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PRÁVNICKÁ
FAKULTA

Masarykova univerzita

ORPHAN AND OUT-OF-COMMERCE WORKS AFTER THE AMENDMENT OF THE CZECH COPYRIGHT ACT

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Supported by Czech Scientific Foundation – project GA17-22474S Adapting Exceptions and Limitations to Copyright, Neighbouring Rights and Sui Generis Database Rights to Digital Network Environment



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Obsah

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 - General info
 - Exception regime
 - New regulation – Extended collective licensing
- Out-of-commerce work
 - General info
 - New regulation – Extended collective licensing
- Comparison & problems & limits
- *Soulier & Doke* case and its impact
- Future development (DSM directive)

Introduction

- Copyrighted work
 - If not “public domain” (70 years p.m.a.)
 - Could be used only if:
 - The right holder consents
 - Limitation or exception is applicable

OW – introduction

- Copyright protected works whose rightholders cannot be identified or located
- Directive 2012/28/EU of the European Parliament and of the Council of 25 Oct. 2012 on certain permitted uses of orphan works, OJ /L 299/5, 27.10.2012
- ‘legal rights clearance mechanism’
- Only specific works: (1) writings, (2) cinematographic and other audiovisual works, (3) phonograms and (4) embedded works
- Unidentified/Not located Authors, Diligent search, Record thereof
- Competent national authority
- Compensation system – Ministry of Culture
- ‘One search per Member State principle’

OW – exception regime

- Implemented already in 2014
- System:
 - Only for specific works
 - Privileged beneficiary (GLAM)
 - Specific use
 - Ex post remuneration



OW – ECL

- New use – however still “OCW”
- Anyone
- All uses – Even commercial
- License fee – CMO

OCW – general info

- Memorandum of Understanding on Key Principles on the Digitisation and Making Available of Out-of-Commerce Works
- No longer available through regular channels of commerce
- Introduced by 102/2017 Sb.
- List of OCW – National Library

OCW – ECL

- National “verbal” works – published, not available via commercial channels
- Library – copying, communicating to the public, for 5 years repeatedly
- Right holder, library, CMO => proposal for inclusion in the List of OCW
- Opt-out possibility – ending the status of OCW (+fees)
- Periodicals older than 10 years – special regime – might be included immediately
- System not yet operational

Comparison

OW

- **EXCEPTION REGIME**
- GLAM – public mission – reproduction and communication to the public
- Diligent search
- EU-wide recognition
- Ex post remuneration

- **ECL REGIME**
- Must be OD
- Everyone
- Any type of use (even commercial)
- Ex ante payment CMO – license for 5 years
- Limited to CZ

OCW

- **ECL REGIME**
- Library for reproduction and communication to the public
- NO diligent search
- NO recognition
- Only “verbal” works
- Not excluded by terms
- License for CZ only
- 5 years

Soulier & Doke case (C-301/15, EU:C:2016:878)

- French OWC system
- Putting on list – of individual information to the creator?
- Mere lack of opposition does not equal consent
- Exception to copyrighted needed & required

Future development: DSM Directive

- 9/2016 – proposal, 2017 –
- Basis for OCW:
 - Article 7: *“non-exclusive license for non-commercial purposes with a cultural heritage institution for the digitization, distribution, communication to the public or making available of out-of-commerce works or other subject matter in the permanent collections of the institution”*
- Basic flaw – only partial solution and based on ECL:
 - + Works that never were IN commerce (no CMO)
- The Soulier Doke threat



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Thank you for your attention!

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