

**25 APRIL 2004. — Royal Decree bearing on the right of authors, artists-interpreters, or performers, producers of phonograms, and producers of first fixations of films, to remuneration in case of public lending**

ALBERT II, King of Belgium,

To all here present and to be present in the future, Greetings.

In consideration of the law of 30 June 1994, relative to the matter of copyright and neighbouring rights, notably with respect to the articles 23, 47, and 63;

Considering that with respect to legal security, it behoves to recall that the concept of «lending» is not applicable to certain forms of making available protected works or performances, for instance, the making available of phonograms or of films for the purpose of public presentations or broadcasting, providing their availability for the purpose of exhibitions or for reference consulting; that the act of «lending» does not encompass the act of making them available by distribution amongst establishments that are accessible to the general public;

Considering that the concept of lending institutions in the sense of articles 23 and 47 of the law of 30 June 1994 designates persons governed by public law or private law that in certain instances operate a number of lending establishments for the public.

In view of opinion 36.534/2 of the Council of State, issued on 3 March 2004, in application of article 84, paragraph 1, item 1<sup>o</sup>, of the coordinated Council of States Acts;

On the recommendation of Our Minister of Economic Affairs,

We have decreed and so decree:

**Article 1.** The present Royal Decree transposes the provisions of article 5 of the European directive 92/100/CEE of the Council of 19 November 1992 relative to the right of rental and of lending and to certain neighbouring rights of the copyright into the domain of intellectual property.

**Art. 2.** In the interpretation of the present decree, the following definitions are meant by:

The law : the law of 30 June 1994 relative to copyright and neighbouring rights;

The remuneration due for public lending: the right to remuneration referred to in article 62 of the law of 30 June 1994 relative to copyright and to neighbouring rights;

Lending institutions: the lending institutions referred to in articles 23 and 47 of the law of 30 June 1994 relative to copyright and to neighbouring rights;

The scientific institutions: the institutions that are included in the list attached to the Royal Decree establishing the applicable modalities as fixed in article 385 of the programme law of 24 December 2002;

The lending: the lending referred to in articles 23 and 47 of the law of 30 June 1994 relative to copyright and neighbouring rights;

The copyright administration society: the society charged with the collection and the distribution of the remunerations for public lending, in implementation of article 63, paragraph 2, of the law of 30 June 1994 relative to copyright and to neighbouring rights;

The reference period: the annual period to which the remuneration for public lending relates. This period corresponds to a calendar year;

The Minister: the Minister responsible in the matter of copyright.

**Art. 3.** The delay referred to in article 23, § 2, of the law, in reference to which the lending of sound or audiovisual works may only take place, has been reduced to two months following the date of first distribution of the work to the general public.

The delay referred to in article 47, § 2, of the law, in reference to which the lending of phonograms and the first fixations of films may only take place, has been reduced to two months following the date of first distribution of the work to the general public.

**Art. 4.** The amount of the remunerations referred to in article 62 of the law is fixed as a flat rate of 1 EUR per annum and per adult person registered in the lending institutions referred to in article 2, in so far as that person at least borrows once in the course of the reference period.

The amount of the remunerations referred to in article 62 of the law is fixed as a flat rate of 0.5 EUR per annum and per minor registered in the lending institutions referred to in article 2, in so far as that person at least borrows once in the course of the reference period.

When a person is registered in more than one lending institution, the amount of the remuneration is payable only once by that person.

The Communities and the library associations may undertake, either in whole or in part, the payment of the remunerations referred to in paragraphs 1 and 2 for the account of the lending institutions in relation to their respective competences, or they can collect these remunerations from the borrowers.

**Art. 5.** The following are exempt from the obligation to pay the remuneration for public lending, the lending of works and performances, carried out by:

1°. Officially recognised teaching institutions or institutions officially organised for that purpose by the public authorities;

2°. Officially recognised institutions engaged in scientific research or officially organised for that purpose by the public authorities;

3°. Officially recognised health institutions or institutions officially organised for that purpose by the public authorities;

4°. Officially recognised institutions, created to assist the blind, persons of impaired sight, deaf people, and persons of impaired hearing.

**Art. 6.** The remuneration for public lending is due annually for each reference period.

**Art. 7.** Each lending institution shall submit its declaration to the attention of the copyright administration society within a term of sixty business days counting as of the first day that follows the expiration of the reference period in question.

The declaration shall refer to the preceding calendar year.

It shall contain the following information:

- 1°. Information allowing the identification of the lending institution;
- 2°. The number of establishments for which it is submitting a declaration, as well as their business data obtaining;
- 3°. The number of adults regularly registered with the lending institution that have at least once borrowed an item in the course of the reference period, as well as the number of minors registered with the lending institution that have at least once borrowed an item in the course of the reference period;
- 4°. Identification of the contact person designated to maintain the public relations with the copyright administration society.

**Art. 8.** The copyright administration society shall communicate to the lending institutions the amount of the remuneration due for their public lending.

This notification shall mention at least the following information:

- 1°. The period for which the remuneration for the public lending is due;
- 2°. The amount of the remuneration for public lending due by the lending institution, plus its computation.

**Art. 9.** The Communities and the Federal Government may decide to assume the obligations as referred to in article 7 for the account of the lending institutions relative to their respective competences.

When the Communities and/or the Federal Government have recourse to this avenue, they shall pay to the copyright administration society the amount of the remuneration for the public lending due by the entirety of the public lending institutions relative to their respective competences.

In such a case, the copyright administration society shall send the notification referred to in article 8 to the Communities and to the Federal Government for what concerns the lending institutions relative to their respective competences.

**Art. 10.** § 1. The lending institutions, or those that make use of the avenue as referred to in article 9, the Communities and the Federal Government, shall forward to the copyright administration society, at its request, the information needed for the collection of the remuneration for public lending.

§ 2. The copyright administration society shall state in its request for information:

- 1°. The legal grounds for the request;
- 2°. The requested information;
- 3°. The motivation and the purpose of the request;
- 4°. The time allowed for the provision of the requested information; this delay must not be less than twenty business days counting as of the date of receipt of the request;
- 5°. The sanctions to be imposed in application of article 80, paragraph 5, of the law in the event that the delay allowed shall not be respected, or in the event of provision of incomplete information or information that is manifestly inaccurate.

§ 3. The information that is obtained in response to a request may not be used for any purpose or for reasons other than those that have been stated on the request.

The request for information may not require the lending institutions, or Communities or the Federal Government, if these have made use of the avenue referred to in article 9, to admit that they have committed or have participated in an infraction of the law.

The request for information is forwarded to the addressee by registered letter sent by mail against receipt.

The Minister may determine the content, the number, and the frequency of the requests in order not to incommode more than necessary the activities of the persons recipient of these requests.

**Art. 11.** § 1er. It shall be incumbent on the lending institutions to submit to the copyright administration society, at the latter's request, information that pertains to the works and performances publicly lent out and that is needed for the allocation and distribution of the remuneration for public lending.

§ 2. It shall be incumbent on the copyright administration society to state in its request:

1°. The legal grounds for the request;

2°. The requested information;

3°. The motivation and the purpose of the request;

4°. The period during which the information pertaining to the lent-out works and performances is to be gathered; this term must not exceed fifteen business days per calendar year;

5°. The delay granted for the submission of the requested information; this delay must be no less than thirty business days counting as of the date of receipt of the request.

§ 3. The request for information may not require the lending institution to admit that it has committed or participated in an infraction of the law.

The request for information is forwarded to the addressee by registered letter sent by mail against receipt.

§ 4. The information received in response to the request must not be used for any purpose or for reasons other than for the distribution and allocation of the remuneration for public lending.

The Minister may determine the content, the number, and the frequency of the requests for information in such a manner as not to incommode more than necessary the activities of the persons recipient of these requests.

**Art. 12.** The present decree enters into force on 1 January 2004. The first reference period is the 2004 calendar year.

**Art. 13.** Our Minister who is responsible in matters of copyright has been charged with the implementation of the present Decree.

Executed in Brussels, on 25 April 2004.

ALBERT

In the name of the King :

The Minister of Economic Affairs,

Mrs. F. MOERMAN