RESUMÉ

HAZUCHA, Branislav
Role of Courts in Regulating New Technologies by Copyright Law: New Forms of Transmitting TV Broadcast on the Internet

The beginnings of the current regulation of protecting author's and neighboring rights on the internet are closely linked to the commencement of the internet's commercial use for the dissemination and communication of copyrighted works to the public. On the international level this regulation was adopted by the so-called WIPO Internet Treaties of 1996 and recently broadened to audiovisual performances by the Beijing Treaty of 2012. Most of developed countries adopted their national laws in this area in the late 1990s and the early 2000s. After more than a decade the courts in many jurisdictions embark on solving the problems arising during the application of this regulation to completely new technologies, which were not foreseen by the lawmakers during its drafting. Courts therefore often face the questions of how they should respond to newly emerged situations. This Paper examines three possible ways of courts' approaches to the application of current legal norms in the field of copyright law to new technologies. It also inquires into their impact not only on new forms of transmitting television broadcasting via the internet in the narrow sense, but also on various new ways of using copyrighted works and on the development of new technologies and online services. In this regard, an array of approaches adopted by the courts in France, Germany, Japan, Singapore and the United States of America is scrutinized.

KOUKAL, Pavel
Direct Applicability of the Berne Convention and Communication of the Work to the Public

The author in this paper analyses selected decisions of the Supreme Court of the Czech Republic, which cover the interpretation of Sec. 23 of the Czech Copyright Act. In these decisions the Supreme Court held, that the Berne Convention for the Protection of Literary and Artistic Works is directly applicable under Art. 10 of the Czech Constitution. The author concludes that the Berne Convention can be directly applicable only for other right holders than authors from the country of origin of the work and criticizes the case-law of the Czech Supreme Court. Furthermore, the author finds that the Art. 11bis par. 1 of the Berne Convention cannot be directly applicable at all, since the second paragraph of the Art. 11bis provides that conditions for the exercise of the right to communication to the public are to be determined by the national law. In this paper author also addresses the issue of "foreign treatment clause" and discusses permissible forms of discrimination of domestic authors in comparison with foreigners. The author is of the opinion that the state can treat its own nationals differently, but the different treatment cannot be arbitrary. Unequal treatment of domestic authors, who according to the Berne Convention may hold lower level of the protection than foreign authors, can be avoided by the interpretation which takes into account the indirect influence of the Berne Convention. This means that the Sec. 23 of the Copyright Act is interpreted in such a way that fulfils international obligations of the Czech Republic. When interpreting the second sentence of the Sec. 23 of the Copyright Act, the interpreter should bear in the mind that copyright is in this provision not limited due to a conflict with the right of healthcare providers to conduct business activities (Article. 26 of the Charter of Fundamental Rights and Freedoms), but with regard to citizens' right to free health care conducted on the basis of public health insurance (Art. 31 of the Charter of Fundamental Rights and Freedoms). For this reason the adequate remuneration, which the author of the work should be entitled to pursuant to Art. 11bis par. 2

of the Berne Convention should be paid primarily by the patient and the remuneration should be satisfied primarily from the public health insurance.

ADAMOVÁ, Zuzana
Support of Culture, Education, Science and Industry through Copyright

This paper provides an analysis of different functions of copyright within the public interest. Copyright may help to support both the culture and creativity, sustain economy and creative industry, research and development, education, and innovations. However, these functions may be realised only if the Copyright is properly balanced and if it takes into account the needs of all parties. The last few years have seen many discussions on Copyright reform and today the necessity for it is even stronger and more urgent. The current Copyright law neither suits the needs of the authors nor the expectations of users. In this paper, selected instruments and procedures on how to achieve these objectives were introduced. Exceptions and limitations of Copyright have an important and invaluable role to play when discussing the balance of Copyright. While modern trends and academic positions prefer different attitude, the CJEU repeatedly stressed that exceptions and limitation have to be interpreted strictly as it is a derogation from the general rule of the exclusivity of rights (*Infopaq*, *Football Association Premier League*). However the Slovak legal attitude is not in accordance with the European law as it does not provide autonomous and coherent application of European law (*cf.* e. g. *TV Danmark*). Therefore, it is suggested to review this attitude and not to create obstacles for legitimate use of Copyright works in the field of culture, (creative) industry, research and science and education.

ŠKREKO, Anton

Private Use of the Protected Authors´ Work in the Scope of the Current Ruling of the Court of the European Union

The protection of authors´ rights (copyright) is one of the key stones for the cultural diversity and stimulates what we call the Creative Economy. The legal concepts dealing with the enabling (the permission for) the general public to use the protected subject matters without the need to gain the consent of the author (the license) is immanent part of the copyright rules (so called exceptions and limitations). The Court of the European Union (the Court) recently decided the case C-435/12 (ACI Adam) dealing with the application of the limitation ruled in Art. 5(5)(b) of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society. The directive rules the limitation to the reproduction right in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation. The judgement says that the EU law, in particular Article 5(2)(b) of Directive 2001/29/EC read in conjunction with paragraph 5 of that article, must be interpreted as precluding national legislation, which does not distinguish the situation in which the source from which a reproduction for private use is made is lawful from that in which that source is unlawful. The present judgement – that is analysed in this article – gives the bright perspective for the national legislation in the field of the reproduction limitation of the copyright. Unlawful source used for reproduction shall not be allowed as the source for the application of this copyright limitation no more. It means that if somebody downloads the protected content from the unlawful source (the source made by breaching the copyright, i.e. without consent of the author), the reproduction limitation shall not apply and one commits the copyright breach. This conclusion emanates from the application of the current EU law using the principle of the fair compensation and three-step-test. Despite the different interpretation of some contexts author of this article comes to similar findings as the Court and at the

very end opens some issues closely connected to the findings and conclusions on the current interpretation of the reproduction limitation.

BEDNÁRIK, Richard
Public License as a Support Tool for Creativity

Public licenses have become a widespread tool, which enables legal use and dissemination of protected content. Traditional copyright system is not suitable and adapted to the digital environment and inconsistent interpretations of certain provisions of the Copyright Act caused many problems in practice. Creative industry is an integral part of the economy of each state and is directly related to the various forms of inspiration. This paper aims to explain the issues related to the Creative Commons licenses as the most widely used type of public license, including the identification of major changes incorporated into the text of version 4.0. Important is to draw attention to the different areas of their use such as inspiration for further work, the proliferation of open educational resources, research dissemination and further spread of different kinds of software. Re-use of public sector information might be included in the above mentioned examples where public licenses can serve as an effective tool to disseminate datasets or different content generated by the public sector.

ABELOVSKÝ, Tomáš
The Importance of Copyright Protection

The subject-matter of the presented discussion paper is an analysis of the crucial precedents, decisions in cases of Millar v. Taylor of 1769 and Donaldson v. Becket of 1742 from the period of the publisher war in the English legal system. The paper aims to describe the shift in thinking which has paved the way for the emergence of the modern

English copyright law and also brought interesting ideas about the necessity of the copyright protection which are still very actual in current information society. It can be stated that the story of English booksellers war showed a remarkable shift in thinking which is still crucial for the current copyright law problems. Regardless of the accuracy and coherence examined decisions, the case law has paved the way for the emergence of modern English copyright. It has helped to stabilize differences between the institutes such as "the first ownership" and "authorship". These principles represent a major economic and pragmatic feature of English copyright which is still actual in the light of new technologies.

SAMEC, Martin
Net Neutrality Principle

The author of this article tries to explain the term "net neutrality". In the article opening there is a description of the origin of the Internet. The term net neutrality stands between two branches of science – law and technical studies, so it was necessary to describe the technical view of the issue in order to bring the topic closer also to non-technical readers. Three main subjects of web communication are described in this part. Subsequently, the author focuses on slovak legislation and remarks to the local cases where is the net neutrality violated. There is a remark of absence of the net neutrality legal definition in our country but author focuses on other legal regulation which can guarantee neutrality of the web. In the next chapter of the article, the author focuses on possibilities of legal regulation of the access to web pages containing illegal content. The difference between legislation of the European Union and the USA is also in attitude to the web neutrality. Internet providers of the US can regulate internet connection speed and this connection can be considered as commodity. In Europe, there is tendency that internet providers have to provide the equal internet access speed to everyone and to every website. Only Slovenia and the Neth-

erlands have net neutrality regulated in their legal systems. Author shortly describes situation in the Netherlands and also reasons why legal acts guarantee neutrality of the web in this country. The issue is also related to a decision of the Court of Justice of the European Union which has ruled that limiting of access to some web sites with illegal content can be ordered by judgment. In the end of the article author focuses on possibilities how to keep web neutrality and why is important to do that.