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Amendments to outdated copyright legislation

The massive digitalisation of society has given rise to the need to amend legislation to accommodate the requirements of the new digital era. After years of relatively outdated copyright legislation in the Slovak Republic, an amendment to the Copyright Act was adopted and will come into force on November 1 2013.

The amendment simplifies the entire process of obtaining licences to use works. The main difference to the original legislation is that a licence agreement can be concluded by setting out only a minimum of particulars, which are:

- the manner in which the work will be used
- the scope of the licence being granted
- the time period for which the licence is granted
- the contents of the licence agreement or a reference to the terms and conditions of the licence
- the licence fee or the manner in which it will be determined

By laying down a minimum of particulars necessary for a licence agreement to be valid, the rigidity established by the prior Copyright Act, according to which a licence agreement had to contain the mandatory particulars, has been removed. Any absence in the former fixed particulars caused the invalidity of the agreement, and countless lawsuits.

The contracting parties will have room to agree on the terms and conditions most suitable for them. The agreement will be valid even if it does not contain

one of the stated particulars. Because an increasing number of licence agreements are being concluded over the internet, the amendment to the Copyright Act offers the possibility of granting public licences. From November of this year, by unilateral act, authors will be able to present an offer to an indefinite number of recipients to conclude a licence agreement. Any party who is interested need only demonstrate consent by any action from which it is apparent that they consent to the terms and conditions of the agreement, with no need to notify the author.

This is the form in which agreements are concluded, for instance, when a person downloads photographs from the internet. The licence agreement is concluded once that person has downloaded the photograph onto their computer. A public licence, however, can only be concluded as non-exclusive, and when the licence is granted this way the author retains the right to grant the licence to others; this licence is granted for free.

Under the new legislation, licence agreements do not need to be in writing. The mandatory written form has been retained for granting exclusive, mass or collective licences.

The content of the licence agreement can now be laid down by simply referencing the licence terms and conditions of which both parties are aware, or which were available at the time the agreement was concluded. Consent to the licence terms and conditions can be manifested, for example, by clicking on an agree button (click-wrap licence).

This is different to purchasing a CD or boxed software, where the licence agreement is concluded when the buyer tears open the package in which the merchandise is sold (shrink-wrap licence).

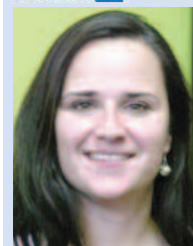
The amendment to the Copyright Act also accounts for the rapid progress being made in science and technology, and art, and it allows a work to be used in a



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manner unknown at the time the licence agreement was concluded. The user is no longer limited in the possibilities for use of the work to those known at the time the licence was granted.

The new Copyright Act also introduces changes in the governance of rights related to or associated with copyright, particularly the rights of performing artists and producers of sound recordings. Under the new legislation, instead of 50 years of protection, such performing artists and producers are afforded 70 years of protection, if during a period of 50 years from the time of their artistic performance a sound recording of that performance is published or it is first publicly broadcast. In addition, performing artists will also be entitled to royalties each year to the amount of 20% of the revenues earned from the use of recordings of their artistic performance in the prior year, but only after the 50th year from the first authorised publication or the date on which it was publicly broadcast.

The greatest objective of the amendment is to adapt governance of copyright and related rights to the ever-expanding digital sphere in all areas of art, in order to ensure not only the easiest access to and distribution of those works, but also to provide ample protection to authors and their legitimate interests. Only time will tell whether the amendment will live up to its expectations. One thing is certain, though – this represents a significant advancement in copyright law in the Slovak Republic.

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