Deutsches
Patent- und Markenamt

FAQ concerning authorised entities under the Copyright Act

I. What does “authorised entity” mean?

- Authorised entities are establishments providing education or accessible reading or information access on a non-profit basis to people with a visual impairment or reading disability (section 45c (3) of the Copyright Act [*Urheberrechtsgesetz*]).
- Examples: libraries for the blind, special education centres for blind and visually impaired pupils or format conversion services at universities.
- **Important:** The classification as an authorised entity pursuant to section 45c (3) of the Copyright Act lies within the responsibility of the notifying establishment. Basically, the German Patent and Trade Mark Office (DPMA) does not verify, prior to the entry in the list of authorised entities, whether the requirements provided for by section 45c (3) of the Copyright Act are fulfilled.

II. Why have authorised entities been established?

- Persons with a visual impairment or reading disability need an accessible supply of literature and other literary works in order to participate in social and cultural life. To ensure such a supply, it will often be necessary to convert such works into accessible formats, e.g., to reproduce them in Braille or convert them into an audiobook. If the works are protected by copyright, though, the conversion is subject either to the approval of the rightholder or to a statutory permit.
- The legislator has provided for such a statutory permit for authorised entities in order to improve the access of persons with a visual impairment or reading disability to accessible works. Thus, authorised entities can convert certain protected works into an accessible format even without the approval of the rightholder and provide them to persons with a visual impairment or reading disability (see also question V. below).
- In order to protect rightholders’ interests, the legislator has provided for the payment of reasonable remuneration to compensate for these uses permitted by law. Such a payment can only be asserted by a collective management organisation (see also question VI. below).

III. Which legal basis does apply to authorised entities?

- In particular, section 45c of the Copyright Act and the Ordinance on Authorised Entities under the Copyright Act form the legal basis.
- These provisions are based on the Marrakesh Treaty, which has been signed by the European Union and been implemented by what is referred to as the Marrakesh Regulation and the Marrakesh Directive.

IV. Which visual impairments and reading disabilities are covered by section 45c of the Copyright Act?

- Persons with a visual impairment or reading disability include all persons who are unable, as a result of a physical or mental impairment or perceptual disability, to read literary works, even with the assistance of a visual aid, to substantially the same degree as persons without such an impairment or disability (section 45b (2) of the Copyright Act).
- Examples: blindness, dyslexia or a physical disability that prevents a person from holding a book.

V. What rights does an authorised entity have?

- Authorised entities can make use of the statutory permit pursuant to section 45c of the Copyright Act. This means that they are permitted by law to perform the uses provided in section 45c of the Copyright Act; they are not required to obtain the approval of the rightholder for the respective uses.
- Authorised entities may
  - reproduce certain protected works[1] in order to convert them into an accessible format **for the exclusive use** of persons with a visual impairment or reading disability (section 45c (1) of the Copyright Act) and
  - lend out, disseminate, provide or make available accessible copies produced in accordance with section 45c (1) of the Copyright Act to persons with a visual impairment or reading disability (section 45c (2) of the Copyright Act).

VI. What obligations does an authorised entity have?

- **Obligation to notify** (section 4 (1) of the Ordinance on Authorised Entities under the Copyright Act):

  An authorised entity must notify the DPMA of its activities **immediately** after the commencement of the uses pursuant to section 45c (1) and (2) of the Copyright Act (see question VII. below).

- **Obligation to exercise due care and to inform** (section 1 of the Ordinance on Authorised Entities under the Copyright Act):

  Any authorised entity is required **to establish procedures** that ensure it

  1. lends out, disseminates, provides or makes available copies in an accessible format **only** to persons with a visual impairment or reading disability within the meaning of section 45b (2) of the Copyright Act or to other authorised entities;

[1] The permit covers only published literary works (text and audio format), graphical recordings of musical works (sheet music) and illustrations contained in these works. It does only apply to works that can be lawfully accessed (section 45c (1) in conjunction with section 45b (1) of the Copyright Act).

2. takes appropriate actions against the unlawful reproduction, dissemination, communication to the public or making available to the public of copies in an accessible format;
3. carefully handles and keeps records of works or other items of protection and their copies in an accessible format;
4. publishes, to the extent appropriate, information on how it fulfils its obligations set out in 1 to 3 above on its website or otherwise and updates such information.

- **Obligation to disclose** (section 2 of the Ordinance on Authorised Entities under the Copyright Act):

  Any authorised entity is required to disclose to persons with a visual impairment or reading disability, rightholders and authorised entities, upon request and – if required – in an accessible form,

  1. which works it has available as copies in an accessible format and what the types of these formats are;
  2. with which other authorised entities it exchanges copies in an accessible format.

- **Remuneration** (section 45c (4) of the Copyright Act):

  Authorised entities must pay reasonable **remuneration** for uses pursuant to section 45c (1) and (2) of the Copyright Act.

  This remuneration is deemed compensation to rightholders whose protected works are used based on the statutory permit – and thus without the otherwise required approval. The remuneration is claimed by *Verwertungsgesellschaft Wort* (literary works) and *Verwertungsgesellschaft Musikedition* (sheet music).

VII. How can an authorised entity notify its activities?

- An authorised entity can be notified by letter, fax or e-mail (for the respective contact details, please see question IX. below).
- If all required information is available and there are no further questions, the notified establishment will be entered in the **list of authorised entities** kept by the DPMA. The accessible list is published on the DPMA website. It enables persons with a visual impairment or reading disability to receive information about possible sources of works in an accessible format from a central point of contact.

VIII. What is the task of the DPMA as the supervisory authority for authorised entities?

- As the supervisory authority, the DPMA ensures that authorised entities meet their duties pursuant to sections 1 and 2 of the Ordinance on Authorised Entities under the Copyright Act. In this context, the DPMA may take all necessary measures. In particular, the DPMA may, at any time, request that the authorised entities disclose information and submit documents (section 3 (1) and (2) of the Ordinance on Authorised Entities under the Copyright Act).
- However, the question whether an authorised entity meets the requirements of section 45c (3) of the Copyright Act lies within the responsibility of the respective establishment. The same is true for the question whether and to what extent the

activity of an authorised entity is covered by section 45c of the Copyright Act. This means that the establishments published in the list of authorised entities are themselves responsible for the lawfulness of their acts in relation to uses.

IX. Whom can I contact if I have further questions?

- If you have further questions, please contact:

Address:	Deutsches Patent- und Markenamt
	Aufsicht über befugte Stellen nach dem Urheberrechtsgesetz
	Referat 4.4.3
	80297 München
	Germany
E-mail:	aufsicht.befugtestellen@dpma.de
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- **Important:** As the supervisory authority for authorised entities, the DPMA must **not provide legal advice.**