[FI] Amended provisions on online injunctions in the Copyright Act

IRIS 2015-7:1/11

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Provisions of the Finnish Copyright Act (404/1961) on injunctions for the online environment have been reformulated and new provisions on preventive injunctions were introduced. This revision was deemed necessary due to some defects detected in the case law. Moreover, the new provisions are aimed at governing situations where the alleged infringer remains unknown or is situated abroad. The amending Act entered into force on 1 June 2015.

The provisions, tailored for an effective enforcement of copyright in the online environment, were introduced to Sections 60(a) to 60(c) of the Copyright Act, which cover access to data, actions for cessation and cease orders respectively. Moreover, a general provision on prohibition against an infringer is found in Section 56(g). Minor reformulations of the former Sections include updated and renewed references to the Information Society Code, which entered into force on 1 January 2015, as well as to Chapter 7 of the Code of Judicial Procedure (4/1734) on precautionary measures. In addition, the content of the provisions was clarified and amended. Section 60(c) on cease orders accompanying actions for cessation was reformulated with regard to the necessary conditions, the hearing of parties, the possibility of an interim injunction and the revocation of the order. Moreover, provisions on cease orders prior to an action were removed from Section 60(c) and repositioned in a new Section 60(d) on interim cease orders. In case of an interim order, an action (Section 60(b)) or an application pursuant to Section 60(e) must be filed within two months (paragraph 60(d)(3-4)). New provisions on interim cease orders for situations where the alleged infringer remains unknown were also introduced (paragraph 60(d)(2)). However, according to the preliminary works, the threshold is to be higher than that of Section 60(c).

The new Section 60(e) introduces the possibility of ordering a preventive injunction against the intermediary if no action for cessation can be filed because the alleged infringer remains unknown. Previously, it was always mandatory to eventually sue the alleged infringer. The new injunction requires that either vast amounts of copyrighted works are made available to the public unauthorised or a serious threat to the rights of the author exists (paragraph 60(e)(1)). The order cannot be unreasonable, taking into account all relevant circumstances and third parties and the intermediary must be heard (paragraph 60(e)(3)). The term is fixed to a maximum of one year at a time. However, it can be extended

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(paragraph 60(e)(4)). According to the preparatory works, the preventive injunction would be applicable only in the most serious cases.

Section 60(f) builds on the previous Section 60(c)(5), as it includes provisions on compensating costs and damages. Costs of enforcing cease orders are primarily born by the intermediary. However, if the action for cessation is not successful, the applicant must compensate the costs and damages incurred by the intermediary and the alleged infringer (paragraph 60(f)(1)). The intermediary must also bear the costs of interim and preventive injunctions pursuant to paragraphs 60(d) and 60(e) (paragraph 60(f)(2)). The provider may decide on the technical execution of the injunctions and it may have the costs covered afterwards, as noted in the preparatory works. According to Section 60(f)(3), the final allocation of costs may be decided in the proceedings concerning the action for cessation. Section 60(g) replaces the previous Section 60(d), noting that paragraphs 60(a) to 60(f) are applicable to right-holders pursuant to Chapter 5 on related rights.

Originally, provisions on slowing down traffic were also planned, but they were not included in the Government bill mainly due to providers' views on the matter, as well as uncertainties related to the technical execution and the effects of such measures.

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

https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/he_181+2014.pdf

Government bill on Act amending the Copyright Act

Laki tekijänoikeuslain muuttamisesta (607/2015)

http://www.finlex.fi/fi/laki/kaannokset/1734/en17340004.pdf

Act amending the Copyright Act, Code of Judicial Procedure (4/1734)

http://www.finlex.fi/fi/laki/kaannokset/1734/en17340004.pdf

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