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## MPA Submission on Bill L 19 to Amend the Danish Copyright Act Implementing the EU Copyright Directive

On 30 August 2002, the Motion Picture Association of America forwarded its submission on the Departmental Draft Bill to amend the Danish Copyright Act. Based upon further review of the Departmental Draft Bill, additional points were forwarded by the MPA on 4 October 2002.

The MPA is a trade association representing the interests of seven major international producers and distributors of film, television programmes, home videos and DVDs<sup>1</sup>.

As a number of important points in the MPA submissions have not been reflected in Bill L 19 of 2 October 2002, the MPA hereby takes the liberty to draw the Committee's attention to a number of points that still give rise to serious concerns on the part of the MPA.

<sup>1</sup> Buena Vista International, Inc.; Columbia TriStar Film Distributors International; Metro-Goldwyn-Mayer Studios Inc.; Paramount Pictures Corporation; Twentieth Century Fox International Corporation; Universal International Films, Inc.;K and Warner Bros. International Theatrical Distribution, a division of Time Warner Entertainment Company, L.P.

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### **Definitions of "technological measures" and "effective" (Article 6.3.)**

"*Technological measures*" and "*effective*" as defined in Article 6.3 of the Copyright Directive should not be interpreted to the effect that the technology must be virtually unhackable in order to qualify for legal protection since such interpretation would be contrary to the intentions of the Copyright Directive. As there are direct references in the Bill to the Copyright Directive's definitions of "*technological measures*" and "*effective*", the risk of a similar misinterpretation will equally exist in the Danish Copyright Act if so implemented.

The MPA recommends that the phrase "*in the ordinary course of its operation*" ("*under deres normale funktion*") be deleted from the definition of "*technological measures*" and included in the definition of "*effective*". Such clarification of the definitions may be inserted in the Explanatory Memorandum on p. 35. Alternatively, the Explanatory Memorandum could state that the legal protection in Section 75c should not be interpreted to the effect that a technological measure must be unhackable. All technological measures can be hacked. It is for this reason that the WIPO Copyright Treaties and the Copyright Directive have introduced legal protection for such measures.

### **Sanctions and remedies**

Under Section 81(6) of the Bill, it is for the aggrieved party to institute legal proceedings in respect of a violation comprised by Section 78, cf. Sections 75 c(1) and 75 e. The MPA strongly recommends that also Section 75 c(2) be included in Section 81(6) as vital private interests are at stake also in this respect.

The MPA notes that the Explanatory Memorandum (p. 40) refers to the issue of standing to bring private cause of action in respect of the circumvention of technological measures under Sections 75 c and 75 e. This part of the Explanatory Memorandum observes that:

*"Doubt may arise as to who should be deemed to be the aggrieved part having standing to bring a cause of action."*

In the opinion of the Ministry of Culture, the aggrieved party will generally be the rightholder. While the MPA definitely agrees with this interpretation, we suggest that it be clarified to cover specifically the manufacturers of technological measures. A whole industry has developed around circumventing copy protection measures which ranges from selling devices and downloads that remove copy protection to cheap imported DVD players which are "chipped" to prevent the output of a copy-protected signal. Such activities damage a whole range of groups, including rightholders, the providers of copy protection technologies, consumer electronics manufacturers, the government and, ultimately, the consumers.

According to Section 78 of the Bill, any person who with intent or by gross negligence violates Section 75 b or 75 c will be liable to a fine and any person who intentionally violates Section 75 e will likewise be liable to a fine.

The MPA does not agree that such sanctions are:

*"... effective, proportionate and dissuasive."*

cf. Article 8(1) of the Copyright Directive. As underlined in the MPA's submission of 30 August 2002, several groups are severely damaged by such activities, including rightholders, providers of copy protection technologies and consumer electronics manufacturers, for whom considerable investments are at stake. The fact that circumvention is sanctionable only by fines does not constitute a proper deterrent. To comply with the intentions of Article 8(1) of the Copyright Directive, intentional crimes should as a minimum be sanctionable by imprisonment.

Section 76(2) of the current Copyright Act provides the basis of imprisonment of up to 12 months in case of intentional violations of certain provisions of the Copyright Act. As the need for an effective deterrent is crucial regarding the new Chapter 6 A of the Copyright Act, the MPA strongly recommends that violations of Sections 75 b, 75 c and 75 e of the Bill be subject to substantial fines as well as imprisonment for intentional violations.

Yours sincerely

  
Strange Beck

