[DE] New Copyright Act and Future Law on Private Copying

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On 20 March 2002, the Bundesministerium für Justiz (Federal Ministry of Justice) published a draft new Urheberrechtsgesetz (Copyright Act - UrhG-E). The proposed Act, entitled Gesetz zur Regelung des Urheberrechts in der Informationsgesellschaft (Act regulating copyright in the information society), would ensure that Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society was transposed into German law before the December 2002 deadline.

The new Act will, amongst other things, provide authors with the right to make their works available to the public (Art. 19a) and allow people with a disability to convert works into a different form (Art. 45a).

However, the most important changes concern the relationship between technological measures designed to prevent illegal copying and individual exceptions, particularly the right to reproduce works for private use. This right, which is recognised in the draft Act and even extended to "any" (i.e., analogue or digital) medium (Art. 53.1), must be viewed in conjunction with Art. 95a of the UrhG-E, which prohibits the circumvention of technical measures whose normal purpose is to prevent works or other protected material from being exploited without the author's consent. This includes all anti-copying devices and Digital Rights Management (DRM) systems. Art. 95b, which is also new, regulates exceptions and limitations, although the right to private copying is not mentioned. On the other hand, the provisions on sanctions (see Art. 108b para.1) give immunity from prosecution to people who, for example, circumvent a technological measure in the sense of Art. 95a purely for private purposes.

In addition to the draft new Copyright Act, there has been a significant development regarding the future of the right to private copying. This marks the start of a new phase in the dispute between collecting companies and the equipment industry over reasonable compensation. In a test case brought before the Landgericht Stuttgart (Stuttgart District Court) in June 2001, equipment manufacturer Hewlett Packard (HP) was obliged, inter alia, to agree a reasonable rate of compensation with the collecting companies. As a result, the Federal Minister for Justice chaired negotiations between the equipment industry union, BITKOM, and the collecting companies. However, the talks broke down at the

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beginning of March 2002 after BITKOM rejected the proposal for a flat-rate tax, preferring individual compensation models based on new technological advances. The collecting company GEMA (company for musical performance and mechanical reproduction rights), which deals with the tax on CD burners, has now announced that it will instigate further proceedings against HP if it does not agree to pay a levy of EUR 10 for every device sold. Furthermore, the collecting companies are now demanding that the legislature clarify the issue in the proposed new Copyright Act.

Referentenentwurf für ein Gesetz zur Regelung des Urheberrechts in der Informationsgesellschaft (Stand: 18. März 2002)

Proposal for an Act regulating copyright in the Information Society (version of 18 March 2002)

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