

## Unofficial Translation

This document is an English translation of a document prepared in German. In preparing this document, an attempt has been made to translate as literally as possible without destroying the meaning. Inevitably, however, differences may occur in translation and if they do, the German text will be legally binding.

# **Constitution of the Association „European Network for Copyright in Support of Education and Science (ENCES) e.V.“**

## **Preamble**

ENCES (European Network for Copyright in Support of Education and Science) is an EU-wide network of organisations and individuals in education and research who advocate an education- and research-friendly copyright. At the same time ENCES advocates for the access to knowledge and information produced in science, research, education, the arts and culture for the general public.

Accordingly, ENCES' basic assumption is that knowledge and information in their digital form should be made available to everyone from everywhere and at any time under fair conditions. This is particularly true in scholarship and education, where free access to knowledge and information is indispensable for the progress of scholarship and for the quality of society's educational level. Therefore copyright, which regulates the access to knowledge and information and to objects of cultural value, has to be framed in a way that it (a) does not encumber the justifiable interests of all scholars in an unhindered access to knowledge and information in the digital age and (b) preserves the right of all citizens of our society to have free access to the objects of artistic and cultural value for the purpose of education, especially via the internet. ENCES lobbies for these aims. The Association is a forum for the development of an understanding of copyright which would enable education, scholarship and research to exploit the potential of electronic environments for the production, distribution and usage of knowledge and information for the benefit of the general public.

As far as this constitution requires the written form, the requirement will also be met by e-mail (also without electronic signature as required by article 126a German Civil Code) and fax, as long as not stated otherwise.

## **Article 1: Name, Seat and Fiscal Period**

- (1) The name of the Association is „European Network for Copyright in Support of Education and Science” (abbreviated as “ENCES”). It shall be registered within the (German) register of associations. After its registration it shall also bear the suffix “e.V.”
- (2) The Association has its seat in Berlin.
- (3) The fiscal period corresponds to the calendar year.

## **Article 2: Objectives**

- (1) The purpose of the Association is to altruistically, ideally and materially promote scholarship and research, the arts and culture as well as popular and professional education in Europe.
- (2) The Association advocates the adjustment of the enforceable national and international copyright law to the new possibilities of digital information processing and dissemination. By these adjustments the free access to knowledge and information in the areas of scholarship and research, the arts and culture as well as popular and professional education shall be brought forward for the benefit of the general public.
- (3) Scholarship and research profit by a copyright which would facilitate free access to knowledge and information as well as swift and unproblematic publication of research outputs. The Association lobbies to ensure the access to scholarly research outputs for the general public at any time. Therefore the Association supports the idea of strong exceptions in copyright for the use of copyright-protected material for the benefit of scholarship and research. The Association shall initiate, pursue and support corresponding activities.
- (4) The arts and culture sector profits from the free access by creative professionals to works of art and objects of cultural value which were created in the past. The Association lobbies to ensure the access to European cultural heritage for the general public at any time. Therefore the Association supports the idea of strong exceptions in copyright for the use of copyright-protected material for the benefit of cultural heritage institutions like libraries, museums and archives. The Association shall initiate, pursue and support corresponding activities.
- (5) Education, especially secondary and higher as well as professional education, profits by the limitations in copyright which guarantee the possibility to use knowledge and information in teaching. The Association lobbies to ensure the access to knowledge and information in schools for the purposes of education at any time. The Association supports the idea of strong exceptions in copyright for the use of copyright-protected material

for the benefit of public educational establishments. The Association shall initiate, pursue and support corresponding activities.

(6) The Association shall – by realising adequate measures to support education and information – enhance the consciousness and understanding of the citizens of all European states with regard to the importance of copyright for the free access to knowledge and information in the education and research sector. The Association shall initiate, pursue and support corresponding activities.

(7) The objectives of the Association are particularly realized by:

- a. international scholarly seminars, workshops and conferences on the topic of “copyright for education and scholarship”;
- b. research projects and the distribution of scientific studies on the topic of “copyright for education and scholarship” in the EU;
- c. immediate and freely accessible publication of all research outputs from a. and b. on the internet;
- d. adequate educational and informational measures to enhance the consciousness and understanding of the citizens of all European states with regard to the importance of copyright for the free access to knowledge and information in the arts, culture, education and scholarship sector;
- e. development of recommendations for legislation on copyright limitation which would permit, facilitate and improve the work of scholars in universities and other public research organisations, libraries, museums, archives and public educational establishments, e.g. schools;
- f. participation in public hearings and consultations organised by national and international legislative bodies on questions concerning the conceiving of national and international copyright.

### **Article 3: Not-For-Profit Association**

(1) The Association shall exclusively pursue not-for-profit common public interest objectives in terms of the clause “Steuerbegünstigte Zwecke” („tax privileged objectives“) under the German General Tax Code. The Association is a non-profit association; it does not primarily pursue economic purposes of its own.

(2) Finances of the Association may be used for statutory purposes only. The members accrue no benefit from the finances of the Association. When leaving the Association members must not lay claim to the funds of the Association. No person may benefit from a disproportionately high salary or reimbursement contrary to the aims of the Association.

#### **Article 4: Admission to Membership, Membership Fees**

- (1) Membership in the Association is open to any legally and contractually competent natural or legal person willing to support the objectives of the Association. Applications for membership may be directed informally to any member of the Executive Board. The Executive Board decides whether the applicant will be granted the state of membership.
- (2) A refusal of membership status by the Executive Board does not require any justification and can't be appealed against.
- (3) Any member is obliged to pay regular annual membership fees. The amount and maturity of the membership fees shall be determined by the General Assembly. The Membership Fee Regulation shall specify details.
- (4) Membership – and therefore maturity of the membership fee for the current fiscal period – shall begin with the decision of admission taken by the Executive Board. This decision shall be communicated to the new member immediately after being taken.

#### **Article 5: Termination of Membership**

- (1) Membership may be terminated by resignation, expulsion, dissolution (of legal persons) or death.
- (2) Notifications of resignation shall be sent to the Executive Board via registered post letter a month in advance to the date of resignation. Resignation of a member during the course of the financial year shall not relieve such member from the obligation to pay the membership fee for the financial year in which the resignation took place.
- (3) Any member acting against the interests of the Association may be excluded from the Association at any time. Members may also be excluded for any other important reason.
- (4) Any member being in arrears with their financial liabilities for longer than three months after maturity date may be excluded from the Association by decision of the Executive Board. The Executive Board shall take such decision only after having reminded the member twice in writing, hereby setting a two-week deadline and announcing the expulsion of the member in case of failure to pay upon the deadline. The member facing exclusion may appeal to the General Assembly which shall take a final decision. The appeal of the member shall be directed in writing to the chair of the Executive Board by registered post within 14 days after the arrival of the registered letter expressing the expulsion. The termination of membership shall not exempt the former member from its financial liabilities towards the Association. The Executive Board shall decide whether to take any steps concerning this matter.

## **Article 6: Bodies of the Association**

The bodies of the Association are the General Assembly and the Executive Board.

## **Article 7: The Executive Board**

- (1) The Executive Board (as defined in article 26 of the German Civil Code) is composed of the Chairperson, the first Deputy Chairperson (Secretary) and the second Deputy Chairperson (Treasurer).
- (2) The members of the Executive Board shall be elected by the General Assembly for a period of two years. They remain in office until the election of the next Executive Board.
- (3) In conducting legal or other affairs the Association shall be represented by the chairperson alone or by both deputy chairpersons together.
- (4) The tasks assigned to the Executive Board include the following:
  - a. the management of the current affairs,
  - b. the execution of the decisions of the General Assembly,
  - c. the administration of the funds of the Association,
  - d. the preparation of the budget for every fiscal year,
  - e. non-profit accounting,
  - f. the alignment of a financial report,
  - g. the preparation and
  - h. the convention of the General Assembly.
- (5) The meetings of the Executive Board shall be convened in writing by the Chairperson or by any other entitled member of the Executive Board. The convention in writing is obsolete if the appointment dates and venues for the fiscal period are disclosed to the members of the Executive Board at the beginning of the fiscal period. Delivery by fax or e-mail (even without electronic signature) will suffice.
- (6) The Executive Board constitutes a quorum, if all members of the Executive Board have been invited to the meeting and at least half of them are present. Meetings via telecommunication are admissible. A positively identified member of the Executive Board shall be considered present.
- (7) The Executive Board shall decide by simple majority of votes. In case of a tie the vote of the Chairperson resp. the first Deputy Chairperson decides.
- (8) The Executive Board may co-opt members as advisors at any time. The Executive Board may also have members co-opted or confirmed by the General Assembly at any time. The advisors, being especially qualified, shall support the Executive Board in fulfilling their tasks. By being co-opted they shall become members of the Executive Board. This membership shall terminate at the end of the respective fiscal year at the latest. They may be re-

co-opted.

- (9) The Executive Board may co-opt a member of the Association to replace a resigning elected member of the Executive Board. Any member of the Association may convene the General Assembly in case the Executive Board resigns completely, failing to replenish and – contrary to duty – not staying in office until the next election of a new Executive Board.

### **Article 8: Cash Audit**

The General Assembly shall elect two Cash Auditors who are not members of the Executive Board whose tenure shall last two years. The Auditors shall check the correctness of the annual accounts at the end of each financial year. The Auditors shall directly report the result of their verification to the General Assembly on the occasion of the next regular meeting.

### **Article 9: General Assembly**

- (1) The tasks assigned to the General Assembly include the following:
  - a. the election and dismissal of the members of the Executive Board,
  - b. the election of the Cash Auditors,
  - c. the approval of the budget for the next fiscal year prepared by the Executive Board,
  - d. the acceptance of the financial report and the discharge of the Executive Board,
  - e. the regulation of the amount and the maturity date of the annual membership fees,
  - f. the issuing of instructions to the Executive Board,
  - g. the regulation of the maximum sum of money the Executive Board may have at their own and sole command and
  - h. any decision on modification of the statutes and the dissolution of the Association.
- (2) Whenever possible, meetings of the General Assembly shall take place in conjunction with another meeting in the curriculum of professional gatherings of the Association and during the first three months of the calendar year.
- (3) All members of the Association are entitled to participate in the General Assembly. The Executive Board may invite guests. The General Assembly shall meet regularly, at least once a year. It shall be convened by notification in writing by the Executive Board at least two weeks prior to the meeting date. No member objecting, notification may be sent out via e-mail. Notification of the General Assembly shall include an agenda of the meeting.
- (4) Upon decision the General Assembly may meet on-line. The decision shall specify the circumstances of this meeting, also with regard to the vote.

- (5) Decisions by the General Assembly shall be taken by way of a simple majority of the votes cast by a show of hands. On application the General Assembly shall vote by secret ballot. Decisions of the General Assembly with regard to the modification of the statutes and the dissolution of the Association shall be of no effect unless passed by a majority of three quarters of the votes cast.
- (6) The General Assembly shall meet under the chairmanship of the Chairperson, who, in case of not being able to attend the meeting, may be substituted for by one of the Deputy Chairpersons. The decisions of the General Assembly shall be recorded in the minutes, which are to be signed by the Secretary. The minutes shall notify of the venue and time of the meeting, the Chairperson, the Secretary, the number of members present, the verification of a quorum, the agenda, the decisions taken and, as far as necessary for their comprehension, the process of the discussion as well as the individual results of every ballot.

#### **Article 10: Extraordinary of the General Assembly**

- (1) Extraordinary General Assemblies shall be convened if it is deemed in the interest of the Association, e.g. in case of dissolution of the Association.
- (2) An extraordinary General Assembly may be called for by decision of the Executive Board, of the General Assembly or by written and justified demand from at least 10% of the members of the Association sent to a member of the Executive Board or by demand of one of the Cash Auditors. The meeting must take place within four weeks of the receipt of the demand.

#### **Article 11: Dissolution of the Association and Transfer of the Funds of the Association**

- (1) In case of dissolution of the Association or other legal forms of termination or cease of tax privileged objectives all funds of the Association shall pass to a body corporate organised under public law or any other tax privileged legal body, which shall use it for the purpose of promoting scholarship and research, the arts and culture as well as popular and professional education in Europe.
- (2) The Chairperson and the Treasurer shall be appointed liquidators.

#### **Article 12: Miscellaneous and Severability Clause**

- (1) Place of jurisdiction for all disputes arising from this Constitution shall be Berlin, as far as legally possible.
- (2) If any provisions of this Constitution shall be held to be invalid, illegal, unenforceable or in conflict with the law, the validity, legality and enforceability

of the remaining provisions shall not in any way be affected or impaired thereby. The invalid provision shall be substituted by a valid provision as similar as possible to the economic objective of the invalid provision. The same shall also apply in case of a loophole.

The founding members unanimously decided on this Constitution as statutes of the Association at the inaugural meeting on 29 June 2010 in Berlin.

Signatures of the founding members: