

AIPPI Study Question 2022 - Copyright - Moral Rights

Draft: Finland

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Questions

I. Current law and practice

Please answer the below questions with regard to your Group's current law and practice.

References to "moral rights" below are used to encompass all legal rights and concepts used to provide protection to the non-economic rights of authors, regardless of whether they are referred to as "moral rights".

References to "moral rights" cover only moral rights in copyright law and not moral rights in related rights/neighbouring rights laws (e.g., rights on the performance), unless expressly stated otherwise¹.

Definition of moral rights

1)

a) Does your legislation and/or case law regarding copyright recognize moral rights?

Yes.

The protection of moral rights in Finland has been implemented in the Finnish Copyright Act (404/1961, as amended; hereinafter referred to as the "Copyright Act"). There are provisions covering the moral rights protecting the personality of the author, and provisions which aim to protect cultural benefits and public interest in general after the termination of Copyright.

The case law consists of few precedents given by the Supreme Court of Finland on Paternity right, Right of integrity, Protection of classics and Right of access. There is also some lower court case law concerning the same rights.

The Copyright Council (appointed by the Ministry of Education) has addressed a number of issues related to moral rights. The opinions given by the Copyright Council are recommendations in their nature, but they have a significant steering function on the application practice of copyright law including moral rights, especially as case the law developed by courts is scarce.

b) Are moral rights recognized outside copyright law?

¹ This also applies to Parts II and III.

Moral rights are not directly recognized outside copyright law. However certain branches have implemented “self-regulation” in the form of ethical guidelines. For example, Finnish advisory board on research integrity (TENK) has formed rules for ethically sustainable and good scientific practice (Responsible conduct of research and procedures for handling allegations of misconduct in Finland 2012). These guidelines include recommendations e.g., on appropriate references to prior research and other research ethical questions.

Certain provisions in the Unfair Business Practices Act (461/2002) can be seen as an indirect manifestation of moral rights. According to the Section 1 paragraph 2 of the Unfair Business Practices Act, the commercial purpose of marketing and the party on whose behalf the marketing is done shall clearly appear from the marketing.

Section 2 paragraph 1 and 2 of the Unfair Business Practices Act provides that:

A false or misleading expression concerning one’s own business or the business of another may not be used in business if the said expression is likely to affect the demand for or supply of a product or harm the business of another. An expression that refers to irrelevant circumstances or that is presented or formulated in an unsuitable manner may not be used in business if the said expression is likely to harm the business of another.

The section suggests that the marketer should also respect the authors’ or creators’ moral rights, especially the Paternity right. Authors’ or creators’ integrity to the work may receive protection as well also in business environment.

- c) What is the purpose of moral rights (the philosophy behind moral rights), e.g., to protect the work itself, the author, the public, etc.?

The moral rights protect the personality of author. The author expresses thoughts, feelings, experiences and skills in creative activity. Moral rights protect the author's special relationship with the work and therefore, the transfer of moral rights is restricted.

Moral rights, despite their name, are not only “moral” but they also have economic significance. The right of attribution is of great importance to the authors’, creators’ or artists’ reputation. Consequently, moral rights are essential to the economic success of the reputable author’s work.

In the field of science and research, the moral rights serve the credibility of the research and guarantee that prior research work and their authors’ contribution will be respected.

Equally important is the right of integrity, which is intended to protect the author's personal literary and artistic rights in relation to his or her work and thus emphasize the author's connection with his or her work.

The moral rights also protect the public interest, for example through providing credibility to publishing and research. Altering a work in a way that offends authors’ right of integrity is also reprehensible in terms of cultural interests. The public interest is protected also through prohibition of false attribution and with a prohibition to use

the name of a work or an author that can be easily confused with a previously published work or its author. The moral rights ensure information on correct source could be seen to bear a similar kind of originality function as trademarks.

- 2) Are all types of works protected by moral rights or are moral rights restricted and/or excluded for certain categories of works (software, databases, architecture, etc.)?

Right of attribution and rights of integrity apply to all copyright works but their importance and significance to their right holder vary depending on how directly and deeply the work is personalised to its creator or author. In works of art, such as paintings, musical works and books, the importance of moral rights can be the most significant part of copyright to the author whereas in industries such as software development (although the moral rights apply) the significance of moral rights is not that important since the works are often made as a joint work in employment relationship.

Infringement of the right of integrity requires a certain objectivity threshold to be fulfilled and alterations that are deemed prejudicial to the author's literary or artistic reputation or individuality is interpreted by the courts and not merely by the artist itself.

Some specific restrictions on the use of moral rights have been made with respect to works of architecture and utilitarian articles to ensure the rights of the owners of the tangible assets integrating the work. Buildings and utilitarian articles may be altered by the owner without the consent of the author, if required by technical or practical reasons.

Parody, caricature or pastiche have been traditionally allowed in Finland without the authors' consent if and to the extent they are interpreted as independent and original new works. Often it is the case, that parody, pastiche and caricature meet requirement of being independent and original, but the possibility of difficult interpretations between new works and infringing modifications cannot be entirely excluded. The pending amendment to the Copyright Act will introduce an express new provision in the form of copyright exception which is applicable to the parody, caricature and pastiche. Like other exceptions and limitations to copyright, the parody exception will not limit the moral rights of the author.

Categories of moral rights

- 3) What are the different categories of moral rights, e.g., right of attribution, rights of integrity (distortion or modification), rights of disclosure, rights of withdrawal, right to prevent use in association with a product, service, cause or institution, etc.? Please give a short definition of each category.

Right of Attribution and rights of integrity

Moral rights protect the author's personality in accordance with Section 3 of the Copyright Act. The section explicitly recognizes two rights belonging to author: Right of attribution / Paternity right /droit à la paternité in paragraph 1 and the Right of integrity / droit au respect in paragraph 2.

According to Section 3 Paragraphs 1-2 of the Copyright Act:

(1) When 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.

(2) 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.

False attribution

Closely related to Paternity right, Section 51 of the Copyright Act provides a right to object false attribution. It protects the author, on the one hand, and the public, on the other, against the risk that a later work might be confused with the first published work.

Signature right

Section 52 paragraph 1 of the Copyright Act provides an inalienable right for artists of works of fine art to sign the original pieces of works they have created. According to this provision:

“The name or signature of the author may be inscribed on a copy of a work of art by another person only when so instructed by the author”. For the sake of clarity, this provision applies only to original pieces of works, not prints (draft).

Right of disclosure

Disclosure and release are both acts that require consent from the author, but the exclusive right is considered economic rather than moral. The copyright law differentiates between disclosure and publication. The difference has impact on applicability of certain exceptions and limitations and exhausting of copyright.

Right to withdraw and to update a work for subsequent edition

Finnish legislation recognizes a right of repentance (*droit de repentir*) which means the right of the author in a contractual relationship to prevent publication of a proposed work because of changed convictions or new knowledge and to redeem already made copies (*droit de retrait*) or, when a new edition of the work is published, to require that he or she be allowed to make additions and changes to it (*droit de modifier*). The latter is an express provision in the Copyright Act concerning publishing contracts (Section 36) and the previous right is formed in contractual principles and case law. It is derived from the right of disclosure and from the right to make updates.

Other rights - right of access to work

For artists of works of fine art the Copyright Act includes a regulation concerning right of access (*droit d'accès*) which allows an artist to view and possibly photograph a piece of art that he or she has already disposed to someone else. Section 52 a of the Copyright Act provides that:

(1) The author of a work of fine art shall have the right of access to see the work he has transferred, unless this causes unreasonable detriment to the owner or holder of the work, and provided this is necessary:

1) for the author's artistic activity; or

2) for the purpose of exercising his economic rights, as defined in section 2.

(2) The right referred to in subsection 1(2) above shall be governed by the provisions of section 41.

Other rights – protection of classics

Section 53 provides a special, posthumous protection against public derogatory treatment of works which are considered classics (Protection of classics -provision). The Finnish Ministry of Education and Culture monitors the provision as it aims to protect the cultural benefits and public interest related to work rather than the rights of the author. Provision applies to use of classic works or their modifications that are objectively infringing or threatening to infringe the cultural interests behind the work.² According to this provision:

(1) If, after the death of the author, a literary or artistic work is publicly treated in a manner which violates cultural interests, the authority to be designated by decree shall have the right to prohibit such an action, notwithstanding that the copyright therein is no longer in force, or that copyright has never existed.

(2) If the person whom the prohibition concerns is dissatisfied with the prohibition, he may submit the matter to a court of justice for decision.

The provision is problematic in many ways. It should not be a form of censorship by protecting cultural interests only. It should also remark that the work has had an identifiable natural author.

Exception and limitations to moral rights

- 4) Does your legislation and case law provide exceptions and/or limitations to moral rights, e.g., for specific categories of works, for the exercise of moral rights by author's heirs, in case of minor modifications of a work or in the absence of the name of the author for specific exploitations, in case of abuse of rights, etc.?

An express limitation to a certain type of works is set out in Section 25 e of the Copyright Act: buildings and utilitarian articles may be altered by the owner without the consent of the author, if required by technical or practical reasons.

² In (KKO 1967 II 10) by Finnish Supreme Court the court confirmed in its decision, in parallel to the Ministry's decision, that the use of inferior and slipshod translations, adaptations and abstracts made out of children's books (Alice in Wonderland, Tom Sawyer, Little Women, Robinson Crusoe etc.) in books with the same names meant tarnishment of cultural values related to the original works in accordance with the Section 53.

There are moral rights that apply to only certain types of work (fine art, publishers) and the rules on moral rights are applied differently to different kinds of works through interpretation.

The right of attribution (i.e. the right to be named as author) provided in Section 3 of the Copyright Act is not absolute. The name of the author needs only to be stated in a manner required by proper usage (i.e. in line with what is customary). What is customary then depends on the type of the work, e.g. it is not customary that the author of a computer program is mentioned in general, and therefore such omission may not be seen as infringement of the author's right of attribution. Similarly, the proper usage of photographs in advertisements does not require disclosing the photographer.

There is case law suggesting that minor (non-material) changes to a work does not infringe the right of integrity of the author.

Although there is no express limitation that permits parodies, the works being parodies, pastiche, satire or caricature are generally accepted as not infringing the moral rights (the right of integrity) of the author as prevalent view is that these kinds of works are typically new works and not modifications or reproductions of the original.

Duration of moral rights

5) What is the duration of moral rights?

The duration for the protection of moral rights is 70 years PMA, or in case of related / neighbouring rights, 50 years from the year of publication or performance i.e. the same as for the economic rights.

There is a protection for so-called classic works in Section 53 of the Copyright Act (prohibition to use classic literary or artistic works in a manner that violates cultural interests). There are no time limits for the protection of classic works.

Ownership of moral rights

6)

a) Who is the initial owner of moral rights, e.g., the author, co-authors, investor, publisher, movie producer, etc.?

Under Section 1 paragraph 1 of the Copyright Act, the initial owner of both economic and moral rights is the author.

If a work has two or more authors whose contributions do not constitute independent works, the copyright shall belong to these co-authors jointly under Section 6 of the Copyright Act. However, each of them is entitled to independently bring an action for infringement of the moral rights.

b) Can legal entities, such as an association, a foundation, collective rights organizations, a corporate company, etc., be the initial owners of moral rights?

No, the initial owner of both economic and moral rights is always a natural person.

- c) Do the circumstances of the creation of the work influence who the initial owner is of moral rights (e.g., work made for hire, collective work, work created by employees, etc.)?

No, the initial owner would still be the author or co-authors.

- d) If the duration of the moral rights exceeds the duration of the author's life, who is the owner of the moral rights after the death of the author/owner?

After the author's death, copyright shall be governed by provisions pertaining to marital right to property, inheritance and will pursuant to Section 41 paragraph 1 of the Copyright Act. Further, the author may give directions in their will for the exercise of copyright or authorize someone else to give such directions under Section 41 paragraph 2 of the Copyright Act. In other words, the moral rights will pass to the author's estate and the heirs.

In addition, the deceased author's close relatives may bring an action for a breach of moral rights under Section 62 of the Copyright Act. This right vests with the surviving spouse, heirs in the ascending or descending line, brothers or sisters, or a person similarly related to the author by adoption.

- e) Who is the owner of moral rights of orphan works?

The unknown author is still the owner of moral rights. The Finnish Act on the Use of Orphan Works (764/2013) sets out provisions for allowed uses of orphan works but does not transfer any rights from the authors. Section 7 paragraph 3 of the Copyright Act even provides that the name of a known author shall be indicated in any use of an orphan work.

Moral rights and the owner of the tangible asset integrating the work

- 7) Are the property rights of the owner of a tangible asset integrating a work (painting, sculpture, architecture, etc.) limited by moral rights? For example, do moral rights prevent the owner of a building from updating or destroying it?

Yes, an author's moral rights may affect the use of tangible assets. The principal rule in Finnish law, set out in Section 3 of the Copyright Act, is in line with the Berne convention i.e., protected works cannot be altered or modified in a manner which is *prejudicial to the author's literary or artistic reputation* or made available in a form or context causing the same.

However, the Copyright Act contains specific regulations on buildings or constructions and utility items (applied art): under Section 25 e, buildings and utility items can be altered or modified even without the authors' consent, if required due to *necessary technical or practical (functional) reasons*, such as repair and maintenance works. The section does not permit modifications for any other reasons or purpose, and for instance the Finnish Copyright Council has in its non-binding decision TN:1995:18 taken the stand that solely aesthetical grounds are not sufficient to overrule the author's moral rights.

No similar exception exists with regard to other works, such as paintings and sculptures. Therefore, the author's right of integrity precludes the owner of the work from altering or modifying the work in a derogatory or distorting manner or making the work available to the public in an offensive context or manner.

By contrast, according to established interpretation, an author's copyright does not preclude the owner from disposing of or destroying the work altogether. This stance is not explicitly stated in the Copyright Act itself but derives from its preparatory works.

Moral rights and contracts

8)

a) Can moral rights be subject of contracts?

Yes. However, the Finnish legislation provides mandatory limitations for the transfer and waiver of the moral rights, as explained below.

b) Can the initial owner of moral rights transfer (e.g., through a contract for valuable consideration or free of charge) these to third parties?

The author's right to transfer their moral rights to third parties has been limited under mandatory legislation. According to Section 27 paragraph 1 of the Copyright Act, copyright may only be transferred subject to the limitations of Section 3 paragraph 3 that reads:

(3) The 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.

Thus, it would only be possible to transfer if the type of use and context of the use is determined beforehand.

Further, unreasonable transfers of the copyright may be adjusted or ignored afterwards. Section 29 of the Copyright Act provides that if an agreement on a transfer of copyright is unreasonable in view of good agreement practice in the field or in other respects, or if its application would result in an unreasonable situation, the condition may be adjusted or ignored. The assessment of the reasonability of a condition shall take into account the entire content of the agreement, the position of the parties, conditions prevalent at the time of making the agreement and afterwards, as well as other factors. For example, a compensation for the transfer of a right may be adjusted.

c) Can the owner of moral rights renounce or waive them?

As a main rule, the author cannot waive their moral rights. Under Section 3 paragraph 3 of the Copyright Act, the author may waive their moral rights with binding effect only in regard of use limited in character and extent. Thus, it would only be possible to renounce or waive moral rights if the type of use and context of the use is determined beforehand.

d) Can the law relating to moral rights be overridden by contractual provisions?

No. The limitation set out in Section 3 paragraph 3 of the Copyright Act is mandatory legislation.

Infringement of moral rights

9) Is infringement of moral rights qualified as is copyright infringement?

Moral rights are protected similarly as economic rights in the Copyright Act. Moral rights are protected according to Section 3 of the Copyright Act. According to Section 3 paragraph 1 the name of the author shall be stated in a manner required by proper usage if copies of a work are made or when the work is made available, accessible or obtainable to the public in whole or in part. Infringement of moral rights is also committed if a work is altered in a manner which is prejudicial to the author's literary or artistic reputation or to his individuality. Additionally, in such form, it is not allowed to make the work available to public. Infringing moral rights in a way stated above, qualifies as copyright infringement.

10) What are the conditions for an infringement of moral rights to be recognized, e.g., proof that the infringement violates the honour, reputation, dignity, legitimate interests of the author, etc.?

Copyright Infringement in the Copyright Act Section 56 g

According to Section 56 g of the Copyright Act, the market court can prohibit continuing and repeating act that infringes copyright.

Copyright including moral rights may be infringed in cases where the work is reproduced in whole or in part, and the reproduced elements of the work are sufficiently broad. Reproductions can infringe the right of attribution if the name of the author is not correct. In case the work is reproduced and modified, the resulting modification can infringe the right of attribution and rights of integrity. The author's name can be used in connection to original work and contributions only. The integrity protection of a work does limit the possibilities to modify the work, but it does not prevent others from creating new works. New works with independent and original character are not infringing whether found undesirable or not.

Copyright violation in the Copyright Act Section 56 a

Copyright of a work is violated if a person wilfully or out of gross negligence makes a copy of a work or makes the work available to the public contrary to the provisions of the Copyright Act. This includes moral rights because moral rights are protected in the Copyright Act Section 3. If copyright is violated in way described in Section 56 a of the Copyright Act, a person violating the copyright of a work shall be sentenced to a fine for a copyright violation unless the violation fulfils all criteria for a copyright offence in Chapter 49 of the Finnish Penal Code.

Copyright Offence in the Finnish Penal Code Chapter 49

An offence of moral rights is recognized in a same way as other copyright offences. According to Chapter 49 Section 1 paragraph 1 of the Penal Code there are three cumulative requirements that all need to be fulfilled in order to an act to be considered an offence of moral rights. First, there has to be violation of Copyright Act and this violation has to be done for profit. The violation also has to be done in a manner conducive to causing considerable detriment or damage to the person holding a right. If rights listed in Chapter 49 Section 1 paragraph 1 of the Penal Code are violated, the person violating these rights shall be sentenced for a copyright offence to a fine or to

imprisonment for at most two years. For someone to be sentenced for a copyright offence, the crime has to be proven beyond a reasonable doubt.

Moral rights on related rights

11)

a) Does your related rights legislation recognize moral rights, for example for performers?

Yes.

b) If YES, please indicate if moral rights in related rights legislation are identical to moral rights in copyright law?

The exact scope and duration of protection depends on the related right in question.

Performers and **photographers** are entitled to moral rights, whose scope of protection is identical to moral rights on basis of copyright, and it covers both right of attribution and right of integrity, but for instance producers whose sound or audio-visual recordings are protected under the related rights regime do not enjoy similar moral rights.

c) If they are not identical, please indicate the main differences from moral rights in copyright law.

The main difference is the duration of protection, which for most related rights is 50 years from the end of the of the year during which the performance, recording or publication took place. Sound recordings are protected for 70 years from their publication if published before 50 years has passed from their recording, whereas for databases and catalogues or registers the duration of protection is 15 years from their completion or publication. Press reports received from foreign correspondents or news agencies are protected for 12 hours from their initial publication in Finland. The press publishers' right has not been used for a long time and it will be removed from the copyright law once the law implementing the EU DSM directive becomes effective.

Performing artists' performances enjoy the same protection of moral rights as granted under copyright law in relation to their use in manners set out in the Copyright Act. Photographers of photographs protected under the related rights regime (but not as copyrighted works) are entitled to similar protection but unlike authors of copyrighted works or performers may freely assign or transfer their moral rights, including a permanent assignment or transfer.

Producers of sound or audio-visual recordings, databases or catalogues, radio and television organisations nor recipients of press reports are not granted moral rights under the Copyright Act, as the purpose of their related rights is not the protection of creative results or artistic performances, which are closely related to the creator's person, but rather the producers' economical or other investments.

II. Policy considerations and proposals for improvements of your Group's current law

12) Could your Group's current law or practice relating to moral rights be improved? If YES, please explain.

Yes, clarification is desirable.

Could any of the following aspects of your Group's current law relating to moral rights be improved? If YES, please explain.

a) the definition of moral rights

Yes, clarification is desirable as some of the moral rights are currently based on case law and they are therefore enforceable in civil cases only. To be able to enforce copyright violation and copyright offence (punitive measures), the prohibitions should be stated in law (*nulla poena sine lege* – no punishment on basis of any legal sources inferior to law).

b) categories of moral rights

Yes, the definitions of moral rights will create or redefine categories as well.

c) exceptions and limitations to moral rights

Yes, the limitations could be clarified and harmonized.

d) the duration of moral rights

No, the moral rights are valid for the same duration as the copyright or related right.

e) ownership of moral rights

No, the power to represent owners of moral rights require clarification and harmonization, but the ownership of right of attribution should not be with anyone else but the author. The other moral rights can be transferred with restrictions and having the author as the original owner of moral rights is and should remain the same as with economic rights.

f) moral rights and the owner of the tangible asset integrating the work

No, current law is not problematic in respect to physical copies of work.

g) moral rights and contracts

Yes, clarification and harmonization are desirable.

h) the regime of moral rights

Yes, harmonisation is desirable.

i) infringement of moral rights

Yes, the passivity rules and silent acceptance should be clarified and harmonized. It should not be possible that the author has allowed the use of a work and afterwards, author's successor (heir) finds that the use constitutes infringement of the deceased author's integrity.

j) moral rights and related rights

Yes, the producers' moral rights should be discussed. Current use of digital works differs from the use of works in the analogue time. The role of the producer is no longer investing to the release of physical albums and the rules related to the moral rights of producers may be outdated.

13) Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question?

No. The Finnish group welcomes harmonization and would like to modernize the outdated rules and exceptions concerning analogue physical copies of work.

III. **Proposals for harmonization**

Please consult with relevant in-house / industry members of your Group in responding to Part III.

14) Do you believe that there should be harmonisation in relation to moral rights? Please answer YES or NO.

If YES, please respond to the following questions without regard to your Group's current law or practice.

Even if NO, please address the following questions to the extent your Group considers your Group's current law or practice could be improved.

Yes, harmonization is desirable.

Definition of moral rights

15)

a) Should moral rights be recognized? Please answer YES or NO.

YES. Moral rights as personal rights of the author have always been a fundamental element of copyright in civil law countries.

Copyright itself has been originally justified as means to help authors benefit economically from their creative work, but since the works are creative and valuable due to the fact that no one else would have created a similar piece, there exists a need to protect the author's personal relation to the work. In practice, moral rights, at least in some parts (e.g., right to attribution), continue to be important to many types of authors, and they also support the economic rights.

Furthermore, since moral rights have been supporting the copyright regime for a long time, it is impossible to foresee how removing them would affect the agreements and practices that exist but that do not result in case law concerning moral rights. Lack of moral rights can harm the author and the public interest, which is obvious in the field of research and publishing. Removing moral rights could negatively impact commercial

partners of authors (e.g. book publishers) and culturally deteriorate the value of authorship.

In addition, the author has a justified interest to have limited possibilities to interfere in the use of its work regardless of transfer of all economic rights thereto. For example, the users of online content sharing platform and providers of online content sharing platforms would benefit from clear rules on what can be prohibited on grounds of right of integrity.

b) If YES, should this be in copyright law?

Yes. Currently the moral rights are included in the Copyright Act with some exceptions: the right to withdraw the work, which is partly covered by general contractual principles and case law.

16)

a) If YES to question 16), should all types of works be protected by moral rights? Please answer YES or NO.

YES, but not all types of works should be protected by all moral rights. There are good grounds to treat different kinds of works differently. For example, the right of access applies only to copyright protected works of (visual) fine art.

It is of great importance to inform the name of the author in connection to articles and publications, but since it is not customary to inform the authors in connection to software for example, proper usage of software does not require recognizing the authors. Right of attribution should continue to depend on *interpretation* of "proper usage".

b) If NO, for which categories of works should moral rights be restricted and/or excluded?

- (please see 16 a above)

Categories of moral rights

17) What should be the different categories of moral rights? Please tick the boxes as appropriate and give a short definition of them:

right of attribution

When 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.

right of integrity

A work may not be altered in a manner which is prejudicial to the author's literary or artistic reputation, or to his individuality;

right of disclosure

A work shall be disclosed when author has consented the disclosure. A work shall be considered to have been made public when the author has made it available to the public.

right of withdrawal

right to prevent use in association with a product, service, cause or institution

A work may not be made available to the public in such a form or context as to prejudice the author in the manner stated.

other, namely, right to publish anonymously and with a pseudonym

Exception and limitations to moral rights

18)

a) Should moral rights be subject to exceptions and/or limitations? Please answer YES or NO.

YES, Exceptions and/or limitations are mindful of the need to make minor alterations that are required by technical or practical reasons or so called editorial purposes in certain fields. The exceptions are closely connected with economic rights and the scope of exceptions is subject to interpretation.

b) If YES, which? Please tick the boxes as appropriate

for specific categories of works, namely

in case of minor modifications of the work

in case of abuse of rights

depending on the owner of moral rights (author, investor, employer, author's heirs, etc.)

other, namely

Exceptions and/or limitations are mindful of the need to make minor alterations that are required by technical or practical reasons or so called editorial purposes in certain fields.

Duration of moral rights

19) What should be the duration of moral rights?

Moral rights protect the personality of the author. It should continue for the duration of economic rights, which for copyright is 70 years after the year of death of the original author.

The group prefers to maintain harmonized rules of the EU but sees no reasons why 50 years would not be sufficient.

Ownership of moral rights

20)

a) Who should be the initial owner of moral rights?

The protection of moral rights is based on the protection of the personality and identity of the human author and author's relation to the work. The initial owner of moral rights should continue to be the original author, a natural person.

b) Should legal entities (i.e. others than natural persons) be able to be the initial owner of moral rights?

No. See the answer in 20 a) above.

c) Should the circumstances of the creation of the work influence who the initial owner is of moral rights?

No, but there should be mechanisms allowing the restricted transfer of moral rights when necessary.

d) If the duration of the moral rights exceeds the duration of the author's life, who should be the owner of the moral rights after the death of the author/owner?

The purpose of moral rights is to protect the author's personality and personal relationship to the work and therefore it is justified that the author has a power to decide how the moral rights should be used after the author's death.

Taking into account the non-transferable nature of some of the moral rights, the power to protect the author's (inheritable) moral rights after the death of the author could be with

- i) the legal or natural person designated by the author (currently in Finland, only the potential beneficiaries of the will),
- ii) the author's heirs or widow / estate of the deceased author (as currently in Finland),
- iii) the state (currently in Finland, if there are no heirs, or with respect to protection of classics),

New and harmonized rules would be needed to manage the rights on behalf of their owner. A representative that has the power to take decision on behalf of the author's heirs is needed especially if there are many people involved in the death estate.

Also, passivity rules related enforcement are needed. The death estate could not take a stricter interpretation on the commercial use of works that author has accepted (except for example misuse of illness etc.).

e) Who should be the owner of moral rights of orphan works?

The ownership of moral rights should not transfer (or be confiscated) in case a work is deemed an orphan work.

If some of the authors of the work are known, the known authors own the moral rights to the work.

The sole author of an orphan work can later be found, and it is important that the moral rights of the author have in the meanwhile been respected by the lawful users to the extent possible.

Moral rights and the owner of the tangible asset integrating the work

21) Should the property rights of the owner of a tangible asset integrating a work (painting, sculpture, architecture, etc.) be limited by moral rights? Please answer YES or NO. If YES, please explain how.

YES. The author of a work of fine art should continue to have a right to see the work and to take a photograph thereof in case it does not cause unreasonable detriment to the owner of the tangible asset and provided that the access is necessary for the author's artistic activity or for use of economic rights. The author should bear the costs of visiting the work and the visit can be arranged outside of private places. The current rules on access to work seem balanced and cause no persistent problems.

The parties should continue to be able to agree about waiving of access rights or on more specific terms and conditions. The terms and conditions of fine art galleries and dealers often support buyer anonymity and privacy.

Moral rights and contracts

22)

a) Should it be possible to contract on moral rights? Please answer YES or NO and explain.

YES, the author should be able to agree and to waive, with certain limitations, the right of attribution, of integrity, right of disclosure, right of withdrawal, right to prevent use in association with a product, service, cause or institution, and the right to access the work.

The right of attribution should not be transferable. The author should be able to provide a power of attorney to any legal or natural person that it wishes, and the author should be able to agree on defending the right of attribution, but the right to be named as the author should not be transferred. The copyright law should not encourage to misleading practices.

It should be possible to agree on waiving of moral rights to existing works and the authors should continue to be able to decide about disclosing the work.

For the purposes of enabling private persons and small entities to monitor their rights, the transfer of right to integrity (right to deny such alterations that are prejudicial to the author's literary or artistic reputation, or to his individuality) should always be expressly agreed upon.

- b) Should the initial owner of moral rights be able to transfer these to third parties? Please answer YES or NO and explain.

Right of attribution should not be transferable. Only the correct author should be mentioned as the author.

The possibility to transfer right of integrity, right of disclosure, right to prevent use in association with a product, service, cause or institution should exist. The transfer would need to be expressly agreed and it should cover only existing works and works that are made to order or on basis of specific assignment.

The Finnish group finds no reasons to broader right of access the work (of fine arts).

The moral rights should be transferable to general successors (inheritance), beneficiaries of a will, or state as described in response to 20 d above.

- c) Should the owner of moral rights be able to renounce or waive them? Please answer YES or NO and explain.

Yes, in relation to a specific work. No general waiver or renunciation should be allowed for future works. Authors are often required to transfer economic rights to their employers, and they may not be in a good position to negotiate e.g. with publishers. Since moral rights protect primarily the author's person and its relation to the work and not economic interests, it seems justified that agreements on renouncing or waiving of moral rights can be done for each work separately.

- d) Should it be possible to override the law relating to moral rights by contractual provisions? Please answer YES or NO and explain.

There should be no more restrictions to contractual freedom than what is necessary.

The limited possibility to agree about moral rights to unspecified future works, author's right to decide about disclosure, and the restriction to transfer right of attribution, should override contractual provisions.

The transfers of moral rights and waiving them should however be possible in contract work and in relation to a specific work that is not yet materialized but that is made to order or on basis of assignment.

Infringement of moral rights

- 23) Should infringement of moral rights be qualified as copyright infringement? Please answer YES or NO.

Yes.

- 24) What should be the conditions for an infringement of moral rights to be recognised?

The infringement of moral rights should cover the infringement of all different categories of moral rights, as provided with respect to question 18 above.

The criteria for an infringement should be clear and predictable. However, it may not be possible to provide exhaustive criteria for an infringement in each case. It should be

recognized that, e.g., the infringement of right to attribution / paternity right may vary in different fields depending on what is considered proper usage.

As a main rule, the infringement of right of integrity should be assessed based on objective criteria. The subjective view of the author is important in respect to right of attribution. Further, the author should not be required to prove that the infringement has caused them actual harm or damage.

All moral rights should be expressly described in law as the principles of criminal law prohibit penalties for any actions that are not expressly stated in law (*nulla poena sine lege*).

The author's moral rights should be balanced with other rights, such as the freedom of expression. For instance, parodies and similar art forms should not constitute an infringement of the moral rights but a parody, pastiche and caricature should never be acceptable excuses for acts that are otherwise prohibited in criminal law.

Moral rights on related rights

25)

- a) Should related rights law recognize moral rights, for example for performers? Please answer YES or NO.

Yes

- b) If YES, should moral rights in related rights laws be identical to moral rights in copyright law?

Some related rights should be protected in a similar manner than works. The rights of performers and photographers whose work is protected by *sui generis* right or neighbouring rights develop a similar personal relation to their performances and photographs than the authors of copyright protected works.

Also, the rights of producers should be considered in connection to copyright and moral right infringements. It should be analysed if a producer needs an independent right to sue the infringer if moral rights to a manuscript or some other essential part of the producer's work of compilation are infringed. Producer's role has changed from investment to provider of creative contribution and the mere protection of investment appears outdated.

Other

- 26) Please comment on any additional issues concerning any aspect of moral rights you consider relevant to this Study Question.

Further consideration about producers' and publishers' rights is needed. Should producers and publishers have the right to enforce moral rights?

- 27) Please indicate which industry/cultural sector views provided by in-house counsel are included in your Group's answers to Part III.

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Kuvasto - A copyright society for artists working in the field of visual arts.