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LEGAL USE OF INTELLECTUAL PROPERTY FOR BUSINESS

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Abstract. The growth and competitiveness of any business, especially micro and SMEs, will increasingly depend on the ability to apply new knowledge, organization and working methods, as well as the capacity to engage in the commercialization of research and development to develop new products, services, or processes.
In the information society, the development of new products, services, and processes requires the use of innovations resulting from the intellectual activity of creative people. For creators and successors in title of intellectual property rights (various projects, trademarks, inventions, computer programs, etc.) to be able to successfully develop and market their products, they need a functioning IPR protection system.
The study used an analytical method to investigate research on the unlicensed commercial use of copyrighted works, a grammatical, systematic, teleological and historical method of interpreting legal provisions to assess the regulation of existing legal provisions and to propose amendments to anti-piracy legislation. Inductive and deductive research methods have been used to draw conclusions.
The study concluded that when concluding a copyright or employment contract, it is very important to clearly define the transfer of copyright and its scope. It is important to obtain the right to use the work from both the employees and the cooperation partners, as well as to obtain the right to use the previously created work, including computer programs.

Keywords: Copyright law, piracy, author, work, software.

JEL Classification: K390.

Introduction

The growth and competitiveness of any business, especially micro and SMEs, will increasingly depend on the ability to apply new knowledge, organization and working methods, as well as the capacity to engage in the commercialization of research and development to develop new products, services, or processes (Ministry of Economics, 2018). An important precondition for the transition to an innovative economy is the strengthening of the Latvian innovation system, eliminating its shortcomings, and promoting mutual interaction between all subjects of the innovation system – business, science, and education, as well as financial and legal systems. One of the main challenges for the improvement of the innovation system is the insufficient use of creative and intellectual capital in the creation of innovations. (Ministry of Economics, 2019). The primary driver of innovation is knowledge. Intellectual Property (IP) rights have supported innovations by firms which have a large market and huge resources but for small business from the manufacturing sector they were less investigated. The growth dynamics and competitiveness of markets directly depend on incentives for intellectual property rights. However, many entrepreneurs, because of their lack of understanding of intellectual property, still ignore the potential of intellectual property to improve business performance by protecting the strategic assets (Barbu & Militaru, 2019, p. 1079).

There is a strong need to protect persons who create copyrighted works and inventions. Without any kind of IP protection, "innovation" proves difficult to produce since there are no mechanisms (such as the grant of exclusive licenses) through which to exclude nonpaying users (free-riders) of the innovation while providing full or limited accessibility to those who pay for an innovation. Consequently, there are no incentives for innovators to commercially exploit their research results. When "free-riders" attempt to exploit or steal an innovation, there

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are few tools to enforce property rights in the absence of an IP system. How an IP system is used depends on the creativity of the companies involved in innovation creation. The presence of effective intellectual property protections are key component of viable innovation ecosystems (Giannopoulos & Munro, 2019, p. 143).

Consumers tend to free ride on the information at little cost. Moreover, the Internet has dramatically reduced the cost of reproduction and dissemination of information. On the one hand, copyright owners now have more channels through which to share their works; on the other hand, it is increasingly difficult for them to control their works as they did in the past (Lee, 2019, p. 437). Many of these problems have not as yet materialized but will come. As intellectual property rights play a greater part in commerce and become more valuable, we shall see many interesting and novel attacks on the ownership of such rights in infringement cases (Davies, 2011, p. 619).

The role and impact of intellectual property are significant in relation to the economic exploitation of cultural heritage. In this regard, it can be concluded that cultural heritage is an essential economic resource whose uniqueness of which is a national competitive advantage and, as such it should be fully industrially but under intellectual property protection (Borissova, 2018, p. 150). In the so-called information society, the development of new products, services, and processes requires the use of innovations resulting from the intellectual activity of creative people. In order that creators and successors in title of intellectual property rights (various projects, trademarks, inventions, computer programs, etc.) successfully develop and market their products, a functioning Intellectual property rights (IPR) protection system is necessary.

Awareness of the need to protect intellectual property should be created from an early age, from kindergarten and the first years of school. However, in Latvia, intellectual property issues are only included in the secondary school curriculum. The conceptual report "On the Intellectual Property Protection and Management System in the Republic of Latvia" identified the need to raise awareness of intellectual property in primary, elementary, and secondary schools, as well as to introduce IPR issues in the study programs of Latvian higher education institutions (Cabinet of Ministers, 2017).

The main question of the study is – how can an entrepreneur obtain the necessary permits for the lawful use of intellectual property in his/her business in order to protect the company from litigation and damages risks?

This article seeks answers to this question by critically and constructively analysing the literature and legal framework in this area. In order to find the answer, international and national law was studied, the materials of international conferences were examined, as well as the information on copyright issues available on the Internet was examined. The study is mainly based on the existing legal regulation in the field of copyright in the Republic of Latvia, comparing it with the international legal framework. In some questions, the author compares the legal framework of Latvia and Lithuania in order to find the best solution to solve specific problems.

The study used a descriptive method to study the work of various researchers on the creation and transfer of copyright, the regulatory framework in this area, and used the analysis of legal provisions to propose the necessary amendments to the legislation.

The main result of this study is the understanding that every entrepreneur needs to use only legally acquired intellectual property objects, because their unauthorized use is much more expensive and loss-making than the acquisition of a license.

This article will focus on the commercial use of copyright objects leaving the use of other types of intellectual property (patents, trademarks, etc.) for further research. The author would like this study to be useful for both businesses and lawyers analyzing copyright issues. Although the paper analyzes mainly the situation in Latvia, many aspects apply to other EU countries as well.

1. The legal use of copyright works – the basis for successful business

Legitimate use of copyrighted content is a tool that ensures a sustainable level of competition between businesses. The problem is that many people do not regard intellectual property as a monopoly and this causes copyright and patent infringement and unauthorized use of exclusive rights (Mingaleva & Mirskikh, 2015, p. 220). Copyrighted works are greatly entwined with the concept of the sharing economy because of their status as informational public goods. Unlike commercial sharing models that address tangible goods such as bikes and houses, the sharing of which is limited by their physical nature, sharing models for intangible copyrighted works such as Google Books and live game webcasting must account for the comparatively unfettered ability for these to be shared. Accordingly, these models are more focused on exploiting these works to their full commercial potential. However, these sharing models are to a large extent based on the unauthorised exploitation of copyrighted works and will be unworkable if the related copyright issues cannot be solved. The interest that copyright owners have in exclusivity must thus be balanced with the public's interest in further exploitation of copyrighted works (Wang & He, 2019, p. 15). Unlicensed downloading of works from the Internet has long roots; it started already in 1997 with the rapid development of technology. However, the use of intellectual property without permission is not allowed, it is called – piracy.

Due to technological progress, works made available on the Internet are easily accessible, their content tends to be increasingly affluent and enticing, and everyone seeks to view, listen, and share it using the advantages provided by the new technologies. Circulation of works on the Internet is conducted continuously without the

authors' permission and also without paying for it. This, undoubtedly, is a violation of the authors' rights, because they are not able to decide whether their works will be made available to the public or not, and are not able to receive any remuneration for it (Veiksa & Kisnica, 2016, p. 358).

To protect main source of income, the creative industry has employed different strategies: lawsuits against downloading services and users of these services; technical solutions to prevent CD-ripping; information campaigns; and lobbying for stricter copyright laws. Many of these efforts resulted in the opposite of what was intended; it caused bad publicity and alienated at least a part of the public. Legal services have some advantages over illegal ones and differ on many aspects. They will probably serve different markets; file-sharing services will serve bootleggers, aficionados, and the (previously) single-buying youth market. Legal services will serve a more mature market (Bakker, 2005, p. 41). Digital music crime reduces the profits and income of artists, record companies, workers, and nations. It is also a matter of interest among economists because it distorts the market of music by changing the incentives to supply and demand new products in the growing market of online music (Borja et al., 2015, p. 74).

The Internet is often considered a "public space", and work on the Internet is considered a "work published in a public space", the use of which is permitted by statutory exceptions. Sometimes businesses freely use photographs found on the Internet to illustrate their advertising, forgetting that these photos may infringe the copyrights of even two people – the author of the photographed object (such as a monument or any other environmental object) and the photographer. They probably may be acting under the misleading assumption that these works are available on the Internet in a public space and may be used for commercial purposes without permission.

There are several ways to obtain the necessary work – by involving creative workers or by outsourcing them. You can enter into employment contracts with your employees who write, photograph, or draw in accordance with their job descriptions. You can enter into copyright agreements with journalists, photographers, or artists, or video creators to take photos or draw the necessary images, film videos, write information material, etc. and supply these to the business. An entrepreneur could also search the Internet for photos or videos taken by others and select among them the most appropriate ones for their business. In such cases, the right to use these materials must be verified.

There are still problems in the Latvian legal framework that prevent both employers from acquiring the necessary rights and legal entities from defending their rights against their unauthorized use. An unreasonable burden is placed on the employer to stipulate in detail the transfer of rights in employment contracts. At the same time right holders are not provided with a proper opportunity to protect their works against unauthorized use, as it is difficult to claim compensation for material damage to the amount of the license fee. Such compensation is only foreseen as an alternative remedy in several legal acts, and the court requires a very high standard of proof.

In order to better ensure the protection of the rights and interests of both creators of intellectual property and employers, it would be necessary to amend a number of intellectual property laws by establishing a common mechanism for calculating damages. The standard of proof in the courts should be lowered while imposing severe penalties on those who abuse the system contrary to its purpose. The requirement for employers to specify in detail the terms and conditions for the transfer of rights in employment contracts should also be simplified.

2. Creation of copyrighted works within the framework of an employment contract or by commission

2.1. The process of creating copyrighted works

Intellectual property is the result of creative intellectual work. It is a reflection of human personality and individuality. Creative and research activities form an important part of intellectual activities. By means of active participation in research and creative work, people can express themselves, their individuality, and desires. Intellectual property rights have a relatively amorphous character (Mingaleva & Mirskikh, 2015, p. 220). There is no doubt that painters, composers, writers, and representatives of other traditional arts are recognized as authors. However, other creative people could also create works of art, such as designers, translators, programmers, photographers, lecturers, and other people who may not seem to be related to traditional arts. Since an human being is by nature a creative personality, most of the results of his/her work are creative, and as a result such are recognized as copyright works and the human being its author. In addition not just the original creator of the work but also the created of a derived work, i.e. the person who creates translations, proofreading, annotations, reports, summaries, reviews, collections of works, databases, and other derivatives or composite works, acquires the right to be called the author.

Any person whose intellectual abilities have resulted in a creative work shall be considered an author. There is no doubt that any natural person can be creative – even a ditch can be dug in a special form, and it can become an author's work. However, persons who just assist technically in the creation of a work (e.g. an article editor) or support the creation of a work financially (e.g. a project sponsor) are not deemed to be authors. In order to ensure uniform application of the law in Latvia, it would be advisable to include a definition of originality in the Copyright Law, as well as to establish the basic principles for assessing the scope of the creativity. This issue is relevant in the modern age of technology, when computer

systems, called "artificial intelligence", are becoming more independent of human influence as they evolve (Veiksa, 2021a, p. 55). Copyright Law of Latvia (Saeima of Latvia, 2000) defines that the author of a work is a person whose creative activity results in a specific work. Copyright belongs to the author as soon as he has created the work; it does not need to be registered anywhere or specially designed. The work is the author's property and only he/she can decide to who and how he/she would give permission to use it. The creator of the copyright work and the first copyright owner is the author himself. The author can only be a natural person because a legal person does not have an intellect and therefore the ability to create something. Only natural persons are capable of creativity. Authorship (from the Latin auctor – author, founder, reporter, principal) indicates the connection between a person and the result of his creative activity (Krūmiņš & Rozenfelds, 2011, p. 680). If the author so wishes, he/she may indicate his/her name or pseudonym on the work, but may also remain anonymous. The presumption of copyright contained in the Copyright Law stipulates that a person whose name or well-known pseudonym is indicated on a publicised or published work shall be deemed to be the author of the work, unless proven otherwise. In turn, if the author is not indicated on the work, then an editor, publisher or any other authorized person shall act in his/her name and interests. If there is a dispute over the recognition of authorship, it must be proved by any means or evidence – drafts, sketches, photographs, documents, etc.

What is an author's work? It is a work created by human creativity. Both completed and unfinished works, fragments of works, sketches, etc. are protected if they meet the basic requirements of labour protection, i.e. if they are literary or artistic works expressed in any material form and the copyright term has not expired. According to the Berne Convention for the Protection of Literary and Artistic Works (World Intellectual Property Organization, 1886) and the WIPO Copyright Treaty (World Intellectual Property Organization, 1994), copyright protection does not extend to ideas, processes, or methods of operation as such, but only to their material expression. Products of creative intellectual activity that have not taken a material form are not works. For example, ideas, concepts, or methods are not protected if they are not expressed in the work, in material form. This means that the idea of organizing an event, organizing an exhibition, creating a museum exposition, etc. is not protected as such. However, the use of other people's copyrighted objects in these events is protected and such cannot be used without permission from the creators (authors) or their successors in title.

"Work", as the subject matter of copyright, has no precise meaning. Literary does not posit a standard of quality or value nor does the work have to take a particular form. The term "literary" is used to describe work expressed in print or writing irrespective of any excellence of quality or style; a work may be complete rubbish and utterly worthless but copyright protection may be available for it just as it is for the great masterpieces. The only qualification, if any, is that a literary work must afford either information and instruction, or pleasure, in the form of literary enjoyment, and so add to the stock of human knowledge (Deveci, 2011, p. 465).

The Latvian Copyright Law stipulates that the author's work or object of copyright is any result of the author's creative activity in the field of literature, science, or art, regardless of the type, form, and value of its expression (Copyright Law, 2000, Section 1). The law lists all protected works, both primarily created and derived. These include musical works, literary works (including computer programs), dramatic and audiovisual works, works of art, photographs, sketches, drafts, projects, maps, choreography, translations, reports, summaries, reviews, collections of works and other works which were produced using creativity. In recent years, computer systems have been able to generate literary and artistic works that are difficult to distinguish from man-made works. Increasingly, these computer-generated works are so successful that collectors want to buy them and museums want to include them in their collections. Computer systems already write news, poetry, chat, compose music, etc. The originality and quality of such works have raised the issue of copyright in them, highlighting two main issues: first, whether such works are to be regarded as copyrighted works and, second, who is entitled to copyright. These issues are becoming more and more relevant in today's age of technology, when computer systems, the so-called artificial intelligence (AI), are becoming more and more independent of human influence (Veiksa, 2021b, p. 234). In some countries, the law specifically states that the work to be protected is the result of personal creation, and products resulting from accidental, natural processes or the operation of machinery cannot be considered as copyrighted works. Intellectual property rights refer to the rights given to the inventor or creator to protect his invention for a certain period of time. Basically, IPR is a system of legal rights that gives a person or a company some exclusive rights over that work. Creativity and innovation are critical to the success of business when new products are protected through strong intellectual property jobs. Thus, there is a set of valuable intangible assets owned and legally protected by a manufacturing company from outside use and include patents, copyrights, trademarks, trade secrets, utility models, and industrial design (Barbu & Militaru, 2019, p. 1077).

Copyright is twofold, moral or personal and economic or property rights. Personal rights are mainly related to the author's personality and are not considered property, they are non-derivative, so personal rights cannot be transferred to anyone, they can be used only by the author during his lifetime, and after his death by the author's heirs. In order for an author to live off the fruits of his trade, he needs to be compensated for his work. The more his work is performed, played, broadcast, and so on, the higher the compensation for the author. In order

to ensure this, the author is granted property rights – the exclusive right to handle his/her work, as well as to transfer the right to use it to other persons. The author has the right to publicise, publish, publicly perform, distribute, broadcast, retransmit, make available on the Internet, rent, lease, publicly lend, reproduce, translate, arrange, dramatize, screen, and transform. No other person may do so without the permission of the author. Property rights may be transferred to other persons by concluding a contract.

2.2. Transfer of copyright to the employer or the commissioner

The terms *author* and *copyright holder* have different meanings, and they coincide only in the first phase of the creation of a work – the natural person who creates the work is the author of the work, he/she is also the first copyright holder, however, copyright holders may also be other persons to whom the first copyright holder transfers his/her rights (Torremans & Holyoak, 1998, p. 206). This opinion is confirmed by the Latvian Copyright Law, which stipulates that the subjects of copyright are the author of the work, his/her heirs, and other successors in title, but other successors in title may obtain only the economic rights of the author, the use of which the author has the right to authorize or prohibit. Copyright holders may exercise the copyright to the work themselves or delegate the management of the rights to a collective management organization. After the death of the author, in accordance with the inheritance procedure (legal, testamentary or contractual) specified in the Civil Law, his/her heirs become the subjects of copyright. Copyright protection continues for another 70 years, and his heirs can enjoy this protection to the fullest.

It should be noted here that copyright is not linked to the ownership of the material object in which the work is expressed. The author"s right to a work expressed in a material object is separable from the possession of that object. The transfer of possession of a material object (including a copy of the first instance of a work) does not in itself create a transfer of the copyright of this work. If someone buys, for example, a CD with a recorded song from the author or a store, the buyer does not in any way become the owner of the rights to the song, he/she owns only the material medium of this work, which can only be used for personal purposes. The same applies to the heir who inherits a collection of records from the deceased – this heir does not derive any other right from using the musical works recorded on the records other than using it for personal purposes.

In order to obtain the right to use a work, users of the work must obtain permission from the copyright holder, and use of the work without permission is prohibited. As copyright is a subject of private law, the parties may agree by means of a contract on any terms and conditions that are not contrary to law. According to the Civil Law, a mutual expression of intent made by two or more persons based on an agreement with the purpose of establishing obligation rights consists of the fact that each obligation contract contains a mutual promise and acceptance by both parties and a unilateral promise which a second party has not yet accepted shall not establish any obligations (Civil Law, 1937, Sections 1511–1513). Different national legal systems have different stipulations for the types of contracts. First of all, they could be classified as oral and written contracts. Simple contracts may include oral contracts as well as those that must be in written form. An example of a simple contract is a so-called informal contract, which does not have a form strictly defined by law. Oral contracts are recognized and enforced in the courts under different conditions. A written contract is a written obligation that is enforced by law if it is executed in the manner prescribed by law (Bojārs, 1998, p. 136).

Thus, the contract does not always have to be in writing, it can also be concluded orally, for example, during a conversation, or simply by nodding your head. However, in the event of a dispute, it will be necessary to prove the existence of such an agreement. This can be proved by any means of proof, including the summoning of witnesses. There are only certain cases where there must be a written contract, for example if the author allows a publisher to publish his/her work or a film producer to make an audio-visual work (film) out of it, or if the author enters into employment relationships by way of an employment contract. However, in order to avoid possible disputes and to protect against the improper use of the work, it is recommended to conclude the contract in writing. Given the long period of copyright protection long after the author's death, the heirs of the users of a work may have great difficulty in proving that the right to use the work had ever been transferred to their parents. In the case of a tangible property right, the acquisition of that right could be proved by actual possession, whereas ownership of an intangible object cannot normally be proved in such a manner. The user of the work can only prove his/her rights by means of a contract.

Any agreement, regardless of the form or the parties involved, must expressly stipulate which rights are transferred by means of the agreement. All rights not transferred remain with the author.

In Latvia, when concluding an employment contract for the performance of work duties related to the creation of copyright works, it is not enough to fill in a standard form of employment contract, without providing for the transfer of copyright from the employee to the employer. The right to use the works created within the framework of the employment relationship also belongs to the author, except for cases when they are transferred to the employer by an employment contract. The only exception in this situation is the developer of a computer program – the right to use his/her work (computer program or its components) is immediately transferred to the employer in accordance with the law; it is not necessary to transfer them with an employment contract.

Different situation is in Lithuania, where right to use the works, created by an employee in the execution of his

duties or fulfilment of work functions, are transferred to the employer for the period of five years (Law on Copyright and Related Rights, 1999, Section 9). While this does not completely remove the employer's concerns, it does ease his obligation to stipulate the transfer of copyright in any employment contract. Only if the work created by the employee is still needed by the employer after five years, he has to agree with the employee on the use of the work in the subsequent period. However, it is not clear how such an annexe to the employment contract can be concluded and whether the employee will not claim additional remuneration for it.

Globally, the default situation is that the author of a work is also its first owner, a general rule that has never given rise to significant controversy. There are specific situations where the creative workflow follows some specific course, such as work for hire, joint authorship, cinematographic works, and so forth, where the author the person who created the work is not its owner. However, even in these cases, it is typically a "person" that is the author and a person or business that is the owner (Perry & Margoni, 2010, p. 621). In the context of the employer–employee relationship in the labour markets, it is often observed that a unilateral option to dissolve employment relationships affects the parties cost-reward structures of the involved (Karas & Kirstein, 2018, p. 39). If the employment contract includes a provision on the transfer of rights from the author (employee) to the employer, the transfer of rights need not be proven at any institution. If such a condition is not included in the employment contract, in the event of a dispute, lengthy legal proceedings may ensue to prove the transfer of rights.

According to the Labour Law, in Latvia an employment contract can only be in writing and must be concluded before commencing work (Labour Law, 2001, Section 40). Consequently, the transfer of copyright within an employment relationship can only take place in writing. If a concluded employment contract does not stipulate the transfer of rights, then it may happen that the employer pays the employee a salary for the development of a project for a long time, but at the end of the employment relationship the author (former employee) goes to work for a competitor with the project or uses the project to start his/her own new business. Therefore, all employment contracts must stipulate that all author's work (projects, layouts, designs, photographs, graphics, press releases, etc.) created by the employee during the employment relationship (according to the job description) must be handed over to the employer. It should also be noted that such tools may be used by other colleagues in the workplace to perform their duties. It is also advisable to include the condition that the employer may use the work himself or transfer the right to use it (sublicense) to other persons. This is very important in cases where the employer participates in some joint projects or makes products on order.

The employment contract may stipulate in detail which property rights are transferred to the employer or transfer all possible rights, formulating it comprehensively. For example, a contract may stipulate that the author (employee) allows the works to be reproduced, publicised, published, distributed, translated, modified, broadcast on television or radio, and sublicensed (to transfer the right to use the work to third parties). It is important to specify in the contract the territory and the period for which such a permit would be valid. If the contract is not limited in time, the author will be able to terminate it by giving six months' notice. However, if no territory is specified, the permit will cover the country where the contract was concluded. If the employer does not wish to stipulate the right to use the work in such detail, it is also permissible to formulate the agreement comprehensively in such a manner, e.g. "the employer is granted the unrestricted right to use the work in any form in any technology in the broadest sense of the word (which is currently known and be construed in the future) for the entire term of copyright protection worldwide".

Generally, an employer wants to receive unrestricted rights to the work created by his/ her employees, which is understandable, as the employer undertakes certain risks, including the failure to create a commercially successful product, as well as pays the employee a salary and makes social payments. However, the employee has the right to disagree with the draft contract proposed by the employer and may request appropriate changes. By agreement of the parties, the employment contract may stipulate that the author reserves some rights or that such are returned back to the author after the termination of the employment contract. For example, the author of a project design or photograph may, after the termination of the employment contract, include such works in a book about his/her work; a storyteller upon termination of the employment contract may dramatize the stories to create a play or film script.

The employer must conclude proper employment contracts with the creators of objects of intellectual property rights (authors, inventors), ensuring the transfer of rights, so that in case of a dispute the merchant can prove (to the police, in court) that the infringed rights belong to him.

However, it should be noted that even with an appropriate employment contract, the employer will not always be shielded from the risks associated with the prevailing nature of the author's personal rights over all contracts entered into. For example, the Copyright Law includes the author's personal right to withdraw his/her work from use – including work that the author (employee) had given to the employer under a concluded employment contract.

The Latvian Copyright Law covers a much wider range of personal rights than required by international obligations. There has been a lot of discussion among employers that employers need legal certainty about the future exercise of their rights in order to invest in creativity. The sudden withdrawal of work at any stage of the use of the work is not acceptable.

If a merchant wants to conclude a contract with a person who is not an employee for the needs of his company, the question arises as to which agreement would be more advantageous to conclude, a contract on performance of work or an author's contract. To answer such a question, one must first understand what those people's tasks would be. If a person is instructed to perform a work using his/her tools and equipment, a contract on performance of work will have to be concluded in accordance with the provisions of the Civil Law. In turn, if a person is commissioned to create an author's work (the result of the author's creative activity in the field of literature, science, or art), it would be possible to conclude an author's contract in accordance with the provisions of the Copyright Law.

The author's contract must specify the type, number, scope, size, etc. of the work, specify the date by which the work must be submitted to the commissioner, as well as agree on the rights to be transferred to the commissioner and what shall remain with the author. The form in which the work is to be submitted must also be specified in the contract. If the copyright agreement states that the work is a translation of a script or novel, a review of books, a summary of last year's activities, etc., it can be submitted either in hard copy or sent electronically. If the contract concluded is for a design work, it may be submitted either as a drawing on paper, in a specific electronic format, or in a specific computer program. If the contract is regarding the development of a computer program or its components, then the manner in which this program is delivered to the customer must also be specified. However, the author's contract may not be concluded for writing, photography, drawing, or programming services. The subject of an author's contract is always work, a project, review, summary, translation, drawing, photograph, computer program, or other type of work.

It should be noted that the Copyright Law does not regulate other provisions to be included in an author's contract and therefore while drafting such a contract, the general provisions that govern the drafting of contracts must be taken into account. These regulations can be found in the Civil Law of Latvia (1937), where Section 1511–1334 define the contract and its essence, and Sections 2212–2229 stipulate the rules for concluding contracts on work performance.

Special conditions must be met if the entrepreneur wants to use images. When taking photos, the rights of others must always be respected. It is allowed to take a photo of family on the background of the monument and put the photo in a personal album. However, it is not permitted to include this photo in an advertisement or to make a postcard and sell it. It is also not allowed to make it available to the public by wire or by other means, so that it is accessible in an individually selected location and at an individually selected time (on the Internet). Particular care should be taken when making advertising or promotional materials. In advertising is prohibited to depict, use, or in any other way mention either a natural person (as a private person or as an official) or his or her property without the consent of this person (Advertising Law, 1999, Section 4). When commissioning the production of images, a contract must be concluded with the photographer or artist, including permission to use the images in all the ways necessary for the entrepreneur, such as publishing images in advertising brochures, distributing brochures to their customers, making images or videos available online, including the use of such on one's homepage or the company's social media profile.

3. Use of previously created copyrighted works

The right to use the works may also be acquired after their creation by concluding appropriate licensing agreements with the right holders or successors in title. A license agreement is an agreement that the copyright holder grants permission for the use of the work and the parties agree on the terms of use of the work, the amount of remuneration, the procedure, and the payment terms. You may also acquire the rights along with the licence. There is a *simple* license, an *exclusive* license, and a *general* license. A simple license entitles the licensee to perform the activities specified therein simultaneously with the author or other persons. An exclusive license entitles the licensee to perform only the activities specified therein. The general license is issued by a collective management organization and entitles the holder to use the works of all authors represented by that organization.

3.1. Peculiarities of using visual works

Images are often searched on the Internet. However, when such images, the type of use permitted must be carefully checked. If permission to use the image has not been attached, then they may not be used! If the image shows natural persons, then in the case of commercial use, the permission of the person depicted in this photo must also be sought, although this is no longer a matter of copyright but of human rights. Images of various celebrities are sometimes used without permission. Of course, the threshold for protection of privacy of celebrities is much lower than for private individuals, but even in such cases there must be a balance between the protection of privacy and the legitimate right of the public to obtain information about a particular person.

Various authors' works (music, movies, pictures, etc.) are widely available on the Internet, the use of which has been authorized by their authors under a so-called Creative Commons license. Generally, such licenses grant permission to use the work in question to anyone, and there is no need to contact authors or related rights holders. More information about these licenses can be found on the Creative Commons website (https://creativecommons.org/licenses/) an organisation founded in the USA. One should always read the terms of the license carefully, as they may differ – an author

may allow their works to be used commercially or modified while others do not, but the source should be cited in any case. For example, you can find different images with different usage permissions on the photo search site Flickr (https://www.flickr.com/creativecommons/). Images permitted for non-commercial use (Non-commercial Licence) may only be used as follows: copied, distributed, performed both as the work itself and as derivative works based on the work, but solely for non-commercial purposes. Therefore, these images may not be placed in advertising for goods or services. On the other hand, works that are not allowed to be derived (No Derivative Works) may be used only in the following ways: copied, distributed, made available, but derivative works may not be created.

However, this licensing system, which is relatively widely used in the United States and some other countries, does not always comply with copyright rules in the European Union. For example, in Latvia, images with such licenses may not be used in cases where the law provides for mandatory collective management, such as in cases of public performance or reprographic reproduction (Law on Collective Management of Copyright, 2017, Section 3). Moreover, when you find an image on the Internet, you must be sure that the author has actually given permission for the use of this work. Unfortunately, it is not uncommon for websites whose owner pretends to be a "guardian of the public interest" to allow the use of images that have not been authorized by the authors. Therefore, great care must be taken when using images available on the Internet, especially if they are intended for commercial use. Otherwise, situations may arise where the author finds his/her work used without permission and addresses the merchant to claim compensation for possible loss or moral damage.

3.2. Peculiarities of using computer programs

The development of the information society involves the use of computers and computer programs (so-called software) in the widest range. The legal acquisition of computer programs is much more beneficial than their unauthorized use, as it can both save significant financial resources and avoid various risks of data loss, as well as avoid a legal penalty.

However, computer programs are often used without permission (license). The Association of Computer Software Manufacturers "BSA | The Software Alliance" conducts a technology research study every two years, covering nearly 22,000 private and business computer users, as well as more than 2,000 IT administrators from 34 countries. A study conducted in 2018 shows that 48% of computer programs installed on computers in Latvia are not properly licensed, and the total commercial value of illegally obtained programs in Latvia reaches 23 million euros. Public awareness, albeit slowly, is still improving step by step: until 2009 this level of piracy was unchanged at 56%, in 2011 it started to decrease to 54%, and continued to decrease in 2013 to 53%, to 49 % in 2015 and 48% in 2017 (BSA, 2018).

The understanding of the licensed use of intellectual property may only result from the development of democracy. According to research, the piracy of computer programs is most directly related to the level of development of democracy in a country. For example: underdeveloped countries or those with low levels of democracy have the highest rates of piracy such as Venezuela, Zimbabwe (89%), Iraq (85%), Bangladesh, Indonesia (83%), Belarus (82%), Azerbaijan, Nicaragua (81%), etc. In developed democracies, on the other hand, these rates are significantly lower – in the USA – 15%, Japan – 16%, Luxembourg – 17%, Australia – 18%, Sweden, Austria – 19%, Denmark 20%, Canada, the Netherlands – 22%. Do we want to be among the underdeveloped countries with low democracy or do we still want to be among the most developed and civilized countries in the world?

However, the legal aspects of using computer programs (licensing) are very complex and require specialist knowledge to help you navigate through them. The main rules to obey are as follows:

- It is very important to check the legality of all computer programs used in the company and their compliance with the acquired licenses;
- All computer programs used in the company must be listed and reflected in accounting documents;
- The company must establish a system for the full and efficient management of the purchased computer programs, ensure their financial and administrative control.

As a result of illegal or improper use of computer programs, the organization may have to legalize existing programs, pay penalties imposed by law enforcement, and pay compensation to rights holders. In general, these costs can be many fold exceed the costs that were required to purchase the necessary licenses if done in a timely manner and in accordance with legal requirements.

Copyright holders (program producers) have the exclusive right to use their computer programs in any way. Computer software may only be used by other persons with the permission of the manufacturer:

- to reproduce, including download from the Internet to your computer's hard disk,
- to distribute, including selling or donating the created copies;
- to rent, lease, or lend to other persons, including together with a computer.

This means that you can purchase a computer program only from the manufacturer of the program (for example, Microsoft, Autodesk, Adobe, Corel, Bentley, Tilde, Jāņa sēta, etc.) or the distributor, a person to whom such rights have been transferred. Each computer program may be used only in accordance with the license agreement. License agreements vary depending on the user of the computer program (student, home user, merchant, etc.), so each such agreement (license) must

be read carefully.

Entrepreneurs who use pirated computer programs are not only legally liable, but also exposed to various risks, such as infection by viruses on the company's computers or loss of data. Therefore, it is important to motivate merchants to choose only licensed computer programs from reliable suppliers. There are also a number of financial, legal and operational risks associated with the use of illegally obtained computer programs. In case the Economic Police suspects the use of illegally used software during the inspection of computer programs, the company's hard disks may be confiscated until the circumstances are further clarified, which significantly complicates the company's operations during this time. As can be seen from the experience and opinions of merchants, the legal acquisition of computer programs is much more beneficial than their unauthorized use, as it can both significantly save financial resources and avoid various risks of data loss, as well as help prevent any legal liability and avoid penalties.

One hears of cases where companies do not provide employees with the necessary software to perform their duties, and employees are forced to perform their work duties at home on a program intended for home use or even on illegally obtained programs. It is not allowed to do so and such a situation can be compared to an order given by an employer to dig a ditch without providing a shovel. This is a clear violation of the labour law and an example of distortion of competition.

Programs intended for home use or for students cannot be used in business (enterprise). The use of computer programs is differentiated for home, work, or study purposes. This is done to differentiate between those who use the programs for educational or entertainment purposes and those who use the programs for profit. Prices vary accordingly (sometimes significantly). Consequently, it can be concluded that only those programs meant for commercial use can be used in business. You may use your home computer for work purposes only if it contains software for commercial use. If the work is done on, for example, a computer program foreseen for use by a student, it will be deemed that the employee is working without a legally acquired program.

Sometimes, there are cases where one merchant rents or lends its old computers to another merchant together with the programs in them. This is not allowed! The company may lease or rent the computer itself to another person because he owns it. However, the program on it does not belong to him to the full extent – the owner of the computer has acquired only the right to use this program as an end-user, but has not acquired other rights (reproduce, rent, distribute, etc.). Computer program manufacturers exercise these rights exclusively. If a company wants to rent or lease a computer program, he must obtain a special license from the program manufacturer, which is intended for rental and leasing services.

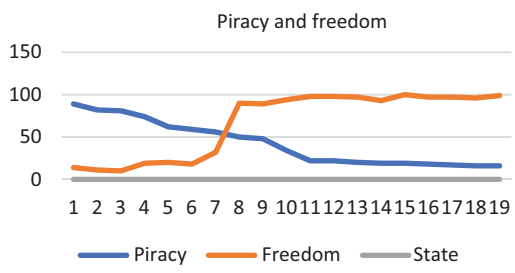

Figure 1. Comparison of national freedoms and software piracy

Table 1. Conclusions from the comparison in Figure 1 for national freedoms and software piracy

Piracy[1]	Freedom[2]	State
89	14	1.Venecuela
82	11	Belarus
81	10	Azerbaijan
74	19	Vietnam
62	20	Russia
59	18	Egypt
56	32	Turkey
50	90	Lithuania
48	89	Latvia
34	94	Taiwan
22	98	Canada
22	98	Netherlands
20	97	Denmark
19	93	Austria
19	100	Sweden
18	97	Australia
17	97	Luxembourg
16	96	Japan
16	99	New Zeland

When comparing the global freedom rates of different countries with software piracy, it is clear that they are strongly interlinked. As it is seen from Figure 1 – the fewer rights and freedoms there are in a country, both political rights and civil liberties, the more piracy flourishes. Table 1 shows the names of the countries mentioned in Figure 1. Freedom rates for countries and territories have been taken from source of Freedom House (2022). Software piracy rates for contries have been taken from BSA Global Software Survey (BSA, 2018). Although this is only a study on the unlicensed use of computer programs (there are no other studies of such detail), the author will dare to say that the same trend applies to music, films, and other intellectual property products.

[1] BSA. (2018). *Global Software* Survey. https://gss.bsa.org/wp-content/uploads/2018/05/2018_BSA_GSS_Report_en.pdf

[2] Freedom House. (2022). *Global Freedom scores*. https://freedomhouse.org/countries/freedom-world/scores

Conclusions

The need to acquire intellectual property rights is not always properly understood in business. Within the framework of the employment relationship, the transfer of copyright from the employee to the employer is not provided for in Latvia. If an employment contract is concluded that does not stipulate the transfer of such rights, a situation may arise where the employer is not entitled to use the work created by the employee. This leads to disputes, disagreements and sometimes even litigation. It is therefore necessary to expressly agree on the rights that are being transferred in the employment contract. All rights not transferred remain with the author. The requirement for employers to specify in detail the conditions for the transfer of rights in employment contracts should be simplified. The Latvian legislator could take an example from the Lithuanian legal framework and determine at least some period when the right passes to the employer on the basis of the law. However, it would be better to stipulate in the law that the employer acquires the right to use the work created by the employee for the purpose for which it was created already at the time of concluding the employment contract.However, even upon concluding the appropriate employment contract, the merchant is not protected from the risks arising from the author's right to withdraw his/her work from use included in the Copyright Law, including work which the employee has handed over to the employer in accordance with a concluded employment contract. Latvian Copyright Law covers a much wider range of personal rights than required for by international obligations. It would be necessary to reasonably restrict the author's right to withdraw a work created in the course of an employment relationship, as this is not required by the provisions of the Berne Convention.

However, in the event of a dispute, it is difficult for an entrepreneur who has legally acquired rights from his employees and partners on the basis of an employment contract or a copyright agreement to recover damages for unauthorized use of his intellectual property. The Latvian legal framework makes it difficult to calculate and recover losses, and the calculation of losses according to the license price method is provided only as an alternative. Create a sense of legal nihilism and permissiveness. To better ensure the protection of the rights and interests of both intellectual property creators and employers, it would be necessary to amend a number of intellectual property laws by establishing a single, simple mechanism for calculating damages.

Unlicensed computer programs are still widely used by businesses in Latvia. This is especially the case in companies engaged in architecture, design and engineering. In this way, the company exposes itself to the risk of administrative or even criminal liability and is forced to compensate computer software manufacturers for the damage they have suffered. Unfortunately, illegal computer programs are often used in companies out of ignorance; the entrepreneur installs a large number of different computer programs on his computers, which he does not actually need at all.

Therefore, entrepreneurs should only purchase computer programs from their manufacturers or legitimate distributors. Every merchant must audit the computer programs used in the company. All computer programs must be listed and reflected in accounting records. It is essential to keep documents that prove the legal use of computer programs (as long as the computer program is used).

The society lacks an understanding of the need for legal protection, as intellectual property issues are included only in the secondary school curriculum in Latvia. Awareness of the need to protect intellectual property should be promoted from an early age, from kindergarten as Internet users become younger and younger. Intellectual property and its protection must be an integral part of the curriculum throughout the education system, from primary to higher education. School curricula should include at least the basic principles of intellectual property, the nature of piracy, and the dangers it poses. In colledges and universities the acquisition of these competencies should be included in the compulsory study courses at least in all bachelor's study programs. There is also a need to promote teacher training by educating teachers about intellectual property rights. In order to educate the society, it would be desirable to implement various information campaigns, which are already taking place, but to a lesser extent.

Disclosure statement

I declare that I have any competing financial, professional, or personal interests from other parties.

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