RESUME

Branislav Hazucha

Private Copying: New Views on the Traditional Problem

Although private copying existed even at the time when the first modern copyright laws were adopted, its relationship with copyright law has significantly changed over time. The causes of these considerable changes were the broadening of the scope of copyright protection and the introduction of reproduction technologies which allowed the general public to make copies of copyrighted works instantly, cheaply and in high quality. The outcome of all the changes is a quite negative approach of copyright law and policy towards private copying. This Paper questions several established premises upon which the current caselaw of the Court of Justice of the European Union on private copying is based. It shows that its foundations are difficult to substantiate by sound and reliable evidence provided by empirical studies. Contrary to those premises, empirical studies suggest mutually beneficial relationship between private copying and the commercial exploitation of copyrighted works by the right holders. In addition to analyzing recent empirical studies, the results of online surveys conducted in four countries with major economies (*i.e.* the U.S., China, Japan and Germany) are presented. They allow to better understand the copyright users' habits, reasons and attitudes with regard to private copying.

Petr Prchal

Trends in Exceptions and Limitations in Czech Copyright Law

The paper deals with development tendencies in the area of exceptions and limitations in copyright in the Czech Republic. It analyzes in more detail the historical development of exceptions and limitations, their

possible categorization and current case law. In the last part the author presents the expected future development in this area. Legislation on exceptions and limitations varies globally from one legislation to another and is not uniform across the EU Member States. The number of exceptions and limitations, their types, and the specific differences given by the different legal system or tradition of each country differ. The author hopes that the conclusions and considerations in question will help to change the approach to the issue of exceptions and limitations to copyright protection and, in particular, to deepen the debate on this subject matter.

Renáta Bačárová

Contradictory Interests of Copyright Entities as a Reason of Copyright Conflicts in The Digital Single Market of the European Union

The Copyright Directive introduces several changes apply to many copyright entities. It introduces new exceptions and limitations in copyright related to the text and data mining for the purposes of scientific research, use of works and other subject matter in digital and cross-border teaching activities and the making of copies of works and other subject matter for preservation of cultural heritage. Beneficiaries in this case are research organizations and cultural heritage institutions whose interests are superior to interests of authors or copyright holders. We also consider it essential to resolve the conflict between the economic interests of publishers of press publications and interests of information society service providers. Although critics talk about the introduction of so-called link tax, setting a fair remuneration of publishers for the use of digital content could lead to a consensus among stakeholders. It is questionable how award of a share of the remuneration to publishers is reflected in the income of the authors who gave a license for publishers. Article 17 of the Copyright Directive appears to be the most problematic from the perspective of balancing the interests of digital single market players. There is a primary responsibility of online content-sharing service providers for user-uploaded content by reason of

performs an act of communication to the public or an act of making available to the public. The issue of monitoring the content provided is also linked to the liability regime, although the Copyright Directive explicitly excludes the introduction of a general monitoring obligation. If the provider of an information society service wants to avoid liability for illegal content, it will have to take some precautionary measures. We perceive the vague of terms as problematic in the implementation of the Copyright Directive in the legal systems of EU states.

Lucie Straková

Creative Commons and the Collective Management

Public licenses, especially Creative Commons, are on the rise. This is partly due to pressure from users and partly due to the real need for such a tool. The current legislation allows granting of rights not for the purpose of direct or indirect profit even if the rightholder is represented in the contractual collective management regime. The legislation also allows granting the rights free of charge in specific cases of extended collective management. In our opinion, public licenses are the concept that utmost illustrates the paradox of copyright development. The model that had to be developed in order for the rightholder to be entitled to grant the right to use the subject matter of protection simply and free of charge has finally been subject to appropriate legislation. The article discusses the potential benefits and problems of the new regulation.

Lucius Klobučník

Fragmentation of Rights for Online Use of Musical Works and its Impact on Collective Management Organisations in Smaller EU Member States

The first decades of the 21st century have introduced significant changes in the licensing landscape for online use of musical works.

These changes, either legislative- or market-driven, were prompted by technological developments allowing consumers to enjoy access to large amount of musical works at a time and at a place of their choice. Traditional licensing mechanism, based on territorial monopolies of collective management organisations, proved unfit for online music service providers who had to obtain a licence from a collecting management organisation in every single EU Member State in order to provide their service EU-wide. Unfortunately, ongoing shifts in the online music licencing market have not sufficiently facilitated access to licences for online music service providers, but merely transformed the existing territorial fragmentation of rights into repertoire- or licensor-based fragmentation. This article examines the underlying legislative and market-related reasons for rights fragmentation in the online music licensing market. It gives an overview of characteristic features of multiterritorial licences for online use as well as technological and financial burden connected with administration and issuance of these licences. This article provides a closer look on the functioning of licensing hubs and other new licensing entities active in the multiterritorial online licensing market as well as legal questions surrounding these entities. Particular attention is devoted to collective management organisations from small EU Member States, which are usually not able to administer and issue multiterritorial online licences on their own but have to cooperate with these licensing entities. This article evaluates the role of small collective management organisations – such as the Slovak SOZA - in the online music licensing market, analyses the existing and possible cooperation with licensing hubs and other larger licensors and aims to predict the fragmented licensing market's impact on repertoires they represent.

Zuzana Adamová

New Legal Regulation of the Television Broadcasting on the Internet

Broadcasters have traditionally focused on distributing linear content. However, as the internet grew, a number of new non-linear services

have emerged, that have gained importance as well as consumer acceptance. The users decide for themselves what they want to watch, when, where and on which device. Consider services, such as, simulcasting, webcasting, TV catch-up services that allow one to watch programs based on one's preferred timing choices, different types of on-demand video services, among others. This, in turn, brings with it a number of new challenges, in particular, relating to the settlement of rights to the content in use and its subsequent use. The new directive on online broadcasting and retransmission seeks to address these challenges, albeit only in relation to partial issues. This includes, in particular, the application of the country of origin principle to supplementary online broadcasting services, cross-border retransmission of programs, and direct injection of programs. The case-law of the Court of Justice on broadcasting and the content covered by it is relatively rich and, on the whole, appears to be largely for the benefit of authors and other rightholders. The secondary use of protected content in the form of public transmission usually runs into the concept of a "new public", which entails the need to settle the rights individually, collectively, or even a combination of both. In practice, therefore, particular attention should be paid to the proper settlement of rights in order to ensure legal certainty and the balance of interests.

Zuzana Vlachová

Limitations of the Law Applicable to Contractual Obligations Related to Transfers of Intellectual Property Rights in Case of Employment Creations

The purpose of this paper was to examine the limits of the law applicable for contracts in the field of private international law related to intellectual property rights (licensing contracts or transfers of intellectual property rights) in situations, where the intangible assets are created by employees within the employment relationships, which nowadays also often include cross-border elements. These situations are on the one hand closely connected with the intellectual property

law but on the other hand also with the labour law, so it is necessary to define the scope of application of these two laws, especially regarding the question of the initial ownership of intellectual property rights. Although opinions on this issue differ, it appears that law of the country of protection *(lex loci protectionis)* always has to be considered in these relationships, both in field of copyright and industrial rights. Thus, the employment contracts shall be drafted carefully respecting the possible future dispositions with the intellectual property rights, mainly to increase predictability and legal certainty not only within the employment contract, but also in the prospective contracts with the third parties.