Kluwer Copyright Blog

Presumption of authorship: only natural persons

Elise Vasamae (Palladium Attorneys at Law) · Monday, March 19th, 2012

Estonian Supreme Court, 7 February 2012, Case No3-2-1-155-11, Herlitz PBS AG vs. Realister OÜ (plaintiff in the prededing proceeding).

The Estonian Supreme Court found in its recent judgement in the Realister case that the presumption of authorship as laid down in the Sections 4(6) and 29(1) of the Estonian Copyright Act (hereinafter referred to as the CA) is only applicable in case the right holder relying on the presumption of authorship is a natural person, who has created the work, not a legal person who has obtained the economical rights under the law or a contract.

In this case the owner of the authors' economical rights is a legal person that claims to have economical copyrights regarding a selection of mathematical and chemical formulas reproduced on the cover of school exercise books, therefore the Supreme Court took the position that the burden of proof must rely on the person who claims to be the holder of authors' economical rights, i.e. plaintiff, Realister OÜ, in this case.

The Supreme Court reasoned that the author of a work is a natural person (or persons), who created the work and that copyright shall belong to a legal person only in the cases prescribed in the CA. Section 4(6) of the CA stipulates that the protection of a work by copyright is presumed, except if, based on this Act or other copyright legislation, there are apparent circumstances which preclude this. The burden of proof lies on the person who contests the protection of a work by copyright. Section 29(1) of CA provides that the authorship of a person who publishes a work under his or her name, a generally recognised pseudonym or the identifying mark of the author shall be presumed until the contrary is proved. The burden of proof lies on the person who challenges authorship.

The Supreme Court pointed out that the concept "authorship" derives from Section 12(1)(1 of the CA, that provides for a moral right of the author. The Section lays down that the author of a work has the right to appear in public as the creator of the work and claim recognition of the fact of creation of the work by way of relating the authorship of the work to the author's person and name upon any use of the work (right of authorship).

According to the Supreme Court, it follows from the foregoing analysis that the objective of Section 29 of the CA is only to bind an author as a natural person with his or her creation. As the plaintiff is a legal person, who cannot rely on the presumption of authorship, the defendant cannot be obliged to prove that Realister OÜ is not the holder of authors' rights. At the same time the Supreme Court did not analyse the presumption laid down in the Section 4(6) of the CA and the concurrence of those two sections referred to above.

In my opinion it might be arguable whether the presumption of authorship should only be applied in cases where the person wanting to rely on this presumption is a natural person. The concept of "author" in this context might be regarded in a more broader sense than just the natural person.

Such conclusions can also be made on the basis of Section 817 of the CA "Protection of copyright and related rights under civil law", that provides that in the case of the unlawful use of a work or an object of related rights, the author or holder of related rights may, among other, claim the following: 1) compensation, pursuant to § 1043 of the Law of Obligations Act, for the patrimonial and non-patrimonial damage caused through the unlawful use of a work or an object of related rights; 2) termination of the unlawful use of a work or an object of related rights and refrainment from further violation pursuant to § 1055 of the Law of Obligations Act; 3) delivery of that which was received by way of the unlawful use of a work or an object of related rights pursuant to §§ 1037 and 1039 of the Law of Obligations Act. It must be emphasized that the Supreme Court in its judgement itself referred to this Section when confirming that also a holder of copyrights (and not only the author as a natural person) is entitled to file claims under this Section.

It might be followed from the foregoing that the term "author" in the broader meaning in the CA describes also a person who is the holder of authors' rights. The Supreme Court did not explain why in this case the concept "author" must be interpreted in a narrow sense, not covering the holder of authors' rights.

In addition, it is worth mentioning that in the CA a similar regulation regarding the presumption of related rights has been laid down. Section 62 1 (1) of CA provides that the protection of the object of related rights is presumed, except if, based on this Act or other copyright legislation, there are apparent circumstances which preclude this. The burden of proof lies on the person who contests the protection of the object of related rights. Section 62 1 (2) of CA stipulates that it is presumed that the person whose name is indicated on an object of related rights as rightholder has rights regarding the specified object until the contrary is proved. The burden of proof lies on the person who contests the fact that this person holds the rights.

Elise Vasamäe, Aavik & Partnerid, Tallinn, Estonia

A full summary of this case will added to the Kluwer IP Cases Database (www.KluwerIPCases.com).

This entry was posted on Monday, March 19th, 2012 at 3:06 pm and is filed under Authorship, Case Law, Estonia, Jurisdiction, Ownership
You can follow any responses to this entry through the Comments (RSS) feed. You can skip to the end and leave a response. Pinging is currently not allowed.