

REVIEW OF LEGISLATION ON COPYRIGHT AND RELATED RIGHTS

Norway¹

The present document reproduces the introductory statement made by the delegation of Norway in the review of legislation on copyright and related rights at the Council's meeting of 22 to 26 July 1996², the questions put to it and the responses given.

I. INTRODUCTORY STATEMENT

Before dealing with the questions put to us, my delegation would like to stress the importance of this exercise which gives us the opportunity to follow up the specific copyright part of the TRIPS Agreement. I would like to thank the US delegation and the EU delegation for posing the questions, and thereby giving us the possibility to explain the current state of affairs in Norway.

I would like to start by giving some general comments which are also significant to the more detailed questions.

The Norwegian Copyright Act was amended on 30 June 1995. This amendment was the result of a long process, including close cooperation with our Nordic neighbours, Denmark, Iceland, Finland and Sweden. The amended Norwegian Copyright Act is presented to this body in document IP/N/1/NOR/C/1, dated 3 April 1996.

The amendments also implemented the consequences of the EEA Agreement between the EU and the EFTA, consequently the Norwegian legislation has taken on board the EU directives in this field.

With the recent alterations of the Copyright Act, Norway has taken a long step towards a full revision of its copyright legislation.

The Copyright Act covers chapters dealing with the object and the substance of authors' rights, limitations to those rights, transfer of rights, term of protection, neighbouring rights and, finally, enforcement provisions.

¹Norway'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/NOR/1 and IP/N/1/NOR/C/1.

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

Substantively we meet all requirements of the TRIPS Agreement and many points go further, both concerning the Berne rights and especially concerning neighbouring rights.

The fact that this revision is fairly recent, an English version has only been available for a short period, explains why some of the questions posed, as indicated in the questions from the United States, are based on earlier legislation.

Generally speaking, I think it is fair to say that the copyright landscape of Norway is a modern one, characterized not only by strong substantive rights for the rightholders, but also by well functioning legal mechanisms to enforce the rights, and strong and well built out professional organizations representing the rightholders.

This being said, we still need to have some of our by-laws in place to fully comply with our TRIPS obligations. The reason for this regrettable delay is lack of manpower, this being an explanation but not an excuse.

The new regulations, which will contain revised rules for eligibility, will be in place shortly, and we will make every effort to secure that the Members of the TRIPS Agreement obtain the rights inherent in the Agreement, and that these new regulations will be notified as soon as they are passed.

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

1. *Is the Norwegian Government of the opinion that the eligibility criteria under Royal Decree of 8 June 1995 No. 524 Section 1 (cfr. the Copyright Act Section 57) and Royal Decree of 22 December 1989 No. 1288, should be amended in order to fulfil the obligations under the TRIPS Agreement for minimum protection, national treatment and most-favoured-nation treatment (Articles 1.3, 3 and 4 of the TRIPS Agreement)?*

These regulations (Regulation No. 5 of 10 April 1964 and Regulation No. 1288 of 22 December 1989 - both with subsequent amendments), which supplement Chapter 8 on the scope of the Act, are currently under revision. The eligibility criteria will shortly be amended to comply with the national treatment clause and the MFN clause of the TRIPS Agreement.

2. *For the purpose of clarification: Has the Norwegian Government made a notification to the TRIPS Council regarding the Norwegian reservation under paragraph 2 of Article 6 of the Rome Convention (Article 1.3 of the TRIPS Agreement)?*

Such notification will be made promptly.³

3. *For the purpose of clarification: Will the Norwegian Government apply the 70-year term of protection for authors under Sections 40 and 41 and the rule of revival of rights under Section 60 of the Act to authors who are nationals of Member States of the European Community and the European Economic Area?*

Provided that the eligibility criteria are fulfilled, the 70-year term of protection and the rule of revival of rights (see the commencement and the transitional provisions of the Act) will apply also to nationals of Member States of the European Community and the European Economic Area.

³The notification made subsequently has been circulated in document IP/N/2/NOR/1.

4. *For the purpose of clarification: Are there any bilateral agreements between Norway and other states which grant any advantage, favour, privilege or immunity which shall be accorded to the nationals of all other Members (Article 4 of the TRIPS Agreement)?*

The question is currently under deliberation in the Norwegian Government, and so far no such provision has been found.

5. *Under Section 41 of the Copyright Act, the starting point for the protection period for anonymous or pseudonymous works is the expiry of the year in which the work was issued. According to Article 12 of the TRIPS Agreement, the starting point is the end of the calendar year of authorized publication. In the opinion of the Norwegian Government, can this difference in starting points result in a shorter protection period under Norwegian law than the protection period laid down in Article 12 of the TRIPS Agreement?*

The Norwegian Copyright Act, Section 4, which has a similar wording as the corresponding provisions in the Danish, Swedish and Finnish Copyright Acts, is consistent with the TRIPS Agreement, Article 12. The English version of the Norwegian Copyright Act uses the term "issued" which is meant to cover "publish". However, the Norwegian Government will consider whether more adequate English terms should be used in the English version of the Act.

III. REPLIES TO QUESTIONS POSED BY THE UNITED STATES

General observation

The Norwegian Copyright Act was amended on 30 June 1995. Amendments were required *inter alia* due to the EEA Agreement. Due to the recent amendments to the Copyright Act, regulations to the Act have not yet been amended. Consequently, minor adjustments are required to comply with the TRIPS Agreement as regards the formal application of the Act to WTO Members. Required adjustments will be made shortly. We would like to stress, however, that the Norwegian Copyright Act, in substance, is consistent with the TRIPS Agreement in the area of copyright and neighbouring rights.

Question Nos. 7 to 9 are based on an outdated version of the Copyright Act, as indicated by the United States.

Replies to questions

1. *Please explain whether and how Norway's law 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 with respect to the distribution of levies for private copying under the relevant provisions of Norway's copyright law.*

Regulation No. 5 of 10 April 1964 and Regulation No. 1288 of 22 December 1989 (both with subsequent amendments) implement the obligations to foreign rightholders stemming from the various international treaties to which Norway is party, into the Norwegian Copyright law. These regulations are issued pursuant to Section 59 of the Copyright Act. Amendments will currently be made to these regulations to comply with the national treatment clause in the TRIPS Agreement.

As Norway is party to the Berne Convention, Norwegian copyright law is complying with the national treatment clause in Article 5.1 of the Berne Convention. Consequently, only minor adjustments are needed.

The Norwegian Copyright Act has no provisions on levies for private copying.

2. *Does Norway 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.*

Norway does not apply the "rule of the shorter term" to phonograms and performances.

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

According to Section 45 of the Norwegian Copyright Act sound fixations and films shall not, without the consent of the producer, be made available to the public, nor shall copies be made of the sound fixation or film, until 50 years have elapsed since the expiry of the year in which the fixation or film was made. "If the fixation is issued during this period of time, the term of protection shall subsist for 50 years after the expiry of the year in which the fixation was first issued."

The term "making available to the public" is explained in Section 2, third paragraph of the Act; "A work is made available to the public when it is performed outside private premises, or when copies of the work are offered for sale, rental or lending, or otherwise distributed or displayed outside such premises." Consequently, both direct and indirect reproduction are covered by these provisions, including digital transmission in the context of subscription or interactive services.

4. *Please explain whether and how Norway 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.*

As Norway is party to the Berne Convention, the Norwegian copyright law is consistent with Article 18 of the Berne Convention. The regulations which implement the obligations according various international treaties, to which Norway is party, into the Copyright law, will shortly be made applicable to all WTO Members. The date of application of the TRIPS Agreement for Norway is 1 January 1996, so this will be the fixed date according to Article 70 of the Agreement.

[Follow-up question]

Will the expected amendment to Norway's copyright regulations to extend full retroactive protection to existing works from all other WTO Member countries also apply to phonograms and performances, as required by TRIPS Article 14.6?

The questions concerns whether the amendments to the Norwegian regulations implementing the TRIPS Agreement to the full extent, will give retroactive protection that will also apply to phonograms and performances - with reference to Article 14.6 of the TRIPS Agreement. The answer, to the extent one can look into the near future, is yes, and this implies that phonograms and performances originating back to 1946 will be protected.

5. *Please explain the criminal and civil remedies available for copyright infringement and the extent to which they fully implement the obligations in TRIPS Articles 41, 45, 50 and 61. In the response, please specify, inter alia, whether these remedies may include the seizure, forfeiture and destruction of infringing articles and equipment used to make the infringing articles, as required by Articles 46 and 61, and the manner in which the grant of civil provisional relief is provided in accordance with TRIPS Article 50. Please also explain how civil damages are measured in the case of computer program infringement, when and how attorney's fees and court costs are awarded, and how long it takes for a decision to be rendered in the average civil and criminal copyright infringement cases.*

Remedies available for copyright infringement is presented in Norway's notification (of 22 February 1996) under Article 63.2 of the TRIPS Agreement, to the TRIPS Council. Provided that the Copyright Act has no particular provisions, the general provisions in Act No. 6 of 13 August 1915 Relating to Judicial Procedure in Civil Cases, Act. No. 86 of 26 June 1992 Related to the Enforcement of Claims, Act No. 25 of 22 May 1981 Related to Criminal Procedures, apply.

Seizure, forfeiture and destruction of infringing articles and equipment used to make the infringing articles, are covered by Section 56 of the Norwegian Copyright Act. In addition, provisional measures will apply.

Regarding how civil damages are measures in the case of computer program infringement, Section 55 of the Copyright Act applies: "Any damage caused by an infringement mentioned in Section 54, or by an infringement of Section 49, first paragraph, is subject to a claim for compensation according to the rules of compensation generally applicable. If the right of an author or a performing artist has been infringed wilfully or by gross negligence, the court may also award him a sum of money as redress for damage of a non-economic nature. Even if the offender has acted in good faith, the aggrieved party may, irrespective of the extent of the damage, demand payment of the net profit accruing from the unlawful act."

A party to a civil proceeding may be granted compensation for expenses incurred during the proceedings, including appropriate attorney's fees, pursuant to Chapter 13 of the Act Relating to Judicial Procedure in Civil Cases. The general rule is that a party who loses a case before the court, shall be ordered to compensate the other party's expenses in full (section 172). If a case is partly won and partly lost, the main rule is that the parties have to cover their own expenses (section 174).

The Act Relating to Criminal Procedure (Chapters 9 and 30) stipulates as a main rule that the cost related to criminal proceedings is paid by the Government.

There are no provisions particularly governing the length or cost of proceedings. We have no available data on the actual duration of proceedings or their cost.

[Follow-up question]

Please describe the "provisional measures" referred to in the second paragraph of the answer, the procedures for invoking them, and the criminal penalties imposed with respect to the piracy of copyrighted works. What provisions of Norwegian law make these measures and penalties available?

The questions contains two different parts. Firstly, a description of provisional measures, referred to in the Norwegian answer, and the procedures for invoking them, is asked for. As I stated, a more full description is presented in the Norwegian notification document. I understand this has

not yet been distributed to delegations, but will be so shortly.⁴ It has been made available to the US delegation. Information on invoking such provisional measures is also presented in the notification document.

At this stage, I restrict myself to referring to that document. If need by, my delegation will be happy to provide further information.

The last part of the question concerns criminal penalty imposed with respect to piracy of copyrighted works. The legislation concerning this is to be found in Chapter 7 of the Norwegian Copyright Act. In general, Section 54 states that persons who wilfully or negligently contravene the Copyright Act shall be liable to fines or imprisonment for a term not exceeding three months. However, if the infringement is wilful, and has been committed under particularly aggravating circumstances, the penalty shall be fines or imprisonment for a term not exceeding three years. Such infringement is subject to public prosecution.

Any damage caused by an infringement is subject to a claim for compensation and, as mentioned in our first reply, also confiscation and destruction of infringing articles are covered.

6. *Article 10 of TRIPS requires that databases based on factual information that constitute intellectual creations by reason of the selection or arrangement of their contents be protected. Please explain how databases are protected under Norway's copyright law and how such protection operates in conjunction with Article 43 of the Copyright Law, which provides that "works by which a considerable amount of information has been compiled" are protected for 10 years.*

Databases which constitute an intellectual creation are protected as literary works under the Norwegian Copyright Act. The "catalogue rule" in Section 43 applies to "Formularies, catalogues, tables and similar works in which a large number of items of information have been compiled", and will apply also on databases. The second paragraph of Section 43 states that if the content of a database is wholly or partly subject to copyright, such may also be applied.

The catalogue right differs from the copyright protection of data bases in many respects; there are no criterion of creativity, only "reproduction" is protected unlike copyright protection which protects against "producing copies", the term of protection is only ten years for catalogues, and finally the catalogue rule applies only to works that are published in Norway.

7. *Article 1 of Norway's Copyright Law lists the works that are protected as literary and artistic works under the Law. Computer programs, however, are not included within this list. As Article 10 of TRIPS requires that computer programs be protected "as literary works," please explain how computer programs are protected under Norway's law.*

Computer programs are protected as literary works in Section 1, second paragraph number 12. Section 1 was amended in 1990 (Act No. 26 of 15 June 1990).

8. *Please explain how Norway's copyright law complies with TRIPS Articles 11 and 14, which require that the rightholders of computer programs and phonograms be granted the right to control the rental of their work. It does not appear that Norway's copyright law grants a rental right in these works.*

⁴Subsequently circulated in document IP/N/6/NOR/1.

Section 19, second paragraph of the Norwegian Copyright Act stipulates that the rightholder of a computer program is granted the right to control the rental of their work. The rightholder of a phonogram is given this right in Section 42, third paragraph (performing artists) and section 45, second paragraph (producers). The Copyright Act was amended in this respect in 1990 (Act No. 26 of 15 June 1990) as regards the rental of computer programs, whereas Sections 42 and 45 were amended in 1995 (Act No. 27 of 2 June 1995).

9. *Article 14 of TRIPS requires that performances be protected for a term of 50 years from when the performance took place and phonograms be protected for a term of 50 years from fixation. Articles 42 and 45 of Norway's Copyright Law, however, appear to protect phonograms and performances for a term of protection equal to only 25 years. How do these Articles comply with the requirements of TRIPS Article 14?*

The Norwegian Copyright Act Section 42, second paragraph stipulates that the term of protection as regards performances is 50 years from the expiry of the year in which the performance took place. 50 years term of protection also applies to sound fixations pursuant to Section 45. The term of protection was extended from 25 years to 50 years in 1988 (Act No. 101 of 23 December 1988).