[RU] Supreme Court on Copyright and Neighbouring Rights

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On 19 June 2006 the Plenary Meeting of the Supreme Court of the Russian Federation adopted a Resolution “On questions that arose in courts in civil cases proceedings in application of legislation on author’s rights and neighbouring rights”. According to the Constitutional provisions the Supreme Court is authorized to pass such resolutions interpreting legislation in order to make judicial practice uniform. The Resolution includes 46 paragraphs.

The Resolution interprets a number of norms of both substantive and procedural law concerning author’s rights and neighbouring rights. The following problems were raised in it: implementation of international law (mostly in part concerning the residence of authors and rightsholders); clarification of the legal status of subjects of relations in the sphere of copyright and neighbouring rights; *locus standi* of courts of general jurisdiction; special measures for copyright protection in civil procedure; terms of protection of copyright and neighbouring rights.

The Resolution guides the general jurisdiction courts to provide a higher level of judicial protection of author’s rights. Its para. 14 imposes upon a defendant the burden of proof of the fact that he (or she) used objects of author’s rights and neighbouring rights lawfully. The plaintiff shall have to prove only the fact that the defendant had used such objects. The Court underlines that breach of the essence of a license agreement shall be considered as a violation of the law. Consequently, rightsholders shall be authorised to claim for compensation even if they do not suffer damages (Article 49 of the Statute of the Russian Federation of 9 July 1993 “On author’s rights and neighbouring rights”). The Court pays a lot of attention to guaranteeing suits concerning breach of author’s rights and neighbouring rights. According to paragraph 18 of the decision, courts while defining guarantee measures shall apply not only the Code of Civil Procedure provisions, but also those of the Statute of the “On author’s rights and neighbouring rights”, namely its Article 50.

The Resolution underlines that television programs of cable companies and broadcasters shall be considered, as a general rule, as objects of neighbouring rights that may, however, include author’s rights elements (para. 28).

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The Court introduced criteria for differentiation between home video and public demonstration of audiovisual works. When deciding whether an audiovisual work was shown in a traditional family circle, courts shall take in consideration *inter alia* family and personal interrelationships between members of a circle, periods of communications, character of the relations (para. 32).

The Court's decision provides for clarification of the rights of authors of audio works. According to paragraph 33 of the Resolution an author of a sound track of an audiovisual work shall have the right to receive royalties for each demonstration of such work, no matter if music was written especially for it or existed before. However, the Court emphasized that in the case of a violation of this norm an author shall have only the right to claim royalties, but not compensation as prescribed by Article 49 of the Statute "On author's rights and neighbouring rights". The Court also points out that any use of phonograms (audio recordings) without entering into license agreement (in cases explicitly sanctioned by law) for commercial purposes shall be accompanied by a deduction from royalties. Otherwise a cable company or broadcaster shall be considered as an offender under the law.

The Resolution deals with dissemination of objects of author's rights and neighbouring rights via telecommunication networks including Internet. According to paragraph 25, copying of an object of copyright (neighbouring rights) to the hard disk of a personal computer if such action provides access by undefined numbers of persons to such an object, it shall be considered as use of an object, and so far must be in conformity with the copyright legislation.

"О вопросах, возникших у судов при рассмотрении гражданских дел, связанных с применением законодательства об авторском праве и смежных правах " Российская газета, 28.06.2006

http://www.supcourt.ru/news_detale.php?id=4349

Resolution of the Plenum of the Supreme Court of the Russian Federation of 19 June 2006 N 15 "On questions that arose with courts in civil cases proceedings in application of legislation on author's rights and neighbouring rights", Official Gazette of 28 June 2006

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