RESUMÉ

Pavel KOUKAL

Protection of the Results of Creative Intellectual Activity in the Charter of Fundamental Rights and Freedoms of the Czech Republic

The aim of this paper is to analyze the constitutional background of the protection of the results of creative intellectual activity in the Czech Charter of Fundamental Rights and Freedoms. We will pay attention to the analysis of Art. 34 (1) of the Charter of Fundamental Rights and Freedoms, trying to explain why we regard it as a "mosaic principle". This means that even though we can apply this provision directly [Art. 34 is not included in the list of rights mentioned in Art. 41 (1) of the Charter of Fundamental Rights and Freedoms of the Czech Republic], we must take into account also other constitutional principles such as protection of personality, protection of the property, freedom of artistic expression etc. In this context, the author of this paper emphasize that the Art. 34 (1) of the Charter of Fundamental Rights and Freedoms should be seen in the light of the international obligations of the Czech Republic. He also explains why we should interpret the Art. 34 (1) of the Charter of Fundamental Rights and Freedoms of the Czech Republic in the context of personhood not the utilitarian theory of the intellectual property protection. The personhood approach to the copyright protection, which is based on the Art. 15 (1) c) of the International Covenant on Economic, Social and Cultural Rights, originates in the German doctrine (Kant, Fichte), and from the constitutional point of view is based on the self-realization and self-identification of an individual. The right to protection of privacy concerns not only the protection of the "inner circle", where an individual can live his or her personal life and exclude from it the entire outside world not included in this choice, but also the right to create and develop relationships

with others people and the outside world. The protection of personality in the Charter of Fundamental Rights and Freedoms of the Czech Republic is governed, in particular, by Art. 10, the purpose of which is to provide space for the development and realization of the human personality. In the so-called informational self-determination (Art. 10 (3) of the Charter of Fundamental Rights and Freedoms), the author decides, in particular, whether his work is captured in a tangible form (i.e., whether the work leaves the author's "inner world"). After the creation of the work, the author determines whether his work will be published at all (Sec. 11 (1) of the Czech Copyright Act), whether it will be published under his real name, under the pseudonym or whether the author remains anonymous (Section 11 (2) of the Czech Copyright Act).

Petr PRCHAL
Balance and external limitations of copyright protection in the digital environment

The paper deals with the understanding of the importance of balancing in author's right in the digital age and the related issue of the significance of the proportionality test. It analyzes in more detail human rights, consumer protection, freedom of expression and the protection of competition as an external restrictions of copyright. Based on an analysis of selected external limitations of copyright, we have come to the conclusion that human rights can provide a teleological basis for judicial interpretation of internal restrictions on copyright, especially exceptions and limitations. The use of a work for personal use and the right of access to information can indirectly affect consumers' interests, but not a way of free and free access to protected works, in terms of proportionality between copyright and consumer protection.

Branislav HAZUCHA
Licensing Agreements and the Distribution of Copyrighted Works through the Internet

The last few decades are characterized by the emergence of new ways for distributing copyrighted works. Contrary to the traditional distribution of copyrighted works which is based on tangible media, the new ways dematerialize distribution and employ digital communication networks. In addition, various contractual arrangements are used by copyright holders in order to strengthen their control over the uses of copyrighted works by consumers. These changes in distribution of copyrighted works question the foundations, upon which its traditional ways have been based, and especially the future of so-called secondary markets with copyrighted works in the digital virtual environment. This Paper thus examines the current law and case law concerning the relationship between licensing agreements and exhaustion of rights. It also analyses the views of concerned stakeholders and scholars on the role of the exhaustion of rights in the digital environment. Furthermore, the consumers' attitudes towards contractual limitations on their possibility to resell legally acquired copies of copyrighted works on secondary markets are scrutinized.

Zuzana ADAMOVÁ
Copyright in the EU from the Perspective of the Copyright Directive Proposal

The subject of this article is to evaluate current European legislative development in the field of copyright. The attention is focused on most important parts of the Copyright Directive proposal, i. e. exceptions and limitations, out-of-commerce regime, extended collective licenses, new exclusive publisher´s right, and responsibility of online platforms. In the first part of the article, three exceptions and limitations are presented, however only the new exception for text and data mining is addressed in more detail. Regarding the out-of-commerce regime, the fo-

cus is mainly on the comparison of the proposed European regulation and the current Slovak regulation, which is already above-standard. The same applies to collective licensing with an extended effect. The Slovak legislation has already been criticized in the past in this regard, although the proposed regulation partially addresses the criticized problems. Next part of this paper is dedicated to the critics of the new exclusive publishers´ right proposal (Article 11) and the new regulation of online platforms responsibility according to Article 13 of the proposal. Although these platforms do not themselves use protected content, they can often generate big value, too. Currently the authors and other right holders may apply a notice-and-take down to prevent the use being made. However, the proposal introduces new obligation of platforms to contractually negotiate the rights of their holders and alternative duty to prevent the use of works and other subject matters on platforms. The Article in general draws attention to quality of European legislative process and the overall change in copyright concept as we know today.

Richard BEDNÁRIK
Data Access and Creative Commons Licenses

Data might be considered as one of the most important assets of today's society that can greatly support the creation of new services and the emergence of new business entities. The question remains how the data might be used and how to support their wider usage. Creative Commons licenses are already a traditional tool in the field of culture used by a number of authors to disseminate their work, which might be effectively used to make databases available as well. The very question of choosing a license is a partial topic the determinant of which is the decision, respectively legal obligation, to make the database available. Account should also be taken of the economic impact of making the database available in connection with the activities of the database maker. In some cases, free database access may negatively affect prima-

ry business activities. The article analyses various aspects of data access from the private and public sector viewpoints and the role of Creative Commons licenses. Especially in the area of state and public administration, this area is significantly affected by legal regulation and activities in the area of Open Government Partnership and Opendata. The request for information and the right to re-use of public sector information are legal instruments in the hands of the public that might be used to gain access to data generated from public funds. However, even in this area Creative Commons licenses might be used at least to reduce the number of applications and to remove the administrative burden.

Marianna NOVOTNÁ
Accountability of Damage Caused by Autonomous Systems

Right now, we stand on the brink of a technological revolution where we don't have fully autonomous systems „on the road" yet, but where we know, they will be introduced at some point of time into the marketplace. These systems will have the capacity to act completely autonomously, independently of direct instructions of their creators and independently of the human will of their users.
This article examines potential risks, new threats and legal vulnerabilities associated with the phenomenon of technological autonomy and focuses on how the legal questions related to autonomous systems can be addressed in terms of the current legal framework. The consideration whether existing liability rules of "traditional" tort law will be up to the task of assigning liability for any wrongful situation accountable to autonomous systems shows that to some point, the concept of standard of care based on fault liability and the concept of strict liability of producers and holders of autonomous systems will lead to deficiencies in the risk distribution and in the process of accountability of liability.

Michal ČERNÝ

Use of Collective Trademarks or Certification Trademarks for Designation of Services with Special Characteristics - Instead of Designation of Origin or Geographical Indications

Collective trademarks and certification trademarks may be used for products or services – collectively referred to as 'new technologies' - for a similar purpose which ensures for other products designations of origin and geographical indications. From the point of view of the appropriateness of legal regulation and possible uncertainties, it is more appropriate to use EUTM, either collective EUTM or certification EUTM. Appropriate content of the regulations for use of collective trademark / certification trademark can be achieved by binding the material conditions of the products and / or services (including their verification by another authority different from the competitor), which is basically the same as the verification of the specification. However, the national collective mark (in the Czech Republic) cannot be recommended in view of the strict requirements of the legislator for the conclusion of the agreement on use of collective trademark.

If it is a choice between the national (Czech) certification trademark and the certification EUTM, again, for the sake of legal certainty, it is possible to recommend certification EUTM for the absence of a requirement for public law authorization to perform the certification activity. While in the case of a national application the absence of such authorization will be problematic already and it may be a reason for rejecting a national application, in the case of certification EUTM the absence of an authorization for certification service will be not examined at all (by EUIPO).