[DE] Bundestag Adopts Copyright Contract Act

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On 25 January 2002, the German Bundestag (lower house of parliament) adopted a Government Bill aimed at strengthening the contractual position of authors and performing artists. The Government's objective in tabling the Bill was to ensure that authors and performing artists receive reasonable remuneration and, for the sake of legal certainty, to provide guidelines on what constitutes reasonable remuneration. The idea was that legal disputes between authors and users should, as far as possible, be avoided.

Since the legislative process began in May last year (see IRIS 2001-7: 14), the Bill has undergone several important amendments. The main areas of discussion were para. 32 of the original draft, which sought to guarantee authors the right to reasonable remuneration, and the provisions of para. 36 concerning joint remuneration rules. Both the Bundesländer and users had suggested, in relation to para. 32, that the juxtaposition of contractual and legal rights to remuneration could cause problems in practice. The lack of a clear definition of the term "reasonable" was also criticised. The Bill as adopted explains that contractual arrangements for remuneration take precedence (para. 32.1.1), but also gives authors the right to appeal if the agreed level of remuneration is not reasonable (para. 32.1.3). Each sector of the industry is to be responsible for defining what is "reasonable" and the relevant associations will agree rules concerning what is classified as normal remuneration in their particular sector (para. 36.1). The arbitration proceedings originally provided for in cases when the parties fail to agree on such rules have been replaced with a different form of mediation. Unlike an arbitral award, the decision taken to resolve such a situation is only legally binding if it is accepted by both parties. However, it should act as an indication of how "reasonable" remuneration is ultimately to be defined (para. 36.3).

The Bundestag believes that the new Bill represents a successful compromise between the interests of the media and those of authors. However, the trade unions have already condemned it as a wasted opportunity, since they doubt whether it is sufficient to guarantee reasonable remuneration.

The Bundesrat (upper house of parliament) also approved the Bill on 1 March 2002.

Beschluss des Bundestages (BT-Drucksache 14/8058)

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Decision of the Bundestag (doc. 14/8058)

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