

REVIEW OF LEGISLATION ON COPYRIGHT AND RELATED RIGHTS

Czech Republic¹

The present document reproduces the introductory statement made by the delegation of the Czech Republic in the review of legislation on copyright and related rights at the Council's meeting of 22 to 25 July 1996², the questions put to it and the responses given.

I. INTRODUCTORY STATEMENT

Our country (Czechoslovakia in the past and the Czech Republic at present) has been a Member State of the Berne Convention since 1921, of the Rome Convention since 1964 and, since 1991, it has been also a Contracting Party to the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms. The Czech Republic made its notification without prejudice to the provisions of paragraph 3 of Article 65 allowing the delay of four years in implementing the TRIPS Agreement for countries in the process of transformation from a centrally-planned into a market, free-enterprise economy. The Czech Republic holds the view that its national legislation does not require the postponed application of the respective TRIPS provisions.

The Czech legislation on copyright and related rights notified so far is contained in three WTO documents IP/N/1/CZE/C/1 to 3. The first document contains the Act concerning Literary, Scientific and Artistic Works. This Act deals, in its key parts, with the concept of copyright (Part 1), with the rights of performing artists (Parts 2) and with the rights of phonogram producers and radio and television organizations (Part 3). In the second document you may find the Act on Collective Administration of Copyright and Rights Similar to Copyright. The third document covers three copyright-related Acts, namely the Act on Conditions of Production, Dissemination and Filing of Audio-Visual Works, the Act on the Operation of Radio and Television Broadcast and the Act on State Fund of the Czech Republic to Assist and Promote the Czech Cinematography. I would like to stress that the Czech Republic has also submitted in writing the description of other laws and regulations, which is contained in document IP/N/1/CZE/1 of 19 March 1996.

¹The Czech Republic's notification of laws and regulations in the area of copyright and related rights under Article 63.2 of the Agreement has been circulated in documents IP/N/1/CZE/1 and IP/N/1/CZE/C/1-3.

²The minutes of the meeting have been circulated in document IP/C/M/8.

The full compatibility of national legislation with the special requirements has been secured by amendments that took place recently. These special requirements relate to border measures pursuant to Section 4 of the TRIPS Agreement, to computer programs protected as literary works, to rental and lending and to technical protection of works.

The amendments came into effect on 22 April 1996. Due to technical reasons, the complete wording of the recently amended Czech Copyright Act was published on 20 June 1996 year in the Collection of Laws under No. 175/96. In our opinion, the Czech Copyright Act is fully consistent with the TRIPS Agreement in the area of copyright and neighbouring rights and it provides even more extensive protection of these rights than stipulated by the TRIPS Agreement. The Czech Republic shall notify the respective amendments in the near future.

II. REPLIES TO QUESTIONS POSED BY THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

1. *Could the Czech Republic specify in detail the provisions in the Copyright Act which may limit the exclusive rights of the rightholder (Article 13 of the TRIPS Agreement).*

The Czech Copyright Act contains several basic principles which should be clarified prior to the answer. According to Article 14, paragraph 1 a work may be used only upon the author's permission, should it not be permitted directly by the law. Paragraph 2 further stipulates that the author's permission following from the law may not be excluded or reduced by agreement between the parties. Paragraph 3 sets up that a work may be used without the author's permission only in cases specified in Article 15. These principles apply partially also to the rights of performers.

The Czech Copyright Act has no limitations and no exceptions to the exclusive author's right regarding non-voluntary licences for the sound recording of musical works corresponding to Article 13, paragraph 1 of the Berne Convention and has no non-voluntary licences for primary broadcasting and satellite communication corresponding to Article 11*bis*, paragraph 2 of the Berne Convention. Exceptions and limitations according to Articles 9(2), 10 and 10*bis* of the Berne Convention are implemented in Article 15 of the Czech Copyright Act and do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the authors.

The permitted use of the work for private copying according to Article 15, paragraph 2a does not apply to computer programs. On the other hand, regarding private copying the equitable remuneration is granted from unrecorded carriers.

Exclusive right of performers is limited by cases of free usage of performances and legal licences. The user does not need any approval and is not obliged to pay a fee for using the performance for user's personal need (in such a case the performers are entitled to get remuneration from unrecorded carriers) and for using the performance from a recording or phonograms exclusively for scientific or educational purposes and within the framework of reporting about actual event by photograph, film, radio or television (so-called unpaid reporting licence).

The user does not need approval, however, he is obliged to pay a fee in respect of making the recording of performer's performance realized for broadcasting organization provided that the recording is taken by this organization by its own means for its own broadcasting, and further in case of broadcasting the performance by radio or television provided that it is done from recording or phonogram which was made with performer's approval.

Sound recording can be used only with approval of a producer who is entitled to get remuneration. Producer's approval is necessary for broadcasting of sound recordings and phonograms by radio or television, for making the reproductions of sound recordings or phonograms for other than own personal need, for public performance of sound recordings or phonograms, for lending and rental of sound recordings or phonograms. Producer of phonograms is entitled to get remuneration also from unrecorded carriers and rental.

Radio or TV programme may be rebroadcasted, recorded for other than own personal need, and such recording may be further reproduced or otherwise communicated to the public only with the approval of the organization having realized the programme. Broadcasting organizations have the right for compensation except for that case when they transmit broadcasting of other broadcasting organizations.

Unpaid reporting licences and licences for scientific and educational purposes are used both for producers of phonograms and broadcasting organizations.

2. *How is the notion "normal exploitation of the work" defined in the Copyright Act or other related laws (Article 13 of the TRIPS Agreement)?*

The notion "normal exploitation of the work" is not directly defined in the Copyright Act. The reason is that the exceptions and limitations, which are always considered as an interference with the exclusive right of authors, are confined to certain special cases indicated in Article 15. The exceptions and limitations cannot be interpreted to a larger extent.

The Copyright Act contains provisions regarding the exercise of author's right, for which publishers of a collection of the works, cartographic works and periodicals as well as producers of a film or a work expressed in similar manner are authorized. According to Article 17, also the employer has the right to exercise the author's rights regarding the work created by the employee for fulfilment of his duties resulting from his employment. By this means, the Copyright Act grants the justified interests of rightholders and users.

In connection with the contracts on dissemination of work we use normal exploitation of the work as regards the form, purpose and extent of dissemination of a work. Especially author's permission to use the work in a manner which is agreed in a contract, may not be extended to the use of work which parties to the contract could not have in mind or to that one which was unknown at the time of conclusion of a such contract.

3. *Did the Czech Republic apply, as of 15 April 1994, a system of equitable remuneration of rightholders in respect of the rental of phonograms, and if so, is it the intention of the Czech Government to continue this practise (Article 14/4 of the TRIPS Agreement)?*

Yes. The Decree of the Ministry of Culture No. 115/1991 Coll. contains the provisions regarding right of authors, performers and producers of phonograms on equitable remuneration in respect of the rental of phonograms. This Decree grants one common remuneration of 10% of the price of rental of phonograms to authors, performers and producers of phonograms. This remuneration is managed by the Collecting Societies. The position of the producers of phonograms was further strengthened by the last amendment of the Copyright Act in 1996. According to Article 45, the permission of the phonogram producer is required for lending and rental of phonograms. Producers of phonograms at this time prefer sale of phonograms to rental. Since 1 January 1996, the new Act No. 237/1995 Coll. on Collective Administration of author's rights is in force. The intention of the Czech Government is, therefore, to continue in this practise.

III. REPLY TO A QUESTION POSED BY SWITZERLAND

1. *Please indicate whether there are any border measures, criminal remedies and provisional measures in the Czech legislation.*

In the Czech Republic the amendment of the Copyright Act has been in force since 22 April 1996. As the Czech representative said at the beginning of this review, the notification will be made as soon as an official translation of this Act is finished.

The new Article 53a is as follows:

(1) Authors, performing artists and phonogram producers, or persons authorized to exercise their rights pursuant to this Act, may require from customs authorities information about the contents and volume of import of goods, which are of the nature of reproductions of works or their sound, visual or audiovisual recordings, or goods, which is to serve for production of such recordings as their carrier (blank carriers), and to examine customs documents for the purpose of establishment, if import of such goods for dissemination in the market is in compliance with this Act.

(2) The customs authority shall at a written request of persons authorized pursuant to paragraph 1 suspend the procedure of release of goods for free circulation for ten working days, if there is a justified suspicion that with import of such goods the rights pursuant to this Act would be violated. In justified cases the period of suspension of the procedure may be extended by further ten working days.

(3) Should the importer of goods mentioned under paragraph 1 not prove within the term pursuant to paragraph 2 that his import is in compliance with provisions of this Act, the customs authority shall not release the goods in free circulation.

(4) Provisions of paragraph 1 through 3 shall apply analogously also for export of goods mentioned in paragraph 1.

The Czech legislation contains also civil and criminal remedies.

According to the special protection of copyrights and rights of performing artists, as stipulated in the Copyright Act No. 35/1965 in conjunction with Section 39, paragraph 1 of this Act, the author whose right was infringed may demand, on the basis of Civil Law, that the infringement of his/her right is prohibited, the consequences of such infringement or abuse are removed (corrected) and the author receives the appropriate compensation. If, as a result of such an infringement, a substantial injury in kind has been caused, the author shall be entitled to receive a monetary compensation provided another form of compensation has turned out to be inadequate. The amount of such monetary compensation shall be determined by the court. As for civil and judicial procedures, the court may ban the distribution of tangible publications which were wrongfully used and order the illegal user to destroy the respective publications at his/her expense.

Criminal procedure enables in the case of infringements of copyright to involve imprisonment up to two years, monetary fine, or seizure of the thing. If the culprit has, through the infringement, received a substantial benefit or the scope of his/her act is substantial, the punishment is from 6 months to 5 years imprisonment, monetary fine or forfeiture of the thing.

IV. REPLIES TO QUESTIONS POSED BY THE UNITED STATES

1. *Please explain whether and how the law of the Czech Republic provides protection for works, phonograms and performances from other WTO Members, and whether and how it does so on the basis of national treatment, as required by TRIPS Article 3 (generally, with respect to all copyrights and neighbouring rights) and Article 9.1 (incorporating Berne Article 5(1)). In particular, please explain how national treatment is afforded with respect to the distribution of levies for private copying under the relevant provisions of the law of the Czech Republic.*

The Czech legislation provides protection for works and performances from other WTO Members on the basis of national treatment according to Article 50 paragraphs 2, 4 and 5. Relevant provisions of the Copyright Act read as follows:

(2) To works of foreign nationals the provisions of this Act shall apply pursuant to international treaties, and if no such treaties exist, their reciprocity shall be guaranteed.

(4) Copyright relating to the works of foreign nationals may not last longer than that in the country of origin of the work.

(5) Above mentioned provisions shall apply per analogiam also to performing artists and their performances.

The international treaty mentioned in paragraph 2 is *inter alia* the TRIPS Agreement. We would like to stress that the Czech Copyright Act provides protection for work of foreign authors and for performers on the level of national treatment and to the extent provided by international agreements to which the Czech Republic is a contracting party. The rights of producers of phonograms and broadcasting organizations are protected on the basis of international agreements or if the reciprocity is granted.

The Copyright Act involves the provisions regarding private copying in Article 13 paragraphs 2 and 3. The remuneration for private copying is granted to authors, performers, producers of phonograms and broadcasting organizations. Broadcasters shall not enjoy such a right in the case that they transmit broadcasting of other broadcasters.

The remuneration is subject to the collective administration and for blank tapes two collective organizations operating in this field. The remuneration is provided on the basis of blank tapes' sales price's percentage. Collective societies distribute the remuneration to authors, performers and producers of phonogram's broadcasters and also to foreign collective societies on the basis of their agreement.

2. *Does the Czech Republic apply the "rule of the shorter term" to phonograms and performances from other WTO Members? If so, please explain how you justify such action under TRIPS Article 4?*

The Czech Republic does not apply the "rule of the shorter term" to phonograms and performances from other WTO Members. The term of protection of performers is fifty years starting from the end of the year in which a recording of performance was made. The same period is adopted for producers of phonograms and it starts at the end of the year when such recording was made.

3. *Please explain whether and how the Czech Republic protects against both the direct and indirect reproduction of phonograms as required by TRIPS Article 14.2, including by digital transmission in the context of interactive services.*

According to Article 46 of the Czech Copyright Act, in which rights of phonograms producers are stipulated, the permission of the phonogram's producer is required for broadcasting of sound recordings and phonograms by radio or television, for production of reproduction of phonograms for other than own personal use, for public performance of sound recording and for lending and rental.

Reproduction of phonograms by digital transmission in the context of interactive services is not *expressis verbis* in our Copyright Act but as we have a very broad provision regarding publication of the work, it can be used also for the digital transmission providing that the exclusive permission of authors, performers and producers is available.

4. *Please explain whether and how the Czech Republic provides full retroactive protection to works, phonograms and performances from other WTO Members, as required by TRIPS Articles 9.1, 14.6 and 70.2, each of which incorporate by reference or rely upon Berne Article 18. Please give the date back to which such protection extends with respect to each category of subject matter.*

The Czech Republic provides full protection to works, phonograms and performances from other WTO Members as required by TRIPS Articles 9.1, 14.6 and 70.2. Author's works are protected fifty years after their death, it means since 1946.

The right of phonogram producers is protected fifty years since the end of the year in which the sound recording was made, it means since 1946 as well. The right of performers is protected fifty years starting at the end of the year in which recording of performance was made.