating in meetings shall be borne by the respective Party that appointed them.
5. Request procedure and priority of action against entities more closely involved in the infringement
- a) Any Rightholder or Association of Rightholders is entitled to file a request. Furthermore, any member of an Association which is party to this Code of Conduct is entitled to file a request, provided the Association approves the request. It is the responsibility solely of the requesting party to identify an SCIW and file a corresponding request.
  - b) The requesting party concerned must first place a priority on enforcing their rights against those involved in the infringement who - like the operators of the websites in question - either committed the rights infringement themselves or who - like the hosting providers of the websites in question - have contributed to the rights infringement by providing services. A request to block an SCIW is thus only permitted if action against the website operator has no prospect of success and thus a gap in legal protection would otherwise arise. The requesting party concerned must have undertaken reasonable measures to ascertain the identity of the operator of the website. In this context, possible courses of action include involving the state investigatory authorities by way of a criminal complaint or undertaking private investigations, for example using a detective or other company which conducts investigations in connection with illegal services on the internet (see BGH judgment of 26 November 2015 - I ZR 174/14 - paras. 83, 87).



## 6. Requirements for the implementation of a DNS Block

The implementation of a DNS block in relation to an SCIW shall be subject to the following cumulative conditions:

a) Firstly, a request addressed to the Clearing Body is required. The request may not be limited to individual Internet Access Providers. The request must contain the following, whereby the details regarding the form and content will be set out in the Rules of Procedure.

- Presentation of proof of rights ownership or that the requirements for applicable presumptions are met.
- Presentation of proof that the requirements of an SCIW are met and of the domain(s) as per Section 2 to be included in a DNS block.
- Presentation of proof that the requirements set out in Section 5 b) are met.

b) The Internet Access Provider is informed by the Clearing Body of admissible requests, so that the Internet Access Provider has the possibility of submitting a response to the Clearing Body. The details in this respect are set out in the Rules of Procedure.

c) If the Clearing Body recommends that the requested DNS block be implemented, the Clearing Body will send the Bundesnetzagentur the request for review and the recommendation, in order that the Bundesnetzagentur can check the recommendation in respect of compliance with the requirements of net neutrality according to Regulation (EU) 2015/2120. The Parties agree that the informal statement on Regulation (EU) 2015/2120 of the Bundesnetzagentur with respect to the DNS block, as foreseen in the correspondence between the Bundesnetzagentur and the Parties, will be taken into account in the procedure. Details will be set out in the Rules of Procedure.

d) If the review by the Bundesnetzagentur confirms that a DNS block is unproblematic under Regulation (EU) 2015/2120, the Clearing Body shall notify the Internet Access Providers and the requesting party that filed the request accordingly. The details in this respect are set out in the Rules of Procedure. In the case of concerns, sentence 1 shall apply accordingly.

## 7. Implementation of the DNS block in relation to SCIWs

a) Upon receipt of the statement of the Bundesnetzagentur that the DNS block is unproblematic, the Internet Access Providers will implement the DNS block in question without undue delay without prejudice to the factual and legal situation, including in regard to the costs of implementation. This does not represent, either for the Rightholders or for the Internet Access Providers, an acceptance of or agreement with the legal considerations or underlying case law of the recommendation of the review committee. The review committee will arrive at its recommendation independently; this will also apply in regard to the reviewers from the pools of "Rightholders' reviewers" and "Internet Access Providers' reviewers". The Rightholders and Internet Access Providers stress that the procedure established with this Code of Conduct has been agreed by the Parties as a result of their coming together in the spirit of mutual compromise. The Parties reserve all of their respective legal rights. The right to appeal in accordance with Section 10 remains unaffected. The details in this respect are set out in the Rules of Procedure.

b) To the extent an Internet Access Provider or company associated with it within the meaning of Sec. 15 et seqq. German Stock Corporation Act [AktG] does not operate any DNS servers itself but has them operated, by way of a wholesale service, by other Internet Access Providers,

- (1) the Internet Access Provider in question will inform their wholesale service providers who are not bound by this Code of Conduct in text form about the recommendations of the Clearing Body and of the Bundesnetzagentur and request that they install a DNS block or



(2) the Internet Access Provider in question will express, to the wholesale service provider(s) as well as to Internet Access Providers bound by this Code of Conduct, its consent to the implementation of the DNS block also in respect of its customers.

c) Should a wholesale provider not immediately implement a DNS block in the case described in Section 7 b) (1) above, the Internet Access Provider which does not itself operate DNS servers will inform the Clearing Body, which will forward this information to the requesting party, provided that this is not precluded by any confidentiality agreements.

d) Error messages displayed to the user as a result of the DNS block will be coordinated via the Steering Committee with regard to their content. The details in this respect are set out in the Rules of Procedure.

#### 8. Procedure in the case of Other Domains and Mirror Domains

A simplified procedure will apply in respect of Other Domains and Mirror Domains. In these cases, the requesting parties will refer, in their request, to the recommendation already issued by the Clearing Body and the Bundesnetzagentur's statement and demonstrate, in an appropriate form, that the domains in question are Other Domains or Mirror Domains, without there being any need for a presentation of proof that the requirements under Section 6 a) third sentence are met. The Bundesnetzagentur will not be called upon again. The details in this respect are set out in the Rules of Procedure. As far as the implementation is concerned, Section 7 applies accordingly.

#### 9. Monitoring of blocked sites/removal of blocks

a) The Rightholders that have filed the request for implementation of a DNS block, either themselves or their members, shall monitor, using appropriate means, the SCIW for which the DNS block has been implemented on the basis of this Code of Conduct, in order to ascertain whether the requirements set forth in Section 6 a) continue to be met. In the event that the requirements are no longer met, the Rightholder(s) shall notify the Clearing Body that the DNS block is no longer necessary. The Clearing Body will inform the Internet Access Providers of the new situation without delay. The details in this respect are set out in the Rules of Procedure.

b) Should the Parties to this Code of Conduct become aware, independent of the monitoring mentioned in Section 9 a) above, that the requirements set out in Section 6 a) as related to the SCIW for which the DNS blocks have been implemented on the basis of this Code of Conduct, the Party in question will duly notify the Clearing Body accordingly. The Clearing Body will duly inform the respective Rightholder(s) that filed the request, either themselves or their members, for whom the obligations under Section 9 a) will then apply. The same shall apply in the event that the Clearing Body itself becomes aware of such a situation.

#### 10. Appeal procedure; recourse to the courts

a) In the event that the Internet Access Provider or the requesting party does not agree with a recommendation of the Clearing Body under Section 6 c), the Party in question shall have the possibility of filing an appeal with the Clearing Body within three (3) weeks of becoming aware of the





recommendation. The Clearing Body shall then make a decision on that complaint within a short time. The details in this respect are set out in the Rules of Procedure.

b) If the Internet Access Provider or the requesting party disagrees with the Clearing Body's recommendation in that appeal procedure, it shall inform the Clearing Body of this within 5 working days of becoming aware of the recommendation. This brings the procedure under this Code of Conduct to an end with regard to the specific request. As such, the option of taking legal action before the courts remains open to the Internet Access Provider or the requesting party.

c) Declarations and actions of the Parties, the recommendations of the Clearing Body and of the Bundesnetzagentur's statements, as well as the obligations of the Parties under this Code of Conduct shall have effect exclusively in the scope of the procedure under this Code of Conduct, unless expressly stated otherwise in this Code of Conduct. The procedure is inserted prior to any judicial proceedings in an attempt to avoid such proceedings, however it is not intended to produce actionable remedies. Claims based on or in connection with this procedure or based on this Code of Conduct cannot be asserted by the Parties unless otherwise expressly stated in this Code of Conduct. The Parties further undertake not to name members of the Clearing Body or employees of the Bundesnetzagentur who are involved in the assessment under Section 6 c), in any subsequent judicial or arbitration proceeding as witnesses for facts which were disclosed to them during the proceedings under this Code of Conduct.

#### 11. Other decisions of the courts or public authorities

a) The Parties agree that Internet Access Providers are entitled not to implement the DNS blocks under Section 7 and Section 8 or are entitled to remove an installed DNS block if decisions of the courts or of public authorities preclude such a DNS block. That includes decisions of public authorities as well as court decisions which are preliminarily enforceable which are enforceable without lodgement of a security payment as well as decisions which are enforceable upon lodgement of a security payment by the obligee, after such security payment has been lodged. The Internet Access Provider is not obliged to contest the enforcement by lodging a security payment.

b) The Internet Access Provider who is the addressee of a decision as per Section 11 a) above of a public authority and/or court is obliged to inform the Clearing Body without delay, providing all necessary details. The Clearing Body will forward this information without delay to the requesting parties and the other parties involved in the implementation of the DNS block on the side of the Rightholders and/or the Internet Access Providers. All affected Parties will come to an agreement, in good faith, as to whether and how a defence of the decision in question shall be mounted. The affected Parties who are not addressees of the decision are obliged to support, with their best efforts and at their own cost, the Party against whom action has been taken by third parties, in defending itself against the claims concerned. If no defence is mounted against the decision by the public authority or the court, the Internet Access Provider has no obligation to implement DNS blocks as per Section 7 and Section 8 or is entitled to remove an installed DNS block.

#### 12. Costs

a) The Parties undertake to pay an annual lump sum determined per capita, which shall altogether finance the central office of the Clearing Body, which must be paid annually in advance. The details for determining the annual lump sum payment are governed by the Rules of Procedure.



b) The costs of the review proceedings shall solely cover the fees for the review committee. These costs shall be borne by the requesting party even if the request is successful. The costs for the appeal proceedings are borne by the party filing the appeal even if the appeal is successful. The details are governed by the Rules of Procedure.

c) Each Party shall bear their own costs for proceedings before the courts or public authorities according to Section 11 a) as stipulated in the court of authority decision unless otherwise set out in Section 13.

### 13. Indemnification

a) The Rightholders who have obtained the implementation of a DNS block under Section 7 and/or Section 8, either themselves or their members, release the Internet Access Providers that have implemented the respective blocks from legitimate claims of third parties based on or in connection with that DNS block. The Parties will work closely together to coordinate the defence against such claims. The indemnification will not apply where the third-party claims are based on an error for which the Internet Access Provider is responsible.

b) The obligations to notify, cooperate and support as per Section 11 b) apply accordingly. Moreover, the Internet Access Providers are, by way of precaution, obliged to cite, against any parties asserting claims, contractually agreed and, where they exist, statutory exemptions from liability.

c) If a company associated with the Internet Access Provider bound by this Code of Conduct maintains contractual relationships to the access end customers, claims of this associated company in connection with these access end customers are not covered by the exemption.

### 14. Communication between the Parties

Any messages, reports and other communication under this Code of Conduct shall be sent via the Clearing Body, observing the confidentiality as per Section 18. The Parties to this Code of Conduct shall provide the Clearing Body with an email contact, through which the Clearing Body shall communicate and provide updates on request. Rightholders whose members submit requests will, in addition, provide and update a corresponding email contact for the requesting party.

### 15. Evaluation

This Code of Conduct will be evaluated annually by the Steering Committee. The number of requests, recommendations and the costs incurred will be assessed. The details in this respect are set out in the Rules of Procedure. The Rightholders will include in the evaluation any studies which may be available on the effectiveness of the DNS blocks implemented.



16. Term; termination; addition of new parties

a) This Code of Conduct shall come into effect upon signature by at least four Internet Access Providers and six Rightholders between the signing Parties. All other parties named in the heading shall become Parties to the Code of Conduct upon signing it. It is concluded for a limited term until 31 December 2021 and can be terminated at the earliest on this date.

b) This Code of Conduct will automatically renew, for a period of one year, for every Party that does not formally effect a termination effective as of the end of the year. The termination must be declared in written form to the Clearing Body, no later than 30 September of the respective year. The Clearing Body shall inform all Parties to the Code of Conduct about any terminations. A termination has the effect that the Party concerned exits from the Code of Conduct, which is continued by the other Parties.

c) Each Party has the right to terminate this Code of Conduct for good cause without notice as per Section 16 b) within four (4) weeks of becoming aware of the good cause. Good cause exists, in particular, if (1) as a result of legislation or a decision of the highest court, it is established that rules set forth in this Code of Conduct are unlawful, or (2) the Code of Conduct is amended, unless the terminating Party has agreed to the amendment. A termination has the effect that the Party concerned exits from the Code of Conduct, which is continued by the other Parties.

d) This Code of Conduct may be terminated without notice any time up to 30 June 2021, if all Rightholder members of the Steering Committee or all Internet Access Provider members of the Steering Committee agree to such a step. The allocation of costs as per Section 12 a will remain unaffected.

e) This Code of Conduct shall cease to be in effect if no Rightholders or no Internet Access Providers remain a party to it.

f) Upon termination of this Code of Conduct - for whatever reason - any and all obligations for the relevant Party shall cease to apply unless expressly stipulated otherwise below.

g) Further parties may join this Code of Conduct. The Steering Committee decides on the accession; its decision is subject to members' right to object. All Parties must be informed of the decision; it is effective if no Party lodges an objection in text form with the dedicated office within one month. On the part of the Internet Access Providers, a pre-requisite of accession is that the acceding internet access provider implements all recommended and implemented SCIW blocks to date. The accession of a rightholder or an internet access provider may otherwise only be refused on objective grounds. Similarly, an objection is only admissible if an objective ground exists.

17. Additional provisions for specific violations against the Code of Conduct on DNS Blocking

a) If a Rightholder asserts claims against one or more Internet Access Providers in connection with SCIW, in proceedings before the ordinary courts, administrative proceedings and/or action and/or conciliation or arbitration proceedings, without first conducting proceedings in accordance with this Code of Conduct, the Steering Committee shall, on becoming aware, immediately send a written request



asking that the Rightholder in question brings an end to such claims within 4 weeks. If the time limit expires without any action being taken, the Steering Committee is entitled to terminate the Internet Access Provider in question without notice for good cause, without having to first set a further time limit. The Internet Access Providers affected by the proceedings are entitled, for a period of four weeks after becoming aware of the Steering Committee's termination decision, to terminate this Code of Conduct for their part for good cause, without having to first set a further time limit.

b) If a member of a Rightholder that takes the form of an Association asserts claims against one or more Internet Access Providers in connection with SCIWs, in proceedings before the ordinary courts, administrative proceedings and/or action and/or conciliation or arbitration proceedings, without first conducting proceedings in accordance with this Code of Conduct, the Rightholder that takes the form of an Association will (i) try and influence its member to bring an end to the proceedings without delay and (ii) release the respective Internet Access Provider(s) from all costs of proceedings including the necessary costs of mounting a legal defence.

c) If an Internet Access Provider or a wholesale provider associated with it within the meaning of Sec. 15 et seqq. AktG fails to implement a DNS block in accordance with Section 7 or Section 8, even where all of the conditions under Section 6 or Section 8 are met, and fails to exercise its right to appeal under Section 10 a), the Steering Committee shall immediately call upon the Internet Access Provider, in writing, to carry out the implementation within a time period of 4 weeks. If the time limit expires without any action being taken, the Steering Committee is entitled to terminate the Internet Access Provider in question without notice for good cause, without having to first set a further time limit. If the Internet Access Provider does exercise its right of appeal (even if unsuccessfully), there shall be no right of termination for good cause. The requesting Rightholder is entitled, for a period of four weeks after becoming aware of the Steering Committee's termination decision, to terminate this Code of Conduct for its part for good cause, without having to first set a further time limit. The Internet Access Provider is additionally obliged to reimburse the requesting party in full for the review fee as per Section 12 and the Rules of Procedure. This claim for reimbursement can also be made in subsequent proceedings before the courts or a board of arbitration.

## 18. Transparency

a) The Clearing Body will publish, on its website, this Code of Conduct, the Rules of Procedure as well as a list of SCIWs, for which DNS blocks would have to be implemented in accordance with the Code of Conduct, complete with the recommendation of the review committee. Further details in this respect are set out in the Rules of Procedure. All other documents are confidential.

b) This Code of Conduct shall not prejudice any future agreements and legal disputes, between the parties, outside of the Code of Conduct.

## 19. Severability Clause

Should any provision of this Code of Conduct be wholly or partly invalid or ineffective or become wholly or partly invalid or ineffective as a result of changes to the legal situation or a decision of the highest court, or become wholly or partly invalid or ineffective in another way or if this Code of Conduct contains gaps, the Parties agree that the other provisions of this Code of Conduct shall remain unaffected thereby and shall remain valid. In such a case, the Parties hereby undertake, taking into account the principle of good faith, to agree an effective provision in place of the ineffective provision, which as closely as



possible reflects the meaning and purpose of the ineffective provision and which it can be assumed that the Parties would have agreed at the point of concluding this Code of Conduct, had they been aware of or been able to foresee the ineffectiveness or invalidity. The same applies in the event that this Code of Conduct should contain a gap. The right to termination for good cause as per Section 16 c) remains unaffected thereby.

20. Amendments

Alterations and amendments to this Code of Conduct must be in writing or in text form (§ 126b German BGB) which includes exchange of emails. Changes will be decided by the Parties to the Code of Conduct with a 2/3 majority, whereby the 2/3 majority must be present among all Internet Access Provider party to the Code of Conduct as well as among all Rightholders which are party to the Code of Conduct.

21. Choice of law; place of jurisdiction

This Code of Conduct and the interpretation hereof are governed by German law. Frankfurt am Main is agreed as the place of jurisdiction.

22. German version takes precedence

As far as the execution and interpretation of this Code of Conduct are concerned, the German version shall take precedence.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Surname, first name

\_\_\_\_\_  
Company/association



Annex 1 to the

**CODE OF CONDUCT**

Clearingstelle Urheberrecht im Internet (CUII)  
[Clearing Body for Copyright on the Internet]:

**RULES OF PROCEDURE**

## Preamble

The Parties have agreed, in Section 3 of the Code of Conduct, to establish a jointly funded “Clearingstelle Urheberrecht im Internet (CUII)” [Clearing Body for Copyright on the Internet] (hereinafter: “Clearing Body”). Review committees of that Clearing Body will, on request, issue, under a highly qualified, independent chair and on the basis of a unanimous vote, well-founded recommendations within the meaning of the Code of Conduct as to which structurally copyright infringing websites (SCIWs) should be blocked by participating Internet Access Providers. In order to ensure a trusting and transparent working relationship exists between the Code of Conduct participants, the Code of Conduct participants have set out the tasks, internal organisation and the procedure for such recommendations. The current Rules of Procedure are included as Annex 1 to the Code of Conduct.

## § 1 Relationship to the Code of Conduct; Definitions

- (1) The provisions of the Code of Conduct apply additionally to these Rules of Procedure; in case of doubt, the provisions of the Code of Conduct shall take precedence.
- (2) Where terms are defined in the Code of Conduct, these shall also apply in these Rules of Procedure, unless expressly stated otherwise below.

## § 2 Clearing Body; Steering Committee

- (1) The Clearing Body shall perform the tasks set out in Section 3 of the Code of Conduct. It consists of a Dedicated Office and a review committee.
- (2) The Steering Committee is responsible for managing the Clearing Body and other central steering functions under Section 4 of the Code of Conduct. These are
  - a. Selecting the members of the three pools from which the members of the Clearing Body’s review committees are selected and carrying out an annual review of the composition of the pools.
  - b. Staffing the Dedicated Office and concluding all necessary contracts for the operation of the Dedicated Office. The Steering Committee shall oversee the financing of the Clearing Body and the funds managed by the Dedicated Office. In particular, it may terminate the contracts concerning the setting up of the Dedicated Office and reassign them.
  - c. The Steering Committee manages the business of the Dedicated Office. In particular, the Steering Committee may revocably transfer day-to-day business to the Dedicated Office. The Steering Committee shall at all times retain the authority to issue instructions to the Dedicated Office.
  - d. The Steering Committee shall decide in the scope of the provisions under Section 12 a) of the Code of Conduct on the division of costs for the Dedicated Office and will issue a schedule of fees for the review procedure.
  - e. The Steering Committee shall carry out the evaluation as per Section 15.



- f. Furthermore, the Steering Committee is responsible for requests and terminations as per Section 17 a) and c) of the Code of Conduct.

### **§ 3 Dedicated Office**

- (1) The Clearing Body shall maintain a Dedicated Office. It will be established by the Steering Committee and is subject to its supervision and instruction.
- (2) The Steering Committee will initially conclude a contract with the Selbstregulierung Informationswirtschaft e.V. (SRIW) for the performance of the activities of the Dedicated Office. The Dedicated Office will be established as a division of the SRIW without its own legal form.

### **§ 4 Responsibilities of the Dedicated Office**

- (1) The Dedicated Office shall ensure that the functions of the Clearing Body are carried out smoothly, to the extent this responsibility has been given to it by the Steering Committee. At the same time, it shall support the Steering Committee in the performance of its tasks.
- (2) Any notifications, messages and other communication under Section 14 of the Code of Conduct shall be sent confidentially via the Clearing Body.
- (3) The parties to the Code of Conduct shall, in accordance with Section 14 of the Code of Conduct, provide the Clearing Body with an email contact, through which the Clearing Body shall communicate and update this as necessary. Associations whose members submit requests will, in addition, provide a corresponding email contact for the requesting party and update this as required.
- (4) The functions of the Dedicated Office are as follows:
  - a. It shall administer the Code of Conduct, accessions and terminations of Code of Conduct participants in accordance with the Code of Conduct and maintain a corresponding email register.
  - b. It shall prepare and follow up on the meetings and work of the Steering Committee, implement its decisions and prepare the finances.
  - c. It shall select, on the instruction of the Steering Committee, the members of the three pools from which the members of the review committees are appointed; it shall appoint and instruct the members of the specific review committee and coordinating the review meetings.
  - d. It shall receive requests for review, assess their formal admissibility, confirm receipt to the requesting party and inform the Internet Access Providers in accordance with these Rules of Procedure.
  - e. It shall prepare and follow up on the work of the review committees and inform the participants in accordance with these Rules of Procedure on the outcome of the review and any appeals. Moreover, it shall forward any advice from the review committee to the requesting party.
  - f. It shall send requests for review as per Section 7 as well as recommendations from the Clearing Body (including those following an appeal) to the Bundesnetzagentur (German Federal Network Agency) in order that the Bundesnetzagentur can check compliance





with the requirements of net neutrality according to Regulation (EU) 2015/2120.

- g. It shall notify the Internet Access Providers and the requesting parties of the informal statement of the Bundesnetzagentur.
  - h. It shall inform the Steering Committee the Internet Access Providers and the requesting parties about a recommendation and maintain a register of all recommendations which is accessible by all parties.
  - i. It shall receive appeals against recommendations, prepare and follow up on the work of the review committee and inform the participants and any relevant third parties in accordance with these Rules of Procedure on the outcome of the review and any appeals.
  - j. It shall inform the Internet Access Providers if a rightholder informs the Clearing Body about the necessity of a block.
  - k. It shall inform the Internet Access Providers the requesting parties and, if the rightholder is not a party to the Code of Conduct, the Rightholder of which the requesting party is a member, if an Internet Access Provider is the addressee of a decision of an administrative and/or judicial body which conflicts with the recommendation of the Clearing Body.
  - l. It shall provide its own website that can also serve as a landing page for blocked SCIWs. On that website, it will publish, after expiry of the implementation time limit as per Sec. 12(2), a breakdown of the SCIWs, for which DNS blocks would have to be implemented in accordance with the Code of Conduct, complete with the recommendation of the review committee. The domains of the blocked SCIW, Other Domains and Mirror Domains, the requesting party and their infringed rights as well as the names of the reviewers will not be mentioned. Any public relations work shall only be reactive and carried out in consultation with the Steering Committee.
  - m. It shall produce an annual report, in consultation with the Steering Committee, on the implementation of the Rules of Procedure and will present it to the Steering Committee for evaluation.
- (5) The Dedicated Office may be entrusted with additional functions by the Steering Committee.

## **§ 5 Review committee**

- (1) The review committee consists of three reviewers. These will come from three pools of reviewers for which the parties will propose members. The Rightholders shall each propose suitable reviewers, who must have the qualifications required for appointment to judicial office, for a pool of "Rightholders' reviewers" and the Internet Access Providers shall do likewise, according to the same criteria, for a pool of "Internet Access Providers' reviewers". Both parties shall propose persons for a pool of "independent reviewers". The Steering Committee shall select the members of the three pools from the respective proposals. The Steering Committee shall appoint, to the pool of "independent reviewers", persons who are impartial. These persons have the qualifications required for appointment to judicial office and have proven their experience and impartiality in the exercise of their judicial, administrative or scientific activity. The Steering Committee shall name at least two members to each pool, so that the work of the review



committee remains guaranteed even in the event that one pool member is unavailable. The members of the pools shall be selected for one calendar year (following the entry into force of the Code of Conduct and Rules of Procedure, appointments shall be for the remainder of the year and the following calendar year) and will automatically renew for one further year unless the member concerned is dismissed by the Steering Committee.

- (2) The Dedicated Office shall appoint the review committee members, taking one reviewer from each pool. It shall create, in consultation with the Steering Committee, a meeting schedule at the beginning of each six-month period which will be adjusted as required and administered by the Dedicated Office. On the basis of the meeting schedule, the Dedicated Office shall convene a meeting of the review committee, on the next available date in the schedule, to handle the current requests. If a reviewer is unable to attend, another reviewer from the respective pool will be invited by the Dedicated Office. If every member of a pool is unable to attend, the Steering Committee must be called upon to replace them.
- (3) When performing their activities under the Code of Conduct and these Rules of Procedure, reviewers are independent and not subject to any instructions. The member of the review committee from the pool of "independent reviewers" shall be the chair of that review committee. The chair will preside over the committee meeting.
- (4) The review committee will meet regularly, every 14 days.
- (5) The chair shall send invites to the respective meeting, attaching an agenda and any necessary documents. Communication shall be dealt with by the Dedicated Office.
- (6) Meetings of the review committee will generally take place by telephone, wherever possible by video conference. Recommendations may only be issued if all reviewers were simultaneously present during the discussion of the subject matter of the recommendation and at the time the decision to recommend was reached. The review committee's recommendation requires written reasoning. The chair shall prepare a vote on a recommendation for the reviewers at the meeting.
- (7) Decisions of the review committee must be unanimous. It is not possible to abstain.
- (8) The scope of the review committee's review will be based on the Code of Conduct and limited to SCIWs. A general test of proportionality will be applied. With regard to Other Domains or Mirror Domains within the meaning of the Code of Conduct, the decision will be made by the chair of the review committee alone in accordance with the limited review under Section 8 of the Code of Conduct.
- (9) The reviewers' work will be remunerated. The amount of the remuneration will be set by the Steering Committee.

## **§ 6 Review procedure**

- (1) Each request for review for a recommendation of the Clearing Body regarding a structurally copyright infringing website is limited to one SCIW and must be addressed to the Dedicated Office. Receipt thereof must be confirmed.
- (2) The request must be in the format according to Annex 1 to these Rules of Procedure.



- (3) The review committee will review requests received by all members of the review committee no later than 3 working days prior to the meeting.
- (4) The Dedicated Office will immediately inform the requesting parties and Internet Access Providers of the outcome of the review and - to the extent applicable - of any options for appeal and relevant deadlines. Requesting parties and Internet Access Providers should generally be sent the recommendation no later than two working days after the day of the meeting.
- (5) If the Clearing Body recommends that the requested DNS block be implemented (where applicable following an appeal) the Dedicated Office will send the request for review as per Section 7 and the recommendation to the Bundesnetzagentur, in order that the Bundesnetzagentur can check compliance with the requirements of net neutrality according to Regulation (EU) 2015/2120. The Parties agree that the informal statement on Regulation (EU) 2015/2120 of the Bundesnetzagentur with respect to the DNS block, as foreseen in the correspondence between the Bundesnetzagentur and the Parties, will be taken into account.
- (6) The Dedicated Office shall forward the informal statement of the Bundesnetzagentur to the requesting parties and Internet Access Providers.
- (7) The Dedicated Office shall enter the Clearing Body's recommendation and the Bundesnetzagentur's statement, into the central recommendation register.
- (8) If the recommendation is overturned, for example following a successful appeal or a diverging statement of the Bundesnetzagentur, the Dedicated Office will inform the requesting party, the Code of Conduct participants and the Bundesnetzagentur without undue delay and update the central recommendation register accordingly.
- (9) The requesting party is obliged to include, with its request, a list of the domains to be blocked according to Section 7 and/or Section 8 of the Code of Conduct in a list in CSV format. That list (where necessary amended to remove domains not to be blocked) in that file format will be used as the basis for the rest of the review procedure, so that an implementation of DNS blocks by the Internet Access Providers on the basis of a list in that file format can occur.

## **§ 7 Request for review**

- (1) A request for review is admissible where
  - a. an entitlement to file such a request exists and
  - b. the review fees have been paid in advance.
- (2) The Dedicated Office shall also check requests, in addition to paragraph 1, to determine whether the required information has been provided or if obvious errors are present. The Dedicated Office will inform the requesting party and can request further information from the requesting party.
- (3) Any Rightholder who is party to the Code of Conduct is entitled to file a request. A request for review from other rightholders is admissible if the rightholder is a member of an association which is party to this Code of Conduct and the association approves the request. The association's approval must be in text form in the request for review.



- (4) The Dedicated Office shall immediately forward copies of admissible requests to all members of the review committee and to the Internet Access Providers.
- (5) To the extent there are Other Domains or Mirror Domains relating to an SCIW, these should be included in the request.
- (6) The review fee for a request for review is based on the schedule of fees as set by the Steering Committee.
- (7) Requests can be withdrawn right up to the beginning of the review committee meeting. In such an event, half of the review fee will, upon request, be refunded by the Dedicated Office.

### **§ 8 Subsequent requests for Other Domains and Mirror Domains**

- (1) For subsequent requests in the case of Other Domains and Mirror Domains, a simplified review procedure will apply as per Section 8 of the Code of Conduct, provided a review request has already been submitted for the SCIW in question and a decision has already been issued in respect of the SCIW in question. In these cases, the party submitting the review request for the SCIW in question will refer, in their request, to the recommendation already issued by the Clearing Body and the statement of the Bundesnetzagentur and demonstrate, in an appropriate form, that the domains in question are Other Domains or Mirror Domains, without there being any need for a presentation of proof that the requirements under Section 6 of the Code of Conduct are met.
- (2) Subsequent requests within the meaning of Section 8(1) will be decided upon by the chair of the review committee alone, in accordance with the limited review under Section 8 of the Code of Conduct. The Bundesnetzagentur will not be called upon again.
- (3) [The processing of a subsequent request by the chair of the review committee shall generally not exceed 5 days. A commitment to process the subsequent application by the responsible chairperson must be communicated to the office in writing and at the latest within one working day 24 hours after receipt of the application. Otherwise, the subsequent application will be handed over to the respective other chair for processing.](#)
- (4) Furthermore, the provisions of Section 7 apply respectively.

### **§ 9 Appeal procedure**

- (1) A well-founded appeal may be lodged against a recommendation, by way of the review procedure as per Sections 7 and 8, within three (3) weeks of service in accordance with Section 10 of the Code of Conduct. The requesting party and Internet Access Providers affected by the appeal shall be given the opportunity to respond.
- (2) The following are entitled to appeal:
  - a. The requesting party in the original proceedings;
  - b. the Internet Access Providers.
- (3) The filing of the appeal in the correct form and in due time has suspensive effect for the appellant with regard to the implementation of the DNS block.
- (4) Requesting parties may make further submissions of fact in the appeal proceedings.



- (5) The decision on appeals which are well-founded and filed in a timely manner will be made by the next review committee meeting after receipt of the reasoning for the appeal whereby there must be least 3 working days between receipt and the meeting.
- (6) Furthermore, the provisions regarding the review procedure (**Error! Reference source not found.**Section 6) apply accordingly. The fee for an appeal is based on the schedule of fees as set by the Steering Committee.
- (7) The operator of an SCIW for which a DNS block has been implemented shall also be entitled to appeal. The subject matter of the appeal is the existence of a clear copyright infringement. The operator's appeal shall be free of charge and not subject to any time limit. Section 9(4) and (5) apply accordingly to the appeal procedure. The obligations under Section 9 of the Code of Conduct remain unaffected.

## § 10 Financing

- (1) The Dedicated Office will be financed by a lump-sum annual contribution from the Code of Conduct participants, whereby affiliated companies shall be considered as one Code of Conduct participant. The sum of all annual contributions must cover the fixed costs incurred by the Dedicated Office.
- (2) Upon request, and to the usual extent of a service provision, the Dedicated Office must provide the Steering Committee with general information regarding the costs incurred, especially staffing costs.
- (3) The lump-sum annual contribution will be decided by the Steering Committee and reviewed annually. The Steering Committee cannot, in the scope of such a decision, deviate from a per capita allocation without the consent of the Code of Conduct participants.
- (4) The intention is that the review and appeal proceedings are covered by case-related review fees. The Steering Committee shall set forth the review fees annually in a schedule of fees. The current schedule of fees is included as **Annex 2** to the Rules of Procedure. The first schedule of fees will apply - unless the Steering Committee decides otherwise - from 1 January 2021 to 31 December 2021.

## § 11 Number of requests for review

- (1) The number of requests for review under Section 7 is limited to 200 SCIWs per year.
- (2) If requests for review in relation to fewer than 200 SCIWs are submitted in the first year that these Rules of Procedure come into force, the remaining requests for review may be rolled over into the second year, whereby the number of requests for review will not exceed 250 SCIWs in the second year.

## § 12 Immediate implementation of DNS blocks

- (1) Under Sections 6 and 7 of the Code of Conduct, Internet Access Providers will implement DNS blocks without undue delay.
- (2) The Parties agree that this condition is met if the Internet Access Provider implements the DNS block within one month of receiving the notification as per Section 6 d) of the Code of Conduct by the Dedicated Office, unless the



DNS server has been temporarily frozen for maintenance work to be carried out.

### **§ 13 Amendment and evaluation of the Rules of Procedure**

- (1) Once a year, the Steering Committee, with the support of the Dedicated Office, will evaluate the Rules of Procedure.
- (2) The Steering Committee shall decide on any changes to the Rules of Procedure as well as any other documents, unless otherwise stipulated in these Rules of Procedure or the Code of Conduct.

### **§ 14 Entry into force**

The Rules of Procedure shall enter into force upon signature of the Code of Conduct and establishment of the Dedicated Office.

TRANSLATION

