

NEW LEGISLATION AND JUDGMENTS 2017 - 2019 ICELAND

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The XVII Nordic Copyright Symposium

5 September 2019

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LÖGMANNSSTOFA

NEW ACTS ON COPYRIGHT

- Act No. 88/2019 on Collective Management of Copyright
Implementation of Collective Rights Management Directive 2014/26/EU
- Act No. 50/2019 which amends of the Copyright Act 72/1973
Implementation of EU Regulation 2017/1128 on cross-border portability of online content services in the internal market
- 2 September 2019: Enactment of an amendment of the Act on Income Tax
Revenues from secondary use of copyrights shall be treated as capital gain (a lower percentage but without any deductions) and are not subject to income tax

COPYRIGHT POLICY

- In 2014 the ministry of Education, Science and Culture decided to draft a Copyright Policy which should be a part of a cultural policy of the authorities
- The work is still in progress

SUPREME COURT 18 OCTOBER 2018 – HRINGIDAN V. STEF

- Case No. 33/2017
- In year 2013 two district court decisions upheld preliminary injunctions STEF had obtained against ISPs, granting access to a few file sharing sites
- The third ISP appealed a corresponding judgment to the Supreme Court
- The Supreme Court upheld the judgment of the district court. Preliminary injunction upheld

SUPREME COURT 18 OCTOBER 2018 – SÝN V. SÍMINN

- Case No. 329/2017
- First judgment on the rights of a broadcaster according to Art. 48 of the Copyright Act.
- Síminn granted a license to Sýn to provide Síminn's content.
- After Síminn had terminated the agreement Sýn continued to provide access to the content through non-linear media. Síminn obtained a preliminary injunction against Sýn which was upheld by the courts.
- Art. 44 and 45 of the Media Act apply solely on linear media

DISTRICT COURT OF REYKJAVÍK 21 JUNE 2017 – RADIO SAGA V. STUNDIN MEDIA

- Case No. 3796/2016
- Stundin Media communicated to the public on its Facebook account some photographs of a news reporter at Radio Saga in a burka
- Radio Saga was a right holder of the photos and claimed rights under Art. 49 of the Copyright Act
- Stundin media claimed that the communication to the public was lawful as a limitation under a Art.14 or Art 15 of the Copyright Act
- The court held held that neither Art. 14 or15 did cover such use

THE COURT OF APPEAL 21 DEC. 2018 – THG ARCHITECTS V THE GOVERNMENT CONSTRUCTION CONTRACTING AGENCY



THE COURT OF APPEAL 21 DEC. 2018 (2)

- Case No. E- 243/2018
- In 2003 THG Architects were engaged by a NGO to assist with a development of a residential center for the elderly under a new ideology in cooperation with the municipality Kópavogur
- THG started the design in 2006
- The project was later taken over by the municipality and the Icelandic state. The decision process lasted many years

THE COURT OF APPEAL 21 DEC. 2018 (7)

- In 2016 the state decided to continue with the complex and to initiate a tender process for the design of the two remaining wings
- THG filed for a preliminary injunction which was granted
 - a PI prohibiting the tender process in its whole
 - and prohibiting the delivery of copies of THG's preparatory documents in the tender process

THE COURT OF APPEAL 21 DEC. 2018 (8)

- THG's arguments:
- The four wings and the community center are one architectural work and the act of designing the two remaining wings without permission from THG would constitute an amendment of that work, e.g. a breach of copyright
- Even though the court would not agree that the building in its whole is one work the design of new artistic features for the remaining two wings would constitute a breach of author's moral rights to the already built parts
- An exception in the tendering legislation – 2014/24/EU, Art. 32,2, (b)

THE COURT OF APPEAL 21 DEC. 2018 (9)

- The argument of the Icelandic state:
- There is no protected work of art in the meaning of the Copyright Act
- THG has no priority right to design the remaining two wings.
- The state is obliged to tendering of the design

THE COURT OF APPEAL 21 DEC. 2018 (10)

- Conclusions of the judgment:
- Preliminary injunction upheld in respect of providing copies of the older design documentation as a part of the tendering documents
- Preliminary injunction denied in respect of the progress of the competition process
- THG has not demonstrated what is the protected work and when it was created
- Draft drawings for the remaining wings have not been finalised, therefore it can not be established that design of such wings or connection to existing buildings would constitute amendments that would require THG's approval
- Not sufficiently demonstrated that it is impossible to design the remaining wings without such design to constitute a breach