

Service contract

- hereinafter called the "Client" -

the law office of Schutt, Waetke Rechtsanwälte GbR, An der RaumFabrik 35, D-76227 Karlsruhe

- hereinafter called the "Attorneys" -

conclude the following agreement:

Preamble

The Attorneys specialise (amongst other matters) in the legal pursuit of infringements of copyright in the Internet and in the judicial and extra-judicial enforcement of injunctions for relief.

The Attorneys cooperate with companies specialising in the monitoring of illegal services in breach of copyright law in what are called file-sharing networks (hereinafter called "EXCUBITOR UG").

The Attorneys also cooperate with debt collection agencies. Infoscore Forderungsmanagement GmbH, Rheinstrasse 99, D-76532 Baden-Baden and Media-Inkasso GmbH & Co. KG, Osnabrücker Landstrasse 2-8, D-33335 Gütersloh (hereinafter the "DEBT COLLECTION AGENCIES") specialise in the large-scale administration, handling and recovery of claims for payment and for this purpose cooperates in turn with a law office which undertakes the recovery of payments in conjunction with the debt collection procedure (hereinafter called "LO").

The Client is the proprietor of exclusive rights of use and exploitation of the works protected by copyright as set out in the list in Attachment 1 of this contract for the Federal Republic of Germany.

Against this background the contractual parties agree the following:

§ 1 Subject of the contract

- (1) The Client warrants that it enjoys the rights necessary for public access in file-sharing networks, at the minimum for the purpose of the pursuit of piracy and that it also has the necessary exclusive rights or other plaintiff's rights of action for the enforcement of claims in respect of injunctive relief, compensation and the reimbursement of costs against copyright pirates of the contractual products or works. If so requested by the Attorneys, the Client will sign an adequate number of relevant affidavits – including during the activities.
- (2) The Client hereby instructs EXCUBITOR UG to identify and record breaches of copyright in the Internet in respect of the works which are the subject of this assignment and to record such breaches in a manner which retains their value as evidence. §151, Sentence 1, Alternative 2 of the German Civil Code (*Bürgerliches Gesetzbuch*) applies for the receipt of the order acceptance by EXCUBITOR UG.
- (3) The Client grants power of attorney to and instructs the Attorneys to identify the subscribers and to pursue the subscribers who have been identified under criminal and civil law.
- (4) In the event that the opposing parties fail to pay in full, the Client grants power of attorney to and instructs the DEBT COLLECTION AGENCIES and LO to proceed with the further recovery and enforcement of claims for payment by means of debt collection procedures and legal proceedings (enforcement proceedings and actions for payment).

§ 2 Power of attorney

- (1) The Client hereby grants the law office of Schutt, Waetke Rechtsanwälte, An der RaumFabrik 35, 76227 Karlsruhe, comprehensive power of attorney to pursue the offenders and subscribers of the file-sharing networks both out of court and before the courts under both civil and criminal law. The Client further grants power of attorney for the identification of the users to public authorities, public prosecutors, courts and the relevant Internet service-providers. In conclusion, the Client grants comprehensive power of attorney to the Attorneys to collect debts and power of attorney to represent the Client in insolvency proceedings.

- (2) The Client grants the Attorneys power of attorney to conclude a debt collection agreement in the name of and for the account of the Client with the DEBT COLLECTION AGENCIES which reflects the conditions set out in this contract and in the contract of engagement which was concluded in parallel with the Attorneys in respect of the DEBT COLLECTION AGENCIES and LO.
- (3) In the context of the agreement in Clause 2.2, the Client grants the same power of attorney as in Clause 2.1 to Infoscore Forderungsmanagement GmbH, Rheinstrasse 99, D-76532 Baden-Baden and Media-Inkasso GmbH & Co. KG, Osnabrücker Landstrasse 2-8, D-33335 Gütersloh and LO.
- (4) The Client will sign an adequate number of corresponding forms granting power of attorney in order to provide evidence of the power of attorney for the parties concerned – also during the activities.

§ 3 The sequence of the activity

- (1) EXCUBITOR UG will search in Internet file-sharing networks for illegal providers of the Client's works and will record such providers. The Client authorises EXCUBITOR UG to forward the data which has been obtained direct to the Attorneys for the purpose of the identification of the subscribers behind the data which has been obtained and for the further legal prosecution of the claims.
- (2) The subscribers who have been identified will then be warned extra-judicially by the Attorneys and required to provide an undertaking to cease and desist and to pay a settlement as payment of compensation and reimbursement of disbursements and attorneys' fees into a trust account held by the Attorneys. The Attorneys will use the assistance of DEBT COLLECTION AGENCIES for the processing, administration and handling of the procedures.
- (3) If the party who was warned fails to meet one or all of the claims asserted against him within the allotted period, details of how to proceed further will be agreed with the Client on a case by case basis. This relates in particular to the issue of the institution of judicial proceedings, the conclusion of judicial and extra-judicial settlements, deferments of payment, agreements on payment by instalments and the assignment of claims to third parties.
- (4) Under normal circumstances and in so far as not otherwise agreed on a case by case basis, all cases which do not entail a settlement of payments in full by the party who received the warning will be handed over to DEBT COLLECTION AGENCIES immediately after the expiry of the allotted payment period for further extra-judicial recovery (debt collection) and then to LO in the name and on behalf of the Client for the assertion of claims for payment in enforcement and recovery proceedings. The Client is aware that further costs will be incurred thereby. The Client authorises the Attorneys to forward the necessary data direct to the DEBT COLLECTION AGENCIES and also authorises the DEBT COLLECTION AGENCIES to forward the necessary data direct to LO. Further details on the collection of debts are set out in the debt collection agreement.
- (5) The cases in which, although involving payment in full or in part, no adequate statement undertaking to cease and desist was given, will under normal circumstances and in so far as not otherwise agreed on a case by case basis, remain with the Attorneys and be pursued before the courts. The Client is aware that further costs will be incurred in this process.

§ 4 Agreement on remuneration, costs

- (1) In the warning notice to the subscribers, the Attorneys will, in the name of and on behalf of the Client and in the case of an initial infringement, demand a total lump sum of € 700.00 by way of a proposed settlement.
- (2) For the first warning the Client will pay the Attorneys a non-recurring fee of **€ 161.00 net (possibly plus taxes) per individual case**. If the party receiving the warning fails to meet all the claims asserted against him in the warning within the allotted period, the Attorneys will invoice in accordance with the German Attorneys' Remuneration Act (*Rechtsanwaltsvergütungsgesetz*). The Attorneys will not invoice a settlement fee to the Client for a settlement achieved by extra-judicial means. By agreement with the Client, the fees will initially be offset against the incoming payments from the parties receiving the warning and will be retained by the Attorneys.
- (3) The Client is aware that in the event of the entitlement to deduct input tax, the attorneys' fees may only be demanded net from the parties infringing the law; however, the gross sum will be due from the Client.
- (4) For every infringer of rights who is successfully warned, the Client will pay to EXCUBITOR UG the sum of twenty-seven (27) percent net of the compensation paid by the infringer of the rights, plus taxes. This sum in-

cludes the collection and storage of data and its preparation for transmission to the Attorneys. The costs will be offset against the receipt of payments from the party in receipt of the warning.

- (5) For every infringer who is successfully warned, the Client will pay to DEBT COLLECTION AGENCIES (therefore also for proceedings which were concluded before transfer to the debt collection process) a sum of twenty (20) percent net of the compensation paid by the party infringing the law, plus taxes. This sum includes the complete processing, administration and handling of the proceedings along with the recovery of open payments. The costs will be offset against incoming payments from the party in receipt of the warning.
- (6) The Client will assign to EXCUBITOR UG its claims for the payment of monies held in trust accounts in the amount of the entitlements of EXCUBITOR UG arising from this agreement on account of performance and instructs the Attorneys to pay such monies directly to EXCUBITOR UG. The Client will receive separate invoices from EXCUBITOR UG and DEBT COLLECTION AGENCIES. Responsibility for the accuracy of the invoices lies with the relevant invoicing parties and not with the Attorneys.
- (7) If, at the time of the abandonment of all the mandates held from the Client for lack of success, including mandates for the collection of debts (irrespective of whether these are managed by the Attorneys, the DEBT COLLECTION AGENCIES or LO), the remuneration and the costs are not covered in full by offsetting, the Client will assign to the Attorneys the totality of all the claims for payment asserted by the Attorneys against the parties in receipt of the warnings on account of performance (§ 364 of the German Civil Code). The Attorneys accept this assignment as performance and at the same time release the Client from liability in respect of the claims which have been assigned. Even after assignment, the Client permits the Attorneys to continue to assert these claims in the Client's name and to require payment to the Client. The same applies in respect of the claims of the DEBT COLLECTION AGENCIES and LO with regard to their remuneration.
- (8) Invoices will be deemed to be accepted if no objections are raised within two weeks of receipt. Invoices are deemed to have been received no later than one week from invoice date.
- (9) The parties concerned agree that ten (10) percent of all payments of compensation by the parties in receipt of warnings will be allocated to a "kitty" which may be used at the Attorneys' discretion exclusively for the payment of all costs and fees which accrue in the context of the legal activities (e.g. court fees, experts' fees, providers' costs, disbursements, postage, registration office enquiries, lawyers' court fees, travelling costs, expenses, etc.) and, in addition, € 1.00 net for EXCUBITOR UG for each subscriber who is identified. These sums will be administered via a separate trust account held by the Attorneys. The Attorneys will be paid directly from this account for their court costs and fees in accordance with the German Attorneys' Fees Act without any other party being involved. After the end of the contract and the conclusion of all on-going proceedings (see Clause 5.4) any remaining monies will be used in the first instance to settle any attorneys' remuneration which is still outstanding (irrespective of whether incurred in extra-judicial or judicial proceedings). The Client is entitled to the balance.
- (10) The cost risk for the identification of the subscribers and the court proceedings will, if the provisions in accordance Clause 4.9 are insufficient, be borne by the Client. The cost risk for the debt collection processes will be borne by the DEBT COLLECTION AGENCIES.
- (11) The Client will bear the account administration and transfer charges of the bank.

§ 5 Ordinary termination

- (1) None of the parties may terminate this agreement for ordinary reasons before 3 months from its signature have elapsed.
- (2) At the end of three (3) months the parties may terminate the contractual relationship by giving thirty (30) days notice at the end of a quarter. The other contractual parties must be informed of termination in writing.
- (3) The right of extraordinary termination is unaffected.
- (4) If the Client should terminate the contract, the following applies at the time of the termination:
 - a) Court proceedings which have commenced at this point in time but have not yet been concluded will be pursued by the Attorneys to their conclusion at the level of jurisdiction at which proceedings are ongoing at the time of the termination and at the conditions agreed in this contract. If the Client should not wish for these proceedings to be continued to their conclusion, the Client must bear the cost of these proceedings up to their termination including the Attorneys' fees; such fees are due for payment immediately. In this case the Attorneys

will immediately cease any further activity in respect of these proceedings. The Client may permit the Attorneys in writing to pursue proceedings also at further levels of jurisdiction.

- b) Out of court proceedings which have commenced at this point in time but have not yet been concluded will be pursued to their conclusion by the Attorneys at the conditions agreed in this contract. If the Client should not wish for these proceedings to be continued to their conclusion, the Client must reimburse the Attorneys for all entitlements to fees which are unpaid at this time in respect of the persons against whom warnings have been filed. In this case the Attorneys will also immediately cease any further action in respect of the ongoing proceedings.
- c) With regard to infringers of copyright who become known after notice of termination has been given, the Attorneys will agree further action with the Client. The Attorneys will not undertake any further action without the Client's express consent.
- d) **The powers of attorney which were granted are deemed to have been granted beyond the point in time of the termination at the conditions set out here.**

§ 6 Upload, Download

The Client expressly permits the Attorneys, EXCUBITOR UG, their staff and agents to undertake acts of exploitation on the contractual works as allowed by copyright law to the extent required for monitoring purposes and in particular make copies for internal purposes, download files from file-sharing networks or make these publicly available in so far as this is technically unavoidable. The Client is aware that no fake files or what are called "honey-pots" will be prepared.

§ 7 Provision of documents and data-carriers

If so requested by the Attorneys and if the work in question is (also) sold in physical form, the Client will provide the required number of original data-carriers without delay and free of charge (not less than four per work for the Attorneys and not less than one per work for EXCUBITOR UG) and with all documents, particularly license agreements and other proof of the ownership of rights (licence chain).

§ 8 Limitation of actions

Measures restricting prescription are not included in this agreement. The Attorneys are not liable for the extinction of debts by limitation. The Attorneys will inform the Client in advance of the extinction of claims by limitation and will give the Client the opportunity to put in hand measures which restrict limitation by further agreements and to demand information on these proceedings for further use.

§ 9 Limitation of liability

- (1) **In accordance with § 51a, Paragraph 1, Number 2 of the Professional Code of Conduct for Attorneys (*Berufsordnung für Rechtsanwälte*), the Client's claim for compensation for loss or damage caused by simple negligence arising from the mandate established between the Client and the Attorneys is limited to four times the minimum sum insured of EUR 250,000.00, that is to say to a total of EUR 1,000,000.00 (in words, one million Euros). If the Attorneys should cause loss or damage which leads to an obligation to meet liabilities, the Attorneys' obligation to pay damages is limited by this agreement.**
- (2) The Client's claim against EXCUBITOR UG or its staff or agents for compensation for loss or damage caused by simple negligence is limited to EUR 250,000.00 in so far as loss of life and bodily impairment or impairment of health are not involved and in so far as there is no liability under the German Product Liability Act (*Produkthaftungsgesetz*) and in so far as this is permissible in law. The Client hereby states that he is in agreement that the typical risk is covered hereby. The maximum amount for which liability exists may, if requested by the Client, be increased in return for acceptance of the insurance costs if this is necessary to cover the typical risk.

§ 10 Final provisions

- (1) The rights and obligations of the contractual parties may not be assigned without the consent of the other party.
- (2) The Client may only offset payments against a counter-claim if the counter-claim is not contested by the Attorneys or has been judged to be final and absolute.
- (3) If one or more provisions of this contract should be or become invalid, the validity of the other provisions is not affected thereby.

- (4) The place of jurisdiction for actions arising from this contract is Karlsruhe.
- (5) The law of the Federal Republic of Germany applies to the exclusion of the CISG.