



ASSOCIATION LITTÉRAIRE ET ARTISTIQUE INTERNATIONALE

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14 January 2019

RESOLUTION OF THE ALAI BUREAU

concerning the 2019 Amendment of the Czech Copyright Act

The International Literary and Artistic Association (ALAI),

- noting the proposal of the Senate of the Czech Republic to amend the Copyright Act by introducing two new exceptions, namely:
 - o an exception to the public performance right where the works are used in establishments “where the performance has no economic value”;¹
 - o an exception to the reproduction right covering the reproduction on paper (executed by persons or businesses for their own use) of sheet music, where the author is anonymous, pseudonymous or for other reasons not known;²
- having learned that the Chamber of Deputies of the Parliament of the Czech Republic will decide about the admissibility of the proposal of the Senate in its meeting commencing on January 21, 2019;
- deeply concerned by the disregard of this proposal to the commitments of the Czech Republic under international and the European law;
- reminding the Government and the Parliament of the Czech Republic of the obligations of the Czech Republic arising out of the Berne Convention and other international agreements, such as the TRIPS Agreement, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty;

¹ § 23 of the Czech Copyright Act with the proposed amendment in bold: „*Performing broadcast of a work shall mean that the radio or television broadcasting of work is made available by means of a facility technically capable to receive such broadcasts. Making the work so available to patients to whom health care is provided in health care and medical facilities **and making it available in public establishments where it has no economic value**, shall also not be considered, within the meaning of § 18 Paragraph 3, as performance of broadcast.*“ Translation by WIPO LEX, edited.

² § 30a(1) of the Czech Copyright Act with the proposed amendment in bold: „(1) *Copyright is not infringed by reproduction of a work made on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of published sheet music **of which the author is known**.*

a) *by a natural person for own private use,*

b) *by a business undertaking (legal person or natural person) for its own internal use,*

c) *by any person, upon order, for private use by a natural person,*

d) *by any person, upon order, for own internal use by a business,*

provided that in cases under clauses (c) and (d) above the remuneration is timely paid in accordance with §25.“

- drawing the attention of the Czech Government and the Czech Parliament to the closed list of allowed exceptions under the European Union Directive on the harmonisation of certain aspects of copyright and related rights in the information society;
- stating that the factor of the absence of “economic value” is not decisive in assessing the admissibility of an exception; and
- stating that the factor of knowledge of the identity of author is irrelevant with the exclusive exception of the cases mentioned in the European Union Directive on certain permitted uses of orphan works, under very strict conditions that the exceptions in the amendment do not meet;

urges the Government of the Czech Republic and the Parliament of the Czech Republic not to adopt the Proposal as it would evidently contradict the international law and the European Union law.

Brief Explanation:

The Proposal contains two different measures.

Under the first one, the author’s right of communication to the public would be limited to those instances, in which an undertaking is communicating the work (by means of radio or television) to its customers, provided that such communication has economic value for the user. This is in contradiction to international and European copyright law which since its origin provides protection to authors notwithstanding whether the use of the work is commercial or non-commercial or whether it has economic value for the user or not. In other words, the use of the work shall be authorized by the author not only in cases where the use has obvious economic value for a business establishment (such as a pub, restaurant, hair salon, gym etc.), but also where the use is not primarily commercial, unless specific exceptions apply (such as illustrative use for teaching).

The second measure seems to tackle the problem of orphan works. Nevertheless, this cannot be done by disregarding the rules of the international and European copyright law. The author might be unknown for many different reasons, including his or her will to remain anonymous or to publish the work under a pseudonym and the copyright law contains instruments how to deal with such situations (e.g. representation of the author by the author’s publisher). Where the author of the work cannot be identified or found, and the work remains orphan, the national law may provide a solution through collective management of rights – it is our understanding that the Czech Republic has already introduced such a system for clearance of rights in orphan works. Furthermore, the Directive on the harmonisation of certain aspects of copyright and related rights in the information society expressly excludes sheet music as a whole from the scope of this exception.

ALAI, the International Literary and Artistic Association, is an independent learned society dedicated to studying and discussing legal issues arising in connection with the protection of the interests of creative individuals.

Founded in 1878 by the French writer Victor Hugo to promote the international recognition of the legal protection of authors for their intellectual work, ALAI fulfils its purpose by fostering the wider international dissemination of works so as to enrich the heritage of humanity. This objective was initially achieved at the end of the 19th century with the adoption of the Berne Convention for the Protection of Literary and Artistic Works. Since then, ALAI continues to play a key role in the preparation of international legal instruments related to copyright and performers' rights, specifically by organizing congresses and study days dedicated to the in-depth analysis of every aspect of copyright.

For more information about ALAI please visit our webpage: www.alai.org.