[DE] Copyright Act - Fifth Amended Version on the Way

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On 7 July 1998, the Federal Minister of Justice issued the preliminary draft of a fifth amending act on the Copyright Act, the aim being to bring the latter into line with developments in the field of information and communication technology. The primary purpose of the draft is to implement two treaties adopted by the World Intellectual Property Organisation (WIPO) - the WIPO Copyright Treaty and the WIPO Performances and Phonogram Treaty - as rapidly as possible (see IRIS 1997-1:5).

One important innovation in the draft is a new transmission right - the "right to make available". This covers the right to make protected material available to individual users on digital networks ("on-demand services"). The concept of "public" also requires adjusting here. So far, the term "public" has been taken to mean that use by all users must be simultaneous - which leaves the copyright status of use in the case of on-demand services uncertain. The draft accordingly makes it clear that a work is also made public when it "is made available to, or perceptible by, various members of the public, or is made available to one of their number via a service aimed at the public". This new right to transmit also needs to be distinguished from the right to broadcast, which is not the same. The criterion used to make this distinction is that of a "structured programme": to broadcast a work is to make it available to the public within a structured programme; to transmit it is to make it available outside a structured programme. The draft also gives performing artists a new right to recognition, which strengthens their strictly personal rights and also brings their legal status closer to that of authors. The draft sets out to ensure that technical measures to protect rights-holders are not evaded, by comprehensively prohibiting action to evade, eliminate, destroy or render unusable. It also protects rights-holders against manipulation of certain data used to identify a work or the conditions attaching to its use. On the other hand, the provision on compulsory licences for the manufacture of phonograms has disappeared completely. This was originally intended to guard against the danger of individual manufacturers' acquiring a monopoly - which no longer exists, since the corresponding rights are now universally exercised by performing rights societies. It is worth noting - particularly in view of the current negotiations concerning the proposed EU directive - that the draft makes no general change in the regulations on restrictions contained in copyright law. Nor are the regulations on payment for the lawful(mainly private) making of copies amended. The draft restricts itself to systematic adjustments already rendered necessary by recognition of the new on-

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line right. To this extent, it is merely a first step, and a second will probably have to be taken during the next legislative period.

Diskussionsentwurf eines Fünften Gesetzes zur Änderung des Urheberrechtsgesetzes, veröffentlicht durch das Bundesjustizministerium am 7. Juli 1998, nebst Gesetzesentwurf zu den WIPO-Verträgen über Urheberrecht sowie über Darbietungen und Tonträger vom 15. Oktober 1998.

Preliminary draft of a fifth act amending the Copyright Act, published by the Federal Ministry of Justice on 7 July 1998, with a bill on the WIPO treaties on copyright, and on performances and phonograms of 15 October 1998.

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