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National Legislation

FINLAND

I

Act Amending the Act Relating to Copyright in Literary and Artistic Works

(No. 897, of December 19, 1980) *

In accordance with the decision of the Parliament, § 11, § 45, third paragraph, § 46, second paragraph, § 48, third paragraph, and § 49, second paragraph, of the Act (404/61) Relating to Copyright in Literary and Artistic Works, issued on July 8, 1961, ¹ are amended, and a new § 11a, new first and second paragraphs to § 54, as amended by the Act (648/74) issued on July 31, 1974, ² and a new § 54a are added as follows:

§ 11. Anyone may reproduce in a few copies a disseminated work for his private use. Such copies may not be used for other purposes.

It is also permitted to engage an outsider to reproduce copies which are intended for the private use of the party ordering the copies.

What is provided in the second paragraph shall not concern the reproduction of musical works, cinematographic works, useful articles, sculptures, or the copying of any other artistic work by artistic reproduction.

The provisions of this Article shall not concern the construction of architectural works.

§ 11a. Anyone who has received authorization, from an organization representing a large number of Finnish authors in a certain field, to reproduce published works by photocopying or analogous methods of reproduction shall also have the right to reproduce by the same methods published works of the same field the author of which is not represented by the organization. The conditions determined in the authorization shall be observed in the case of such reproduction.

Whatever the organization referred to in the first paragraph may have stipulated regarding the distribu-

tion of compensations to be paid for the reproduction to authors represented by the organization, or regarding the use of such compensations for the joint purposes of the said authors, shall also be applied to authors who are not represented by the organization.

If the stipulations issued by the organization and referred to in the second paragraph do not provide, for the authors represented by the organization, the right to individual compensation, an author not represented by the organization shall, however, have the right to demand such compensation. The compensation shall be paid by the organization which has given the authorization referred to in the first paragraph. The right to individual compensation shall, however, have expired if a claim concerning it cannot be proved to have been presented within two years from the end of the calendar year during which the reproduction has occurred.

§ 45.

The provisions of § 3, § 11, first to third paragraphs, § 14, first paragraph, §§ 17, 20 and 21, § 22, first paragraph, §§ 27 to 29 and §§ 41 and 42 shall apply to the recording, broadcasting and communication of a performance mentioned in this Article.

§ 46.

The provisions of § 11, first to third paragraphs, § 14, first paragraph, §§ 17 and 21 and § 22, first paragraph, shall apply to any act which under the first paragraph requires the consent of the producer.

§ 48.

The provisions of § 11, first to third paragraphs, § 14, first paragraph, §§ 17, 20 and 21 and § 22, first paragraph, shall apply accordingly in the cases mentioned in the first and second paragraphs.

* English translation received from the Finnish Ministry of Education.

¹ See *Le Droit d'Auteur (Copyright)*, 1963, p. 21.

² See *Copyright*, 1976, p. 260.

§ 49.

The provisions of § 11, first and second paragraphs, and in §§ 11a and 14 shall apply to the productions mentioned in the first paragraph above. If a production of this kind or a part thereof is subject to copyright, the copyright may also be claimed.

§ 54.

Questions regarding the granting of an authorization referred to in § 11a, or regarding the conditions of such authorization, when the case is one of reproduction of copies to be used in teaching, shall be

decided, in the case of disagreement, by arbitration in accordance with provisions fixed by decree.

An authorization given on the basis of the second paragraph shall have the same effect as an authorization referred to in § 11a.

§ 54a. Whatever has been provided in this Act regarding educational activities shall not apply to educational activities conducted for profit.

This Act shall come into force on December 29, 1980.

II

Act Amending the Act on Rights in Photographic Pictures

(No. 898, of December 19, 1980) *

In accordance with the decision of the Parliament, §§ 5 and 14 of the Act (405/61) issued on July 8, 1961, Relating to the Rights in Photographic Pictures,¹ are amended, and a new § 5a, new second and third paragraphs to § 17, and a new § 17a are added to the Act as follows:

§ 5. Anyone may reproduce in a few copies a photograph for his private use. Such copies may not be used for other purposes.

It is also permitted to engage an outsider to reproduce copies which are intended for the private use of the party ordering the copies.

§ 5a. Anyone who has received authorization, from an organization representing a large number of Finnish photographers, to reproduce published photographs by photocopying or analogous methods of reproduction shall also have the right to reproduce by the same methods a published photograph the photographer of which is not represented by the organization. The conditions determined in the authorization shall be observed in the case of such reproduction.

Whatever the organization referred to in the first paragraph may have stipulated regarding the distribution of compensations to be paid for the reproduction to photographers represented by the organization, or regarding the use of such compensations for the joint purposes of the said photographers, shall also be applied to photographers who are not represented by the organization.

If the stipulations issued by the organization and referred to in the second paragraph do not provide for the photographers represented by the organization the right to individual compensation, a photographer not represented by the organization shall, however, have the right to demand such compensation. The compensation shall be paid by the organization which has given the authorization referred to in the first paragraph. The right to individual compensation shall, however, have expired if a claim concerning it cannot be proved to have been presented within two years from the end of the calendar year during which the reproduction has occurred.

§ 14. When a photograph is reproduced on the basis of § 5a or §§ 6 to 11, the source shall be indicated in the manner required by proper usage.

§ 17.

Questions regarding the granting of an authorization referred to in § 5a, or regarding the conditions of such authorization, when the case is one of reproduction of copies for use in educational activities, shall be decided, in the case of disagreement, by arbitration in accordance with provisions fixed by decree.

An authorization given on the basis of the second paragraph shall have the same effect as an authorization referred to in § 5a.

§ 17a. Whatever has been provided in this Act regarding educational activities shall not be applied to educational activities conducted for profit.

This Act shall come into force on December 29, 1980.

* English translation received from the Finnish Ministry of Education.

¹ See *Le Droit d'auteur (Copyright)*, 1963, p. 27, and *Copyright*, 1976, p. 260.

General Studies

A Profile of Copyright in Today's Society

Mario FABIANI *

Correspondence

Letter from Finland

A Review of Copyright in Finland from 1961 to 1981

Jukka LIEDES *

Book Reviews

Copyright Revision Studies. Consumer and Corporate Affairs Canada, Ottawa, 1981.

Within the framework of the series of studies prepared for the Department of Consumer and Corporate Affairs of Canada, which has already been mentioned in this review,* two new studies have been published recently. Their major conclusions are briefly summarized below.

* See *Copyright*, 1981, pp. 262 and 300.

Ownership of Copyright in Canada, by Barry Torno.

The study advocates that a revised Act should not derogate from the general principle of first ownership by the author. A revised Copyright Act should not contain any special provisions with respect to works by employees, other than one which recognizes that an author, including an employee, may transfer part or all of his copyright or his prospective entitlement to copyright to a third party, including an employer, by way of contract, including an employment agreement.

Where a juridical person (e.g., a corporation or a partnership) may be an author, as in the case of films or sound recordings, the same moral rights should be accorded to the juridical author as would be accorded to a natural author. Moral rights, like pecuniary rights, should be fully assignable and capable of being licensed during an author's lifetime.

The author of a cinematographic work should be, in essence, its producer, defined as the person responsible for the arrangements undertaken for the making of the cinematographic work. It is further proposed that the author of a photograph no longer be deemed to be the party who owned the negative at the time it was created but, rather, that the author should be defined as the person who composed the photograph.

In the case of works of joint authorship, the Copyright Act should specify that joint authors are the first and equal co-owners of the copyright in such works. Any one co-owner should be able to assign, exercise or license his interest in the whole of a copyright, without requiring the consent of all of the other co-owners.

Fair Dealing: The Need for Conceptual Clarity on the Road to Copyright Revision, by Barry Torno.

The author considers that the present doctrine of fair dealing, under which fair dealing may be a defense upon

establishment of a *prima facie* case of infringement, should be abolished. A new doctrine of fair use should be established, according to which fair use is to be defined as the use of a protected work that does not deprive the owner of the copyright in such work of an appropriately expected economic reward. In determining whether the use made of a work in a particular case deprives the owner of the copyright in the work of such a reward, account should be taken first of the nature of the copyrighted work, and then of the purpose, character and extent of the use.

A levy on blank audio-video taping would legitimize all home taping for personal use without the need for the authorization by or further payment to copyright owners, thus eliminating the application of the doctrine of fair use in this context. Fair use should be applicable with respect to all other forms of audio-video recording of protected works. Thus, unauthorized reproduction of a substantial part of a protected work should constitute infringement. A comprehensive approach to photocopying vis-à-vis fair use, comparable to that suggested for home taping (i.e., some form of blanket licensing, either statutory or voluntary, or the imposition of an equipment levy), should be introduced.

The proposed changes should, in addition to serving Canada's national interest, ameliorate any lacunae which may subsist in the international field.

Calendar

WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible change.)

1982

- June 7 to 11 (Paris) — Berne Union — Committee of Governmental Experts on Problems Arising from the Use of Computers for Access to or the Creation of Works** (convened jointly with Unesco)
- June 7 to 18 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information**
- June 14 to 18 (Geneva) — Development Cooperation — Working Group on the Establishment of a Guide on the Organization of Industrial Property Activities of Enterprises in Developing Countries**
- June 28 to July 2 (Geneva) — Committee of Governmental Experts on Model Provisions for the Protection of Expressions of Folklore** (convened jointly with Unesco)
- September 1 to 3 (Geneva) — Working Group on the Rights of Employed or Salaried Authors** (convened jointly with ILO and Unesco)
- September 6 to 10 (Geneva) — International Patent Cooperation (PCT) Union — Committee for Administrative and Legal Matters**
- September 10 (Geneva) — International Patent Cooperation (PCT) Union — Assembly (Extraordinary Session)**
- September 20 to 23 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Patent Information for Developing Countries**
- September 23 to October 1 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Planning**
- September 23 to October 1 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Special Questions**

- September 27 to 30 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property
- October 4 to 30 (Geneva) — Revision of the Paris Convention — Diplomatic Conference
- October 25 to 27 (Paris) — Berne Union — Working Group on Copyright Questions Connected with the Use of Works by Persons with Defective Hearing or Sight (convened jointly with Unesco)
- November 8 to 12 (Geneva) — Working Group on Model Contracts for Licensing or Transferring Copyright (convened jointly with Unesco)
- November 22 to 26 (Geneva) — Governing Bodies (WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions)
- November 29 to December 3 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)
- December 6 to 10 (Geneva) — International Patent Classification (IPC) — Committee of Experts
- December 6 to 10 (Paris) — Berne Union and Universal Copyright Convention — Working Group on the Formulation of Guiding Principles Covering the Problems Posed by the Practical Implementation of the Licensing Procedures for Translation and Reproduction under the Copyright Conventions (convened jointly with Unesco)
- December 13 to 17 (Paris) — Berne Union, Universal Convention and Rome Convention — Subcommittees of the Executive Committee of the Berne Union, of the Intergovernmental Copyright Committee and of the Intergovernmental Committee of the Rome Convention, respectively, on Copyright and Neighboring Rights Problems in the Field of Cable Television (convened jointly with ILO and Unesco)

UPOV Meetings

1982

- September 28 (Faversham) — Technical Working Party for Fruit Crops — Subgroup
- September 29 to October 1 (Faversham) — Technical Working Party for Fruit Crops
- October 5 to 7 (Cambridge) — Technical Working Party for Ornamental Plants and Forest Trees
- October 12 (Geneva) — Consultative Committee
- October 13 to 15 (Geneva) — Council
- November 15 and 16 (Geneva) — Administrative and Legal Committee
- November 17 (Geneva) — Information Meeting with International Non-Governmental Organizations
- November 18 and 19 (Geneva) — Technical Committee

Other Meetings in the Field of Copyright and/or Neighboring Rights

1982

Intergovernmental Organizations

Council of Europe

Committee of Legal Experts in the Media Field — October 12 to 15 (Strasbourg)

Non-Governmental Organizations

International Confederation of Societies of Authors and Composers (CISAC)

Congress — October 3 to 8 (Rome)

International Federation of Actors (FIA)

Congress — September 27 to October 1 (Paris)

International Federation of Library Associations and Institutions (IFLA)

General Conference — August 23 to 28 (Montreal)

International Federation of Phonogram and Videogram Producers (IFPI)

Board, Council and General Meeting — May 31 to June 3 (Lisbon)