

Proposed amendments to the Copyright Act

I

Proposed amendments to Act no. 2 of 12 May relating to copyright in literary, scientific and artistic works (Copyright Act)

Proposal for amendments in the heading of Chapter 7:

Chapter 7. Penal sanctions, compensation and confiscation

Proposal for new sections 56a to 56d:

Processing of personal information relating to infringement of copyright

§ 56a Rights holders' processing of personal information relating to infringement of copyright or other rights in accordance with this Act is excepted from the obligation to obtain a licence pursuant to the Personal Data Act when such processing is necessary to establish, assert or defend a legal claim.

In other cases, for the processing of such information, the Personal Data Act applies.

Access to information that identifies the holder of a subscription used infringing copyright

§56b If an infringement of copyright or other rights pursuant to this Act is made feasible, the court may upon the petition of the rights holder order a provider of electronic communication services, unimpeded by the obligation of confidentiality pursuant to the Electronic Communication Act sections 2-9, to hand over information that identifies the holder of the subscription used in the infringement.

Before the court makes its decision in the case, the Norwegian Post and Telecommunications Authority shall be requested to consent to exempting the provider from the obligation of confidentiality pursuant to the Electronic Communication Act sections 2-9. The rights holder shall send such a request to the Authority and present the Authority's statement to the court. The statement is then communicated to the parties. The Authority may only deny consent if it would be unreasonable to the person entitled to confidentiality.

For the petition to be approved, the court must find the grounds in favour of surrendering the information to be outweighing the grounds for maintaining the obligation of confidentiality. The court's assessment shall balance the interest of the subscriber against the interest of the rights holder in gaining access to the information, taking the gravity, extent and harmful effect of the infringement into consideration.

Following such assessment, the court may by its verdict find that information is to be surrendered although consent has been denied, or that information is not to be surrendered although consent has been given.

The petition for the order to surrender information is to be presented to the district court in the provider's legal venue. Only the provider of electronic communication services shall be declared and treated as the opposing party in such petitions. The Dispute Act section 28-5 first paragraph corresponds to this provision. The remaining provisions in the Dispute Act Chapter 28 do not apply.

The information shall not be submitted until the decision is final. When submitting the information, the provider shall notify the court simultaneously. The provider shall notify the subscriber one month after submitting the information. A copy of the notification is to be sent to the court simultaneously. The case shall not be made known to the general public until at least one month after the information has been submitted and the subscriber has been notified, or more than six months have passed since the case was closed.

For the processing of personal information received in accordance with this provision, the Personal Data Act applies.

Draft section 56, alternative 1 (the competence to order is assigned to the Norwegian Media Authority)

Decision to hinder access to a website infringing copyright

§ 56c. Upon the petition of a rights holder, The Norwegian Media Authority may order a provider of electronic communication services who transfers, provides access to or saves content, to hinder access to a website where, material is being made available to a great extent, evidently infringing copyright or other rights in accordance to this Act.

The decision of the Norwegian Media Authority pursuant to this provision may be challenged and put before an independent complaints board appointed by the Ministry. The decision may be appealed by a party or by others with a legal interest to complain. The Norwegian Consumer Council may also appeal the decision. The complaints board may not reverse the decision at their own initiative.

The King may issue regulations specifying rules of procedure etc pursuant to this provision as well as the organization of the complaints board. The King may also issue provisions concerning procedural fees pursuant to this provision.

If it is obvious that the basis for the decision no longer exists, the Norwegian Media Authority or the complaints board may upon the petition of a party or others with

a legal interest to complain, set the order aside. The Norwegian Consumer Council may also put forth such a petition.

The King or the Ministry may not instruct the Norwegian Media Authority or the complaints board in the consideration of cases pursuant to this provision, nor may they reverse the decision of the Authority or the board.

The decision of the complaints board may be brought before the court, which may try all aspects of the case and make a decision on the merits of the case. Any legal action is to be directed to the government, represented by the complaints board.

In legal action against the government concerning a legal trial of the decision of the complaints board, the court shall notify the parties in the case that was up before the complaints board of the lawsuit and that they are entitled to become parties in the case. The verdict will be binding for the recipients of such notifications even if they choose not to enter upon the case.

The decisions of the Norwegian Media Authority and complaints board constitute specific grounds of enforcement pursuant to the Enforcement of Claims Act Chapter 13.

Draft section 56, alternative 2 (the competence to order is assigned to the court):

Order to hinder access to a website infringing copyright

§ 56c. Upon a petition from a rights holder, the court may order a provider of electronic communication services who transfers, provides access to or saves content, to hinder access to a website where, material is being made available to a great extent, evidently infringing copyright or other rights in accordance to this Act.

Such a petition is to be presented to the district court in the legal venue of one of the providers addressed by the petition. The owner of the website shall also be declared an opposing party in the petition.

A provider may not be ordered to compensate the legal costs of the opposing party, unless the provider has employed legal remedies in vain against a ruling. In other cases, the Enforcement Act Chapter 20 applies.

If it is obvious that the basis of the decision no longer exists, the court may, upon a petition from a party or others with a legal interest, rule to reverse the order. Such a petition is to be presented to the same district court that heard the petition to order now being demanded reversed.

II

Proposed amendments in Regulation no. 1536 of 21 December 2001 for the Copyright Act (Act no. 2 of 12 May 1961 relating to copyright in literary, scientific and artistic works, etc.):

Proposal for amendments to the heading for chapter IV (amendments in italics):

Chapter IV – Dispute resolution etc. for extended collective license or compulsory license situations, *when technical protection systems are employed and also appealing the decision of the Norwegian Media Authority in pursuant to the Copyright Act section § 56c*

Proposal for new section 4-21:

Appealing the decision of the Norwegian Media Authority concerning the infringement of copyright etc. on the Internet, cf. the Copyright Act section 56c

§ 4-21. The Ministry of Culture appoints a board to hear complaints as referred to in the Copyright Act section 56c third paragraph. The board shall be comprised by one chairman and to other members, appointed for four years at a time. Personal deputies are appointed for each member. The chairman of the board and the chairman's deputy must be legal professionals.

The board's negotiations will be administered by the chairman. All board members are to take part in the decision. In cases of disagreement decisions are made by majority vote.

The decision of the board may not be appealed.

III

Proposed amendments to Regulation no. 1265 of 15 December 2000 on the Processing of Personal Data:

Proposal for new provision in Chapter 7:

Processing of personal data concerning infringements of copyright

Rights holders' processing of personal data concerning infringement of copyright or other rights pursuant to the Copyright Act, are excepted from the obligation to acquire a license pursuant to the Personal Data Act section 33, when such processing is necessary to establish, assert or defend a legal claim.