

German Resale Price Maintenance Act

Book Resale Price Maintenance Act (Buchpreisbindungsgesetz – BuchPrG)

As amended on September 2016

Translated by Carol Wanske

Sec. 1 Purpose of the Law

The Act serves to protect books as a cultural asset. The setting of binding resale prices for final customers ensures that a broad offer of books is maintained. At the same time, the Act warrants that this offer is accessible to a broad public through its promotion of the existence of a large number of points of sale.

Sec. 2 Scope

(1) Books for the purposes of this Act are also

1. sheet music,
2. cartographic products,
3. products which reproduce or substitute books, such as e.g. ebooks made available for permanent access, sheet music or cartographic products and which, upon due consideration of the overall circumstances, are to be deemed to be primarily of a typical publishing or bookselling nature and
4. composite items for which one of the aforementioned products constitutes the main item.

(2) Foreign-language books shall only be subject to the Act if they are primarily intended for sale in Germany.

(3) A final customer for the purposes of this Act is anyone who acquires books for purposes other than for resale.

Sec. 3 Price Maintenance

Anyone who sells books to final customers in Germany for profit or for commercial purposes must comply with the price which is set in accordance with Sec. 5 of this Act. This does not apply for the sale of used books.

Sec. 4 Price Setting

(1) Whoever publishes or imports books for final customers in Germany is obliged to set and indicate, in an appropriate manner, a price, including value-added tax (retail price) for the release of a book for sale to final customers in Germany. The same shall apply accordingly for changes to the retail price.

(2) Whoever imports books may not go below the retail price recommended by the publisher of the country of publishing for Germany including the value-added tax applicable from time to time in Germany, when setting the retail price. If the publisher has not recommended any price for Germany, the importer may not go below the fixed or recommended net price set by the publisher for final customers in the country of publishing, plus the value-added tax applicable from time to time in Germany, when setting the retail price.

(3) Whoever buys books in a member state of the Treaty on the European Economic Area at a cost price which is lower and deviates from the normal cost prices in the country of purchase may reduce the retail price to be

set in accordance with paragraph (2) in the ratio equivalent to the ratio between the earned commercial advantage to the normal cost prices in the country of purchase; the bulk discounts and equivalent terms of sale typical to the industry shall be deemed to be elements of the normal cost prices.

(4) Publishers or importers may set the following retail prices:

1. series prices;
2. bulk prices;
3. subscription prices;
4. special prices for institutions which have collaborated under a contract in the issue of individual, specific publications in a manner which is of decisive importance to the creation of the work;
5. special prices for the subscribers of a periodical to purchase a book written or edited by the editors of the periodical and
6. surcharges for instalment purchases.

(5) The setting of different retail prices by the publisher or importer or their licensees for a certain work is permitted if this is justified on objective grounds.

Sec. 5 Sales

(1) When setting their sales prices and other terms of sale in relation to retailers, publishers must take into reasonable account the contribution made by smaller booksellers in the interests of supplying books on a broad basis, as well as their professional bookseller service. They may not orient their rebates solely to the sales earned with one retailer.

(2) Publishers may not supply retailers from other industries at prices or under more favourable terms than to booksellers.

(3) Publishers may not set higher prices or less favourable terms for book distributors (*Zwischenhändler*) than for the retailers they supply directly.

Sec. 6 Exceptions

(1) Sec. 3 does not apply for the sale of books:

1. to publishers or importers of books, booksellers or their employees and permanent staff for their personal requirements;
2. to the authors of the independent publication of a publisher for their personal requirements;

3. to teachers for the purpose of testing a use in the classroom;

4. which are marked as being »seconds« due to damage or another defect;

5. within the scope of an inventory sale limited to a period of 30 days on the occasion of the final closing of a bookstore, provided the books originate from the normal inventory of the closing undertaking and have already been offered to the suppliers for return at reasonable notice.

(2) A discount of up to 5 per cent may be granted in the case of the sale of books to research libraries accessible to all those working in their area of research, and up to 10 per cent may be granted to town libraries, state libraries and school libraries, as well as to churches and the troop libraries of the Armed Forces and the Federal Border Police.

(3) For group orders of books for classroom instruction which will become the property of a public authority, chartered school (*»Beliehene«*) or private school endowed with the status of a public substitute school (*Staatliche Ersatzschulen*), the sellers shall grant the following discounts:

1. for contracts with a total value of up to EUR 25,000 for works with

more than 10 copies, a discount of 8 per cent

more than 25 copies, a discount of 10 per cent

more than 100 copies, a discount of 12 per cent

more than 500 copies, a discount of 13 per cent

2. for contracts with a total value in excess of

EUR 25,000, a discount of 13 per cent

EUR 38,000, a discount of 14 per cent

EUR 50,000, a discount of 15 per cent

If schoolbooks are purchased by schools within the scope of their own budget, a general discount of 12 per cent is to granted instead for all group orders.

(4) The retailer is not in breach of his duty under Sec. 3 if, on the occasion of the sale of a book, he

1. sells merchandise of low value or merchandise which is of no commercial significance in light of the value of the purchased books;

2. assumes the insignificant costs of the retailer for visiting the point of sale;

3. assumes the shipping or special procurement costs;
or
4. performs other ancillary services typical to the trade.

Sec. 7 Duration of Price Maintenance

- (1) Publishers and importers are entitled to lift the price maintenance by appropriate announcement for book editions released more than eighteen months previously.
- (2) In the case of books published on a continual basis in intervals of less than eighteen months or whose content considerably loses its value upon the occurrence of a certain date or event, a termination of the price maintenance by the publisher or importer is possible without compliance to the time limit under paragraph (1) after a reasonable period following its publication.

Sec. 8 Damage Claims and Claims to an Injunction

- (1) A claim to an injunction may be raised against anyone acting in violation of the provisions of this law. Whoever acts with intent or in negligence shall be obliged to compensate for the loss or damage incurred due to such violation.
- (2) The claim to an injunction may only be asserted
 1. by merchants who sell books;
 2. by associations for the promotion of commercial interests having legal capacity, provided a significant number of merchants who sell goods or commercial services of the same or related nature in the same market are their members and provided the associations are in a position, according to the personnel, material and financial resources at their disposal, to actually exercise the duties under their charters to pursue such commercial interests;
 3. by an attorney appointed jointly by publishers, importers or undertakings engaged in sales to final customers as trustee to manage their resale price maintenance process (price maintenance trustee);
 4. from qualified institutions documenting that they are entered in the list of qualified institutions under Sec. 4 of the Injunction Act (*Unterlassungsklagegesetz*) or in the list of the Commission of the European Communities under Article 4 of Directive 89/27/EEG of the European Parliament and the Council of 19 May 1988 on Injunctions for the Protection of Consumer Interests

(Official Journal of the European Communities No. L 166 (51)) as amended from time to time.

The institutions under sentence 1 No. 4 hereof may only assert the claim to an injunction if the claim concerns an action affecting material interests of the final customer.

(3) The provisions of Unfair Competition Act shall apply for the claimants under subparagraph 2 No. 1–3, and the provisions of the Injunction Act shall apply for institutions under subparagraph 2 No. 4.

Sec. 9 Inspection of Books

- (1) Where there is a justified suspicion that an undertaking has committed a violation of Sec. 3, a merchant who also sells books may demand that the undertaking grant a member of the accounting or tax advisory professions who is obliged under the rules of his profession to maintain secrecy to inspect his books. The report of the auditor may only refer to the violations of this Act of which he has become aware.
- (2) If a violation has been committed, the merchant may demand the reimbursement of his necessary costs of the audit from the undertaking which committed the violation.