[FI] New Copyright provisions for network recording services

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The government has proposed (HE 181/2014 vp) amendments to the Finnish Copyright Act (404/1961). One of these amendments concerns new provisions on extended collective licencing for net-PVR services provided by third parties, such as IPTV companies. Early in 2014, a solution for copyright-proof recording services was introduced, which was based on negotiations between core actors in the field, namely broadcasters MTV Oy, Sanoma Entertainment Finland Oy, Yleisradio Oy, teleoperators DNA Oy, Elisa Oyj and Teliasonera Finland Oy, as well as collecting societies Kopiosto, Teosto and Tuotos, representing authors, performers, musicians and producers, among others. Later the same year, the Government proposal was introduced to the Parliament.

The proposed new Section 25 l (1) states that the provider of a network recording service may make a copy of a programme and work included in a television transmission by virtue of an extended collective licence, as provided in Section 26. This copy may be made available to the public in such a way as to enable the programme and work to be viewed and listened by customers of the recording service provider from a place and at a time chosen by them. Paragraph 1 does not apply to a work the author of which has assigned to the broadcasting company the right to make a copy and the right of communication to the public (§ 25l(2)).

According to the government proposal, the fixation of programming is to be based on contracting with both the broadcasters and the organisation(s) representing rightsholders. The former grant permissions regarding their own, as well as acquired rights and negotiate on the practical execution. The latter grant permissions with regard to rights that have not been transferred to broadcasters. By force of law, the effects would be extended to rightsholders not represented by the organisation(s). The organisation(s) should, however, have a wide coverage with regard to rightsholders (incl. foreign) and explicit coverage with regard to the rights concerned. References to related rights are also proposed, not including the protection of transmission signals in Section 48. The broadcasters' authorisation is thus required.

In principle, all programming is included in the provision, but contracting may mean the exclusion of some programmes. The starting point in the negotiations would be the streaming for private purposes of consumers, although solutions

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enabling offline viewing could also be agreed upon. The solution based on extended collective licencing combined with direct contracting was deemed appropriate, especially due to the mass scale nature of the activity and the large number of rightsholders, as well as challenges related to obtaining all authorisations beforehand.

At the same time, amendments are proposed to Section 26 concerning extended collective licences. A new sentence would be added to paragraph 1, which clarifies the legal basis of the extension of collective licences. Provisions on extended collective licences apply when the use of a work has been agreed upon between the user and the organisation approved by the Ministry of Education and Culture, which represents, in a given field, numerous authors of works used in Finland. Such an organisation would be considered representative also of authors of other works in the same field with regard to the contract in question. All works in a given field may be used as prescribed by the licence. Clarifications and updates are also proposed to the language used in this section.

Other amendments concern explicit provisions on the equity of contract terms when copyright is assigned by the original author, as well as enforcement measures (e.g., preventive injunctions imposed on teleoperators). New titles are also proposed for each section of the Copyright Act.

Hallituksen esitys eduskunnalle laiksi tekijänoikeuslain muuttamisesta (HE 181/2014 vp)

http://www.finlex.fi/fi/esitykset/he/2014/20140181.pdf

Government proposal on Act amending to the Copyright Act (HE 181/2014 vp)

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

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