

Question Q235

National Group: ESTONIA

Title: Term of copyright protection

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Date: 15 April 2013

Questions

The purpose of Q235 is to explore the issues raised in relation to Term of protection. The Groups are invited to answer the following questions under their national laws:

I. Analysis of current law

- 1) Have the Berne Convention amended in 1979 (BC), TRIPS 1994 and the WIPO Copyright Treaty (WCT) been ratified by your countries? Please provide your answer in relation to each individual international instrument, and provide dates and details of ratification.

Estonia has ratified the Berne Convention amended in 1979 (BC) with the Act of Accession of the Berne Convention for the Protection of Literary and Artistic Works, adopted by Parliament on 18.05.1994, in effect as of 26 October 1994.

Estonia has ratified TRIPS 1994 with an Act on Ratification of Protocol for Estonia Republic accessing the World Trade Organization (Marrakesh Agreement), adopted on 29.09.1999 by the Parliament, in effect as of 13 November 1999.

Estonia has ratified the WIPO Copyright Treaty (WCT) with an Act of Ratifying World Intellectual Property Organisation Copyrights Treaty, adopted on 14.06.2006 by the Parliament, in effect as of 14 March 2010.

- 2) Have the minimal obligations in respect of Term of protection of copyright imposed by these international instruments been implemented in your countries' laws? By means of which legislation? Please respond in relation to each of BC, TRIPS and WCT.

The minimum obligations in respect of Term of protection arising from BC have been implemented in Estonian laws, under the Estonian Copyright Act articles 38-43.
 The minimum obligations in respect of Term of protection arising from TRIPS have been implemented in Estonian laws, under the Estonian Copyright Act articles 38-43.
 The minimum obligations in respect of Term of protection arising from WCT have been implemented in Estonian laws, under the Estonian Copyright Act articles 38-43.

	Estonia	BC	TRIPS	WCT
Copyrights in general	life +70 years	life +50 years	life+ based calculation or at least 50 years as of publication	Incorporation of BC by reference, with the exception of BC Art 7(4)
Joint authorship	life of surviving author +70 years	life of surviving author +50 years		
Anonymous, pseudonymous unpublished works	70 years as of made public	50 years as of made public		
Collective work, employees	70 years as of lawful publishing if not published, 70 years as of making	N/A	N/A	
Audio-visual	life of surviving author +70 years	50 years as of made public	life+ based calculation or at least 50 years as of publication	
Photographic works and works of applied arts	N/A	at least 25 years after making	at least 25 years after making	

- a) If the answer is no please specify (i) which obligations have not been implemented (ii) give any reasons why this has not proved possible and (iii) whether there are any current proposals for their implementation.

N/A

- 3) Do your laws provide for TRIPS+ obligations with respect to the Term of protection? Please provide details of any legislation that imposes this, and specify whether it is Domestic or Regional legislation?

The Estonian Copyright Act provides for TRIPS+ obligations with respect of the Term of protection. The Estonian Copyright Act is Domestic legislation.

Copyright Act:

Term of protection of copyright in anonymous or pseudonymous works is set forth in § 40: In the case of anonymous or pseudonymous works, the term of protection of copyright shall run for seventy years after the work is lawfully made available to the public. If the author of the work discloses his identity during the above-mentioned period or leaves no doubt as to the connection between the

authorship of the work and the person who created the work, the provisions of §§ 38 and 39 apply.

Mandatory Term for audio-visual works is set forth in § 42 (1¹): *The term of protection of copyright in an audio-visual work (§ 33) shall expire seventy years after the death of the last surviving author (director, script writer, author of dialogue, author of a musical work specifically created for use in the audio-visual work).*

- 4) Have the Terms moved in an upward direction with ensuing revisions of your domestic laws, or as a result of any obligations derived from regional laws? Please provide details. Are there any current proposals for continued increases in Term of protection generally, or in relation to any specified categories of work? Please specify.

Terms have not moved in an upward direction, or changed at all, since the adoption of the present Copyright Act in 12.12.1992.

The Estonian Copyright Act is currently under review, due to the comprehensive codification of intellectual property related legislation. However, there has been no amendment to the provisions on Term in the draft of Copyright Act as on this date of Report.

- 5) What is the existing rationale/justification under your laws for the existing Terms of copyright protection? In particular, is the rationale/justification a merely economical one or are other reasons given? Have there been/is there currently, any academic/judicial or general criticism of this rationale? Are you aware of any economical, sociological or other studies justifying or criticizing the current Term?

Terms of copyright protection in the existing law were established in 1992. The rationale for these Terms was the example of legislation under the European droit d'auteur system, especially the German. The legislation objective is to protect the economic as well as the moral interests of the author. Therefore the justification was not merely economical.

Regarding criticism, the general public would like to see the Term of protection reduced, however the focus of the general public is to expand the free usage of copyrighted works in digital world. Therefore their true objective is not only to reduce the Terms of copyrights but rather seek more free usage exemptions or other similar relief.

There has not been any profound academic debate regarding the Term of protection which is consistent with the present draft of the Estonian Copyright Act, which does not foresee any changes in the Term of copyright protection.

II. Proposals for harmonisation

Groups are invited to put forward proposals for the adoption of harmonised rules in relation to Term of copyright protection. More specifically, the Groups are invited to answer the following questions:

- 6) In your opinion do the current Terms of copyright protection provide "adequate" standards of protection? Is this protection adequate for all interested parties i.e. authors/commercial providers/consumers? Please give reasons for your answer.

In our opinion current Terms provide 'adequate standards of protection' and should be amended only in course of comprehensive reform of copyright laws. In our opinion debate over Terms of copyright protection should, however, continue to seek a better balance between the interests of right holders, consumers and commercial providers,

keeping it mind that this may be achieved with other instruments than reducing the Terms. We agree that long Terms of protection without any exemptions may prove ineffective as they are difficult to enforce by the right holders and are unreasonably limiting for social and economic purposes.

- 7) Do you think that there is a need for an upper limit on Term in international treaties? Please provide your reasons.

We do not see any specific need for an upper limit on Terms and establishing any without clear benefit to the actual market situation would be unreasonable at this point.

- 8) Would you like to see the Terms of copyright protection changed? If yes should the changes take place within the confines of the existing international treaties? Please give your reasons.

We do not find changing the Terms of copyright protection necessary at this point. However, in case any changes should take place we find it reasonable that they take place within the confines of the existing international treaties.

- 9) If your answer to 8 is yes and you would like to see the current Term of protection changed, please indicate whether changes should take place in relation to all categories of work, or only in relation to specific categories of work. If only in relation to specific categories of work, please specify which categories of work, and give your reasons for this choice.

N/A

- 10) Please list the factors or criteria that should in your view be used to arrive upon the optimum Term of copyright protection for any specific work, or in general. What in your opinions would this optimum Term(s) be?

We believe that the achieving a criteria for optimum Term of copyright protection should derive from a point of balance, where enforcement of granted protection is administratively effective and economically reasonable for right holders as well as for the authorities, and the provided protection does not unreasonably hinder the growth of the economy. I believe it is reasonable to continue with different terms applying to different types of works. Rather than changing the Term of copyrights it may be preferable to provide a list of exemptions and/or limitations to the Terms of different usages of copyrighted works.

SUMMARY

Estonia is a member of the Berne Convention, TRIPS and WIPO Copyright Treaty. The minimum obligations in respect of Term of protection of copyright under these instruments have been implemented. Terms have not changed under Estonian legislation since 1992 and there is no discussion to amend them at the present.

Estonia takes pride in promoting e-commerce and Internet-based solutions. General public and commercial providers have raised concern that the Term of protection is too long, prohibiting innovation in the field. However, we believe any amendment to the Terms should be made on international level. It should be kept in mind that the objectives the general public seeks can be achieved via instruments of exemptions or limitations rather than reducing the Terms.

Any changes to current Terms of copyrights should consider how to secure effective and reasonable enforceability of any protection provided. This also seeks to balance the interests of various parties.

RESUME

L'Estonie est membre de la Convention de Berne, des accords ADPIC et du Traité de l'OMPI régissant la Propriété Intellectuelle et les droits d'auteur. Les obligations minimales en matière de durée de protection du droit d'auteur en vertu de ces instruments ont été mises en œuvre. Les Conditions n'ont pas changé dans la législation estonienne depuis 1992 et, à l'heure actuelle, il n'y a pas de discussion de les modifier.

L'Estonie est fière de promouvoir l'e-commerce ainsi que des solutions Internet. Des fournisseurs d'accès public en général ainsi que commerciaux ont soulevé des inquiétudes concernant la durée de protection trop longue interdisant ainsi toute innovation dans ce domaine. Cependant, nous croyons que toute modification des Clauses de ces conventions doit être faite sur le plan international. Il convient de garder à l'esprit que les objectifs que recherche le public en général peuvent être réalisés par l'intermédiaire d'instruments d'exception ou de limitation plutôt que par des limitations des Conditions.

Les changements éventuels apportés aux Conditions actuelles des droits d'auteur devraient examiner les moyens d'assurer une applicabilité efficace et raisonnable de toute protection fournie. Ceci pourrait conduire à un point d'équilibre entre les intérêts des différentes parties.

ZUSAMMENFASSUNG

Estland ist Mitglied der Berner Konvention, des TRIPS-Abkommens und des WIPO-Urheberrechtvertrages. Die Mindestanforderungen bezüglich Urheberschutz im Rahmen dieser Instrumente sind eingesetzt worden. Die Bedingungen sind in den estnischen Gesetzen seit 1992 nicht geändert worden und zur Zeit wird über die Änderung dieser diskutiert.

Estland ist stolz auf die Förderung von E-Commerce und der webbasierten Lösungen. Die Öffentlichkeit und gewerbliche Anbieter haben Besorgnis darüber geäußert, dass die Schutzfristen zu lang sind und Innovationen auf dem Gebiet hindern. Wir glauben, dass jegliche Änderungen in den Fristen sollten auf internationaler Ebene gemacht werden. Man sollte beachtet werden, dass die Ziele der Öffentlichkeit durch die Anwendung von Ausnahmen oder Einschränkungen anstatt Verkürzung der Fristen erzielt werden können.

Bei möglichen Änderungen in den Fristen des Urheberschutzes sollte man überlegt werden, wie eine effektive und angemessene Durchsetzbarkeit eines Schutzes gewährleistet werden kann. Dies sollte zu einem Gleichgewicht zwischen den Interessen von unterschiedlichen Parteien führen.