THE LEGAL ASPECTS OF COPYRIGHT CONTRACTS REGULATION

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Annotation. Copyright contracts are one of the most relevant issues on these days. If someone try to calculate the current copyright contracts, there is no doubt, the numbers are impressive. Unfortunately, not always the copyright contracts are made by the legislative requirements, and often the copyright contracts are made even when they cannot be applied. Untypical conditions used in copyright contracts are one of the most common mistakes. Indeed the properly prepared copyright contracts could be an alternative employment or other contract.

Key words: copyright contracts, legal regulation, author.

Introduction

In 2003, March 21, the new Lithuanian Law on Copyright and Related Rights Act update has been set in. The update of the law didn't change it in principle, but some new aspects were regulating newly. The main purpose of the update was to accommodate the Copyright and related rights act with the European Union norms, to improve the Copyright and Related rights act according to Lithuania's international obligations and also to harmonize with the new Lithuanian Civil Code and Lithuanian Civil Procedure Code.

Copyright and Related rights act is the main document in Lithuania which regulates copyright contracts and other related issues (The Official Gazette, 2003, No. 28-1125).

The common provisions of the copyright contracts under the existing copyright and related rights act are analysed in this thesis, focusing on the object of the copyright contracts and how the copyright contracts conditions are regulated.

The object – the legal regulation of copyright contracts.

The aim – to make the comparison of the legal regulation of copyright contracts in Lithuania and Great Britain.

The objectives:

- To discuss the conception of the copyright contracts;
- To analyze the inherent characteristics of copyrights contracts;
- To look into the problems of making and implementing of copyright contracts in practice.

The research methods – the generalization of the scientific literature analysis, systematic and comparative analysis, the analysis of graphical, court orders and legislation, logic - analytical method.

The concept and characteristics of the copyright contracts

In many states the legal doctrine and practice of the contract as a legal institution, has long been identified exclusively with private (civil) legal category. Perhaps, it's the reason why contract issues are not adequately known, disclosed and assessed. O. V. Shirabon noticed this problem: „it is necessary to declare that the jurisprudence is focused on „sectoral" contracts – the private contracts awarded on the basis of civil and commercial law, also focus on the contract performance in international law. Considering on this, the most important issues, related with the contractual legal relationship of public law, are not analyzed enough" (Shirabon 2007; Bentley 2004).

The modern concept of copyright occurred in United Kingdom on 1710, it was established by the Statute of Anne. Nowadays the author's rights are protected by the copyright, designs and patents act (1988) in Great Britain[1].

The article 6.159 of the Civil Code of the Republic of Lithuania (Civil Code of the Republic of Lithuania 2001) (hereinafter – CC) provides that the elements of the contract, which are enough for the validity of the contract, are the agreement of capable parts and also the form of contract according the law. It is stated that the contract is made when the parts agreed all essential conditions. The essential conditi-

1 A number of legislative amendments entered into force on August 1, 1989, also a few small provisions on the 1990 and 1991. Various changes were mostly of European Union directives origin.

ons are determined by the law, part's agreement and sometimes by the court. It is generally accepted that the essential condition of the contract is the object of the contract in all cases (Mikelėnas 1996). The copyright contract is one of the types of civil contracts regulated by the special law (Usonienė 2002).

In the most general sense, the copyright contract is the agreement, the basis of which the author transfers or undertakes to transfer in the future his rights of the use of production to the assign in the limits and conditions as determined by mutual agreement.

The concept of copyright contract is introduced in article 39 of the Republic of Lithuania on Copyright and Related Rights Act (hereinafter – LCRR), in which determined that according the copyright contract the „one part (the author or his assign) transfers or gives the author's economic rights in literary, scientific or artistic work or undertakes to create a work specified in the contract and to transfer it or to give the author's economic rights on it to the other part (assign or licensee), meanwhile another part undertakes to use the work or to begin to use it under the circumstances based in the contract and to pay the salary unless the contract provides otherwise" (The copyright and related rights act of the Republic of Lithuania, 1999).

The copyright contract may be only if the contract's object is the copyright transfer or grant. If the contract is not agreed on the transfer of copyright or take advantage of the grant, the contract does not constitute a copyright contract[2].

Only the economic author's rights can be transfer[3], for example, to reproduce, publish, interpret, adapt, disseminate, broadcast or use in other way. Author's moral rights cannot be transferred. This means that if a person has a translation of another author's work, according the contract he may transfer all his rights to the property of another author's work of translation to the publishing house. In this case, the publishing house will be able to publish the work in the discretion, however it must noticed who made the translation. Also the author of translation keeps the right to object any change or misrepresentation of translation. Everything else is a matter of agreement between the author and the publishers.

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It is possible to transfer property rights to an existing work, when the author and the publisher has already signed a contract to publish already written book. Also it's possible to make the work order contract, which will oblige the author to create the work under the contract's conditions and to transfer some rights of work to the customer (The copyright of literary, scientific and art works: Current Issues and Perspectives 2005).

The copyright contract can be repayable or not. If the copyright contract is repayable, the salary must be provided or the salary's calculation must be noticed in the contract. There are two main methods to set the salary of the work or the rights on it:

1. The specific sum of money.

2. Percentage of the copyright assignee of income. In this case, the author has the right to get information about his work use and about the income of assignee (Copyright and related rights protection and the fight against piracy 1997).

It is noticed that the parts can make the agreement to pay all salary at once or to pay in instalment.

In summary, in the most general sense, the copyright contract is the agreement, the basis of which the author transfers or undertakes to transfer in the future his rights of the use of production to the assign in the limits and conditions as determined by mutual agreement. Only the author's property rights can be transferred, for example, to reproduce, publish, interpret, adapt, disseminate, broadcast or use in other way.

Copyrights requirements in Great Britain

According to Copyright, Designs and Patents Act[4] (1988) in United Kingdom, non- property rights related to copyright is a moral rights, which are intended to protect the author's / creator's reputation, these rights cannot be inherited after the creators / authors death.

2 It may be a service contract or contract.

3 The copyright is the author's property rights and moral rights of the created work.

4 Copyright, Designs and Patents Act 1988, §107 (1) (a), UK.

There are four moral rights:

1. Authorship. This right identifies the author / creator.

2. Wholeness. Author / creator has the right to prevent belittle his work, change jobs, use not in accordance with the author's idea, or to take any action that would harm the author's reputation.

3. Incorrect assignment. Author's / creator's right to a fair ascribed authorship.

4. Disclosure. Author's / creator's right to withhold from publication of films or photos, or to prevent the display or distribution (Cornish 1999).

Copyright, Designs and Patents Act prohibits a third party without the holder's permission:

1. Copy;
2. Publish;
3. Lease or lending;
4. Publicly perform, display, play;
5. Broadcast, or partially applied.

Copyright, Designs and Patents Act provides some exceptions. The main exception is known as „honesty", it is not a legal right, but the defense. Honest persons are permitted to use the work for nonprofit purposes or for research, news reporting, and criticism or review information. Other exceptions apply to educational institutions and libraries, such as copy to the purpose to give or receive instructions or assessment, librarians and archivists copying, local or interlibrary document supply.

In almost all cases, the author shall assign its copyright to someone else, for example, the publisher. However, if the work was assigned to another party, or has been created by another person by order or under an employment contract, copyrights belong to the customer or employer.

Copyright owners of press publications are very difficult to identify, not to mention the permission, because they consist of a number of copyright works.

All electronic media works provide the same restrictions for all copyright works. E-mails, web pages, and all the material available on the web is considered copyrighted works. Although this information is publicly available and free of charge, does not mean that it can be freely copied. Some web developers actually give the right to copy the material for educational purposes, but in all cases, the authorization or consent of the copied material must be obtained.

Confined works should never be copied without the author's permission. This can be various written papers, dissertations, personal letters, etc.

The subject of copyright contracts

The title of work is one of the main elements which determines the subject of copyright contract: the copyright contract is considered as made when the object of rights, which transference (or granting) are the subject of copyright contract, is clearly determined - the work, on the other words, when it is possible to determine what a given work rights are transferred or granted. As the associate professor A. Vileita says, both the title and the format, genre, extent, and other information of work must be defined (Vileita 2000). It must be noticed that the title of work is the only one element of copyright contract subject which must be determined in the contract. The transferred rights and the extent of transferred rights may be determined according the dispositive LCRRA norms.

Examining the subject of copyright contract, it is also needed to notice the LCRRA article 40, part 3 and 4, in which it is said that according the copyright contract transferring all author's property rights, these rights are transferred just for those work using ways, which are defined in the contract; if the work using ways are not defined in the contract, it is considered that the contract is made just for those work using ways, which are necessary for the purpose on which the contract was made. Two rules are set in these provisions: the first – a strict copyright contract interpretation rule, according it the transferring of all copyrights is abridged to the particular ways of using the work; the second – the purposes of the copyrights transferring, according it if appears some uncertainty of extent of copyright transferring, this rule defines that it is enough extent to reach the purpose of the contract.

According the copyright, designs and patents act (1988) in Great Britain, the subject of copyright contract is the transferring of author's property rights or the granting of author's property rights (in copyright license contract).

In summary of legal regulation of this copyright contract element, some author's rights (including the property) transferring is strictly prohibited on purpose to assurance the author's interests (the condition of mentioned rights included in the contract wouldn't be as the contrary to the imperative norms), on the other hand, the selected copyright contract regulatory model allows not a very detailed contract, however, having any doubt of what rights are transferred, it is considered that the mi-

nimum of author's rights is transferred to reach the purpose of contract (Mikelėnas 1996).

Copyright protected by the laws of the Republic of Lithuania respectively. The court finds that the works or objects of related rights have been fraudulently employed, recover from the user 5 times higher royalties than would be payable under license to use a work or object of related rights. In individuals who have, within one year from the royalties of recovery, repeated breach of the Copyright Law of the works and objects of related rights procedure recovered 10 times higher royalties than the one to pay for the rights granted under the license to use a work or object of related rights. Losses and property damages are governed by the Civil Code and the Copyright Law.

Both in Lithuania copyright law norms as well as by the British Design and Patents Act 1988, in determining the amount of loss, the court took into account of infringements, the amount of damage and the lost income and other expenses of subject of copyright or related rights. Illegal works and objects of related rights specimen can be forwarded to the subject of copyright or related rights, if requested.

A person which infringes the author's or artist's moral rights, must compensate for non-pecuniary damages, which amount in money determines the court. Moral damages is determined in each case shall not be the less than 5000 LTL and not more than 25000 LTL. In determining the moral damage, expressed in money, the amount shall take into account the offender's guilt, its financial position, the moral damage effects and other significant circumstances of the case.

In the case of copyright infringement, the property damage is incurred costs and the loss of material property (income), which he would have received if there hadn't been illegal actions. Damages expressed in monetary are considered losses, which can be direct (real) and indirect (loss of income). Loss of income is the amount of money by which the victim's financial situation has not improved, on the other words, the loss of profit. It is calculated by excluding the costs associated with taxes, fees, and other costs (Vileita 2000). Therefore, the legal meaning of the term „loss of income" in economic terms is a loss of profit.

The person who infringed the author's moral rights must to compensation moral damage. This amount of damages expressed by money is determined by the court in accordance with the Civil Code and the rules on non-pecuniary damages (Mikelėnas 1997).

In order to find an infringement of copyright, the fact that the work is unauthorized use must be set – the use of a work (including the release and reproduction) and the distribution without the permission (a license). Unauthorized use of copyrighted works brings not only civil but also the administrative and criminal responsibility.

As one of the most important features of the work is its novelty (originality). Therefore, business people as subjects seeking the financial gain, must think about the confidential contract with the author. This agreement provided that any creative process, from idea to result must be vigilantly protected. The idea of work – one of the most precious expressions of the author's intangible property, the disclosure would be forthcoming creations novelty infringement, it means that it cannot enter into a list of objects protected by copyright, and its use is not illegal and will not entail legal liability (Mizaras 2003).

Lithuanian courts are not which examined the relationship between work and shape. Meanwhile, in terms of the originality of the work as a criterion to determine whether a work is not copied, it should be noted Lithuanian Court of Appeal analyzed the case (Antanas Vilius Jurkunas v LLC „Though" 2004). Applicant Antanas Vilius Jurkunas appealed to the court with the lawsuit in which the defendants are LLC „Though" and Ramute Sukeviciene on infringement of the author's property and moral rights. The applicant stated that the defendant LLC „Though" in 2001 publication „Encyclopedic book of forest" used the twenty-nine paintings of applicant without his permission and without mentioning his name. According to the applicant, drawings (various drawings of forest animals) was a repaint of his drawings printed in 1988 publication „Lithuanian fauna: Mammals". The authors of the drawings in „Encyclopedic book of forest" is the respondent R. Sukeviciene. Defendant R. Sukeviciene said that she is the author of drawings published in LLC „Though" . The court appointed examination of drawings. The experts have concluded that R. Sukeviciene's drawings are repaints of A. V. Jurkunas drawings. Based on the results of the examination, the court concluded that R. Sukeviciene's drawings are not original, but the illegal copy of the A. V. Jurkunas' drawings.

Lithuanian case law of compensation cases of author's non-pecuniary rights, based on which would be visually show what factors are important in determining the extent of damage, is limited and not crystallized. An interesting and informative in this respect is dr. V. Mizaras article (Mizaras 2003) on the German case law. It should be noted that the German Federal Court in determining the amount of non-pecuniary damage, usually takes into account the illegal nature of the actions and the difficulty and the form and degree of offender's guilt. For example, the offender's actions, re-made after he was warned of prohibition to distribute photographs without the author's permission, Court assessed as intentional and found a higher amount of compensation for non-pecuniary damage (Wieder holungsreröf-fentlichng 1996). German courts also define the circumstances, influencing the difficulty and the amount of damage, as the reasons and motivation of the offender's behavior, which affects profit (Von Hollebern K.Geldersatz bei Persönlichkeitsverletzugen durch die Medien 1999).

One of the greatest practical copyright remedies - damages, is regulated by both the Copyright and Related Rights Act and the Civil Code. Copyright and Related Rights Law Article 67 provides that the losses and property damage to be compensated according to the law and the Civil Code. Under Article 2 and 3 of this act, it is provided two copyright damage remedies - reparation and compensation. In determining the amount of the damages should be based on both the CC Article 6249 and Article 67 paragraph 2. CC 6.249 paragraph 2 declares losses as the personal benefits of unlawful actions. This provision makes it easy for the author or his defender to proof the amount of loss, because the other person of the proceeds of unlawful action is much easier to prove than the victim's loss of income.

Lithuanian case law of compensation cases of author's moral rights, based on which would be visually show what factors are important in determining the extent of damage, is limited and not crystallized. An interesting and informative in this respect is dr. V. Mizaras article on the German case law. It should be noted that the German Federal Court in determining the amount of moral damage, usually takes into account the illegal nature of the actions and the difficulty and the form and degree of offender's guilt. For example, the offender's actions, re-made after he was warned of prohibition to distribute photographs without the author's permission, Court assessed as intentional and found a higher amount of compensation for moral damage. German courts also define the circumstances, influencing the difficulty and the amount of damage, as the reasons and motivation of the offender's behaviour, which affects profit (Mizaras 2003).

It can be reasonably concluded that the non-pecuniary damage are not only the victim's spiritual suffering assessed in cash. This is the entirety of the factors that allow solving the degree and extent of the victim's subjective claims are based on facts.

Non-pecuniary damages aren't an alternative to pecuniary damages. Claim for non-pecuniary damages may bring any copyright holder, who has reason to believe that the damage done to him, whether it calls for pecuniary damage.

Conclusions

1. Under the Lithuanian law, the copyright agreement may contract the author (or his successor) and the user of work. Therefore, in almost all cases one party of the contract will be a person, whereas the user of work can be a person or artificial person.
2. According the law, both in Lithuania and in Great Britain, the copyright agreement may contract the author (or his successor) and the user of work. Therefore, in almost all cases one party of the contract will be a person, whereas the user of work can be a person or artificial person.
3. Copyright in the United Kingdom, as well as in Lithuania is valid all life of the author or sponsor (employer) plus 70 years after his death. If the author / creator is unknown, the copyright is protected 70 years after the publication. If there is a common authorship, 70 years from the last author's death. When the work is carried out by the official or servant of the queen, or by the queen, the term of copyright protection is 125 years since the work was created, except that cases when it is published in 75 years.
4. Copyright does not have to be registered, it automatically appears at the moment when the work is created, or is declared, published, or released, and if the creator is unknown, published or publicly displayed.
5. In order to ensure the economic interests of authors and the public a legitimate and reasonable interest to use a work balance, exclusive author property rights may be restricted by law provi-

ded for socially important purposes, and provided that this does not conflict with a normal Use of a Work and does not prejudice the author's moral rights.

6. If the time limit of author's property rights or license is not noticed in the copyright contract, any part can terminate the contract before the year reporting other in writing. If the area of validity is not noticed in the copyright contract, it is considered that the author's property rights are transferred to the territory of the Republic of Lithuania

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TEISINIAI AUTORINIŲ SUTARČIŲ REGULIAVIMO ASPEKTAI

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Raktiniai žodžiai: autorinės sutartys, teisinis reguliavimas, autorius.