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Cultural Dimension in Estonian Copyright Law

The objective of this article is to discuss some national and global issues of copyright law. The subject of the analysis is the relationship of Estonian copyright law today with culture and economic activities.

1. Estonian copyright (*autoriõigus*) — the right of an author or of an undertaking?

Estonia belongs to those Continental European countries where the terminology itself reveals the bases of legal regulation. The counterparts of the Estonian term *autoriõigus* in other civil law legal systems are *droit d'auteur*, *Urheberrecht*, *diritto di autore*, *upphovsrätt*, *tekijänoikeus*, *avtorskoje pravo*, *etc*. And although according to international practice *autoriõigus* is translated into English as 'copyright', the Estonian term expresses the content of the notion correctly.

Section 39 of the Constitution of the Republic of Estonia sets out: 'An author has the inalienable right to his or her work. The state shall protect the rights of the author'. The entire copyright regulation is based on the premise that the author is the creator of the work. Such a conclusion may be drawn even from § 1 of the Copyright Act[*2], titled 'Purpose of Copyright Act'. Subsection 1 of this provision reads as follows: 'The purpose of the Copyright Act is to ensure the consistent development of culture and protection of cultural achievements and the development of copyright-based industries and international trade, and to create favourable conditions for authors, performers, producers of phonograms, broadcasting organisations, producers of first fixations of films, makers of databases, and other persons specified in this act for the creation and use of works and other cultural achievements.'[*3]

Upon the adoption of the Copyright Act in 1992, the provision setting forth the main objectives of the Act was worded with solely the cultural dimension in mind. Only by the amendments to the Copyright Act, which entered into force on 6.01.2000[*4], was a reference to the cultural industry and commercial acti-

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[1] Copyright H. Pisuke 2004.

[2] The Copyright Act was passed on 11 November 1992 and entered into force on 12 December 1992 (RT 1992, 49, 615, in Estonian). By June 2004, it had been amended 16 times. See the English translation on the Web site of the Estonian Legal Language Centre www.legaltext.ee.

[3] In fact, the Estonian legislative act should be titled the Copyright and Related Rights Act.

[4] The Copyright Act and Associated Acts Amendment Act was adopted on 9 December 1999, and it entered into force on 6 January 2000 (RT I 1999, 97, 859, in Estonian). This act harmonised all of the five European Union directives adopted at the time.

vities introduced using the expression 'the development of copyright-based industries and international trade'.

On what grounds can we decide that the underlying element of the Estonian copyright law is the author as a creator of cultural achievements? Above all, by the regulation of protected works and the rights guaranteed in the Copyright Act to authors and the exercise of such rights.

The legal definition of a work protected by copyright has been set out in § 4 of the Copyright Act. The criteria for the protection of a work are traditional. Works mean any original results in the literary, artistic, or scientific domain that are expressed in an objective form and can be perceived and reproduced in this form either directly or by means of technical devices. The criterion of originality of a work as applied to all types of works is that a work is considered to be original if it is the author's own intellectual creation.[*5]

The Estonian law clearly expresses the presumption of protection of a work.[*6] The burden of proof lies on the person who contests the protection of a work by copyright.

Such a concept proceeding from the author's interests allows for the protection of oral works, photographs, designs, buildings and landscape architecture, *etc*. Such a broad range of protected subject matter manifests one of the functions set out in § 1 of the Copyright Act: to provide authors with favourable conditions for the creation of mental and material culture.

The Copyright Act grants to the author an extensive catalogue of rights that is much broader than provided for in any international standards established by intellectual property agreements and the majority of the copyright laws in the world. The list of personal or moral rights is especially extensive, comprising nine independent rights.[*7] For example, the two rights of article 6*bis* of the Berne Convention for the Protection of Literary and Artistic Works have been detailed as five independent rights in the Estonian Copyright Act; for the violation of each, the application of a separate remedy may be sought. These rights are the right of authorship, the right to the author's name, the right of integrity of the work, the right of additions to the work, and the right of protection of the author's honour and reputation. In addition to these five, the principles of article 6*bis* of the Berne Convention have been developed further in the form of the independent right of disclosure of the work, the right of supplementation of the work, the right to withdraw the work, and the right to request that the author's name be removed from the work that is being used.[*8]

Copyright, both moral and economic rights, in a created work belong to the author in all cases, according to the Estonian law.[*9] This is an important legal and political starting point, which once again emphasises that copyright derives from the creator and belongs to the creator at the moment the work is created. The use of a work as a cultural phenomenon or an object of the economic activities of society derives from the author. Consequently, the whole system of economic exercise of copyright has been structured proceeding from the author and starts with nobody else but the author.

According to the Estonian law, the author may dispose of his or her proprietary rights in any manner and form. The economic rights can be assigned individually or as a set of rights, or they can be licensed. In such cases, an author is entitled to remuneration. The law does not impose any limits on the terms of authors' contracts. This means that by a contract, an author may assign all his or her economic rights until the copyright expires (70 years after the author's death). Permitting conclusion of authors' contracts without any time limits is not characteristic of the legal systems of several countries, which impose, for example, a maximum term of validity for authors' contracts or do not allow for the assignment of all the author's economic rights. In this respect, the applicable Estonian copyright law involves a certain contradiction between the granting of legal guarantees in the author's interests and the extremely liberal policy concerning conclusion of contracts. On the basis of complete freedom of contract, the author has the absolute right to decide on the use of the fruit of his or her creation. As demonstrated by practice, this provides an opportunity to take advantage of the ignorance of authors and to conclude contracts that are extremely unfavourable for authors. The Copyright Act does not provide any guarantees to authors regarding contracts already concluded. However, the interests of authors can still be protected under the provisions of the new Law of Obligations Act[*10], which govern withdrawal from or cancellation of a contract.

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5 See § 4 (2) of the Copyright Act.

6 The protection of a work by copyright is presumed: § 4 (6) of the Copyright Act.

7 See also H. Pisuke. Moral Rights of Author in Estonian Copyright Law. – Juridica International 2002 (7), pp. 166–175.

8 See § 12 of the Copyright Act.

9 In § 11 of the Copyright Act, Content of copyright, '(1) Copyright of the author arises upon the creation of the work by the author. Moral rights and economic rights constitute the content of copyright.' In § 28, Author of work, '(1) The moral and economic rights of an author shall initially belong to the author of a work unless otherwise prescribed by this Act with regard to the economic rights of the author.'

10 The Law of Obligations Act, passed on 26 September 2001, came into force on 1 July 2002 (RT I 2001, 81, 487), as amended (RT I 2002, 60, 374; 2003, 78, 523; 2004, 13, 86; 37, 255) (in Estonian).

In the case of moral rights, the Estonian law does not expressly permit their assignment.*[11] However, a licence may be granted with respect to all personal rights.*[12] Such a licence may, analogously to economic rights, be an exclusive licence or a non-exclusive licence. In practice, this is a very important provision that is seldom found in the laws of other countries. Namely, the licensing of personal rights allows for solving the 'ghost authorship' issue. If a political speech is written by one person (who is the actual author) and is presented to the public by another person under his or her name (for example, a minister), then from the copyright perspective the situation is undetermined and even risky. The granting of an exclusive licence to moral rights is close in essence to the assignment of all these rights, and this can also be done with regard to the right of authorship. Thus, the provision is extremely important, for example, in relation to designs of trademarks, banknotes, official insignia, *etc*. created by an artist. From the point of view of the certainty of transactions, such a solution is a positive one. The hidden activity that has so far operated on the basis of custom has come to a clear legal solution. At the same time, it must be noted that in practice such contracts are seldom found. As a rule, this is caused by the fact that neither the user of the work nor the author is familiar with matters of law.

In practice, moral rights are violated rather frequently, and relevant judicial practice is developing in Estonia. The Supreme Court has rendered several decisions in the area.*[13]

According to the Estonian law, only a natural person may be an author. A legal person cannot be an author as a creator of a work. A legal person as a subject of derived rights may naturally have copyrights on the basis of law or a contract.*[14]

Following consistently the Continental European tradition based on the author, the Estonian Copyright Act still makes three reservations in relation to the ownership of economic rights that are typical of the Anglo-American copyright tradition. Namely, the copyright in works created under an employment contract or in public service in the execution of a person's direct duties and in audiovisual works shall be transferred to the employer, state, and producer of the audiovisual work, respectively.*[15] Yet we have to emphasise one very important aspect that characterises Estonian law in the transfer of such rights. The legal-political and legal-philosophical consistency in the Estonian copyright law is manifested in the fact that in these three cases copyright as a complex of moral and economic rights is first created for the author (or authors) of the work and only from him or her (or them) are the economic rights transferred to the employer, state, or producer. For example, § 32 (1) of the Copyright Act is worded as follows: 'The author of a work created under an employment contract or in the public service in the execution of his or her direct duties shall enjoy copyright in the work, but the economic rights of the author to use the work for the purpose and to the extent prescribed by the author's duties shall be transferred to the employer unless otherwise prescribed by contract', and § 33 (2) of the Copyright Act, dealing with audiovisual works, is analogous in its principle.*[16] In theory, a question arises how long economic rights belong to the author and from what moment they are transferred to the employer or state. There is obviously no answer to this question in real time. And consequently, §§ 32 and 33 of the Estonian Copyright Act must be interpreted both as a legal provision and as a provision containing a general principle of law.

Moral rights are not automatically transferred to the employer or producer under the Estonian law. Yet the employer or producer may obtain from the author also an exclusive licence for exercising moral rights as well.

A question arises as to where such an author-centred approach is rooted in Estonian legal thought and practice. These historical roots must be sought in the years of Estonia's first era of independence. Until 1940, the Copyright Act of tsarist Russia, dating from 1911, applied in Estonia. And although in the 1930s, a draft was developed on the basis of German theoretical examples, it never came to be processed as legislation. The Russian law of 1911 continued to apply without amendments after Estonia's accession to the Berne Convention in 1927.*[17]

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[11] According to § 11 (2) of the Copyright Act, the moral rights of an author are inseparable from the author's person and non-transferable.

[12] This solution was introduced by the amendment that entered into force on 6 January 2000. See Note 4.

[13] The Web site of the Supreme Court, located at www.nc.ee, contains a database of the judgments of the Supreme Court (in Estonian).

[14] See § 28 of the Copyright Act.

[15] Namely § 32, 'Copyright in works created in execution of duties of employment', and § 33, 'Copyright in audiovisual works', of the Copyright Act.

[16] 'Copyright in an audiovisual work shall belong to its author or joint authors — the director, the scriptwriter, the author of dialogue, the author of the musical work specifically created for use in the audiovisual work, the cameraman, and the designer. The economic rights of the director, the scriptwriter, the author of dialogue, the cameraman, and the designer shall transfer to the producer of the work unless otherwise prescribed by contract. The economic rights of the author of the musical work used in the audiovisual work shall not transfer to the producer, whether or not the work was specifically created for use in the audiovisual work'.

[17] RT 1927, 78, p. 980. The official notice on the Republic of Estonia's accession was published in official publication Le Droit d'Auteur 1927/8 of the International Bureau of the Berne Union, p. 89. See also L'entrée de l'Estonie dans l'Union de Berne. – Le Droit d'Auteur 1927/9, pp. 102–103. Estonia was the 29th member state of the Berne Union. See also H. Pisuke. Berni konventsioon ja Eesti: minevikust tulevikku (Berne Convention and Estonia: from past to future). – Eesti Jurist (Estonian Lawyer) 1993/11, pp. 16–26 (in Estonian); H. Pisuke. Eesti on taas Berni konventsiooni liige! (Estonia is state party to Berne convention again!) – Eesti Jurist (Estonian Lawyer) 1994/11, pp. 47–52 (in Estonian).

During that period, copyright was regarded as part of legal regulation of culture. At the same time, an institute — the national Cultural Endowment — was established by the Act of 1925[*18], which competed with copyright. This Act established a special national foundation from appropriations from alcohol and tobacco excise duty, gambling tax, *etc*. Representatives of all creative professions could apply for support; these regular allowances to authors were reminiscent of salaries for being authors. The doctrine of the era favoured such a support system for national authors, with the reasoning that Estonia's limited market and modest competitiveness in an international cultural market were not sufficient for the subsistence of Estonian authors. Copyright thus played a secondary role next to the Cultural Endowment. The Cultural Endowment system was restored in the Republic of Estonia after the re-establishment of its independence, principally on the basis of the same model.[*19] However, it does not endanger the situation of copyright in any manner today.

Nevertheless, in legal theory, copyright was still treated as part of commercial law.[*20] Copyright was not taught separately at the university level, and almost no research was done in the area.

The currently applicable Estonian copyright law and doctrine manifest some influences dating back to Soviet legal thought, which is strongly related to the cultural realm for historical reasons.[*21] This is understandable and can be explained. The draft Act was developed in 1991–1992, when there was still insufficient knowledge of either the market economy or copyright based on a market economy. This, however, did not prevent the WIPO from giving high marks to the Estonian Copyright Act of 1992 and recommending it as a model legislative act to the other Central and Eastern European countries and former Soviet republics.

The Copyright Act has enjoyed an exceptional status in the Estonian legal order. This is one of the few legislative acts dating from the beginning of the 1990s that have continued to apply in their original wording to this day. And although the Copyright Act has been amended more than a dozen times[*22], this has not affected its legal-political and philosophical foundation, which proceeds from the author and is strongly related to culture.

2. International dimension

The first section of the Estonian Copyright Act follows the foundations of the preamble to the Berne Convention for the Protection of Literary and Artistic Works, entered into in 1886[*23], which states that the objective of the convention is to protect the rights of authors in a manner that is characteristic of the Continental European tradition.

The preamble to the Universal Copyright Convention (UCC) of 1952[*24] has somewhat different foundations. The cultural dimension can also be inferred here[*25], but it is not a clearly worded goal. It has been regarded

[18] RT I 1925, 27/28.

[19] Eesti Kultuurkapitali seadus (Cultural Endowment of Estonia Act). Passed 1.06.1994. – RT I 1994, 46, 772; 2002, 87, 506 (in Estonian).

[20] A. Piip. Kaubandusõigus ja -protsess. "Kaubandusõiguse" kolmas trükk (Commercial law and process. Third edition of 'Commercial law'). Tallinn: Justiitsministeerium (Ministry of Justice) 1995, p. 166 (in Estonian).

[21] The legal-political foundation of the preamble to the Civil Code of the Estonian Soviet Socialist Republic of 1964 was 'the protection of the material and cultural interests of citizens; the correct concordance of these interests with the interests of the entire society; development of creative initiative in the areas of science and technology, literature, and art'. – ENSV ÜVT (ESSR Supreme Council and Government Gazette) 1985, 27, 451 (in Estonian). The Soviet Union did not have a market economy or private ownership; the term 'intellectual property' was not used.

[22] See H. Pisuke. Autoriõiguse seadus (Copyright Act). – Intellektuaalse omandi infokiri (Intellectual Property Newsletter). TÜ Õigusinstituut (Institute of Law, University of Tartu) 2003/1, pp. 6–7 (in Estonian).

[23] 'The countries of the Union, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works'. Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886. Paris Act of 24 July 1971, as amended on 28 September 1979. WIPO, Geneva.

[24] Universal Copyright Convention of 6 September 1952, as revised in Paris, 24 July 1971. See www.unesco.org/culture/laws/copyright/html_eng/page1.shtml.

[25] 'The Contracting States, / Moved by the desire to ensure in all countries copyright protection of literary, scientific and artistic works, / Convinced that a system of copyright protection appropriate to all nations of the world and expressed in a universal convention, […], will ensure respect for the rights of the individual and encourage the development of literature, the sciences and the arts. Persuaded that such a universal copyright system will facilitate a wider dissemination of works of the human mind and increase international understanding […]'

[26] W. Bappert. Internationales Urheberrecht. Munich and Berlin: Beck 1956, Note 2. Cited in W. Nordemann, K. Vinck, P. W. Hertin, G. Meyer. International Copyright and Neighboring Rights Law. Commentary with special emphasis on the European Community. VCH 1990, p. 215.

[27] Article I (Paris Text 1971) reads: 'Each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works […]'.

as a social aspect of copyright in literature, as a 'social bond of copyright law'.[*26] Article 1 of the UCC clearly includes the proprietor[*27] among the subjects protected by copyright, which was not there in the Berne Convention.

The WIPO Copyright Treaty 1996[*28], which is a special agreement to the Berne Convention, relies on the view that the author is the sole subject of protection[*29] in the first section of its preamble, and from copyright as an incentive for creation.[*30] At the same time, the preamble sets out as the objective of the convention 'to introduce new international rules and clarify the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by new economic, social, cultural, and technological developments'.

The preamble to the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)[*31] makes no use of the words 'culture' and 'author'. The general objective of the agreement, which also fully includes copyright, is to achieve global economic and trade goals.[*32] Moreover, article 9 of the TRIPS Agreement precludes the application of article 6*bis* of the Berne Convention, which imposes minimum standards concerning the moral rights of authors.

We have to agree with the statement that 'The Preamble, as a preface and declaration of intention of the Contracting States, does not constitute contractually binding subject matter. Therefore, it […] can, at most, contribute to shedding light on the particular provisions set forth in the actual text of the Convention or to the elucidation of the motivations behind these provisions'.[*33] However, the role of the preamble is not limited to that. The preamble to the international agreement and the general provision containing the objectives of a national law have a fundamental meaning as a legal-political and legal-philosophical basis for law.

In the European Union, questions concerning the possible harmonisation of copyright law were raised in the 1970s, and particularly in the cultural context and social context as proceeding from authors. The primary goal of the European Commission was to provide the Commission with competence in the area of culture. The Commission published two papers, in 1977 and 1982. At the request of the Commission, Dr. Adolf Dietz prepared the study 'Copyright in the European Community' together with specific proposals for harmonisation.[*34] And although extensive preparations were made to this end, copyright was actually harmonised in the European Union on bases completely different from cultural affairs.

Starting from the 1988 Green Paper on Copyright and the Challenge of Technology, the Directorate responsible for the internal market (DG Internal Market) of the European Commission took a lead in the harmonisation and implementation activities in the areas of copyright and rights related to copyright. Goals such as 'establishment of a common market', 'functioning of the internal market', 'an area without internal frontiers', 'abolition of obstacles to the free movement of goods and services', and 'ensuring that competition in the common market is not distorted' served as economic and legal-political goals in the directives adopted in 1991 and later.[*35] The first-generation directives of the 1990s very clearly applied copyright as falling within the economic and trade realm. The approach related to the author and culture was clearly in the background only. This approach was challenged by the culture ministers of the EU member states, voicing their concern that the completion of the single market should not constitute a threat to cultural identities and to the rich diversity of Europe. The ministers noted that 'taking into account the cultural dimension of copyright, internal harmonisation at Community level in this area should be implemented only in areas affecting the establishment or functioning of the common market' and 'the cultural content of copyright and neighbouring rights should be taken into account'.[*36]

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[28] Adopted by the WIPO Diplomatic Conference on 20 December 1996. Estonia has signed the treaty but not ratified it by June 2004. See www.wipo.int/documents/en/.

[29] 'The Contracting Parties, / Desiring to develop and maintain the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible […]'

[30] 'The Contracting Parties, […] Emphasizing the outstanding significance of copyright protection as an incentive for literary and artistic creation […]'.

[31] Annex 1C of the Agreement Establishing the World Trade Organisation (Marrakesh Agreement). See www.wto.org/english/docs_e/legal_e/27-trips.doc. Estonia has been a party to the WTO and TRIPS agreements since 13 November 1999.

[32] 'Members, / Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade […]'

[33] W. Nordemann, K. Vinck, P.W. Hertin, G. Meyer (Note 26), p. 215.

[34] G. Schricker. Harmonisation of Copyright in the European Economic Community. NIR – Nordic Intellectual Property Law Review 1989, pp. 494–495.

[35] See Recital 2 of Council Directive 93/83/EEC of 27 September 1993 on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ No. L 248, 6.10.93, p. 15); Recital 3 of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ No. L 77, 27.3.1996, p. 20).

[36] Conclusions of the Ministers for Culture Meeting Within the Council of 7 June 1991 on copyright and neighbouring rights (91/C 188/04). – OJ No. C 188, 19.07.1991, p. 4.

The objective of harmonisation of copyright in the European Union in the 21st century has been set out in the preamble to the flagship of harmonisation of the area, the Infosociety Directive.*[37] Recital 1 of the directive has been worded as follows: 'The Treaty [establishing the European Community] provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Harmonisation of laws of the Member States on copyright and related rights contributes to the achievement of these objectives'. A significant change when compared to the five previous EU directives is the introduction of the dimensions regarding the author and culture as a legal-political basis for harmonising law. It is true that these dimensions are introduced only starting from Recital 8 (up to Recital 12), which implies their order of importance, but they are there. For example, the following principle is found in recital 12: 'Adequate protection of copyright works and subject matter of related rights is also of great importance from a cultural standpoint. Article 151 of the Treaty requires the Community to take cultural aspects into account in its action'. It may be predicted that the issues related to the author as a creator of culture and initial subject of rights will continue to be highlighted in the EU documents to come. Estonia as a full member of the EU will participate in drafting these documents.

Similar developments can be detected also on the global level in the 21st century, marked by a knowledge-based society. The WIPO has established as one of the branches of its international political activities 'a vision of creating global intellectual property culture'. When explaining this concept, WIPO Director General Dr. Kamil Idris has noted that 'WIPO considers that the IP culture promotes a productive, well-functioning IP system that extracts the maximum economic, social, and cultural benefits from national creativity and invention; encourages partnerships that facilitate the innovation cycle; and generates an understanding and appreciation among the general public of the important place of intellectual property in the construction of a better future'.*[38]

The WIPO global intellectual property culture doctrine can be easily associated with the global intellectual property society doctrine, established in Estonian jurisprudence.*[39] The presupposition of both doctrines is the perception of a strong relationship between the legal regulation of copyright and culture in the modern world. It is not correct to include copyright only among the institutes of law governing economy and trade today. Copyright has a strong social objective as a tool developing culture and the means of social protection of creative professions. The subjective rights granted to the author under the Copyright Act belong to private law by nature and are included in civil law in the Estonian legal system. At the same time, this is not a traditional institute of civil law, and its inclusion in the common civil law system in Estonia is precluded.*[40]

The mission of copyright law in Estonia is to regulate two types of relationships proceeding from the author, in which the creator of a work appears in different roles: author as the creator of culture and author as the subject of economic activities. The old, traditional framework of copyright is suitable for that, as there is no contradiction in the division of the roles of these two 'authors'. Such an approach may be called a cultural copyright doctrine. Another paradigm is characteristic of the Anglo-American legal tradition and draws on the category of 'work'. Such an approach is not part of the Estonian legal tradition. At the same time, a new paradigm can be established, combining both the cultural background regulation based on the author (cultural copyright law) and the economic approach that takes account of modern global economic realities (economic copyright law).

This article does not consider the social aspect of copyright, which definitely has an independent meaning and specific features. It is not clear yet what basis will be provided for the possible new Estonian Copyright Act or a new wording of the Act to be developed in the years to come.

3. Conclusions

Today's Estonian copyright is clearly the author's right. Taking that into account, we may claim that by its historical tradition and foundations, the Estonian copyright law is a cultural copyright law. Proceeding from the author and serving the author's interests, private law provides copyright law with the leverage enabling the author to actualise his or her economic interests. Consequently, the Estonian copyright law is also economic copyright law.

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[37] 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 No. L 167, 22.6.2001, p. 10).

[38] Speech of Dr. K. Idris at the International Symposium in Commemoration of the 100th Anniversary of the Japan Institute of Invention and Innovation. WIPO update 226/2004, Geneva, 28 May 2004. www.wipo.int.

[39] H. Pisuke. Building a National Intellectual Property Protection System: Some Issues Concerning Copyright and Related Rights in Estonia. – Scandinavian Studies in Law 2002 (42). Intellectual Property, pp. 140–144.

[40] The sub-institute of copyright belonged to the ESSR Civil Code of 1964 as Part IV. In the Russian Federation, a debate on whether copyright should be part of the civil code continues to this day.

The Copyright Act, which continues to apply in Estonia for the 12th year, signals to a certain extent the 'romantic concept of authorship'. But in its foundation, structured to clearly proceed from the concept of author as creator, it has survived all harmonisations with international conventions and EU directives. These conventions and directives are primarily a result of the globalisation of the world economy, development of international and Community trade, and development of technology. Hence, copyright law that is based on a view of the author as a creator and is strongly related to the cultural paradigm allows for meeting the challenges presented by the global economy and development of technology in the 21st century, too. Moreover, the doctrines of global intellectual property society and global intellectual property culture cannot exist without reliance on the view of the author as the immediate creator of the work and the cultural category of copyright. The new Estonian Copyright Act to be drafted in the years to come attempts to find a basis suitable both for the 21st-century author and cultural industries.