German reform on the use of copyright protected works in the fields of education and research will come into force soon

German Copyright Blog
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Introduction

On 30 June 2017, the German “Bundestag” adopted the “Act to Align Copyright Law with the Current Demands of the Knowledge-Based Society” (Kultusministerium, 2017). It essentially reforms the terms of use of copyright protected works in the fields of education and research and will come into force on 1 March 2018.

This new act attempts to address the repeated critiques of German Copyright Law, concerning its inflexibility for new technological solutions and its complex structure, which makes it difficult to understand for the layperson and complicated to apply.

Therefore, in order to make the provisions easier to understand, the statutory permitted uses of protected works, for which the prior consent of the author is required, have been structured in new articles, each of which addresses a different category of uses or different forms of use of the protected works. Nevertheless, the specific issues of remuneration for the permitted use and the relationship between statutory permitted uses and licensing agreements are, for their part, also governed separately (sections 60g and 60h of the German Copyright law).

Finally, section 60c of the German Copyright Law introduces a new permission, enabling text and data mining for the purpose of scientific research.

The Act is divided in two parts:

Part 1: New Definitions

First, the previously undefined specifications of the permitted amount of a work that could be used, e.g. “small parts”, have been replaced by definite percentages in order to achieve gender legal certainty.

Thus, up to 15 percent of a work may now be reproduced, distributed and made accessible to the public for the purpose of non-commercial scientific research. In addition, for personal scientific research, the part which may be reproduced amounts to 75 percent. Moreover, restrictive explicit references to means of communication, such as by mail or fax transmission or “inaccessibility as physical data” have been removed.

Another novelty is the permission for illustrations, individual contributions, other small-scale works and out-of-print works to be used for the purpose of teaching and scientific research.

Libraries, archives, museums and educational establishments shall now be allowed to reproduce works from their collections or exhibitions, including even films and works with technologically necessary changes, provided that they don’t, explicitly or implicitly, serve any commercial purpose. Unlike before, even archiving will be possible if the original work is not part of the establishment’s own collection. For the purpose of teaching, reproductions of works may also be distributed to other libraries, archives, museums of educational establishments, including Internet works, copies of newspapers, and out of print or damaged works.

Libraries are to make a work from their collections available to the public for personal research or private study of terms on their premises. Libraries may further make works, for non-commercial purposes, to reproduce up to 10 percent of a work per session and to make reproductions of individual illustrations, contributions from the same periodical or scientific journal, other small-scale works and out of print works to respond to individual orders, reproductions up to 10 percent of a published work and reproductions of individual contributions from professional or scientific journals that are indispensable to digital research.

Moreover, the German National Library shall be allowed to archive all cost-free online content that is not permanently accessible online, for example legacy works.

The initial bill stated that any online content could be archived by the German National Library and made accessible to users. This approach was strongly criticized by major German newspapers (e.g. Frankfurter Allgemeine Zeitung – FAZ), who feared for their economic interests. Thus the bill was later amended by the German Bundestag to provide that press products shall be excluded from the German National Library’s archives provided that such press products remain regularly and permanently accessible.

Furthermore, for the purpose of scientific research, a new permission has been introduced in order to enable text and data mining (section 60d of the German Copyright law) by enabling electronic enabling electronic means, such as “by mail or fax transmission” or “exclusively as graphical data” have been removed.

Concerning the relationship between statutory permitted use and licensing agreements, the new law provides for the predominance of the statutory permitted use, and in addition, a licensing agreement on the use of works from the same professional or scientific journal, other small-scale works and out of print works to respond to individual orders, reproductions up to 10 percent of a published work and reproductions of individual contributions from professional or scientific journals that are indispensable to digital research.

Concluding Thoughts

Lastly, the choice of regulatory model can be examined. The suggestion of increasing the scope for new technological solutions by a general clause or flexible clause combined with precisely regulated specific situations has not been accepted. Instead, the government has insisted on legal certainty, opting for only precisely regulated specific situations. The introduction of the flexible clause instead of the text and data mining permission in the German Copyright Act shows an attempt to future-proof the German Copyright Act for the digital age, despite the specific issues of remuneration for the permitted use and the relationship between statutory permitted uses and licensing agreements are, for their part, also governed separately (sections 60g and 60h of the German Copyright law).

Please refer to this post as:
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