

[DE] Bill on a Fourth Act to Amend the Copyright Act

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On 29 May 1995, the Federal Ministry of Justice published the draft version of a fourth Act amending the Copyright Act. The new act is designed to implement Copyright Act Directive 93/83/EEC of 27 September 1993 on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable transmission (OJ EC L. 248, p. 15).

Concerning the law on satellite transmission, the ministerial draft rewords Section 20 of the Copyright Act to incorporate the Directive's definition of the legally relevant act, transmission by satellite. Under the draft, the copyright act of transmission consists in the insertion, under the control and on the responsibility of the broadcaster, of the programme signals in an unbroken communication chain, leading to the satellite and back to the earth.

This would do away with the distinction, previously a source of problems in German law, between direct broadcasting and telecommunications satellites, at least in so far as the programme signals are, at the end of the communication chain, relayed to the public; coded transmissions (Pay-TV) would also be covered by this broad definition of satellite transmission.

The proposed new Section 20b of the Copyright Act also restricts the legally relevant act of satellite transmission to a single location. Under this section, only the copyright law of the country where the programme signals are fed into the unbroken communication chain is applicable (the transmitting state theory). The so-called Bogsch theory, which regards the laws of all receiving states as applicable too, has thus been rejected.

Sub-Sections 2 and 3 of Section 20b contain provisions which are intended to make it impossible to evade EU and European Economic Area copyright regulations by shifting satellite transmission to outside countries with lower levels of protection, while nominally operating from an EU or European Economic Area country. Sub-Section 1 of the new Section 20a states that the right of simultaneous, unaltered and full retransmission of broadcast material by cable belongs to the author of that material. To exercise his rights, however, the author must establish a copyright exploitation company, since the subsidiary nature of the right to exploit previously broadcast material makes a separate contract necessary. Exemption from the obligation of setting up copyright exploitation

companies will be granted only to broadcasters in respect of their own programmes. Authors will also have an absolute right to fair payment for retransmission rights by cable operators who relay broadcast material simultaneously, unchanged and in full. This right may be transferred in advance only to a copyright exploitation company.

Finally, the ministerial draft contains transitional regulations on existing contracts and on the changes which must be made in the Copyright Protection Act to implement the Directive.

In their first reactions to the draft, broadcasters admit that additional fees must be paid whenever transmission rights are exercised outside the terms of the original contract. But they are massively opposed to the rule laid down in the proposed Section 20, Sub-Section 2; this, they argue, would mean that terrestrial broadcasters throughout the country would have to pay extra fees for the cable retransmission of their programmes. In view of the fact that fees for cable use are already covered in their contracts with programme-makers, the broadcasters regard the projected absolute legal right to payment as "serious interference with existing regulations on payment", and even question the draft's conformity with the Directive.

