[DE] Federal Government Passes a Bill on Copyright Contracts

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On 30 May 2001, the Bundeskabinett (Federal Cabinet) approved a new Bill on copyright contracts, designed to strengthen the legal position of creators of original works, particularly freelance artists, writers, translators, journalists and photographers.

Until now, German copyright law has lacked specific provisions on copyright contracts, even though they were first promised in the explanatory memorandum of the Copyright Act, which was introduced in 1965 and is still in force today. The key purpose of the proposed Act, which will amend the existing Copyright Act, is to establish the inalienable right of authors or artists to reasonable remuneration for the use or exploitation of their work (Section 32 of the Bill). This means that the right to remuneration arises whenever the work is used, irrespective of any contractual rights to payment. Depending on the sum involved, however, this amount decreases by the sum agreed between the author and the user. This right expires three years after the author becomes aware of it, or ten years from the time a claim arises without the author's knowledge. The provision also entitles authors to the information they require to enforce their claim for remuneration.

Another important part of the Bill is Section 36, which deals with joint remuneration rules. These are to be jointly drawn up by the respective groups of authors and users. It is assumed that, when such an agreement is reached by the parties concerned, the payment is "reasonable" in the sense of Section 32. If the two groups cannot come up with mutually acceptable remuneration arrangements, however, arbitration proceedings should be an option if both parties agree. The arbitral award in such cases should set out the applicable joint remuneration arrangements.

These amendments to the existing Copyright Act should put an end to the inferior position - in both economic and organisational terms - of creative artists in relation to users of their work - a situation which has already been noted by the Bundesverfassungsgericht (Federal Constitutional Court) in a decision of 8 April 1987 (Entscheidungssammlung Band 75, page 108).

Entwurf und Begründung des Gesetzes zur Stärkung der vertraglichen Stellung von Urhebern und ausübenden Künstlern (Stand 30. Mai 2001)

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Bill on strengthening the contractual position of authors and performing artists, and Explanatory Memorandum (as at 30 May 2001)

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