

MA Helle Tiikmaa, PhD student, lecturer¹
Institute of Social Studies, University of Tartu, Tartu, Republic of Estonia

The Author's Rights in the Estonian Journalism – Understanding, Interpretation and Practices

Abstract: The Author's Rights Act is one of the first legal principles officially accepted in the Estonian Republic after re-gaining independence 1992 that regulates the journalistic field. It is also one of the longest serving and from journalists' point of view bipartite act – journalists are both users of material and authors themselves. This article focuses firstly on the ongoing modification process of the act and secondly on the practice of the media organisations forcing or negotiating journalists to sign off their author's rights material and even personal parts. As the author the journalist is a weaker part of this dispute, which the new version of the law will defend even less.

Key words: *author's rights, legal regulation of journalism, Estonia*

1 helle.tiikmaa@ut.ee

MA Hele Tikma, doktorand, predavač
Institut društvenih nauka, Univerzitet Tartu, Tartu, Republika Estonija

Autorska prava u estonskom novinarstvu – Razumijevanje, tumačenje i praksa

Apstrakt: Zakon o autorskim pravima je jedno od prvih pravnih načela i zvanično prihvaćenih u Republici Estoniji nakon ponovnog sticanja nezavisnosti 1992. godine, koji reguliše oblast novinarstva. To je takođe jedan od najdugovječnijih i sa novinarskog gledišta dvostranih akata – novinari su i korisnici materijala, a i sami su autori. Ovaj članak se prvenstveno usredsređuje na tekući postupak izmjene Zakona, kao i na praksu medijskih organizacija koje prisiljavaju ili nagovaraju novinare da se odreknu njihovih autorskih materijalnih prava, pa čak i vlastitog djela. Kao autor novinar je slabija karika ovog spora, pri čemu će je nova verzija zakona dodatno oslabiti.

Ključne riječi: *autorska prava, pravna regulativa novinarstva, Estonija*

Introduction

Of the several legal acts, that journalistic work is regulated by, author's rights act is usually most bipartite and, hence, holds problems hardly ever addressed. From one side journalist earn their everyday bread and butter producing material that falls under author's rights, but problematically the legal rights of journalists as authors are often overlooked either wholly or partly. Journalists themselves, although putting their names under published text or to electronic broadcasts, know little of their own rights to the material as authors and their employers/channel owners prefer it like that. From other side journalists are also facing author's rights in material they use to make their stories, news, analysis, interviews. In both cases the knowledge of the essence of the law and how to implement it is the central part.

The journalists in Estonian media field today have acquired their education under two different systems – Soviet/totalitarian and democratic – and not everyone has special training as journalist. But even the knowledge of the journalists who have received current special education in the time of independence regained and it is focused mainly on the European and Estonian practice in libel and defamation cases. The main reason for being the mistake under these laws may have negative effect on both the reputation of the outlet and also of the journalist hence theoretically it also cost owners money. The self-regulation tool, Estonian Journalistic Code of Ethics demarcates libel, defamation and lying.

Context - the legal acts regulating journalism in Estonia from 1992 to today

The general values, evaluations and ideologies valid in a society shape the regulations of journalism, both legal acts and broader principles of supervising and directing media. The need to regulate media is often justified with defence of the public interest and finding balance with other interests in a society – for instance personal, owner's, political/party interests (Tiikmaa 2015). The Estonian legal system, including the regulating of journalism, follows European traditions and is also dependent on the directives of European Union.

The current Estonian media regulation system was established rather quickly if compared to those of “older democratic states”, the basic principles of infrastructure were introduced quickly, rather than being developed through debate and discussion, while journalistic professional culture has not developed at the same rate as in the Scandinavian states (Roseland 2005:20, 23). The main characteristics are its self-regulation in print media and minimal state regulation.

The general freedoms, including freedom of speech and information, are provided for by the Constitution of the Estonian Republic, ratified in a national referendum on 28th June 1992. § 44 and 45 declare the right to obtain and distribute information and the absence of censorship. § 17 also guarantees the protection of personal honour.

Although there were four attempts in early 1990s to establish an overarching media law, the attempts were unsuccessful (Lau, Hoyer 2008:15) as the freedom of speech and entrepreneurship was considered most important. In addition to self-regulation through professional unions and codes of ethics, several areas of the media field are regulated by general laws which leave some areas unregulated (see Table 1). Of the specific areas, defamation was first regulated against in the Estonian Penal Code, modified from the Soviet Penal Code, and passed in the Riigikogu (Parliament) in May, 1992. In 1994, to protect personal rights, the Civil Code replaced the Soviet Estonian Civil Code of 1965. In spite of the Acts being ratified, the understanding of defamation, moral damage and personal rights was not uniform until at least the middle 1990s (Harro 2002:227). In the second half of the 1990s, a number of laws were passed to regulate certain parts of the media (see Table 1), and the regulation of information and the press became more sophisticated, but not all of the problems were solved, despite several amendments to existing laws and new laws being ratified, for instance, experts have described the Advertising Act (accepted in 1998) as a “dormant” law, often easily disregarded (Loit 2007:359). There has been discussion of a project to defend a source of information, which in print media is not yet regulated by any Act and so only principles of self-regulation apply.

Separate legal acts have been ratified for broadcasting (Broadcasting Act 1994, regulating Public Service Broadcasting (PSB), and advertising principles and licensing commercial broadcasting; 2007 Public Broadcasting Act).

Table 1. *Fields legal acts regulate on the media field in Estonia*

General principles of Regulations (substantive law) in print media:	Title of Act	Valid from¹
Freedom of the press; protection of human dignity, rights: protection of honour and good name, right to the inviolability of private and family life; compensation for moral and material damage.	Constitution of the Republic of Estonia	1992
Punishment (fine or detention) for defamation or insult Punishment for defamation or insult of a person enjoying international immunity or of a family member of such person	Criminal Code Penal Code Penal Code ²	1992-2002 1992-2002 2004
Protection of state secrets and classified information of foreign states from disclosure or from being accessible to persons who have not been granted access to such information	State Secrets and Classified Information of Foreign State Act ³	1994

Protection of the fundamental rights and freedoms of natural persons upon the processing of personal data, above all the right to inviolability of private life; esp. protection of confidential information	Personal Data Protection Act ⁴	1996
General requirements, prohibitions and restrictions established to advertising	Advertising Act ⁵	1998
Prohibitions related to dissemination and exhibition of works that have certain content, e.g., they promote violence or cruelty.	Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty	1998
Assurance that the public has the opportunity to access information intended for public use, based on the principles of a democratic and social rule of law and an open society, and to create opportunities for the public to monitor the performance of public duties.	Public Information Act	2001
Unlawfulness of damaging personal rights; unlawfulness of disclosure of incorrect information; compensation for moral and material damage.	Law of Obligations Act	2002
Personal rights and honour, defamation, restitution of damage	Civil Code Personal Data Protection Act Law of Obligations Act	1994 1996 2001
Broadcasting channel licences Advertising in broadcasting Own production and news percentage Public Broadcasting operations Author's rights in broadcasting	Broadcasting Act National Broadcasting Act Media Services Act	1994-2010 2007
Author's rights	Author's Rights Act	1992

Source: *Electronic database of the State Gazette (Riigi Teataja)*, compiled by Marelle Leppik and Helle Tiikmaa

1 Some Acts were amended or annulled during the period.

2 The Penal Code itself came into force on 1st September, 2002, but the *Riigikogu* (Parliament) later (01.01.2004) added § 247, which regulates the defamation and insulting of persons who enjoy international immunity.

3 In 1994 the Act was called the *State Secrets Act*, but since 2008 the Act's official name has been the *State Secrets and Classified Information of Foreign States Act* (with the new name valid since 01.01.2008).

4 Since 1996 there have been three *Personal Data Protection Acts*. The first *Personal Data Protection Act* was valid from 1996-2003, the second was valid 2003-2010, and the third came into force on 1st January, 2008, and is still valid.

5 Since 1998 there have been two *Advertising Acts*. The first was valid from 1996-2008 and the second from 2008 to the present.

The Author's Rights in Estonia

As shown in table 1 the Estonian Author's Rights Act was accepted already in the 1992. hence being one of the earliest regulated areas in Estonian Republic after regaining independence. The Act has been in force for 23 years, being a valid candidate for a title of longest standing law (Pisuke 2006).

It also is only second act specifically regulating author's rights in Estonian territory overall and first Estonian legal act on the topic. The last act regulating author's rights was passed in the 1911 in Czarist-Russia, that Estonia was a part of. The same law stayed in force also in Estonian Republic existed between the 1919 and the 1940. Although Estonian authorities were on a path to establish an Estonian own act in the 1930s, it wasn't proclaimed (Pisuke 2012). The international regulations were also accepted at that time. In the 1927 Estonia joined with the Berne Convention for Protection of Literary and Artistic Works. The Author's Rights Defence Association was created in the 1932 with a task to protect the legal rights of writers and composers and their heirs and to develop the economic and artistic interest of the members of the association (AYP 1932 §3). The Association also had a right to represent both its members and non-members, who had given it this right with a contract, in decisions on publishing their work and in discussions about the payment. Journalists, as a new profession of that time, did not fall under this agreement.

In Soviet time the central laws or the Estonian own laws created on the basis of central legal acts were in force in Estonia. The author's rights were regulated from the beginning of Soviet occupation in the 1940 Civil Code of Russian SSFR and from the 1965. The chapter IV "Author's Rights" of the Civil Code of the Estonian SSR, created after the SSSR's Civil Code. Although Soviet Union never joined the Berne Convention for Protection of Literary and Artistic Works, the Civil Codes of the Union specified that the author's rights began with the creation of an art piece, protection was extended to the scientific, literary and artistic creations, but not to the documents, legal acts and folklore (CV-ESSR 1964). The vague definition (Ananjeva via Kuuskemaa 2013) made it possible for the law enforcement to last long time and be adapted to the new technological forms like television and radio. The author's rights belonged to the individuals, who participated in creating the work, but also to the corporate persons, if the work was done under contract. Soviet time rights for authors included paying royalties to freelancers, but the contract workers gave their rights over to their employer organisation. Hence the corporate persons with author's rights were the film studios, television and radio committees, but also some publishing houses (e.g. publishing encyclopaedias). There were no concomitant rights mentioned in the legal structure, hence the performers were not included under the author's principle. Authors in Soviet time mostly practiced under state order, which is seen in the contracts, which state the creator's obligation to present the work at fixed deadline and make rectifications to their work as the dispatcher demanded. From the other hand, dispatchers had to limit their demands for rectifications and also had to make use of the work during established deadline (Kuuskemaa 2013).

The current Estonian Author's Rights Act is based on the Estonian Constitution, the Berne Convention and European directives and traditions. The Estonian Constitution states explicitly that an author has unexpropriable right to his/her creations and state is obligated to defend them (ERC 1992 §39). In the Author's Right Act the creation falling under protection is defined as work belonging to the field of literature, art or science. The work must be original and have a certain form, hence merely idea is not defendable under Author's Rights Act. As the examples of defendable work the publicism, political, educational and other written forms, scripts, oral creations, audio-visual and photographic works are named (ARA 1992 §4.3). The goal of the Act is defence of Estonian culture, but also economic development in the fields falling under author's rights. (Autoriõiguse seadus §4, §1).

In the beginning of the period of restoring Estonian independence there was considerable attempt in several fields to distance current ways of thinking from Soviet ones that did not acknowledge a single human being as a person. In the Author's Rights Act is can be seen in the greater focusing on the definition of individual author and authorship even in broader scale that foreseen in the Berne Convention, with which Estonia re-joined again in the 1994. Estonian Author's Rights Act was in the 1992 considered one of the most modern in Europe and was brought out as example to other states which either gained or regained independence at the same time (Pisuke 2012). The Act separates the personal and material rights, of which the first ones are imprescriptible and the second can be surrendered with a contract for a fee.

The personal rights include among others

- the right for authorship
- right to author's name on the work
- right to make or allow others to make changes in the work
- dispute the changes or distortions in the work and assessments given to the work that harm author's name
- right to recall published work or his/her name on it

The material rights include among others:

- right to reproduce, publish, distribute etc. of the work
- right to allow translation of the work
- right to recite the work either orally or with technical means
- right to make adaptations to the work

(ARA 1992 §12, §13)

The Act defines also performers as authors and the concept of co-authors. Among other parts there are specified the boundaries and possibilities of free use.

Over the years the Act has been amended more than 30 times and even the experts acknowledge that the text has become difficult to understand (Nemvalts 2012, Mägi 2015). That is one of the reasons for Estonian Ministry of Justice has been working on new redaction of the Act for over three years. Nevertheless, the main reason given by the ministry is technological development, to which the old definitions and limits are getting in the way. The new approaches mostly concern the free use rules

for internet solutions and new technological possibilities, all of which also apply to journalists as users and as authors (Nemvalts 2015). The process is still ongoing.

Short case study on the practices into implementing the author’s rights in media organisations.

AS mentioned above, the journalistic education does not include the author’s rights knowledge and many people working as journalists have different educational background. Hence the task to acquire the knowledge on the author’s rights, falls either to employer organisations or to the person oneself. To establish the practice, how legally defined author’s rights are put into practice by the media organisations, I made a short questionnaire for answering by the legal representatives of different Estonian outlets. Answers came from one of two big media concerns, AS Ekspress Grupp (“Express Group”), Estonian National Broadcaster ERR and from main national daily “Postimees” (“Postman”) and commercial TV channel “Kanal 2” (“Channel 2”). AS Ekspress Grupp unifies several outlets, among them national daily, “Eesti Päevaleht” (“Estonian Daily”), tabloid “Õhtuleht” (“Evening Paper”), main weekly “Eesti Ekspress” (“Estonian Express”) and Baltic newsagency Delfi. “Postimees” and Kanal 2 belong to another Estonian media concern, Eesti Meedia (“Estonian Media”). Hence the results can be interpreted as the practices of the biggest players in the Estonian media field.

Table 2. *The implementing and informing of employees of author’s rights in media organisations*

Media organisation	The practice on author’s rights in employee contracts	The practice on author’s rights in freelance agreements	Informing employees on their author’s rights
AS Ekspress Grupp	An employee signs away all material rights and gives to media organisation a licence to use the personal rights.	Usually the freelancers have no contracts, but present to media organisation an invoice. If there is a contract signed, the goal is to get as many rights to media organisation as possible	There is no schooling of employees
Postimees AS (belonging to Eesti Meedia)	Authors or creative employees sign over all material rights	Freelancers agree mainly to the one-time publishing. The contracts include author’s agreements, licence agreements, contract agreements	
Kanal 2 (belonging to Eesti Meedia)	All authors, except composers, sign away material rights	In principle freelancers have in their contracts same terms as employees	Employees are tutored as necessary

ERR (PSB)	All authors of all programmes, except composers, sign away all material rights and all contingent rights; for using author's personal rights a simple licence is granted	Freelancers are offered same terms as employees, but have room for negotiations. The author's contracts are made. In case the author belongs to an association representing authors, the contract ERR has with the association is binding	New employees are tutored when hired by legal department and consulted in the case of necessity later
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As anticipated, all media organisations conclude contracts with their employees, where all material rights of the creative work is given over to employer organisation. Two big organisations, who answered, ERR and Ekspress Grupp also get employees to give using right to personal rights with simple licence, but two smaller organisations, Kanal 2 and Postimees did not mention that. The licence in ERR is given for indefinite time and global scope. The ERR legal representative gave as a reason for such a licence the necessity to change programmes or make new ones with old material. At the same time the author's name is not harmed in the processes of changes. Usually an employee is expected not to use his/her own creations any other way than in job assignments without special permission from media organisation.

Usually the freelance journalists have almost the same terms as employees, although contracts may have different structure. Only Ekspress Grupp does (or openly admitted) not make any contracts with freelancer, hence not providing to the authors any social security. Material, which is provided for publishing with an invoice, belongs to author and media organisation.

Tutoring or educating of employees in their rights as authors is not done much or not at all.

Discussion on the author's rights in the law and in the practice

While the Author's Rights Act does not specifically name journalism as a field it covers (like music, but unlike literature, art and science), both practitioners and theoreticians accept that journalists have rights to authorship on their own work. At the same time there has been a governing view on Estonian political and due to that also in legal field, that journalism is business, which does not require similar defence as other cultural creative spheres (Tiikmaa 2014). Hence the explicit defining of a journalistic piece as creation and journalist as a creator and author is more difficult than, for example, in the cases of literature and writers or architectures and architects. Journalistic text (both written and oral) consists of facts and analysis, which have to be clearly differentiated. Journalistic text may not contain fictions, although in the case of tabloids or "yellow journalism" the rule is sometimes knowingly ignored. Journalistic text cannot be constructed or staged without a significant necessity and if it is, the staging must be pointed clearly out for the audience. While facts do not fall under material covered by author's rights, the form

in which the journalistic text is presented, does and it should be easier to draw from the wording of the Act. In the case of broadcasting programmes – both TV and radio – there is no dual understanding possible, as these are mentioned specifically.

In current and even more so in the new Act, there is a stumbling-block for news journalists as the §5.6 defines daily news as a result of intellectual activity, that is not covered by the authors rights. The choice of a term is taken from the Berne Convention, in which the article 2.8 states that author's rights do not expand to „ ... to news of the day or to miscellaneous facts having the character of mere items of press information “(Berne 1979 - §2.8). The current Estonian Act does not define the term of daily news. In the new wording there is foreseen a broader term – daily news in the amount of covering the events of the day. This actually confuses the interpretations as implicitly puts all daily news forms of one day under undefended intellectual work. Daily news is not just an event, but also in journalistic field a genre, form of a text for covering daily events with its clear criteria and formal rules (Hennoste 2001). For example there can be risen an argument for free and unpaid use of all news pieces and photos as material author's rights do not cover². The modification of a new text of the Act would win in clarity if instead of disputable definition the text would state that author's rights do not broaden to daily events.

A broader, not just journalists are those who possibly harming change that is planned into the definitions of personal and material rights. The main change is moving the right to make changes into a work, which is currently under both, personal and material rights, only under the material rights. The wording of the Act wins from this, but the authors do not. As mentioned above, the material rights are definitely the ones, which all media organisations get journalists to sign off for a fee. Hence the author in principle loses rights to control the changes made to their work and the owners and chief editors gain more power over the material. Especially in print media and internet pages there is a common practice, that changing that (e.g.g shortening, titles, headlines) are not under the control of the author. In the broadcasting the problematic area is re-runs and new editing of old material. Although the lawyers might stress that the reputation of a journalist is not harmed with the changes, the understanding of what can and cannot be considered harming, is not defined and the same for everyone. But for a journalist his/her reputation with the work examples is the only tool for future work.

As mentioned above, the higher education as a journalist does not include good knowledge of the legal acts, hence the journalist him/herself or the work place has to fill the gaps. Notable is that no commercial media organisation schools or tutors, its employees, as the owners and chief editors are probably not so interested in the journalist fighting vigorously for his/her rights. The public broadcaster ERR tutors of new employees, during their first contract agreements, are present if necessary. But it is improbable, that the same lawyers would support both employee and employer in the conflict.

2 Such an interpretation was presented on the author's rights seminar organised by the Estonian Association of Journalists in 20.03.2015 by a lawyer, who was explaining the free use principle of materials.

Conclusion

The media field in Estonia is regulated with multiple legal acts, understanding of which is not always feasible for a journalist or even necessary, but there are topics that every journalist should be familiar with, whether she/he is an employee of a media organisation or a freelancer. One of these is author's rights, a bipartite act, which affects journalists as users and authors. In this article I mainly focused on the problems of a journalist as an author of creative material rights.

The short case study proved that media organisations are more interested in the outlets/channels/organisations and in that way interests and the journalist might end up underrepresented on undefended. When journalists are not familiar with their legal rights, they might not see them and stand up for themselves. At the same time pure knowledge does not give sufficient strength to a journalist for fighting an organisation with legal representative, department or even whole legal bureau behind it. Estonian journalists have been couraged not to organise, defend and negotiate for them alone.

The new redaction of the Author's Rights Act as it is planned for now is turning away from the focus on the author and starting to prefer owners, outlets and organisations, catching up to the political understanding of journalism as business that should bring profit and also to the practice of media organisations, who see themselves as main implementer of the author's rights field in journalism.

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