initiative urheberrecht

Kreativität ist was wert.

Position of the German Authors' Rights Initiative

with regard to implementing the stipulations of Article 13 submitted by the Council and Parliament, that online content sharing services providers of the information society, which perform an act of communication to the public, are obliged to conclude fair and appropriate licensing agreements with right holders.

1. Commission, Council and Parliament stipulate in their wording of Article 13 that content sharing service providers must conclude contracts with right holders, i.e. authors, performers and owners of transferred rights and their collective management organisations or other authorised organisations respectively.
   This will be possible in many areas of music and film use with good will without any problems. This is especially valid since, in these work categories, numerous works are clearly identifiable by means of content identification (e.g. content ID), so that their use is traceable and thus the settlement of the agreed compensation for these uses is possible.

2. However, the licensing and billing of other types of works could be difficult, especially for works which are also fully uploaded or are only uploaded in parts (Parliament Article 13(2)) and for identification techniques of works, which are either not yet known or not yet sufficiently available, such as works of art and reproduced images of these works, press photos and literary works or parts thereof. Content sharing service providers could argue that the proposed licence purchase is impeded due to technical issues.

3. Another challenge for the licensing models is the use of parts of works or new works created through existing works that are freely available.

4. In order to avoid these problems, we consider it useful to adopt the proposal made by the Commission, the Council and Parliament in Article 9 in trilogues, namely to institutionalise a dialogue between the parties and thus contribute to solutions.

5. In addition, we support the proposal currently made by the Council in Article 9a to make use of "extended collective licensing". This will allow the conclusion of licensing agreements by established institutions or societies such as collective management organisations, trade unions and professional associations representing a large number of relevant authors, performers or right holders, who may enter into licensing agreements and thus close licensing gaps. These contracts will then extend to all relevant authors. These models have proven successful in Nordic countries in their pure state and are similar to procedures for settling claims to remuneration for legal private copying in other states, where laws or contracts ensure the responsibility of large and representative organisations to represent the large collective of right holders. Right holders who do not wish to join this "large collective" have the possibility to opt-out (Council Article 9a(3c)).

This proposal could also ensure that the licensing to use protected content by information society services providing automated image referencing, as proposed by the Council in Article 13b, operates at a contractual level.
Therefore, we propose to make this alternative mandatory in the trilogues so that conceivable licensing gaps be closed, or areas be covered that cannot otherwise be licensed efficiently.

6. The practical implementation could be agreed upon through the mediation of dialogue forums provided by the Commission, the Council and Parliament in Article 9, between the parties involved. Thus, it can be ensured that the conclusion of licensing agreements is guaranteed and possible in every conceivable case. Concerns that content sharing service providers might be forced to remove works for which no licensing agreements were concluded for their use (if necessary, by using automated techniques), are therefore completely redundant.

7. Thus, we are convinced that both individual licensing solutions and solutions based on Article 9a of the Council's decision jointly and in parallel, cover all conceivable uses of protected works on platforms.
It may therefore be appropriate to formulate a similar restriction following the pattern of existing restrictions, such as on private copying and payment of reasonable remuneration for communication to the public, to avoid licensing gaps and resultant problems for content sharing service providers.

The Authors' Rights Initiative will be happy to discuss this further with you.

Prof. Dr. Gerhard Pfennig

Berlin, 25th September 2018

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Initiative Urheberrecht (Authors' Rights Initiative)

The initiative comprises more than 35 guilds, organizations and unions, and represents the interests of about 140,000 authors and performing artists in Germany.

SAVE THE DATE:

19 November, 2018 - **6th Initiative Urheberrecht Authors' Rights Conference** - Academy of Arts Berlin