[DE] Federal Cabinet adopts draft copyright reform act

IRIS 2021-4:1/11

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On 12 February 2021, the German *Bundestag* (lower house of parliament) adopted a draft act bringing German copyright law into line with the requirements of the Digital Single Market. The package, amending both the *Urheberrechtsgesetz* (Copyright Act – UrhG) and the *Verwertungsgesellschaftengesetz* (Collecting Societies Act – VGG), as well as introducing a new *Urheberrechts-Diensteanbieter-Gesetz* (Copyright Service Provider Act – UrhDaG), is primarily designed to implement the Directive (EU) 2019/790 (DSM Directive) and the Directive (EU) 2019/789 (Online SatCab Directive).

The most hotly debated provisions of the new legislation, which were also widely discussed in the run-up to recent EU copyright reforms, concern upload filters and the copyright liability of upload platforms. Enshrined in the draft Copyright Service Provider Act (UrhDaG-E), the relevant transposing provisions are closely based on the wording of the DSM Directive. They require service providers to make their best efforts to obtain the contractual rights to make copyright-protected works available to the public. If they fail to do so, they can be held liable for the (illegal) uploading of such works. The draft act also contains provisions on permitted uses (e.g. for quotations and pastiches), the remuneration of authors, and unauthorised uses that create the obligation for platforms to block content. In order to ensure that the use of automated processes does not result in content being unreasonably blocked, the uses covered by the draft that are presumed to be allowed, must not be blocked until a complaints procedure has been concluded. These include minor uses of works, which are defined in the act as film excerpts, motion pictures or audio tracks up to 15 seconds in duration, text containing up to 160 characters, and photographs and graphics up to 125kB in size. The UrhDaG-E also contains provisions on internal and external complaints procedures and out-of-court dispute resolution.

The legislative package also introduces a form of ancillary copyright for press publishers in order to protect the economic, organisational and technical performance of press publishers in creating press publications. The previous rules on this subject were declared inapplicable on technical grounds by the CJEU in 2019 (C-299/17, VG Media). Articles 87f to 87k of the draft Copyright Act (UrhG-E) contain new rules giving press publishers the exclusive right (and therefore also a licensing obligation) to make their press publications available to the public and

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reproduce them in whole or in part for online use by providers of information society services. However, these rules do not apply to private use by individual users, the insertion of hyperlinks to a press publication, and the use of individual words or very short excerpts from a press publication. Publishers' remuneration is also reorganised: publishers will once again be entitled to a share in remuneration for lawful uses, such as authorised private copying (Article 63a of the UrhG-E and Articles 27 to 27b of the draft Collecting Societies Act (VGG-E)).

The existing provisions of copyright contract law (Articles 32 *et seq*. UrhG-E) are also amended and collective redress is strengthened (Article 36d UrhG-E and extended collective licences, Article 51 VGG-E). The draft also contains rules on permission to use text and data mining (Articles 44b and 60d UrhG-E), digital and cross-border education, preservation of and better access to cultural heritage (Articles 60e, 60f and 68 UrhG-E), and, finally, the online distribution of television and radio programmes, e.g. through live streaming and media libraries (Articles 20b to 20d and 87 UrhG-E).

The legal limits on authorised use are also extended in relation to caricature, parody and pastiche. The use of works for these purposes is permitted as long as it is justified by its specific purpose (Article 51a UrhG-E). This change was introduced partly in response to the CJEU's judgment in the Pelham case (C-476/17), in which the provision of Article 24 UrhG (free use) was declared incompatible with EU law.

Entwurf eines Gesetzes zur Anpassung des Urheberrechts an die Erfordernisse des digitalen Binnenmarktes

http://dipbt.bundestag.de/dip21/brd/2021/0142-21.pdf

Draft act bringing German copyright law into line with the requirements of the Digital Single Market

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