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Právní režim digitalizace a uchovávání digitálních děl ve veřejných archivech

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Digitising and digital archiving in public repositories – legal perspective

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Michal Koščík

Relevant Law

Czech Copyright Act

- Implemented all of InfoSoc exceptions
- Including statutory licenses for public archives, libraries and CHI

Czech Act on Libraries

- Defines library's collection
- Does not define, how a collection should be created

Act on non/periodical publications

- Legal deposit

Act on Archives

- Defines archive item

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Relevant questions

How can one make a digital copy of a document

- Based on exception
- Based on license

How can one use a digital copy

- Making available to the public
- Transferring to other repositories and CHIs

Copyright to new digital copy

- Does the CHI hold any right to the digitisation?

Collective rights management

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How to make a copy of a document

With or without license

Making a digital copy

- Exception in CAC - §37
  - CHI or school may create a backup copy that does not serve direct or indirect commercial benefits for archiving purposes
- This exception may relate to both print or digital copy.
- The law does not put any criteria on the form or type of work (if it was published)
- License is not needed for a copy
- This can be used also for performance of an artist or audio, visual and audiovisual records and broadcasting rights

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However

- General clause
  - 3 step test,
  - The work has to be published §29 odst. 2 aut.Z
- Archiving exception is useless for sui generis databases
- Right to make a copy does not mean a right to use the work
  - Can be solved by a license or other statutory exception

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How to use a digital copy?

§ 37 CAC three exceptions

- Lending a copy of a work that has been lost or damaged and cannot be replaced - the copy has to be „rightful“
- „Terminal“/„on-site“ display of copies of works, that are parts of the collection
  - Only for private purposes and research – Users are not allowed to make copies

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Orphan works exception §37a

- Library and Archive can digitize and use the Orphan work (even on-line)
- Under a condition, that this is already the part of its collections
  - Again 3 step test
  - The work may be „unpublished“
  - Also relates to databases

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Collective rights management

- Orphan works are subject to collective rights management
- See : Kolektivní správa k paměťovým institucím-
  - Lucie Straková – NUŠL 2017

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…… Now the difficulut part

Discussion

Weak spots

Regulation was drafted with Analogue to Digital in mind

Does not explicitely adress digital to digital

- How can a CHI or library add a purely digital copy to its collections
- Is the access right enough to make a copy?

Legal aspects of Digital to New digital or Other digital

- Moral rights issue

Athorship of digitisation

- Is digitisation a new creative activity

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The ultimate question: Adding digital content to the collection

- Exceptions are related to „rightful copies“ and „works that are parts of collection“
  - How to make a website or piece of database a part of collection?
- Posibilities
  - License
  - Creation
  - Use of archiving and preservation exception

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Further research

Can an individual take over the role of library or repository?

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DĚKUJI ZA POZORNOST!

Podpořeno GA ČR – Projekt GA17-22474S Přizpůsobení výjimek a omezení autorského práva, práv souvisejících a zvláštních práv pořizovatele databáze prostředí digitálních sítí

Grafická úprava snímků je determinována vizuálním stylem Masarykovy univerzity a nevyjadřuje osobní přesvědčení autora