[DE] Proposed Copyright Law Amendments Back on Agenda

IRIS 2006-3:1/18

Kathrin Berger
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 26 January 2006, following the publication of a revised Bill, the Bundesjustizministerium (Federal Ministry of Justice) organised a hearing for interested parties on the second wave of copyright law reforms.

Since the first wave of copyright law amendments transposed into German law the binding provisions of the EU Directive on Copyright in the Information Society in 2003 (see IRIS 2003-9: 13), no further regulations have followed. A draft for the second wave was published in September 2004, but was not adopted during the parliamentary term ended autumn 2005.

The new revised draft concentrates on certain restrictions, particularly concerning private copies, the adaptation of remuneration for technological advances, unknown uses and restrictions on the reproduction of works on electronic reading devices in public libraries.

A particular source of controversy and the subject of numerous written responses is the exemption from punishment of copyright breaches by private users. Copies for private use are prohibited if they are made from obviously illegal sources -- downloading an illegal file from an Internet file-swapping site, for example, is illegal and subject to criminal sanctions. The Bill provides that minor offences with only a small degree of illegality should be exempt from punishment. It explains that, since more and more private end users are committing this kind of copyright breach via digital networks, it is inappropriate from a legal policy viewpoint to prosecute every offender.

The Bill also states that, in future, authors may also have rights over unknown uses. Here, however, a separate remuneration right is obligatory. Authors can also revoke this right, unless the other party has already begun to use the new form of exploitation.

The obligation to pay copyright fees is summarised in a technology-neutral paragraph. In addition, the amount due is no longer calculated according to the "discernible certainty" of reproduction, but rather is based on the actual type of exploitation. Generally speaking, the rules on such remuneration should be adapted to the new conditions of the digital environment, particularly taking into consideration possible anti-copying measures that could have an effect on

© European Audiovisual Observatory (Council of Europe) 2026

remuneration.

Further criticism has been directed at the decision to make works available via electronic reading devices in public libraries, museums and archives, for which an appropriate fee is to be paid, as well as the distribution of copies on request. In the latter case, the Bill states that public libraries will still be able to post or fax parts of a work or article. However, such an electronic communication should only take place in the form of a graphic file. Even this should only apply if access is not granted to members of the public in places and at times of their choice via a contractual agreement.

The industries concerned will be given one more opportunity to respond in order to then create conditions in which the Bill can become law.

Referentenentwurf eines Zweiten Gesetzes zur Regelung des Urheberrechts in der Informationsgesellschaft (Stand: 26. Januar 2006)

http://www.bmj.bund.de/media/archive/1125.pdf

Draft Second Law Regulating Copyright in the Information Society, 26 January 2006

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026