[FI] New Provisions on Extended Collective Licence for Archives

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On 15 November 2013, amendments to the Finnish Copyright Act (404/1961) came into force. Among the amendments, section 25(g) of the Act, on renewed transmissions of television programmes stored in archives, was updated and extended. The section was also renamed to refer to the re-utilisation of programmes and publications stored in archives ("Arkistoidun ohjelman ja lehden uudelleen käyttäminen"). Other amendments to the Act concern the term of protection for fixations of performances and producers of phonograms as well as the use of orphan works (16(f)§ comes into force on 29 October 2014).

According to paragraph 1 of the new section 25(g), a broadcasting organisation may make a copy of a television or radio programme stored in its archives and of a work included in the programme, and use it for communication to the public. This re-utilization is made possible by virtue of an extended collective licence as provided in section 26. The work must have been included in a television or radio programme produced or commissioned by the broadcasting organisation and transmitted before 1January 2002. According to paragraph 2, publishers may, by virtue of the extended collective licence, make a copy of a work and use it for communication to the public, if the work has been included in a newspaper or periodical by the publisher before 1 January 1999. According to paragraph 3, the provisions of subsections 1-2 shall not apply to a work of which the author has prohibited the use of.

The new section 25(g) is intended to facilitate the re-utilisation of archives in mass use since individual agreements are often impossible to conclude afterwards or would require excessive investments; the materials and right-holders are numerous. However, the new provisions aim to enable re-utilisation only for organisations themselves (i.e. broadcasting organisations or publishers who have made the initial investments) and not for other commercial or non-commercial exploiters.

In its previous form, section 25(g) provided a similar possibility of an extended collective license only for a new transmission of a television programme stored in archives. No licences existed - allegedly due to the limited scope of the provisions. As regards broadcasting organisations, section 25(g) was updated in order to cover radio programmes and communication to the public via

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communications networks, including via the Internet (on-demand or otherwise). Similar provisions have already been implemented in other Nordic Countries (Denmark, Sweden, Norway). However, in addition, the amendments to the Finnish Copyright Act include the possibility of digitization and re-utilization of archives for publishers (section 16(d) on use of archives by the National Library of Finland; e.g., Finnish newspapers are digitised for online use).

The provisions still need to be accompanied by negotiations and licensing. According to section 26 of the Copyright Act, provisions regarding extended collective licences apply when the use of a work has been agreed upon between the user and the organisation which is approved by the Ministry of Education and which represents, in a given field, numerous authors of works used in Finland. A licensee authorised by virtue of an extended collective licence may, under the terms determined in the licence, also use a work in the same field whose author the organisation does not represent. In the case of media archives, all relevant right holders, including producers, should be represented. The InfoSoc Directive (2001/29/EC) is without prejudice to arrangements in the Member States concerning management of rights such as extended collective licences (recital 18).

Tekijänoikeustoimikunnan mietintö - Ratkaisuja digiajan haasteisiin, Opetus- ja kulttuuriministeriön työryhmämuistioita ja selvityksiä 2012:2

http://www.minedu.fi/export/sites/default/OPM/Julkaisut/2012/liitteet/OKMtr2.pdf?lang=fi

Report of the Copyright Commission - Solutions to challenges of the digital age, Reports of the Ministry of Education and Culture 2012:2

Laki tekijänoikeuslain muuttamisesta, 763/2013, 8 November 2013

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Act amending the Copyright Act, 763/2013, 8 November 2013

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