[CH] Extension of Compulsory Collective Management on Behalf of Distributors

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In the context of the revision of the Federal Act on copyright and neighbouring rights of 9 October 1992 (LDA), the Federal Parliament approved, in October 2007, an extension of the scope of compulsory collective management on behalf of distribution bodies. These provisions should enter into force on 1 July 2008.

The new Article 22a LDA settles the use of archive productions belonging to distributors. According to this provision, the right to distribute such productions, or to make them available on demand, can only be exercised by the approved management companies. An “archive production” is a work in the form of a phonogram or videogram that has been produced by the distribution body or commissioned by it from a third party. The first circulation of the work must have occurred at least ten years previously. Article 22a LDA also applies to archive productions that contain other works or parts of works, on condition that these do not substantially determine the nature of the production; this exception applies more particularly to recordings of concerts, which are thus excluded from compulsory collective management. Lastly, the application of Article 22a LDA is also excluded if a contract concluded before the first screening of the archive production, or within the following ten years, governs these rights of use and remuneration for their use; in this case, only the contractual provisions apply, in order to avoid double remuneration.

Article 22b LDA governs the use made of “orphan” works. These arrangements concern archives that the public may access, or that are held by distributors but whose rightsholders are unknown or cannot be traced. Article 22b LDA introduces compulsory collective management when at least ten years have passed since the production or reproduction of the phonograms or videograms containing the orphan works in question.

In addition, the new Article 22c LDA also makes collective management compulsory for the right to availability held by the producers and the performing artists on commercial phonograms used in radio and television productions. This provision applies when the broadcast is produced largely by the distributors themselves, or at their request, and the music is used as background music for the broadcast. Article 22c LDA includes the right to make broadcasts available as video on demand, either with or without downloading, either free of charge or for

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payment.

Lastly, the new Article 24b LDA clarifies the distributor's right to use phonograms or videograms available on the market for the requirements of the broadcasts it produces. Thus, the legal provision acknowledges the existence of a right of reproduction for the purpose of distribution in favour of producers and performing artists, but makes this right subject to compulsory collective management by incorporating it in the rates for the distributors' activities.

Loi fédérale sur le droit d'auteur, modifications du 5 octobre 2007

http://www.admin.ch/ch/f/ff/2007/6753.pdf

Federal Act on Copyright, amended on 5 October 2007

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