

LAW 12.853, OF AUGUST 14, 2013

Amends arts. 5, 68, 97, 98, 99 and 100, adds arts. 98-A, 98-B, 98-C, 99-A, 99-B, 100-A, 100-B and 109-A and revokes art. 94 of Law 9.610, of February 19, 1998, to provide for the collective management of copyrights, and other provisions.

THE PRESIDENT OF THE REPUBLIC I make it known that the National Congress decrees and I sanction the following Law:

Art. 1. This Law provides for the collective management of copyright, amends, revokes and adds provisions to Law No. 9,610, of February 19, 1998.

Art. 2. The arts. 5, 68, 97, 98, 99 and 100 of Law No. 9,610, of February 19, 1998, shall come into force with the following changes:

"Article 5

.....

XIV - original holder - the author of an intellectual work, the performer, the phonographic producer and the broadcasters. " (NR)

"Article 68.

.....

§ 6 The user shall deliver to the entity responsible for collecting the rights related to the performance or public performance, immediately after the act of communication to the public, a complete list of the works and phonograms used, and shall make it public and freely accessible, together with the amounts paid, on its electronic website or, if this is not the case, at the place of communication and at its headquarters.

.....

§ 8 For the companies mentioned in paragraph 7, the period for compliance with the provisions of paragraph 6 shall be up to the tenth working day of each month, in relation to the complete list of works and phonograms used in the previous month." (NR)

"Article 97.

§1 The associations regulated by this article carry on an activity of public interest, as determined by this Law, and must attend to its social function.

§2 It is prohibited to belong, simultaneously, to more than one association for the collective management of rights of the same nature.

§3 The holder may at any time transfer to another association and must communicate the fact in writing to the association of origin.

§4 - Associations established abroad shall be represented in the country by national associations constituted in the manner set forth in this Law.

§5 Only holders originating from copyright or related rights directly affiliated with national associations may vote or be voted in the associations regulated by this article.

§ 6 Only holders of copyright or related rights, national or foreign domiciled in Brazil, directly affiliated to the national associations may assume management positions in the associations regulated by this article." (NR)

"Art. 98. With the act of affiliation, the associations referred to in art. 97 become mandatory of their associates for the practice of all the acts necessary for the judicial or extrajudicial defense of their copyrights, as well as for the exercise of the activity of collection of these rights.

§ 1. The exercise of the collection activity mentioned in the caput is only permissible for associations that obtain authorization in an organ of the Federal Public Administration, under the terms of art. 98-A.

§ 2. The associations shall adopt the principles of isonomy, efficiency and transparency in the collection for the use of any work or phonogram.

§ 3. It will be up to the associations, in the interest of their associates, to establish the prices for the use of their repertoires, considering the reasonableness, the good faith and the uses of the place of use of the works.

§ 4. The collection will always be proportional to the degree of use of the works and phonograms by the users, considering the importance of the public execution in the exercise of its activities, and the particularities of each segment, as provided in the regulation of this Law.

§ 5. Associations shall treat their associates in an equitable manner, and unequal treatment shall be prohibited.

§ 6. Associations shall maintain a centralized register of all contracts, declarations or documents of any nature that prove authorship and ownership of works and phonograms, as well as individual participations in each work and in each phonogram, preventing the falsification of data and fraud and promoting the disambiguation of similar titles of works.

§ 7. The information mentioned in § 6 is of public interest and access to it shall be made available by electronic means to any interested party, free of charge, and the Ministry of Culture shall also be granted continued and integral access to such information.

§ 8. In the event of inconsistency in the information mentioned in paragraph 6 of this article, the Ministry of Culture may, through communication of the interested party and preserving the ample defense and the right to the adversary, determine its rectification and other measures necessary for its regularization, as provided in Regulation.

§ 9. The associations shall provide information system for periodic communication by the user of all the works and phonograms used, as well as for the monitoring by the rights holders of the amounts collected and distributed.

§ 10. Credits and unidentified amounts should be retained and available to the holders for a period of 5 (five) years, and should be distributed as they are identified.

§ 11. At the end of the period of five (5) years provided for in § 10, without identifying the credits and amounts retained, they shall be distributed to holders of copyright and related rights within the same line in which they were collected and in proportion to their collections during the period of retention of those credits and amounts, and their destination is prohibited for another purpose.

§ 12. The rate of administration practiced by the associations in the exercise of the collection and distribution of copyright should be proportional to the effective cost of their operations, considering the peculiarities of each of them.

§ 13. The leaders of the associations shall be elected for a term of three (3) years, with a single renewal preceded by a new election.

§ 14. The directors of the associations will act directly in their management, by means of personal vote, being forbidden that they act represented by third parties.

§ 15. The copyright holders may personally practice the acts referred to in the caput and § 3 of this article, by communication to the association to which they are affiliated, within 48 (forty eight) hours prior to their practice.

§ 16. Associations, by decision of their maximum decision-making body and as provided for in their bylaws, may allocate up to twenty percent (20%) of all or part of the resources resulting from their activities to cultural and social actions that benefit their members collectively." (NR)

"Art. 99. The collection and distribution of the rights related to the public execution of musical and literomusical works and of phonograms will be done through collective management associations created for this purpose by their owners, which should unify the collection in a single central office for collection and distribution, which will act as a collecting entity with its own legal personality and will observe § § 1 to 12 of art. 98 and arts. 98-A, 98-B, 98-C, 99-B, 100, 100-A and 100-B.

§ 1. The collecting entity organized in the manner set forth in the caput shall not have a profit purpose and shall be directed and administered by means of the unit vote of each association that integrates it.

§ 2. The collecting entity and the associations referred to in this Title shall act in court and outside it in their own names as procedural substitutes of the holders linked to them.

§ 3. The collection of any amounts by the collecting entity shall only be made by bank deposit.

§ 4. The portion destined to the distribution to the authors and other rights holders may not, in one year from the date of publication of this Law, be less than 77.5% (seventy-seven integers and five tenths percent) of the amounts collected, increasing 2.5% p.y. (two and five tenths percent per year), until, within four (4) years of the date of publication of this Law, it shall not be less than 85% (eighty five percent) of the amounts collected.

§ 5. The collecting entity may maintain tax exemptions, which are forbidden to receive from the cash user under any title.

§ 6. Failure to comply with the rule of § 5 will render the defaulter unfit for the function of prosecutor, without prejudice to the communication of the fact to the Public Prosecutor's Office and to the application of applicable civil and criminal sanctions.

§ 7. It is incumbent upon the collecting entity and the collective management associations to ensure continuity of collection and, in the case of loss of qualification by any association, it is incumbent upon it to cooperate so that the transition between associations is carried out without any prejudice to the holders, all necessary information to the process of collection and distribution of rights.

§ 8. Without prejudice to the provisions of § 3 of art. 98, associations must establish and unify the price of their repertoires with the collecting entity to collect them, acting as agent of the associations that are part of it.

§ 9 The collecting entity will collect the user in a unified form, and will be in charge of the distribution of the collection to the associations, observing the provisions of this Law, especially the criteria established in §§ 3 and 4 of art. 98." (NR)

"Art. 100. The trade union or professional association that brings together members of a collective copyright management association may, once a year, at its expense, after 8 (eight) days' notice, to supervise, through an independent auditor, the accuracy of the accounts rendered by this authorial association to its represented." (NR)

Art. 3. Law No. 9,610, of 1998, becomes effective with the addition of the following arts. 98-A, 98-B, 98-C, 99-A, 99-B, 100-A, 100-B and 109-A:

"Art. 98-A. The exercise of the collection activity referred to in art. 98 will depend on previous qualification in a Federal Public Administration body, as set forth in regulations, whose administrative process will observe:

I - compliance, by the statutes of the requesting entity, with the requirements established in the legislation for its constitution;

II - the demonstration that the requesting entity meets the necessary conditions to ensure an efficient and transparent administration of the rights entrusted to it and a significant representativity of works and registered owners, upon proof of the following documents and information:

- a) registers of the works and holders that they represent;
- b) contracts and agreements maintained with users of works from their repertoires, when applicable;
- c) bylaws and respective amendments;
- d) minutes of ordinary or extraordinary meetings;
- e) agreements of reciprocal representation with foreign counterparts, when they exist;
- f) annual report of its activities, when applicable;
- g) annual financial statements, when applicable;
- h) demonstration that administration fees are proportional to collection and distribution costs for each type of use, where applicable;
- i) annual external audit report of its accounts, as long as the entity has operated for more than one (1) year and the audit is demanded by the majority of its members or by a trade union or professional association, pursuant to art. 100;
- j) detailing the governance model of the association, including the association's isomeric representation structure;
- k) position and salary plan, including the amount of directors' remuneration, gratuities, bonuses and other remuneration and award procedures, with updated values;

III - other information stipulated in a regulation by a Federal Public Administration body, such as those that demonstrate compliance with the contractual international obligations of the requesting entity that may lead to questioning of the Brazilian State within the scope of the international agreements to which it is a party.

§ 1 The documents and information referred to in items II and III of the caput of this article shall be submitted annually to the Ministry of Culture.

§ 2 - The qualification mentioned in § 1 of art. 98 is an act of qualification linked to the fulfillment of the requirements established by this Law and by its regulation and does not need to be renewed periodically, but may be annulled by means of a decision rendered in an administrative or judicial process, when verified that the association does not comply with the provisions of this Law, always ensuring the contradictory and ample defense, as well as the communication of the fact to the Public Prosecution Service.

§ 3. The annulment of the authorization referred to in § 1 of art. 98 shall take into account the seriousness and relevance of the irregularities identified, the good faith of the offender and the recurrence of irregularities, as provided in the regulations, and shall only take effect after the application of a warning, when a reasonable deadline will be granted to meet the stated requirements by the competent authority.

§ 4. The absence of an association that is mandated by a certain category of holders due to the application of § 2 of this article does not exempt users from the obligations set forth in art. 68, which shall be discharged in respect of the period between the rejection of the request for authorization, the cancellation or cancellation of the authorization and the obtaining of a new authorization or constitution of successor entity under the terms of this article, being the successor entity responsible for setting the values of the copyright or related rights in relation to the period between the rejection of the application for authorization or its annulment and obtaining a new authorization by the successor entity.

§ 5. The association whose authorization under this article is annulled, nonexistent or pending review by the competent authority, or presents any other form of irregularity, may not use such facts as an impediment to the distribution of any amounts already collected, under pain of direct accountability of its managers under the terms of art. 100-A, without prejudice to applicable criminal sanctions.

§ 6 - Collective rights management associations shall keep the documents and information provided for in items II and III of this article up to date and available to the members."

"Art. 98-B. Collective copyright management associations, in the performance of their duties, shall:

I - give publicity and transparency, through its own electronic websites, to the calculation methods and collection criteria, including, among other information, the type of user, time and place of use, as well as the criteria for distribution of rights values including spreadsheets and other records of use of the works and phonograms provided by users, except for the values distributed to the individual owners;

II - to publicize and transparency, through its own electronic websites, the statutes, the regulations for collection and distribution, the minutes of its deliberative meetings and the registers of the works and holders they represent, as well as the amount collected and distributed and credits collected and undistributed, their origin and the reason for their retention;

III - seek operational efficiency, among other means, by reducing its administrative costs and the deadlines for distribution of the amounts to the right holders;

IV - offer the right holders the technical means so that they can access the balance of their credits in the most efficient way within the state of the art;

V - improve their systems for increasingly accurate investigation of public executions carried out and annually publish their verification, sampling and verification methods;

VI - guarantee members access to information on the works on which they are entitled and the executions assessed for each of them, refraining from signing contracts, agreements or agreements with a clause of confidentiality;

VII - guarantee the user access to information regarding the uses made by him.

Sole paragraph. The information contained in items I and II must be updated periodically, in an interval never exceeding 6 (six) months."

"Art. 98-C. The associations of collective management of copyright should be accountable for the amounts owed, on a regular and direct basis, to their members.

§ 1 The right to the rendering of accounts may be exercised directly by the member.

§ 2. If the accounts are not provided in accordance with § 1, the associate's request may be referred to the Ministry of Culture which, after its assessment, may determine the association's rendering of accounts, in the form of the regulation."

" Art. 99-A. The collecting entity dealt with in the caput of art. 99 shall admit in its staff, in addition to the associations that constituted it, associations of copyright holders that are relevant to their area of activity and are qualified in a Federal Public Administration body in the form of art. 98-A.

Sole paragraph. The deliberations regarding the criteria for the distribution of the resources collected will be taken by means of the unit vote of each association that integrates the collecting entity."

"Art. 99-B. The associations referred to in this Title are subject to the competition rules defined in specific legislation that deals with the prevention and repression of infractions against the economic order."

"Art. 100-A. The directors of collective copyright management associations are jointly and severally liable for their misconduct or for breach of their obligation to members for fraud or guilt."

"Art. 100-B. Disputes between users and copyright holders or their agents in relation to non-payment, collection criteria, forms of repertory offering and collection amounts, and

between owners and their associations, in relation to the values and criteria may be the object of the action of a Federal Public Administration body for the resolution of disputes through mediation or arbitration, in the form of the regulation, without prejudice to the appreciation by the Judiciary and by the bodies of the Brazilian System for the Defense of Competition, when appropriate."

"Art. 109-A. Failure to provide or provide false information in compliance with the provisions of § 6 of art. 68 and in § 9 of art. 98 shall subject the persons responsible, by determination of the competent authority and in accordance with the regulations of this Law, to a fine of 10 (ten) to 30% (thirty percent) of the amount that should have been originally paid, without prejudice to losses and damages.

Sole paragraph. The rules of civil law apply to the breach of obligations in case of non-compliance by users with their legal and contractual obligations with the associations referred to in this Title."

Art. 4 The associations of collective management of copyrights that, before the validity of this Law, are legally constituted and collecting and distributing the copyrights of works and phonograms will be considered qualified to carry out the economic activity of collection for the period defined in the regulation, and must comply with the provisions contained in art. 98-A of Law No. 9,610, of 1998.

Art. 5. The associations referred to in art. 4 of this Law will have 60 (sixty) days to adapt their statutes to § 13 of art. 98 of Law No. 9,610, of 1998, allowing its directors to complete the terms of office in progress when this Law comes into force until the originally established term, after which they may run for a term of office of 3 (three) years, with possibility of 1 (one) reappointment, under the terms of this Law.

Art. 6. Provided that compliance with all the requirements for the constitution of the new unified collecting entity, contained in the caput of art. 99 of Law No. 9,610, of 1998, the associations referred to in art. 4 of this Law may request the Ministry of Culture, within the period established in the regulation, to recognize the legal entity already constituted as a collecting entity.

Art. 7. The Ministry of Culture will set up, within the term and under the terms set forth in the regulation, a permanent commission for the improvement of collective management, which will promote the continuous improvement of collective management of copyright in Brazil through the analysis of the performance and results obtained by Brazilian entities, as well as the examination of international best practices.

Art. 8 The Ministry of Culture can delegate the powers assigned to it by this Law to another body.

Art. 9. Art. 94 of Law No. 9,610, of February 19, 1998 is revoked.

Art. 10. This Law enters into force after 120 (one hundred and twenty) days after its official publication.