[DE] Draft copyright reform bill for Germany

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On 13 October 2020, the German *Bundesministerium der Justiz und für Verbraucherschutz* (Federal Ministry of Justice and Consumer Protection – BMJV) published a bill to adapt copyright law to the requirements of the digital single market. The bill mainly contains proposals for the implementation of Directive (EU) 2019/790 on Copyright in the Digital Single Market (DSM Directive) and Directive (EU) 2019/789 (the Satellite and Cable Directive, or SatCab Directive).

In particular, the bill contains a proposal for a *Urheberrechts-Diensteanbieter-Gesetz* (Copyright Service Provider Act – UrhDaG-E), which is designed to implement Article 17 of the DSM Directive and which regulates the platforms' copyright liability for content uploaded by their users, from which they can only be released if they meet specific due diligence obligations. These include the obligation to apply for certain licences to communicate protected works to the public. If protected content is not licensed and its use is prohibited, the service provider must remove or block access to it at the rightsholder's request. However, in the interests of users, the bill permits the use of protected works for the purposes of caricature, parody and pastiche, while limited minor uses for non-commercial purposes are also allowed if reasonable remuneration is paid by the platform. Video-sharing platforms must enable their users to label uploads as authorised uses in order to protect them from being immediately removed or blocked. Creators can claim remuneration directly from the platforms.

In relation to other provisions that were fiercely debated when the DSM Directive was adopted, the bill also contains proposals on the rights of press publishers. Such rules already existed in Germany, although they had been deemed inapplicable by the Court of Justice of the European Union (CJEU) (Case C-299/17) for procedural reasons after Germany had failed to meet its notification obligation. The bill again makes provision for remuneration to be paid to publishers by amending the German *Urheberrechtsgesetz* (Copyright Act – UrhG) and *Verwertungsgesellschaftengesetz* (Collecting Societies Act – VGG), with rules closely based on Article 15 of the DSM Directive.

Other amendments proposed in the bill concern the authorisation for text and data mining and cross-border education; extended collective licensing; amendments to copyright contract law; publisher remuneration; reproductions of works of visual arts in the public domain; and improvements to cross-border

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access to broadcast content for European civil society (the implementation of the SatCab Directive).

In addition to the provisions designed to implement EU secondary legislation, the bill introduces new rules in other areas: the CJEU's Pelham decision (*Metall auf Metall*) requires the amendment of domestic law (Germany's provision on "free use" in Article 24 UrhG is annulled), while the time limitation in the *Urheberwissenschaftsgesetz* (Act on copyright in education and research) has been removed.

The bill has not yet been approved by the other German governmental departments.

Entwurf eines Gesetzes zur Anpassung des Urheberrechts an die Erfordernisse des digitalen Binnenmarktes (Stand 2.September 2020)

https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/DE/Gesetz_Anpassung-Urheberrecht-dig-Binnenmarkt.html

Bill to adapt copyright law to the requirements of the digital single market (as at 2 September 2020)

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