

# Kluwer Copyright Blog

## Copyright transfer by accepting general conditions

Elise Vasamae (Palladium Attorneys at Law) · Friday, November 16th, 2012



In its recent judgement in the [Auto24.ee-case](#), the Estonian Supreme Court established that an authors' agreement for assigning economical copyrights is deemed to be signed when the user of database accepts the general conditions imposed by the database owner.

According to Article 49(1) of the Estonian Copyright Act though, an author's contract shall be entered into in writing. The grant of a non-exclusive licence may also be made in a format which can be reproduced in writing. The referred Article 49(1) is imperative.

The "Auto24" database, owned by the plaintiff AS Sanoma Baltics, contains sales advertisements of motor vehicles that are accompanied with corresponding photos made by the users of this database. In this case defendants found that investments the plaintiff has made are not substantial and therefore "Auto24" cannot be protected as a sui generis database. Only the users of the database have made photos and inserted data regarding the cars. But according to the plaintiff there is no difference whether the photos have been made by the users of the database or by the plaintiff itself, because all users have assigned their economic copyrights vested in the photos to plaintiff by accepting online general conditions before starting to use the database. The defendants found that plaintiff has no copyrights vested in photos since author's agreements for assignment the rights to the plaintiff are invalid due to wrong format of those agreements.

In this case a lot of the users of "Auto24" database were physical persons (i.e. authors) who waived their rights to the database owner not under the basis of an authors' agreement in written format, but only by accepting general conditions online. This means that this kind of (authors') agreement should have been in written format in order to be in compliance with Article 49(1) of the Estonian Copyright Act. Nevertheless, the Estonian Supreme Court took the position that despite a very clear requirement for an obligatory written format of an author's agreement, the authors agreement for assigning the copyrights can be also regarded valid when it has been signed in other formats than a written format. In this case the authors of photos (at the same time users of "Auto24" database) had waived their copyrights vested in photos that were contained in "Auto24" database by accepting the general conditions for using this database. The Supreme Court held that in this case the authors' agreement must be still regarded as valid because the users of the "Auto24"

database had accepted the general conditions imposed by the database owner. This position might be arguable and in contrary to Article 49(1) of the Estonian Copyright Act.

The Estonian Supreme Court earlier held, in a previous similar case (i.e. Dave Benton, Estonian Supreme Court from 13th of December 2006), that the written form of authors' agreement is not required in case of the grant of a non-exclusive license concerning contracts for publishing works in periodical publications or works of reference and for one-time transmissions of oral works in radio and television, or in cable networks. It is questionable whether the court rightly regarded that the requirement of written form is aimed to protect both parties of the agreement by creating better clarity in rights and obligations of the parties. The general legal regulation concerning license agreements laid down in the Law of Obligations Act does not require that the license agreement be necessarily entered into in writing. The special provision regarding the form of an author's agreement was initially adopted primarily in the interest of the author who is considered to be in weaker legal position and as a result one should consider an author's agreement concluded in the oral form to be null and void.

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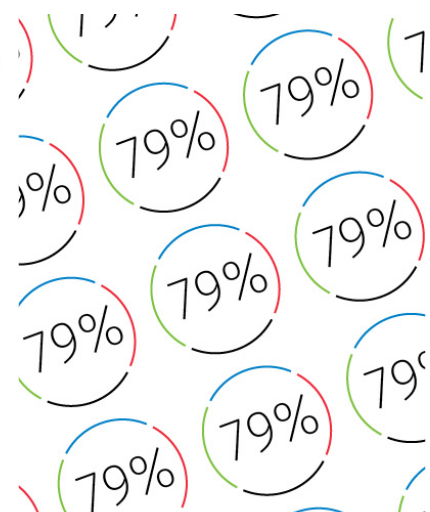
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