[FI] Reintroduction of remuneration for “must-carry” retransmission

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The remuneration for retransmission of programmes subject to a “must-carry” obligation was reintroduced to the Finnish Copyright Act (404/1961). The amendments to Sections 25(i) and 47 of the Copyright Act entered into force on 1 June 2015. Previously, Section 25(i) of the Copyright Act required no separate authorisation and right-holders were not entitled to remuneration for retransmitted works. Reference was made to Section 134 of the Communications Market Act, which included the “must-carry” obligation. However, this obligation is currently found in Section 227 of the Information Society Code (917/2014), which entered into force on 1 January 2015. Similar arrangements covered Section 47 of the Copyright Act on the use of sound phonograms.

The new Section 25(i)(1) basically corresponds to the previous paragraph 1, with an updated reference: it provides a company offering a network service via cable network, which is used primarily for the transmission of television and radio programming and by a significant number of end users as their principal means of receiving radio and television transmission, the possibility of retransmission. The company may retransmit by wire for reception by the public a work included in a transmission referred to in Section 227 of the Information Society Code without any change and simultaneously with the original transmission.

The new second paragraph includes the author’s right to remuneration from the retransmitting company if the latter does not show that the remuneration has been paid when acquiring the transmission rights in question. If remuneration for the retransmission was not paid to right-holders directly by the transmitting organisation, it can only be paid via an organisation which represents authors of works used in Finland (paragraph 26(1)). The remuneration right persists for three years. These changes also cover Sections 45 (performer), 49 (database) and 49(a) (photographer) of the Copyright Act, since these include a reference to Section 25(i). Regarding Section 48 (transmission signal), the reference was limited to Section 25 I (1) (unless the transmission originates from another EEA state). In addition, Section 47 on sound phonograms and music videos was amended in order to reintroduce a remuneration right whereby producers and performers of recorded performances have the right to remuneration for retransmission. For remunerating retransmission pursuant to paragraph 25(i)(1), the retransmitting organisation is responsible if it does not show that a payment has already been

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made (paragraph 47(2)).

In Finland, the provision on the obligation to remunerate authors was abolished in 2005 by Act 821/2005, which took effect on 1 January 2006. The obligation to pay remuneration where there was a legal obligation to carry the content was deemed disproportionate from the point of view of the operator's fundamental protection of property. The compatibility of the Finnish provisions with EU law was, however, ultimately questioned. During the subsequent legislative process, the Finnish Constitutional Law Committee reassessed the situation in light of previous legislative amendments which had narrowed down the scope of "must-carry". It also took into account freedom of speech and pluralism, as well as the property right interests of authors. Remuneration was not found problematic. However, a clearer formulation of the provisions with a view to preventing double remuneration was deemed necessary.

Hallituksen esitys eduskunnalle laiksi tekijänoikeuslakin 25 i ja 47 §:n muuttamisesta (HE 305/2014 vp)

https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/he_305+2014.pdf

Government bill on amending Sections 25 1 and 47 of the Copyright Act

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