

## **Summary of Substantive Changes from Unported to Estonian Legal System**

The main difference between CC licences and the Estonian Copyright Act rests in the author's moral rights, related rights and the rights of database makers.

1. The Estonian Copyright Act is implemented based on the Berne Convention. Thus, Estonian law is similar to all laws based on the Berne Convention;
2. The definition of Work covers the copyrighted works, related rights and database rights, including *sui generis* rights.
  - 2.1. The *sui generis* rights have been introduced into Estonian law based on the regulation of the Database Directive. We have inserted the clause 3(i) as recommended: Hereby, the Licensor waives the rights of database makers deriving from the Directive 96/9/EC of the European Parliament and of the council of 11 March 1996 on the legal protection of databases.
  - 2.2. The following rights constitute the related rights:
    - 2.2.1. the rights of Performers; and
    - 2.2.2. the rights of Producers of Phonograms; and
    - 2.2.3. the rights of Broadcasting Organisations.
3. The Estonian Copyright Act provides the regulation on moral rights – the moral as well as the economic rights of authors constitute the whole content of copyright. The moral rights of an author are inseparable from the author's person and are non-transferable. The list of moral rights in the Estonian Copyright Act is one of the longest in the European Union. The moral rights can be licensed under exclusive or non-exclusive license – but not waived.
4. The economic rights of an author are transferable as single rights or a set of rights for a charge or free of charge (if agreed accordingly).

In addition to the aforementioned, in porting the CC licences several changes were made to the definitions given in the unported CC licences. The rights of database makers were explicitly listed as the latter do not exist in the unported versions of CC licences. Furthermore, the definitions of Collections and Original Authors were complemented. The term Distribute was supplemented in way that it encompasses activities such as lease and rental. The reason for introducing the afore-cited amendments was the fact that the Estonian Copyright Act provides for a broader range of rights. The reference to Japan, which can be found in the unported version of the example licence, was neglected. The stipulations regarding compulsory licences were amended so that it is in compliance with the regulation of the Estonian Copyright Act (compulsory licences in the Estonian Copyright Act § 13<sup>1</sup>, 26, 27, 27<sup>1</sup>, § 15 and § 76 (3)). The section of limitation of liability was also altered in a way that it is in line with the Estonian Law of Obligations Act. We also introduced a classification of damages as the Estonian Law of Obligations Act lists two types of damages: pecuniary and non-pecuniary. Furthermore, pecuniary damages can be sub-categorised as direct pecuniary damages and loss of profit and non-pecuniary damages can be sub-categorised as the physical and emotional distress and suffering of the aggrieved party.

The fact that we introduced a section on the licensing of the author's moral rights into the CC licence is an essential amendment. Thus, the licensor's moral rights are licensed to the fullest extent permitted by the applicable national law, to enable the person that has been granted rights under the licence to reasonably exercise the rights granted in section 3 of the license, but not otherwise. The aforementioned is of great relevance due to the fact that pursuant to the Estonian Copyright Act moral rights cannot be waived. The matter of moral rights could not be left unregulated as it is prohibited to use the author's moral rights without the consent of the author. The issue of moral rights is especially important in case works are being altered.

What is more, we introduced a provision on that in case a licensor is the owner of *sui generis* database rights under Estonian law, the licensor waives such rights. We also included an explanatory provision on the regulation of databases.

Taking into consideration the national law there is no need to include a reference in the ported licence text to the fact that the CC licence has been elaborated based on the Berne Convention, the Rome Convention, the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty and the Universal Copyright Convention (UCC). Such references are necessary only in unported licence texts.

In addition to the aforementioned, several other changes were made but the latter are less significant. Such changes include, amongst others, rewording as well as specifying the suggested definitions and agreements during the porting process.