

Articles of Association of the Cultural Commons Collecting Society SCE (C3S)

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Preamble

The developments in digital markets and copyright law necessitate new forms of exploiting creative works, including the possibility of commercial utilisation of free licenses like Creative Commons. Lyricists and composers of musical works are joining together in a company that protects exploitation possibilities and, in view of the present market situation, also develops new possibilities of utilisation. The individual is not able to monitor all usages of his works and collect the income he or she is due, particularly in the digital age. The rights to be transferred to this company are administered as joint rights of the parties involved and the income and remuneration received are distributed according to a set procedure.

§ 1 Name, domicile

- (1) The co-operative society bears the name Cultural Commons Collecting Society SCE mit beschränkter Haftung (with limited liability) (C3S SCE).
- (2) The co-operative is domiciled in Düsseldorf.

§ 2 Purpose and object

- (1) The purpose of the co-operative is to promote its members' economic, social and cultural activities and interests.
- (2) The object of the co-operative is to administer in a fiduciary capacity the members' copyright authorisations that were entrusted to the co-operative by means of a deed of assignment, as well as to distribute the income generated to authorised persons.
- (3) Business operations are based on the authorisation given by the Deutsches Patent- und Markenamt (German Patent and Trade Mark Office) as supervisory authority in accordance with the Urheberrechtswahrnehmungsgesetz (UrhWG – Copyright Administration Act).
- (4) ¹Non-members can use the services of the co-operative and participate in its activities. ²Further details will be stipulated in the guideline on the participation of non-members to be resolved by the board of directors. ³The co-operative can conclude contracts with other rightholders to ensure the most comprehensive exploitation possible of their members' rights.

§ 3 Communication

Communication within the co-operative shall take place in German and in English. When in doubt, the German version is decisive.

§ 4 Acquiring and ending membership

(1) ¹Only natural persons can become full members. ²Other prerequisites to acquiring membership are

- a) direct involvement in the creative process through creation of the work or as a performer, or
- b) a special interest of the co-operative in the membership.

(2) ¹Anyone who does not meet the prerequisites of Paragraph 1 can, with the consent of the board of directors, be admitted as an investing member. ²Investing members are natural and legal entities or private companies that would not be considered for the use or provision of the co-operative's services. ³Investing members have the same rights and obligations as the other members of the co-operative unless otherwise stipulated hereinafter.

(3) To acquire membership requires an unconditional written declaration of joining on which the board of directors decides.

(4) Membership ends upon

- a) Resignation,
- b) Exclusion,
- c) Transfer of all shares,
- d) Death or liquidation of a legal entity or private company.

§ 5 Payment obligations

(1) ¹The member's share in the cooperative amounts to € 50 (nominal value). ²It is to be paid in full immediately.

(2) ¹The members must participate with at least one share. ²They may participate with further shares; the maximum possible is sixty.

(3) ¹The share capital is variable in accordance with the number of co-operative members. ²Payments for the shares must total at least € 30,000. ³The share capital may not fall below € 30,000 upon repayment of membership shares (minimum capital).

- (4) In case of insolvency of the co-operative, the members are not obligated to pay additional contributions.
- (5) Upon resolution adopted by the general assembly, an entrance fee can be defined that will be allocated to the reserves.
- (6) The general assembly can decide on rules for membership fees that obligate members to pay an annual contribution.

§ 6 Deed of assignment

- (1) ¹The performance relationships between the co-operative and its members and the rightholders who are not members of the co-operative are governed in the deed of assignment. ²The standard contract will be decided on by the board of directors with the consent of the general assembly.
- (2) ¹Distribution of the licence fees received will be carried out according to the distribution plan that the board of directors establishes after consulting with the advisory board of rightholders. ²The distribution plan will be attached to the articles of association as an annex.
- (3) ¹If membership ends in accordance with § 4 Paragraph 4, the co-operative is authorised to end the deed of assignment with the departing member or his heir at law through a decision of the board of directors to be communicated to the affected party in writing, unless this is opposed by an obligation to contract. ²In this case, the departing member or his heir at law takes part in a distribution of the licence fees received only to the extent that the licence fee claims arose during the membership period.

§ 7 Members' rights and obligations

- (1) In accordance with § 4 Paragraph 1, members are specifically authorised
- a) to use the co-operative's facilities and services,
 - b) to demand the remuneration decided upon by the board of directors,
 - c) to take part in the general assembly and its decision-making,
 - d) to demand at their own cost in a timely manner a copy of the annual financial statement, the management report – if required by law – and the report of the board of directors before approval of the annual financial statement by the general assembly,
 - e) to inspect the summarised audit results during the general assembly,
 - f) to request the convening of the general assembly or the announcement of decision-making if the statutory conditions are satisfied,

- g) to consult the minutes of the general assembly, and
 - h) to consult the membership list.
- (2) The investing members are authorised,
- a) to take part in the general assembly as observers,
 - b) to demand copies at their own cost of the annual financial statement, the management report – if required by law – and the report of the board of directors,
 - c) to inspect the summarised audit results during the general assembly,
 - d) to consult the minutes of the general assembly,
 - e) to consult the membership list.
- (3) The members are obligated
- a) to pay the payments stipulated for the share,
 - b) to promote the interests of the co-operative in every way,
 - c) to comply with the articles of association of the co-operative and to carry out the resolutions decided upon by the co-operative bodies,
 - d) to use the facilities of the co-operative to a reasonable extent and
 - e) to communicate a change in address, including e-mail address.

§ 8 Resignation

¹Membership can be terminated by a written statement from the member. ²The notice period is one year at the end of the fiscal year. ³This notice period also applies for terminating shares taken on voluntarily.

§ 9 Transferring shares

Shares can be transferred and sold individually or as a whole if the board of directors gives its consent and the acquirer is, or will become, a member.

§ 10 Exclusion of a member

- (1) Members can be excluded if
- a) they have been found guilty of a serious breach of their obligations, or

- b) they within one year after joining the cooperative in accordance with § 4 Paragraph 1 a) they have not granted the rights to at least three works or performances; if the number of rights granted falls below three, the period of one year begins anew, or
 - c) they act grievously against the cooperative's interests; members in accordance with § 4 Paragraph 1 b) also if the cooperative's interest in the membership has lapsed.
- (2) ¹The board of directors decides on exclusion. ²The member must be consulted unless his or her place of residence cannot be determined.
- (3) The general assembly decides on exclusions of members of the board of directors and executive directors.
- (4) ¹The board of directors' decision on exclusion can be appealed before the general assembly. ²The appeal must be declared in writing to the co-operative within six weeks after receiving the decision on exclusion (cut-off period).

§ 11 Winding up membership

- (1) ¹Departure from the co-operative results in a winding up of membership between the departing member or his or her heir at law and the co-operative. ²In case of transfer the winding up shall be omitted.
- (2) ¹Tax-loss carryforwards shall be deducted pro rata on the credit balance from the apportionment of assets and liabilities. ²The resigning member has no claim to the reserves and other assets of the co-operative.
- (3) ¹The approval of the annual financial statements is definitive for settlement between the resigning member and the co-operative. ²The departing member is entitled to claim payment, subject to the provisions in Paragraph 4, to the credit balance from the apportionment of assets and liabilities within a time period of one month after approval of the balance sheet, at the latest, however, within seven months after the end of the business year.
- (4) ¹If, through the payment, the minimum capital would fall below its defined low point, payment of the credit balance from the apportionment of assets and liabilities is suspended; the payment of the membership shares repaid in the course of winding up all departing members will be reduced pro rata. ²If the minimum capital again falls below its defined low point, the suspended membership shares repaid in the course of winding up will become due to payment. Payment then takes place by year.
- (5) The credit balance from the apportionment of assets and liabilities shall be liable to the Cooperative for any default; for members that are not natural persons (legal entities and private companies), this particularly applies in the case of insolvency proceedings against the member.

(6) The member's participation in the distributions in accordance with § 6 Paragraph 3 Sentence 2 shall remain unaffected.

§ 12 The cooperative's governing bodies

(1) The cooperative is managed under a one-tier system.

(2) The bodies are:

- a) General assembly,
- b) Board of directors,
- c) Executive directors,
- d) Court of arbitration and
- e) Advisory board.

§ 13 General assembly

(1) The general assembly is specifically responsible for

- a) Accepting the activity reports from the executive directors and the board of directors,
- b) Discharging the executive directors and the board of directors,
- c) Approving the annual financial statements,
- d) Deciding about appropriating the net income for the year and offsetting the loss for the year,
- e) Accepting the reports about the cooperative audit, and
- f) Amendments to the articles of association.

(2) ¹The general assembly is convened by the board of directors by directly informing all persons who are eligible to participate, or by means of a notice in the form required in § 25, by complying with a notice period of 30 days between the date of dispatch of the notice referred to and the date of the opening of the general assembly. ²In urgent cases, this notice period can, pursuant to Art. 56 of the EU Regulation No. 1435/2003 on the Statute for a European Cooperative Society (SCE), be reduced to 15 days. ³The invitation must contain information on the company and the domicile of the SCE, on the place, date and time of the assembly, and, if applicable, on the type of general assembly. ⁴In addition, the agenda indicating the subjects to be discussed and the proposals for decisions is to be attached. ⁵The notifications will be deemed to be received if they are

sent to the members at the last address known to the co-operative, unless a notification in accordance with the 2nd alternative of Sentence 1 was chosen.

(3) ¹Annually, at least one general assembly is to be conducted in the first half of the year at which decisions are taken on the approval of the annual financial statements, the appropriation of profits or the compensation of losses and the discharge of the board of directors and executive directors. ²Other general assemblies are to be convened if this is necessary in the interest of the co-operative.

(4) ¹Unless changes in the articles of association are announced, every properly convened general assembly is quorate. ²For determining the presence of a quorum at a general assembly at which an amendment in the articles of association is announced, at least 50% of the total number of registered members entitled to vote at the time the assembly was convened must be present or represented. ³If the minimum number according to Sentence 2 here is not achieved, another general assembly with the same agenda is quorate without consideration of Sentence 2. ⁴The invitation to this additional general assembly may be sent at the earliest on the day after the first general assembly that did not have the presence of a quorum due to not having achieved the minimum number of members.

(5) ¹Every full member has one vote, regardless of the number of his or her shares; the investing members have no right to vote in the general assembly. ²Members can also submit their vote electronically. ³In this case, the casting of the vote is carried out using an electronic process that ensures the transparency and verifiability of the members' voting. ⁴The specific voting procedure will be determined by the board of directors.

(6) ¹Members entitled to vote can issue proxy voting powers. ²No representative, however, may represent more than two members. ³Only members of the co-operative or spouses, parents, children or siblings of a member can be representatives.

(7) ¹The general assembly decides with the majority of the votes cast – simple majority of votes – unless, exceptionally, a larger majority has been defined; abstentions are disregarded. ²Elections take place with the majority of the votes of the members present; abstentions have the same effect as »no« votes. ³In case of more than two alternatives to agree or decide on, the voting process will be carried out by approval voting. ⁴If in this way no clear result is obtained, a run-off election will be conducted.

(8) The general assembly determines the chairperson of the assembly upon proposal of the board of directors.

(9) The general assembly can be broadcast as a live stream in a secure process accessible only to the members.

(10) The decisions will be entered in the minutes in accordance with § 47 German Cooperative Societies Act (GenG).

§ 14 Regionalisation

Once the co-operative has more than 2,500 members, it is intended to form regional assemblies. The board of directors is to draw up proposed articles of association for the general assembly as soon as the number of members exceeds 2,500.

§ 15 Board of directors

(1) ¹The board of directors manages the co-operative, defines the principles of its activity and supervises their implementation. ²The board of directors is to convene a general assembly when this is expressly stated in these articles of association or is otherwise necessary in the interest of the co-operative. ³The board of directors ensures that the required ledgers are kept. ⁴The board can, either by itself or by individually appointed members from its ranks, at any time inspect and review the accounts and correspondence of the co-operative as well as the state of the co-operative fund and the inventories of securities and goods. ⁵The board of directors is responsible for determining the number of executive directors as well as appointing and dismissing them.

(2) ¹The members of the board of directors are selected and recalled by the general assembly. ²The board of directors consists of at least five members to be elected by the general assembly. ³The general assembly determines the number of members of the board of directors before the election. ⁴Investing members may make up at most one quarter of the members of the administrative body.

(3) ¹The period of office of the members of the board of directors lasts until the election of successors at the ordinary general assembly that takes place three years after the election. ²Should members depart before the end of their period of office, the board of directors shall consist only of the remaining members until the next ordinary general assembly, during which replacement members are to be elected. ³Earlier by-elections by an extraordinary general assembly are necessary only if the number of members of the board of directors falls below five or the number of investing members exceeds one quarter of the number of members of the board of directors.

(4) ¹The meetings of the board of directors shall be convened by the chairperson of the board of directors in text form with a notice period of at least one week. ²The members of the board of directors and the executive directors can demand at any time that a meeting be convened. ³A meeting of the board of directors is to take place at least once every quarter.

(5) ¹The board of directors is quorate if at least half of its members participate in the adoption of resolutions. ²The board of directors can adopt resolutions in writing, by telephone and electronically if no member of the board of directors objects to the adoption of resolutions.

(6) ¹Contracts of members of the board of directors with the co-operative, particularly

supply and service agreements, require the consent of the entire board of directors to be valid. ²Handling these contracts is to be supervised by the board of directors and information is to be provided on this to the general assembly.

(7) ¹The board of directors decides with the majority of the votes cast – simple majority of votes – unless, exceptionally, a larger majority has been defined; abstentions are disregarded. ²Elections take place with the majority of the votes of the members present; abstentions have the same effect as »no« votes. ³In case of more than two alternatives to agree or decide on, the voting process will be carried out by approval voting. ⁴If in this way no clear result is obtained, a run-off election will be conducted.

§ 16 Executive directors

(1) ¹The executive directors conduct the business of the cooperative. ²Tasks assigned by law to the board of directors cannot be transferred to the executive directors.

(2) ¹The board of directors appoints two or more executive directors. ²Members of the board of directors can be appointed to be executive directors as long as the majority of the board of directors continues to consist of non-executive members.

(3) ¹The regular term of office of the executive directors is three years. ²Executive directors can be dismissed at any time by the board of directors by simple majority.

(4) ¹The executive directors can also take decisions in writing, by telephone and electronically. ²They are only jointly authorised to conduct business and to represent the co-operative; rules of procedure issued by the board of directors can specify otherwise. ³Executive directors who are authorised to represent the cooperative jointly can authorise individual executive directors to execute certain transactions or certain types of transactions.

§ 17 Court of arbitration

(1) ¹All conflicts resulting from the membership relations between co-operative members and the co-operative, between members of the co-operative and bodies of the co-operative and/or between bodies of the co-operative among themselves will be definitively decided by a court of arbitration to the exclusion of the ordinary courts of law. ²Those decisions are exempt that by rights may not be allocated to a court of arbitration for decision.

(2) ¹An arbitration agreement with the co-operative is to be concluded by its members governing the composition of the court of arbitration and how it will work. ²The text of the arbitration agreement is to be approved by the general assembly. ³Members who do not sign the arbitration agreement in the version adopted by the general assembly are

to be excluded.

(3) ¹This does not affect the possibility of invoking an arbitration board to be established to clarify legal issues involving licencing, protecting rights by the cooperative and license fee claims. ²Further details are to be stipulated in the deed of assignment.

§ 18 Assembly of the rightholders

¹In advance of every general assembly, an assembly of the rightholders shall take place.

²Invitations are extended by the executive directors in consultation with the board of directors. ³At this assembly, chaired by the chairperson of the board of directors or his deputy, the management presents the annual report and provides information to the rightholders.

§ 19 Advisory board of the rightholders

(1) ¹The co-operative forms an advisory board of the rightholders that is the representative of the rightholders in accordance with § 6 Paragraph 2 WahrnG (Law on the Administration of Copyright and Neighboring Rights). ²It consists of 5 persons who work in an honorary capacity. ³It is composed as follows:

a) 2 members are appointed by the board of directors for a term of three years.

b) 3 members are elected by the assembly of the rightholders for a term of three years.

(2) Only natural persons who are rightholders, or legal representatives or agents of rightholding legal persons who have concluded a deed of assignment with the company can become members of the advisory board.

(3) ¹The term of office of the advisory board ends with the new election of its members.

²Re-election is admissible.

(4) The advisory board of rightholders advises the co-operative on the following subjects and can submit proposals independently on them with which the other bodies of the co-operative are to deal during the next meeting:

a) Preparing, modifying and amending the distribution plans for the various rights to be exercised by the co-operative, specifically within the scope of the process in accordance with § 6 Paragraph 2 Sentence 1,

b) Establishing tariffs in accordance with § 13 WahrnG, concluding contracts with the users and general agreements in accordance with §§ 11, 12 WahrnG,

c) Concluding reciprocal agreements with other collecting societies,

d) Conducting legal actions in fundamental issues, applying to the arbitrating board in accordance with § 14 WahrnG and contesting its decisions.

(5) ¹The advisory board, represented by one of its members who has been appointed to carry out the tasks, can request information on the management and inspection of the company's ledgers. ²At the general assembly the members of the advisory board have the right to attend, make proposals and speak on all items on the agenda that are within the advisory board's area of responsibilities. ³The members of the advisory board have the same obligation of secrecy as stipulated for the directors by § 34 Paragraph 1 Sentence 2 of the German Cooperative Societies Act (GenG).

(6) ¹The advisory board convenes at least once a year for a meeting. ²In addition it meets when the majority of its members, or its chairperson, or his or her deputy, or the board of directors requests to do so. ³For participation in meetings, the members of the advisory board receive travel expenses and a daily allowance on the basis of rules on reimbursement to be decided by the board of directors.

(7) ¹The advisory board is quorate if at least half of its members are present. ²The advisory board decides with the majority of the votes cast – simple majority of votes – unless, exceptionally, a larger majority has been defined; abstentions are disregarded. ³Elections take place with the majority of the votes of the members present; abstentions have the same effect as »no« votes. ⁴In case of more than two alternatives to agree or decide on, the voting process will be carried out by approval voting. ⁵If no clear result is obtained in this way, a run-off election will be conducted. ⁶Passing of resolutions electronically is admissible.

(8) ¹The advisory board elects for its term of office a chairperson and a deputy from amongst its members. ²Re-election is admissible.

(9) ¹Minutes are to be kept on the meetings of the advisory board that are to be signed or initialed by the chairperson and the minute taker. ²The minutes are deemed to be approved if not contested by a member of the advisory board within three weeks after being sent.

§ 20 Other advisory boards

¹The general assembly can resolve the formation of other advisory boards that advise the bodies. ²In the resolution it is to be specified how the advisory board is composed and what topics it addresses.

§ 21 Common provisions for the bodies

(1) No one can exercise the right to vote for him- or herself or for another if a resolution is being adopted on whether he or she or the member represented is to be discharged or to be relieved of a liability, or whether the co-operative is intending to assert a claim

against him or her or the member represented.

(2) ¹If matters of the co-operative are advised upon which affect the interests of a member of the board of directors of an executive director, his spouse, his parents, children and siblings or a person represented by him by virtue of law or power of attorney, the member affected may not participate in the consultation. ²However, the member is to be heard before the resolution is adopted.

(3) ¹The members of the bodies are to apply the requisite level of diligence of the management of a co-operative when conducting their business. ²They are to maintain secrecy about confidential information and secrets of the co-operative, especially trade and business secrets that have become known to them through their activity for the co-operative. ³Members of the bodies who infringe on their duties are liable jointly and severally to compensate for damages arising from that. ⁴If there is a dispute as to whether they have applied the requisite level of diligence of the management of a co-operative, they bear the burden of proof.

§ 22 Annual financial statement, reimbursement, allocation to reserves and appropriation of net income

(1) ¹The annual financial statement and the management report are to be presented to the general assembly immediately after they have been prepared. ²The general assembly decides on the approval of the annual financial statements and the appropriation of profits or covering of losses.

(2) If a loss, that is not covered by half of the total amount of the assets and the reserves, arises during the preparation of the annual or semi-annual balance sheet, or is to be assumed upon exercising professional judgment, the board of directors is to immediately convene a general assembly and communicate this issue.

(3) ¹The board of directors decides on paying back a reimbursement before drawing up the balance sheet. ²Members have a legal claim to the reimbursement decided upon in this way.

(4) ¹The statutory reserve serves the co-operative to cover losses. ²At least 20% of the annual net income is to go into this until at least 100% of the total of the shares have been reached. ³This is to be decided on by the general assembly.

(5) ¹Other revenue reserves may be established in addition to the statutory reserve. ²The board of directors decides on their use.

(6) The general assembly decides on the profit or loss resulting from the approval of the annual financial statement.

(7) Relating to the annual net income, the general assembly is free to decide in favour of a profit carried forward, allocation to the reserves or providing a return on the credit balance, whereby payment can also occur in shares.

(8) A payment takes place only when the assets are fully replenished.

§ 23 Limitation of claims

¹Claims to the payment of profits, reimbursements and credit balances become time-barred two years after they have fallen due. ²The sums will be allocated to the reserves.

§ 24 Winding-up

¹The decision on winding up the co-operative can only be taken at a general assembly convened exclusively for this purpose. ²When winding up the co-operative the net assets will be distributed among the members according to the assets.

§ 25 Announcements

Announcements that it is mandatory to publish are made under the company name of the co-operative in the *Musikforum*, the bulletin of the Deutscher Musikrat (German Music Council).