The Exercise of Moral Rights by Non-Authors[1]

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The concept of moral rights is as old as authors' rights (*droit d'auteur*) themselves. It was intended to protect the author's honour and reputation. The rights of attribution, integrity and disclosure constitute the core of the author's moral rights. During the 20th century, moral rights became a universal category of copyright law.

The problem is that the society and copyright system itself are not static. Copyright protection is not limited to artistic expression any more. It is extended to numerous objects including software and databases, as well as to certain type of investment. Several objects are created collectively and their utilization is enhanced by information communications technology. This raises the question whether it is time to adjust moral rights to the changed societal situation.

The authors analyse copyright laws of different countries and define good practices, which are compatible with the needs of contemporary society. The results of comparative analyses can be used for international, regional (EU) and national unification in this field.

Keywords: intellectual property, copyright, moral rights, personal rights, exercise of moral rights.

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Introduction

In the doctrine of the Continental European countries, copyright is often considered as an "extension of author's personality". This is explicit in the Continental copyright doctrine, which distinguishes between two categories of rights – moral rights (which in several jurisdictions and theory are named personal rights) and economic rights. While economic rights are freely assignable and licensable, the moral rights are not usually considered to be objects of transaction. There are several restrictions to the exercise of moral rights by third parties. Perhaps this was not so relevant when the scope of copyright protection was limited to artistic expressions and there were no signs of information and communications technology (ICT) or knowledge based economy. Today's reality is that copyright protected works are regarded as business assets and products which may include substantial investment. ICT provides tremendous opportunities for various uses of works. Furthermore, works are often created and developed further collectively by a wide range of authors. As a result, it is crucial to adjust the concept of moral rights with the aim to facilitate economic, technological and cultural development.

The authors' main argument is that in contemporary society we have to strike a fair balance between author's moral rights and the need to enhance the utilization of copyright protected works by the society. The role of moral rights is to protect the author's honour and reputation, not to interfere with and create barriers to exploitation of works. The law should not restrict the author's freedom to allow making adaptations and changes to his works by third parties. This should be up to the author to decide. One method to enhance the exploitation of works is to limit the catalogue of moral rights so that if the author has transferred the rights to make adaptations to the work to a third party, he cannot object to any changes made to his work unless these changes are prejudicial to the author's honour and reputation. Another key method is to allow transactions with moral rights so that the exercise of moral rights by non-authors is not restricted. It is, however, up to legal doctrine of a particular country whether these transactions are constructed as waivers, consents or licenses.

The article explores how different countries have dealt with barriers to the exploitation of works caused by moral rights. The authors use Estonia, France, Germany, the Nordic countries, the United States, the United Kingdom and Canada as examples. These countries can be divided into groups based on the strength of protection of moral rights. France as the homeland of *droit d'auteur* concept has the strongest protection for authors' moral rights. In the Anglo-American copyright

tradition moral rights have, however, very limited scope of protection. The Nordic countries are somewhere in between.

Since the moral rights of the creator of a work belong to a broader system of personal rights in private law of Civil law countries, the authors first of all address the question how to categorize personal rights in private law and whether it is possible to exercise these rights by third parties. Thereafter, the authors analyse international instruments regulating author's moral rights and describe the extent of the catalogue of moral rights in different countries. Extensive catalogue of moral rights makes it necessary to regulate their exercise by non-authors. The authors explore whether there are any international restrictions in regulating the exercise of moral rights by third parties and analyse the regulations in several developed countries and in the Draft European Copyright Code.[2] In the conclusion the authors summarize research results and provide possible approaches to settlement of diverging interests of the parties concerned by legislative means.

1 System of personal rights in private law and their exercise by third parties

The concept of non-transferability of moral rights, as it is still common understanding in continental Europe, is based on the character of moral rights being those elements of copyright, which derive directly from the personality of the author. Being a subgroup of personal rights, moral rights refer to those means by which the human personality expresses itself towards its environment, *i.e.* any act of creativity. The question to what extent can moral rights be exercised by third parties is therefore preceded by the question whether personal rights in general can be object to this exercise or whether they may even be transferable.

In continental Europe, personal rights (in the meaning of German "*Allgemeines Persönlichkeitsrecht*") traditionally were seen as rights protecting non-material interests; the scope of protection did not include their economic exploitation.[3] Due to their essentially personal character, the non-material right to the integrity of personal data – protecting interests such as privacy, reputation, dignity of deceased persons – have been categorically neither subject to third-party exercise nor transferable.

Defining the system of personal rights in private law generally is not an easy task. In countries of dualistic theory (for example, France) moral rights developed individually and separately from property (economic) rights, which means that in these countries the emphasis is placed on the natural personal rights of persons, rather than the property rights. In countries where intellectual work is a component of the author's 'sphere of personality,' the commercial aspects are not separated from the moral rights of the author. However, the core of the moral rights remains personal. Therefore one may conclude that the meaning of personal rights and moral rights can be different depending on the approach to the incorporeal rights of author over the work.[4]

Below we will follow the general division of legal protection of moral rights of authors into the right of paternity or attribution, *i.e.* the right to claim authorship of the work, and the right of integrity, which refer to the right to object to any distortion or modification or other derogatory action in relation to the work which may be detrimental to the author's honour or reputation.[5] Moral rights are required to be independent from the economic rights and in some jurisdictions can be transferred

with economic rights. Here the German approach to the coexistence of moral rights with economic rights seems to be the most flexible concept in civil law countries. Coming to this point, one may conclude that even if the most important element of personal rights is their inalienability and non-transferability, moral rights can still be assigned in some countries under special conditions and in limited amount or there is a limited right to agree on waiver of these rights.[6]

Estonian private law in its legal acts does not use the term "moral right". Instead of "moral rights" the terms "personality rights" and "personal rights" are used. However, here also the use of terminology is not consistent *vis-à-vis* personal rights. The Estonian Law of Obligations Act[7] (LOA) uses the terms "*isikuõigus*" and "*isiklik õigus*", which could be, with some reservation, translated into English as "personality right" and "personal right". The uncertainty in this differentiation is deepened by the fact that the Supreme Court has not paid attention to the difference in the scope of those terms and has even used them interchangeably.[8] The term "*isikuõigus*" is used in § 131 LOA, which refers to the obligation to compensate damage "*caused by unlawfully depriving a person of liberty, by defamation or by violation of any other personality right*". Some legal scholars consider that this provision relates to the general personality right containing *inter alia* the free self-realisation and the related right to the inviolability of private and family life and inviolability of the home, freedom of conscience, religion and thought, etc.[9] The term "*isikuõigus*" (personality right) is also used in § 1055 LOA, which permits the performance of damaging acts and lists "bodily injury, damage to health, violation of inviolability of personal life or any other personality rights" as examples. This, in turn, can be analysed in the context of the procedural rules regarding application of restraining orders. Here the law[10] refers to such orders being in place "In order to protect the personal life of a person or other personality rights".[11] This leads to a conclusion that the term "*isikuõigus*" includes the right to the protection against bodily injury and damage to health. In contrast, the term "isiklik õigus" (personal right) is contained in § 1045 LOA, which refers to unlawfulness of causing the damage if it is brought about by a "violation of a personal right of the victim". This is supplemented by § 1046 LOA, which in this context directly refers to "isiklik õigus" in context of defamation, unjustified use of the name or image, breaching the inviolability of the private life, etc. Thus, one may conclude that although the term "isiklik õigus" (personal right) is closely related to the constitutional general personality right, it is indeed more limited in scope. Most likely it does not include deprivation of liberty, which is subject to separate regulation under § 1045 LOA nor to the protection against harm to health or bodily injury. In contrast, they are contained in the term "isikuõigus" (personality right).

Estonian approach to the moral rights of authors is not settled and similarities can be seen primarily with the German concept of "*allgemeine Persönlichkeitsrecht*". Interpreting the Estonian approach to moral rights, which can be observed in the legislation and court practice, the German approach might be reasonable and pragmatic solution to the problems concerning exercise of author's moral rights by third persons.

In Germany, during the last decade a trend has developed in case law[12] that the protection of commercial interests should at least be partly included in the scope of personal right protection since "personality merchandising" has become a major economic issue not only for celebrities, but also among the wider public (*e.g.* in social media).[13] It can be explained by the monist approach of Otto von Gierke[14] which

was adopted in Germany as a basis of author's rights. The legal issues arising from bringing in personal data[15] as "consideration" within these private law contracts do refer much less to the providing contract partner's interest in the integrity of his personal data, than to their market value. It is therefore arguable whether the doctrine of non-transferability is still needed or even useful if the providing contract partner himself deliberately decides to commercialize his personal data by making them publically accessible against remuneration on a contractual base.[16] The German discussion focuses within this context not only on the question in how far a person may effectively dispose over personal rights at all – personal rights traditionally were not even seen as a solely subjective right[17] –, but also to which extent an eventual transfer would be achieved, making it somewhat parallel to the discussion on the assignability of moral rights.[18]

While the discussion in jurisprudence still continues, case law is in favour of the transferability of personal rights in the situation of an alleged infringement of the right in question. The German Supreme Court (BGH) held in its "Marlene Dietrich" decision that all economical rights arising from a name are unlimitedly transferable,[19] arguing that the scope of protection can be guaranteed much more effectively if third parties are also entitled to claim damages for an eventual infringement.

There is no clear conceptual framework addressing the issue of exercise of personal rights by third parties. It is important to remember that private law is based on private autonomy. Freedom of contract is one of its manifestations. Therefore parties can agree on the exercise of personal rights by third party, unless it is *expressis verbis* restricted by law. Although European countries are rather conservative when it comes to transactions with personal rights, they still allow these transactions.

2 The extent of the catalogue of moral rights

The need to regulate the exercise of moral rights by non-authors depends much on the extent of the catalogue of moral rights. The more extensive the scope of moral rights is, the more relevant it is to have legal provisions on their exercise. There are, however, considerable differences in how different countries protect moral rights. Before we focus on individual countries, it is necessary to outline the international framework.

The Berne Convention for the Protection of Literary and Artistic Works[20] (the Berne Convention) sets an international standard for protection of authors' moral rights which is binding to all member states (including all countries referred to in this article). Article 6*bis* of the Berne Convention regulates moral rights as follows: "*[i]ndependently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation*". The minimum standard of the Berne Convention was established in 1928. Today it is considered to be a compromise solution in which a balance is struck between comprehensive protection of moral rights in *droit d'auteur* doctrine countries such as France and Germany and the countries which for a long time did not recognise these rights (e.g. the copyright doctrine countries such as UK and USA).[21] The Berne Convention only sets minimum standards for the protection and member states are free to establish more comprehensive regulations. Several countries, including Estonia, have gone far beyond the Berne Article 6*bis*.

The WIPO Copyright Treaty[22] does not establish any additional standards for the protection of moral rights. It just refers to the applicability of the Berne Convention.[23] The Agreement on Trade-Related Aspects of Intellectual Property Rights[24] (the TRIPS Agreement) also does not introduce any additional regulation on moral rights and refers to the Berne Convention, but makes an exception regarding Article 6*bis* by stating that "*Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article* 6bis *of that Convention or of the rights derived therefrom*."[25]

Several other conventions also regulate moral rights to some extent. For instance, Article 5 (1) of the WIPO Performances and Phonograms Treaty provides "*[i]ndependently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation*".

Moral rights have not explicitly been regulated on the EU level. The issue of moral rights is tackled in Section VII of the Commission Green Paper Copyright and Related Rights in the Information Society.[26] It can be concluded from the ECJ case law that moral rights are in principle covered by the EC Treaty, as far as they have an impact on intra-Community trade. The existing Directives do not in any way harmonize the regulation of moral rights.[27] Some Directives even explicitly exclude moral rights from their scope of application.[28] It has been suggested that moral rights are not harmonized on the EU level since they do not have a sufficiently strong impact on the functioning of the Internal Market.[29] The main reason most likely lies in the conceptual differences of the *droit d'auteur* and the *copyright* doctrines followed in different Member States.

Harmonization of the regulation of moral rights on the EU level would probably entail finding a compromise in this matter by strengthening the moral rights protection in the countries of the copyright system and weakening them in other Member States following the *droit d'auteur* system.[30] This seems to be something that neither party concerned would be willing to do. Therefore the Berne Convention also remains the minimum standard for the EU Member States. One of the early principles for EU harmonisation in the field of copyright was formulated as follows: "*Community legislation should be restricted to what is needed to carry out the tasks of the Community. Many issues of copyright law, do not need to be subject of action at Community level. Since all Member States adhere to the Berne Convention for the protection of literary and artistic works and to the Universal Copyright Convention, a certain fundamental convergence of their laws has already been achieved*".[31]

The authors of this article support the idea of at least minimum harmonization of moral rights at the EU level.

It is possible to categorize countries based on the extent of protection of moral rights. France, Germany and Estonia are among the countries protecting moral rights extensively. France is often called the birthplace of moral rights and the terms "author's rights" ("*droit d'auteur*") and "moral rights" ("*droit moral*") originate from France. The regulation of moral rights in France as in Germany goes beyond the requirements of the Berne Convention. In legal literature[32] it has been expressed that moral rights in the French Intellectual Property Code[33] are fourfold, encompassing the rights of respect for the name and capacity of the author, respect for the

work itself, right of disclosure or divulgation and the right of reconsideration and withdrawal.[34]

Moral rights in Germany exceed the requirements of the Berne Convention but unlike the French provisions described below, the German provisions governing the moral rights are numerous and detailed.[35] In Germany there is a single author's right ("*Urheberrecht*") protecting the author in relation to, firstly, the author's intellectual and personal interests in the work and, secondly, the author's interests in the work's commercial exploitation. The unitary nature of the system means an intertwining of moral right (or moral interests) with exploitation rights, and the ultimate inseparability of the two sets of prerogatives.[36] The most important principal clause of the German Author's Rights Act[37] provides that "*the author's right protects the author with regard to his intellectual and personal connections with the work and the use of the work*".[38] One consequence of this nuance is that in Germany the duration of economic rights and moral rights are linked, so that in Germany moral rights' protection lasts only as long as copyright protection, whereas in France moral rights are protected in perpetuity.[39]

The Estonian Copyright Act (1992)[40] has a very extensive catalogue of moral rights. Subsection 12 (1) of the Estonian Copyright Act provides the following catalogue moral rights: the right of authorship and author's name, the right of integrity of the work, the right of additions to the work, the right of protection of author's honour and reputation, the right of disclosure of the work, the right of supplementation of the work, the right to withdraw the work and right to request the removal of the author's name from the work. It is probably one of the longest lists of moral rights granted to the author in the world. Some moral rights such as the right of integrity of the work, the right of additions to the work and the right of supplementation of the work partly overlap with the right of alteration of the work which is an economic right. According to the Estonian Copyright Act "*[t]he authorship of a certain work, the name of the author and the honour and reputation of the author shall be protected without a term*".[41]

In order to facilitate the exploitation of copyright-protected works, the catalogue of moral rights is narrowed down in the draft of the Copyright and Related Rights Act (the draft Copyright Act).[42] Section 12 of the draft Copyright Act provides a catalogue of moral rights which lists the right of authorship, the right of author's name, the right of protection of the author's honour and reputation, the right of disclosure of the work, the right to withdraw the work and the right to request the removal of the author's name from the work. All so called alteration and adaption rights are foreseen to be moved into the catalogue of economic rights and, consequently, become transferable to third parties.

The Nordic countries more or less apply the minimum requirements of the Berne Convention. Finnish[43], Swedish[44] and Danish[45] Copyright Acts do not move very far from the Berne Convention and include basically two types of moral rights: the right of attribution and the right of integrity of the work. Since the wording of all the referred legal acts is similar, we hereby use the Finnish Act as an example. Section 3 of the Finnish Copyright Act has the following provisions on the moral rights: "*[w]hen copies of a work are made or when the work is made available to the public in whole or in part, the name of the author shall be stated in a manner required by proper usage*" and " *[a] work may not be altered in a manner which is prejudicial to the author's literary or artistic reputation, or to his individuality; nor may it be made*

available to the public in such a form or context as to prejudice the author in the manner stated".

Countries of copyright doctrine such as the United States, the United Kingdom and Canada have limited protection of moral rights.

Under U.S. copyright law moral rights receive narrow protection. Only the author of a work of visual art enjoys moral rights.[46] According to US copyright law[47] (U.S.C.) a work of visual art is a painting, drawing, print or sculpture, a still photographic image produced for exhibition purposes only. A work of visual art does not include any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication, any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container and any work made for hire.[48] The author of a work of visual art has rights of attribution and integrity.[49]

The British copyright system traditionally has manifested certain scepticism towards claims that authors deserve special protection in law.[50] Until the adoption of the Copyright, Designs and Patents Act (1988)[51], the regulation of moral rights was quite insufficient. The current United Kingdom's Copyright, Designs and Patents Act (1988) includes the following moral rights: the right to be identified as author or director, the right to object to derogatory treatment of work, the right not to be identified as the author of someone else's work and the right to privacy.[52]

The Canadian Copyright Act[53] includes two moral rights: the right to the integrity of the work and the right of attribution.[54] As suggested in the literature, the wording of the legislation would suggest that there are in fact three moral rights – of attribution, integrity and anonymity – but the right of anonymity is, as in European doctrine, usually subsumed under the "attribution" rubric by the commentators and courts.[55]

3 Moral rights as objects of transactions

The commentary to the Berne Convention clarifies that "*[w]hile article* 6bis *does not specifically rule out transfers of moral rights, their assignment would arguably be inconsistent with the very nature of these rights, which are inherently personal to the author. Moreover, it might seem absurd to accommodate the transfer of 'mutilation right', for example. But, in the language of the Convention, the author would not be transferring an affirmative right to mutilate, she would be conveying certain rights of action: to claim authorship, to object to any distortion, etc.".*[56]

Neither the text of the Berne Convention nor its commentaries explicitly preclude transactions with moral rights. This means that its member states are free to regulate the issue. Therefore it is necessary to analyse copyright laws of different countries and model laws to identify best practices.

Here again it is possible to group countries based on whether, under which conditions and to what extent they allow third parties to exercise the moral rights of authors.

France and Germany are rather restrictive. The French Intellectual Property Code provides the following regulation: "*[a]n author shall enjoy the right to respect for his name, his authorship and his work. This right shall attach to his person. It shall be perpetual, inalienable and imprescriptible".*[57] It has been explained in the literature that the French Intellectual Property Code does not *expressis verbis* regulate

issues of transfer, renunciation, alienability or waiver of moral rights. Due to inalienability of moral rights they cannot be transferred *inter vivos*, pass to a creditor[58] and form a part of conjugal property[59]. With a reference to case law, it is asserted that any contractual terms constituting a final irrevocable renunciation of moral rights is void. The moral rights can be temporarily renounced. Consent to an otherwise infringing act precludes infringement. It is crucial that the consent is given to the act itself[60] rather than to unspecified acts.[61]

In contrast to most other countries, Germany follows – together with e.g. Austria – the "monistic theory" based on the works by P. Allfeld,[62] which means that both "*vermögenswerte Immaterialgüterrechte*" (*droit pécuniare*, economic rights) as well as "*ideell ausgerichtete Urheberpersönlichkeitsrechte*" (*droit moral*, moral rights) are principally not separable, resulting in the general non-transferability of copyrights.[63] They can – regarding their economic aspects – only be subject to licenses. Moral rights themselves are not licensable.

Nevertheless, in many cases the existence of moral rights may obstruct the usability of economic rights. For instance, if a theatre acquired from the author a right to use a play in the theatre, it may be interested in being allowed to change parts of the content as well as adapt it to respective stage conditions, etc. In these cases – where the agreed use is only possible if parts of the author's moral rights are adapted –, the restricted transfer of moral rights is exceptionally possible, see § 39 II UrhG.

Another question in case of copyright infringement is to what extent can these rights be enforced also by third parties. Generally, the right is not assignable, see sec. 399 par. 1[64] *Bürgerliches Gesetzbuch*, and cannot be merely enforced by third parties either. However, German legal practice recognizes a respective possibility, although the dogmatic structure remains unclear.[65]

Dogmatically less controversial is the transfer of economically exploitable aspects of moral rights by succession,[66] since all moral rights are subject to succession and therefore automatically transferred to the heirs in the moment of the author's death. They serve as a basis for damages if these rights have been infringed by third persons before or also after the death of the author just as by the author himself.

This is also the only constellation where the possibility to enforce moral rights by third parties is not disputed, as the heirs may have much less personal relation to the works created by the deceased author than his or her partners, performers or other closely affiliated persons,[67] if they can prove proper interest which deserves protection.[68] In these cases, it matches the assumed interest of the deceased author much better if eventually infringed moral right is exercised by these persons than by their heirs. However, the decision whether this exercise is transferred still is left to the successors themselves.

Estonia and the Nordic countries allow the exercise of moral rights by third parties. In Estonia it is a widespread legal practice that parties license moral rights exclusively or do not regulate the exercise of moral rights at all. There is a practical need to find a workable solution. For instance, writing speeches for the President, Prime Minister, ministers or other high officials is a widespread practice (this is called "ghost authorship"). A legal solution is required for drafting legal acts or other official documents or getting the whole package of rights from an artist who drafted a trademark, logo or other symbol for the organisation or official state symbols for a state body.

Some Estonian legal experts have raised the issue of how to distinguish between a general exclusive licence and the transfer of "authors' personal rights" (moral rights). It has been argued that licensing moral rights *in corpore et in genere* is not admissible. It is necessary to agree on how every single moral right will be exercised.[69] Several Estonian copyright scholars support licensability of moral rights under the Estonian copyright system.[70] For example, according to H. Pisuke "*for the purposes of Estonian law, moral rights cannot be assigned. However, it is possible to issue an exclusive licence and a non-exclusive licence for exercising any moral right*".[71] This approach is to some extent supported by the wording of the Copyright Act in its parts concerning the catalogue of rights and exercise of rights.[72] Waiver of rights is not regulated in the Copyright Act.

The situation is different where the exercise of moral rights is not regulated in a contract at all. There are some more general provisions such as § 370 (3) of the Estonian Law of Obligations Act, which states that "*if the right of use to which a licence agreement extends is not clearly specified in the agreement, the extent of the right of use shall be determined pursuant to the objective of the agreement*," which according to some Estonian legal scholars also regulates the exercise of moral rights.[73] Finally, it might also constitute a violation of the principle of good faith if an author has granted a permission for a particular use and afterwards exercises his moral rights to forbid the use (the prohibition of *venire contra factum proprium*).[74]

There is another aspect, which needs to be considered under the Estonian law. Hypothesizing that the exclusive license on moral rights is void, the issue arises whether the exercise of moral rights by a non-author who relied on the license constitutes an infringement of moral rights. In this context it is necessary to consider one of the key concepts of tort law enshrined in the Estonian Law of Obligation Act, which states that "*[t]he causing of damage is not unlawful if the victim consents to the damage being caused, except in the case where the grant of such consent is contrary to law or good morals*".[75] In the field of copyright, the Supreme Court of Estonia has clarified that a person's consent to otherwise tortious act makes the act lawful, while the consent does not have to comply with any specific form requirements.[76]

Finnish, Swedish and Danish Copyright Acts all allow the author to waive the exercise of moral rights in a limited and specified way. Since the wording of all acts is similar, it may suffice to refer to subsection 3 (3) of the Finnish Act which has the following provision: " *[t]he right conferred to the author by this section may be waived by him with binding effect only in regard of use limited in character and extent*".

The United States, the United Kingdom and Canada also allow the exercise of moral rights by non-authors.

Pursuant to U.S. copyright law moral rights pertaining to the author of a work of visual art "*may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified*".[77]

As a general principle, section 94 of the UK Copyright, Designs and Patents Act of 1988 (CDPA) provides that moral rights are not assignable. However, the exercise of moral rights can be based on consent or waiver of rights.

According to the CDPA, it is not an infringement of any moral right to do any act to which the person entitled to the right has consented. Any of those rights may be waived by instrument in writing signed by the person giving up the right. A waiver may relate to a specific work, to works of a specified description or to works

generally, and may relate to existing or future works, and may be conditional or unconditional and may be expressed to be subject to revocation. If a waiver is made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.[78] According to literature, the waiver is one of the key methods, which allows to control the effect of moral rights. The UK law also allows authorial consent to otherwise infringing action which can be oral or in writing.[79]

Pursuant to Article 14.1 of the Copyright Act of Canada, moral rights may not be assigned, but may be waived in whole or in part. Where a waiver of any moral right is made in favour of an owner or a licensee of copyright, it may be invoked by any person authorized by the owner or licensee to use the work, unless there is an indication to the contrary in the waiver. According to legal commentators, a waiver does not require a written form. The waiver of moral rights is possible only after the creation of a work.[80]

In addition to the waiver, it is essential not to ignore the concept of consent as well. Article 28.1 of the Copyright Act of Canada provides: "[a]ny act or omission that is contrary to any of the moral rights of the author of a work or of the performer of a performer's performance is, in the absence of the author's or performer's consent, an infringement of those rights". It has been emphasized by some scholars that consent is not an alternative to waiver. Its expression in law contemplates its availability to the author. Consent could be given expressly or implied.[81]

The draft European Copyright Code (ECC) aims to find a common ground for countries relying on *droit auteur* and copyright traditions. According to Article 3.5 of ECC "*[t]he author can consent not to exercise his moral rights. Such consent must be limited in scope, unequivocal and informed*".

This approach has been challenged by J. Ginsburg. In her analysis of Article 3.5 of the draft European Copyright Code she marks that "*[w]hile the text seeks to bar general waivers, it would permit specific renunciations of moral rights. … The absence of a clear limitation to agreements intuitu personae leaves open the possibility that specific consent might extend to the whole world, for example, to any user of a website on which a work is posted*".[82] J. Ginsburg has also raised the issue whether the consent is revocable. According to her argumentation "*[t]he text does not address the question whether a specific consent must be revocable. While revocability would seem consonant with the concept and purpose of moral rights, the possible extension of permissible consent to website waivers may make revocation impossible*".[83]

There are several methods to define and regulate the exercise of moral rights by non-authors. While the French model is restrictive, the other European countries and Anglo-American countries allow the exercise of moral rights by third parties. Non-authors exercising moral rights can rely on legal instruments such as license, waiver and consent. These instruments usually are limited in scope. In case a country does not have a very extensive catalogue of moral rights then this does not pose any significant problem. However, when changes and adoptions to a work interfere both with economic and moral rights, then it is necessary to have instruments allowing the exercise of moral rights by non-authors.

Summary

The general civil law approach is to divide authors' rights into two clearly distinguished groups: moral (or personal) rights and economic (or property) rights. These two groups of rights have evolved through different paths and have their specific features in national legal systems. As a rule, moral rights are not designed to be an object of transaction. Nevertheless, there is a need to find a workable solution to practical cases directly concerning moral rights (for instance "ghost authorship", in cases of drafting legal acts, trademarks, logos, state and official symbols, creation of ICT related works, etc.).

Copyright systems usually separate moral and economic rights (the dualistic approach). There are also exceptions. In the German copyright system moral and economic rights are inseparable (the monistic approach). In common law tradition author's honour and reputation are protected by other law institutes and therefore author's moral rights are not so relevant as in civil law countries. In civil law countries, moral rights have a direct connection with the personality of an author.

Although moral rights are protected, the scope of protection varies greatly in different countries. On the one hand, there are France, Germany, Estonia and other civil law countries, which have very extensive protection of moral rights, and on the other hand, there are countries of copyright tradition which recognize a very limited concept of moral rights with a short history.

The more extensive the protection of moral rights is, the more relevant it is to regulate the exercise of these rights by non-authors. The analysis, however, reveals that countries which very strongly protect moral rights are also rather restrictive in allowing third parties to exercise these rights.

With an exception of France, the analysed countries accept the exercise of moral rights by non-authors. The analysis shows that the exercise of moral rights is regulated through institutes of waiver and consent. Consent and waiver have to be limited in scope and clear.

The Estonian copyright law contains one of the longest lists of moral rights in the world. Therefore the exercise of such rights has special importance. The Estonian Copyright Act does not regulate author's consent and waiver concerning moral rights. Moral rights are usually licensed. In practice some copyright contracts have provisions which have resemblance to waiver and consent.

The Draft European Copyright Code can be considered a good practice for further harmonization of European copyright law. It also concerns the exercise of moral rights since the authors of the Code make an attempt to reconcile *droit d'auteur* and copyright doctrines. Nevertheless, the current wording could be developed to make the regulation of moral rights more understandable and compatible to national copyright systems. The authors of this article support the idea of at least minimum harmonization of moral rights at the EU level.

Sources

Bibliography

1. *Adeney, E.* The Moral Rights of Authors and Performers. An International and Comparative Analysis. Oxford University Press, 2006.
2. *Cornish, W., Llewelyn, D., Aplin*, T. Intellectual Property: Patents, Copyright, Trademarks and Allied Rights (the 7th ed.). Sweet & Maxwell, 2010.

3. *Daniels, J. M.* Lost in Translation: Anime, Moral Rights, and Market Failure. – Boston University Law Review, Vol. 88, No. 3, 2008. Available: SSRN: *http://ssrn.com/abstract=1179762* [last viewed 01.07.2014].
4. *Dreier, T., Schulze, G.* Urheberrechtsgesetz: UrhG (Commentary on the German Copyright Act), Beck 4. ed. 2013.
5. Eesti Vabariigi põhiseadus. Kommenteeritud väljaanne. (Constitution of the Republic of Estonia, Commented Edition), edited by a panel led by *Madise, Ü.* Tallinn: Juura, Õigusteabe AS 2012. Available: *http://www.pohiseadus.ee/ptk-2/pg-19/* [last viewed 28.06.2014].
6. *Forkel, H.* Gewerblicher Rechtsschutz und Urheberrecht (GRUR) 1988.
7. *Ginsburg, J. C.* European Copyright Code – Back to First Principles (with Some Additional Detail) (January 2011). Auteurs et Medias (Belgium), 2011; Columbia Public Law Research Paper No. 11-261. Available at SSRN: *http://ssrn.com/abstract=1747148* [position 29.6.2014].
8. *Götting, H.-P.* Persönlichkeitsrechte als Vermögensrechte (Personality rights as assets). Tübingen: Mohr, 1995.
9. *Harding, I., Sweetland, E.* Moral rights in the modern world: is it time for a change? – Journal of Intellectual Property Law & Practice, 2012, Vol. 7, No. 8, 565-572.
10. *Jents, L., Kelli, A.* Legal Aspects of Processing Personal Data in Development and Use of Digital Language Resources: the Estonian Perspective. – Jurisprudence 2014, 21(1), 164-184.
11. *Kalvi, A.* Autorilepingu uus kuub (New Skin of Author's Contracts). – Juridica 2003/4, 250-260.
12. *Kull, I.* Principle of Good Faith and Constitutional Values in Contract Law. – Juridica International, 2002/7, 142-139.
13. LUG-Kommentar zum Gesetz betreffend das Urheberrecht an Werken der Tonkunst und der Literatur (LUG), München Beck 1902.
14. *Möller, U.* „Die Unübertragbarkeit des Urheberrechts in Deutschland – ein überschießende Reaktion auf Savignys subjektives Recht", 2. Kapitel p. 11 ff.; Berliner Wissenschaftsverlag, Berlin 2007.
15. *Pisuke. H.* Moral Rights of Author in Estonian Copyright Law. – Juridica International 2002/7, 166-175.
16. *Ricketson, S., Ginsburg, J. C.* International Copyright and Neighbouring Rights: The Berne Convention and Beyond. Second Edition. Volume I. Oxford University Press, 2006.
17. *Rosentau, M.* Intellektuaalse omandi õigused infotehnoloogias. Autori isiklikud õigused (Intellectual Property Rights in Information Technology. The Personal (Moral) Rights of the Author). – Juridica 2007/9, pp. 653–654 (in Estonian).
18. *Salokannel, M.* Ownership of rights in audiovisual productions. A comparative study. The Hague: Kluwer Law International, 1997.
19. *Sirvinskaite, I.* Toward Copyright "Europeanification": European Union Moral Rights. – Journal of International Entertainment & Media Law, 2010/2011, Vol. 3, Issue 2, 263-288.
20. *Schack, H.* Urheber- und Urhebervertragsrecht (Copyright Law and Copyright Contract Law). Siebeck 10. ed. 2010.
21. *Sprau, H.,* in Palandt-Commentary to the Bürgerliches Gesetzbuch (German Civil Code), 70. ed. 2011.
22. *Unseld, F.* "Die Übertragbarkeit von Persönlichkeitsrechten. – Gewerblicher Rechtsschutz und Urheberrecht" (The transferability of personality rights. Industrial property and copyright). – Gewerblicher Rechtsschutz und Urheberrecht 11/2011, 982-988.
23. *Varul, P., Kull, I., Kõve, V., Käerdi, M.* Võlaõigusseadus I. Kommenteeritud väljaanne (Law of Obligations Act I. Commented edition). Tallinn: Juura, Õigusteabe AS, 2006.
24. *Varul, P., Kull, I., Kõve, V., Käerdi, M.* Võlaõigusseadus II. Kommenteeritud väljaanne (Law of Obligations Act II. Commented edition). Tallinn: Juura, Õigusteabe AS 2007.
25. *Walter, M. M., Lewinski, von S.* European Copyright Law. A Commentary. Oxford University Press, 2010.
26. WTO Trade-Related Aspects of Intellectual Property Rights. Ed by *Stoll, P.-T., Busche, J., Arend, K.* Leiden, Boston: Martins Nijhoff Publishers, 2009, p. 245.

Policy documents and draft laws

1. Commission Staff Working Paper on the review of the EC legal framework in the field of copyright and related rights. Brussels, 19.7.2004, SEC(2004) 995.
2. Commission of the European Communities. Green Paper on Copyright and the Challenge of Technology – Copyright Issues Requiring Immediate Action. COM (88) 172 final, 7 June 1988, p. 7. Available: *http://ec.europa.eu/green-papers/pdf/green_paper_copyright_and_chanllenge_of_thecnology_com_%2888%29_172_final.pdf* [last viewed 29.6.2014].

3. European Copyright Code is the result of the Wittem Project that was established in 2002 as a collaboration between copyright scholars across the European Union concerned with the future development of European copyright law. Further information available at: *http://www.copyrightcode.eu/* [last viewed 28.6.2014].
4. Green Paper Copyright and Related Rights in the the Information Society, Brussels, 19.07.1995, COM (95) 382 final, p. 65-68. Available: *http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51995DC0382&from=EN* [last viewed 30.06.2014].
5. The draft Estonian Copyright and Related Rights Act (Autoriõiguse ja autoriõigusega kaasnevate õiguste seadus). Available: *https://www.just.ee/sites/www.just.ee/files/elfinder/article_files/autorioiguse_seaduse_eelnou_0.pdf* [last viewed 28.06.2014].

Normative acts

1. Agreement on Trade-related Aspects of Intellectual Property Rights. Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization. Marrakech, 15.4.1994. Available: *http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm* [last viewed 29.06.2014].
2. Autoriõiguse seadus (Copyright Act). Entered into force on 12.12.1992. – RT 1992, 49, 615 (in Estonian). Unofficial translation available at: *https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/525112013002/consolide* [last viewed 28.06.2014].
3. Berne Convention for the Protection of Literary and Artistic Works. Available: *http://www.wipo.int/treaties/en/text.jsp?file_id=283698#P123_20726* [last viewed 29.06.2014].
4. Canadian Copyright Act. Available: http://laws-lois.justice.gc.ca/eng/acts/C-42/index.html [last viewed 28.06.2014].
5. Code de la Propriété Intellectuelle (Intellectual Property Code). English translation available: *http://www.wipo.int/wipolex/en/details.jsp?id=5563* [last viewed 29.06.2014].
6. Copyright, Designs and Patents Act 1988 (the CDPA). Available: *http://www.legislation.gov.uk/ukpga/1988/48/contents* [last viewed 29.06.2014].
7. Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code. Available: *http://www.copyright.gov/title17/circ92.pdf* [last viewed 01.07.2014].
8. Danish Act on Copyright. Available: *http://www.wipo.int/wipolex/en/details.jsp?id=7394* [last viewed 28.06.2014].
9. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. OJ L 167, 22/06/2001 P. 0010 – 0019.
10. Finnish Copyright Act. Unofficial Translations in English. Available: *http://www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf* [last viewed 28.06.2014].
11. German Act on Copyright and Related Rights (Copyright Act) (Gesetz über das Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz) (geändert am 17. Dezember 2008). English translation available: *http://www.gesetze-im-internet.de/englisch_urhg/index.html* [last viewed 29.06.2014].
12. Swedish Act on Copyright in Literary and Artistic Works. Available: *http://www.government.se/content/1/c6/01/51/95/776893cd.pdf* [last viewed 28.06.2014].
13. Tsiviilkohtumenetluse seadustik (Code of Civil Procedure). Entered into force on 1.01.2006. – RT I 2005, 26, 197 (in Estonian). Unofficial translation available: *https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/521052014005/consolide* [last viewed 28.06.2014].
14. Võlaõigusseadus (Law of Obligations Act). Entered into force on 1.07.2002. – RT I 2001, 81, 487 (in Estonian). Unofficial translation available: *https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/513062014001/consolide* [last viewed 28.06.2013].
15. WIPO Copyright Treaty. Available: *http://www.wipo.int/treaties/en/text.jsp?file_id=295166* [last viewed 29.06.2014].

Case law

1. BGHZ (the central compilation of essential Bundesgerichtshof-judgements).
2. Bundesverfassungsgericht (German Constitutional Court) Neue Juristische Wochenschrift 2006, p. 3409 („Zerknitterte Zigarettenschachtel").
3. Bundesgerichtshof, Gewerblicher Rechtsschutz und Urheberrecht 2000, 709 = Neue Juristische Wochenschrift 2000, 2199 („Marlene Dietrich").
4. The judgements of the Estonian Supreme Court of 25 February 2010 No. 3-2-1-159-09.
5. The judgements of the Estonian Supreme Court of 13 January 2010 No. 3-2-1-152-09.
6. The judgement of the Civil Chamber of the Estonian Supreme Court of 13 December 2006 No. 3-2-1-124-06.

References

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[2] The European Copyright Code is the result of the Wittem Project that was established in 2002 as a collaboration between copyright scholars across the European Union concerned with the future development of European copyright law. Further information available: *http://www.copyrightcode.eu/* [last viewed 28.06.2014].

[3] See: *Götting, H.-P.* Persönlichkeitsrechte als Vermögensrechte (Personality rights as assets). Tübingen: Mohr, 1995, p. 138; *Sprau, H.,* in Palandt-Commentary to the Bürgerliches Gesetzbuch (German Civil Code), 70. ed. 2011, sec. 823 at mgnr. 86.

[4] The French legal regime followed a dualist approach proposed by Josef Khöler, while Germany adopted a monist approach of Otto von Gierke. See more in *Adeney, E.* The Moral Rights of Authors and Performers: and International and Comparative Analyses. Oxfrod: Oxford University Press, 2006, pp. 28, 170. *Sirvinskaite, I.* Toward Copyright "Europeanification": European Union Moral Rights. – Journal of International Entertainment & Media Law, 2010/2011, Vol. 3, Issue 2. See also: *Salokannel, M.* Ownership of rights in audiovisual productions. A comparative study. The Hague: Kluwer Law International, 1997, pp. 266-270.

[5] See: WTO Trade-Related Aspects of Intellectual Property Rights. Ed. by *Stoll, P.-T., Busche, J., Arend, K.* Leiden, Boston: Martins Nijhoff Publishers, 2009, p. 245. This division is in accordance with the Art. 6 *bis* of the Berne Convention.

[6] About the possibility to assign or waivetheir exercise see *Salokannel M.,* Ownership of rights in audiovisual productions. A comparative study. The Hague: Kluwer Law International, 1997, p. 267.

[7] Võlaõigusseadus (Law of Obligations Act). Entered into force on 1.07.2002. – RT I 2001, 81, 487 (in Estonian). Unofficial translation available at: *https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/513062014001/consolide* (28.6.2013).

[8] See the judgements of the Estonian Supreme Court of 25 February 2010 No. 3-2-1-159-09 and of 13 January 2010 No. 3-2-1-152-09.

[9] *Varul, P., Kull, I., Kõve, V., Käerdi, M.* Võlaõigusseadus I. Kommenteeritud väljaanne (Law of Obligations Act I. Commented edition). Tallinn: Juura, Õigusteabe AS, 2006, p. 464; Eesti Vabariigi põhiseadus. Kommenteeritud väljaanne. (Constitution of the Republic of Estonia, Commented Edition), edited by a panel led by *Madise, Ü.* Tallinn: Juura, Õigusteabe AS 2012. Available: *http://www.pohiseadus.ee/ptk-2/pg-19/* [last viewed 28.06.2014].

[10] Tsiviilkohtumenetluse seadustik (Code of Civil Procedure). Entered into force on 1.01.2006. – RT I 2005, 26, 197 (in Estonian). Unofficial translation available: *https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/521052014005/consolide* [last viewed 28.06.2014].

[11] Chapter 55 of the Estonian Code of Civil Procedure.

[12] See judgment of the Bundesgerichtshof (German Supreme Court) „Marlene Dietrich", Neue Juristische Wochenschrift 2000, p. 2195; see also affirmatively Bundesverfassungsgericht (German Constitutional Court) Neue Juristische Wochenschrift 2006, p. 3409 („Zerknitterte Zigarettenschachtel").

[13] See *Unseld, F.* "Die Übertragbarkeit von Persönlichkeitsrechten. – Gewerblicher Rechtsschutz und Urheberrecht" (The transferability of personality rights. Industrial property and copyright). – Gewerblicher Rechtsschutz und Urheberrecht 11/2011, p. 982.

[14] *Sirvinskaite, I.* Toward Copyright "Europeanification": European Union Moral Rights. – Journal of International Entertainment & Media Law, 2010/2011, Vol. 3, Issue 2.

[15] For further discussion on interaction of personal data and copyright protection see *Jents, L., Kelli, A.* Legal Aspects of Processing Personal Data in Development and Use of Digital Language Resources: the Estonian Perspective. – Jurisprudence 2014, 21(1), 164-184.

[16] See *Forkel, H.* Gewerblicher Rechtsschutz und Urheberrecht (GRUR) 1988, p. 491.

[17] See BGHZ (the Central compilation of essential Bundesgerichtshof-judgements) 32, p. 103, in Gewerblicher Rechtsschutz und Urheberrecht 1960, p. 490.

[18] See *Unseld, F.* "Die Übertragbarkeit von Persönlichkeitsrechten. – Gewerblicher Rechtsschutz und Urheberrecht" (The transferability of personality rights. Industrial property and copyright). – Gewerblicher Rechtsschutz und Urheberrecht 2011, p. 986.

[19] Bundesgerichtshof, Gewerblicher Rechtsschutz und Urheberrecht 2000, 709 = Neue Juristische Wochenschrift 2000, 2199 („Marlene Dietrich").

[20] Berne Convention for the Protection of Literary and Artistic Works. Available: *http://www.wipo.int/treaties/en/text.jsp?file_id=283698#P123_20726* [last viewed 29.06.2014].

[21] *Harding, I., Sweetland, E.* Moral rights in the modern world: is it time for a change? – Journal of Intellectual Property Law & Practice, 2012, Vol. 7, No. 8.
[22] WIPO Copyright Treaty. Available: *http://www.wipo.int/treaties/en/text.jsp?file_id=295166* [last viewed 29.06.2014].
[23] Article 4 (1) of the WIPO Copyright Treaty prescribes that "[c]ontracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention".
[24] Agreement on Trade-related Aspects of Intellectual Property Rights. Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization. Marrakech, 15.4.1994. Available: *http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm* [last viewed 29.6.2014].
[25] Second sentence of Article 9 (1) of the TRIPS Agreement.
[26] Green Paper Copyright and Related Rights in the Information Society, Brussels, 19.07.1995, COM (95) 382 final, p. 65-68. Available: *http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51995DC0382&from=EN* [last viewed 30.06.2014].
[27] *Walter, M. M., Lewinski, von S.* European Copyright Law. A Commentary. Oxford University Press, 2010, p. 1472.
[28] See Recital 19 of the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. OJ L 167, 22/06/2001 P. 0010-0019.
[29] Commission Staff Working Paper on the review of the EC legal framework in the field of copyright and related rights. Brussels, 19.7.2004, SEC(2004) 995.
[30] *Walter, M. M., Lewinski, von S.* European Copyright Law. A Commentary. Oxford University Press, 2010, p 1473.
[31] Commission of the European Communities. Green Paper on Copyright and the Challenge of Technology – Copyright Issues Requiring Immediate Action. COM (88) 172 final, 7 June 1988, p. 7. Available: *http://ec.europa.eu/green-papers/pdf/green_paper_copyright_and_chanllenge_of_thecnology_com_%2888%29_172_final.pdf* [last viewed 29.06.2014].
[32] *Adeney, E.* The Moral Rights of Authors and Performers. An International and Comparative Analysis. Oxford University Press, 2006, p. 172.
[33] Code de la Propriété Intellectuelle (Intellectual Property Code). English translation available: *http://www.wipo.int/wipolex/en/details.jsp?id=5563* [last viewed 29.06.2014].
[34] Articles L121-1, L121-2 and L121-4 of the French Intellectual Property Code.
[35] *Adeney, E.* The Moral Rights of Authors and Performers. An International and Comparative Analysis. Oxford University Press, 2006, p. 219.
[36] *Adeney, E.* The Moral Rights of Authors and Performers. An International and Comparative Analysis. Oxford University Press, 2006, pp. 221-222.
[37] German Act on Copyright and Related Rights (Copyright Act) (Gesetz über das Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz) (geändert am 17. Dezember 2008). English translation available: *http://www.gesetze-im-internet.de/englisch_urhg/index.html* [last viewed 29.06.2014].
[38] Article 11 of the German Copyright Act.
[39] *Harding, I., Sweetland, E.* Moral rights in the modern world: is it time for a change? – Journal of Intellectual Property Law & Practice, 2012, Vol. 7, No. 8.
[40] Autoriõiguse seadus (Copyright Act). Entered into force on 12.12.1992. – RT 1992, 49, 615 (in Estonian). Unofficial translation available: *https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/525112013002/consolide* [last viewed 28.06.2014].
[41] The Estonian Copyright Act § 44 (1).
[42] The draft Estonian Copyright and Related Rights Act (Autoriõiguse ja autoriõigusega kaasnevate õiguste seadus) is available: *https://www.just.ee/sites/www.just.ee/files/elfinder/article_files/autorioiguse_seaduse_eelnou_0.p*df [last viewed 28.06.2014].
[43] Finnish Copyright Act. Unofficial Translations in English. Available: *http://www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf* [last viewed 28.06.2014].
[44] Swedish Act on Copyright in Literary and Artistic Works. Available: *http://www.government.se/content/1/c6/01/51/95/776893cd.pdf* [last viewed 28.06.2014].
[45] Danish Act on Copyright. Available: *http://www.wipo.int/wipolex/en/details.jsp?id=7394* [last viewed 28.06.2014].
[46] For further discussion see: *Daniels, J. M.* Lost in Translation: Anime, Moral Rights, and Market Failure. – Boston University Law Review, Vol. 88, No. 3, 2008. Available: *SSRN: http://ssrn.com/abstract=1179762* [last viewed 01.07.2014].
[47] Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code. Available: *http://www.copyright.gov/title17/circ92.pdf* [last viewed 01.07.2014].
[48] U.S.C § 101.

[49] U.S.C § 106a.
[50] *Cornish, W; Llewelyn, D; Aplin*, T. Intellectual Property: Patents, Copyright, Trademarks and Allied Rights (the 7th ed.). Sweet & Maxwell, 2010, p. 514.
[51] Copyright, Designs and Patents Act 1988 (the CDPA). Available: *http://www.legislation.gov.uk/ukpga/1988/48/contents* [last viewed 29.06.2014].
[52] The CDPA §§ 77, 80, 84 and 85.
[53] Canadian Copyright Act. Available: *http://laws-lois.justice.gc.ca/eng/acts/C-42/index.html* [last viewed 28.06.2014].
[54] Article 14.01 of the Canadian Copyright Act.
[55] *Adeney, E.* The Moral Rights of Authors and Performers. An International and Comparative Analysis. Oxford University Press, 2006, p. 320.
[56] *Ricketson, S., Ginsburg, J. C.* International Copyright and Neighbouring Rights: The Berne Convention and Beyond. Second Edition. Volume I. Oxford University Press, 2006, p. 600.
[57] Article L121-1 of the French Intellectual Property Code.
[58] *Lucas, A., Lucas, H.-J.* Traité de la properiété littéraire et artistique. Paris: Litec, 2001, para. 377. Cited from: *Adeney. E.* The Moral Rights of Authors and Performers. An International and Comparative Analysis. Oxford University Press, 2006, p. 207.
[59] *Gautier, P.-Y.* Properiété littéraire et artistique. 4th edn. Paris: Presses Unitaire de France, 2001, p. 201. Cited from: *Adeney, E.* The Moral Rights of Authors and Performers. An International and Comparative Analysis (Oxford University Press, 2006), p. 207.
[60] Blanket consents are not allowed. – *Bertrand, A.* Le droit d'auteur et les droits voisins. Paris: Dalloz-Sirey, 1999, p. 262. Cited from: *Adeney, E.* The Moral Rights of Authors and Performers. An International and Comparative Analysis. Oxford University Press, 2006, p. 209.
[61] *Adeney, E.* The Moral Rights of Authors and Performers. An International and Comparative Analysis. Oxford University Press, 2006, pp. 207-209.
[62] See LUG-Kommentar zum Gesetz betreffend das Urheberrecht an Werken der Tonkunst und der Literatur (LUG), München Beck 1902, Einleitung, S. 22 ff.; further information in *Möller, U.* „Die Unübertragbarkeit des Urheberrechts in Deutschland – ein überschießende Reaktion auf Savignys subjektives Recht", 2. Kapitel p. 11 ff.; Berliner Wissenschaftsverlag, Berlin 2007.
[63] See also *Schack, H.* Urheber- und Urhebervertragsrecht (Copyright Law and Copyright Contract Law). Siebeck 10. ed. 2010, § 16, mgr. 636 ff.
[64] "A claim may not be assigned if the performance cannot be made to a person other than the original obligee without a change of its contents or if the assignment is excluded by agreement with the obligor."
[65] See *Schack, H.* Urheber- und Urhebervertragsrecht (Copyright Law and Copyright Contract Law). Siebeck 10. ed. 2010, § 16, mgr. 638
[66] See BGHZ (the central compilation of essential Bundesgerichtshof-judgements) 143, pp. 214, p. 223.
[67] See e.g. BGHZ (the central compilation of essential Bundesgerichtshof-judgements) 107, p. 384 at 389 (Emil Nolde) or BGH GRUR 1984 p. 907 at 909 (keyword "Frischzellenkosmetik").
[68] *Dreier, T., Schulze, G.* Urheberrechtsgesetz: UrhG (Commentary on the German Copyright Act), Beck 4. ed. 2013, before § 12 mgnr. 13.
[69] *Rosentau, M.* Intellektuaalse omandi õigused infotehnoloogias. Autori isiklikud õigused (Intellectual Property Rights in Information Technology. The Personal (Moral) Rights of the Author). – Juridica 2007/9, pp. 653–654 (in Estonian).
[70] See *Kalvi. A.* Autorilepingu uus kuub (New Skin of Author's Contracts). – Juridica 2003, 4, p. 258 (in Estonian); *Varul, P., Kull, I., Kõve, V., Käerdi, M.* Võlaõigusseadus II. Kommenteeritud väljaanne (Law of Obligations Act II. Commented edition). Tallinn: Juura, Õigusteabe AS 2007, p. 337 (in Estonian); *Pisuke. H.* Moral Rights of Author in Estonian Copyright Law. – Juridica International 2002/7, p. 170.
[71] *Pisuke. H.* Moral Rights of Author in Estonian Copyright Law. – Juridica International 2002/7, pp. 170–171.
[72] See the Estonian Copyright Act § 12 (1), clauses 3 and 4.
[73] *Kalvi, A.* Autorilepingu uus kuub (New Skin of Author's Contracts). – Juridica 2003/4, p. 258 (in Estonian).
[74] For further discussion on the principle of good faith see *Kull, I.* Principle of Good Faith and Constitutional Values in Contract Law. – Juridica International, 2002/7, pp. 142-139.
[75] LOA § 1045 (2), clause 2.
[76] Clause 11 of the judgement of the Civil Chamber of the Estonian Supreme Court of 13 December 2006 No. 3-2-1-124-06.
[77] U.S.C § 106a.

[78] The CDPA § 87.
[79] *Adeney, E.* The Moral Rights of Authors and Performers. An International and Comparative Analysis. Oxford University Press, 2006, p. 422.
[80] *Ibid.*, p. 352.
[81] *Ibid.*, p. 353.
[82] *Ginsburg, J. C.* European Copyright Code – Back to First Principles (with Some Additional Detail) (January 2011). Auteurs et Medias (Belgium), 2011; Columbia Public Law Research Paper No. 11-261, p. 15. Available: SSRN: *http://ssrn.com/abstract=1747148* [last viewed 29.06.2014].
[83] *Ibid.*