[DE] Federal Government Adopts Copyright Bill

IRIS 2006-5:1/17

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On 22 March 2006, the Federal Government adopted the second wave of copyright law amendments enshrined in the Bill modernising copyright law. The Bill had been published for debate in January 2006 (see IRIS 2006-3:11).

An amendment to Art. 53 of the *Urhebergesetz* (Copyright Act - UrhG) concerning copying for private and other "own" uses is designed to make it clear that the use of illegal file-swapping sites on the Internet is not covered by the exemption contained in Art. 53 UrhG . Under the Bill, the right to copy for private or "own" uses is no longer just restricted where the source is obviously illegal, but also when the source is made accessible to the public in an obviously illegal manner. This is meant to take into account the situation where a (non-copy-protected) copy made available on the Internet is not produced illegally, but is used illegally.

Under the new Art. 54 UrhG, copyright fees shall in future only be due in respect of devices that are used for large-scale copying. This amendment is designed to settle a dispute that has arisen from the current wording, which states that fees must be paid for any device obviously designed for copying. The size of the copyright fee payable for the device will, according to the new Art. 54a UrhG , in future depend on the extent to which it is actually used for copying. However, the existence of technical protection measures for content will also be taken into account, reducing the amount due. According to the Government's wishes, the fees due will no longer be fixed by the legislator but by the parties concerned.

Another amendment concerns the possibility for authors to conclude contracts on presently unknown uses (Art. 31a of the Bill).

The Bill is not expected to come into force before the end of 2006.

In January 2006, at the same time as the Bill modernising copyright law, a Bill improving the enforcement of intellectual property rights was tabled, although this has not been adopted yet. The Bill is meant to transpose the European Enforcement Directive (Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights). As well as detailed regulations on compensation, the Bill gives authors a right to information about the origin and distribution methods of illegally copied material. In order to obtain this information, the injured party would be able, through a court order, to demand communications data within the meaning of the *Telekommunikationsgesetz* (Telecommunications

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Act).

Regierungsentwurf des Gesetzes zur Modernisierung des Urheberrechts

http://www.kopienbrauchenoriginale.de/media/archive/139.pdf

Government Bill modernising copyright law

Referentenentwurf des Gesetzes zur Verbesserung der Durchsetzung des geistigen Eigentums vom 3. Januar 2006

http://www.urheberrecht.org/topic/enforce/bmj/2006-01-03-DurchsetzungsG-E.pdf

Bill improving the enforcement of intellectual property rights of 3 January 2006

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