[LU] Amendment of the Act on Copyright, Neighbouring Rights and Databases

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By means of an Act of 18 April 2004, the Grand Duchy of Luxembourg has now transposed into its national law European Directive 2001/29/EC of the Parliament and the Council on the harmonisation of certain aspects of copyright and neighbouring rights in the information society (see IRIS 2001-5: 3). This transposition takes the form of a text amending the Act of 18 April 2001 on copyright, neighbouring rights and databases (referred to as "the Act"). Apart from the transposition of the provisions of the Directive, the new Act also amends the scheme for reserved royalties.

The new text introduces changes that affect the audiovisual sector in that, firstly, audiovisual works are protected in the Grand Duchy of Luxembourg under the copyright scheme (Article 20 of the Act) and, secondly, broadcasting bodies are protected under the neighbouring rights scheme (Section 4 of the Act).

In addition to the list of rights recognised by the Act (reproduction and communication), the right of distribution is now included (Article 3, paragraph 5 of the Act), although it is considered that this right was already included in the right of reproduction. This right, which covers the original of the work and its copies, only ceases if ownership of the subject protected by copyright (ie the original or copies of the original) changes hands within the European Union.

The Act of 18 April 2004 has also modified the scheme of exceptions laid down in the 2001 Act. Apart from differences in wording, three new exceptions have been added to those of the 2001 Act. These are set out in Articles 10(12), 10(13) and 10(14); they cover the use of a work for public security purposes, the use of short excerpts from public lectures or similar works for information purposes, and public communication of works by means of special terminals in certain public institutions (schools, museums, libraries, archives, etc).

In accordance with the Directive, the new Act provides that the exception for private copying is only possible where the copyright holders receive fair compensation (Article 10(4)). This compensation will not be satisfied by setting up a system for levying a lump sum on the sale price of recording media. Parallel to this exclusion from a lump-sum scheme, the new Act aims at the contractual fixing of rates for using the works or services covered by copyright or a

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neighbouring right (Article 66, paragraph 2(a)).

Alongside this modification of the conventional copyright scheme, the new Act has modified the scheme of neighbouring rights enjoyed more particularly by broadcasting bodies.

The only notable change in this article concerns the right allowed to broadcasting bodies to authorise the making of recordings of their programmes available to the public (Article 53).

Lastly, the new Act has adapted the wording of the exceptions concerning neighbouring rights and provides that the exceptions to copyright should apply for the remainder (Article 46, second paragraph).

The new Act adds a new section to the 2001 Act aimed at ensuring legal protection for technical measures created with a view to preventing access to protected works (part 7A). According to Article 71B, these technical measures include all technical procedures, arrangements or components intended to prevent or limit the carrying out, in respect of protected works or services, of acts not authorised by the holder of the corresponding copyright, neighbouring right or sui generis right (rights recognised for the producer of a database). Anyone circumventing these measures may be held liable in both civil and criminal terms. The technical measures may not under any circumstances hinder exercise of the right of lawful access to the protected work or service.

The new Act also contains provisions concerning the information that must be given in respect of the existing rights scheme (Article 71F of the Act). This information must make it possible to identify the protected work, service or database and the originator or any other holder of the protected right. Anyone deleting this information incurs civil and criminal penalties.

Advantage has been taken of the transposition of Directive 2001/29/CE into national law to extend the definition of reserved royalties to include all original works of art.

Furthermore, the new Article 71A of the Act also enshrines the principle of reciprocity for those persons who are not citizens of a European Union country. From now on, these persons will have the benefit of reserved royalties as long as the legislation of the State of which the originator is a citizen affords protection within its territory to reserved royalties for originators who are citizens of European Union countries.

Act of 18 April 2004, Memorial A, 2004, no. 61, pp. 942 et seq.

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