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The Impact of Copyright Industries on Copyright Law

One of the driving forces that generated copyright industries as a phenomenon of the capitalist social order was the introduction of technologies that allowed for creative works to be used in ways different from the old.¹ The new types of use resulted in changes of values in society. The changed values propelled interest in information and art, as well as new types of entertainment. The increased interest and the accompanying demand for information, art, and entertainment drove the activities that offered them to develop into an 'industry', and their importance in society grew.

Modern copyright industries provide the central information that is used in other sectors of the information society's economy. Copyright law and copyright are at the centre of economic development in the 21st century.² The *status quo* raises the question of whether and how copyright industries influence copyright law. The purpose of this article is to answer that question.

In the first part of the article, the author defines copyright industries, stressing the link between copyright and copyright industries as clusters of activities. Copyright industries are characterised on bases that allow for predicting their potential economic interest in copyright law. The author has made unconventional use of socio-philosophical and economic studies of the cultural and entertainment industries in her study of copyright industries. In the second part of the article, the author indicates that the economic indicators of copyright industries prove the indirect influence of these industries on copyright law. In the third part, the author gives examples of how the existence of copyright industries has influenced changes in copyright law. To assess the impact of copyright industries on copyright law, it is necessary to study the consequences of this impact for various interest groups (copyright industries, authors, the public), as well as for the development of society as a whole. Such an analysis requires more extended discussion that is beyond the scope of this article. The author provides a general overview instead of in-depth analysis.

¹ See R. Towse. Cultural Economics, Copyright and the Cultural Industries (2000). Available at: <http://www.lib.uni-corvinus.hu/gt/2000-4/towse.pdf> (01.09.2005), p. 107.

² See R.G. Picard, T.E. Toivonen, M. Grönlund. The Contribution of Copyright and Related Rights to the European Economy. Based on Data from the Year 2000. Final Report, 20 October 2003. Available at: http://europa.eu.int/comm/internal_market/copyright/docs/studies/etd2002b53001e34_en.pdf (01.09.2005), p. 11.

1. Concept and nature of copyright industries

The concept of copyright industries³ can be defined in many ways, depending on the purpose of the definition. The author believes that the cornerstone of studies and descriptions of copyright industries is the idea of the industries as a function of socialisation.⁴ Socialisation is understood by the author⁵ as adjustment to the needs of social groups. The needs of social groups change as their mutual relationships develop as regards the different aspects of social life. The approach from the socialisation function standpoint indicates that copyright industries emerge and develop in society at the time and in the ways determined by social relationships and the surrounding environment. Economic life, culture, the social sphere, and law influence the emergence and development of copyright industries; copyright industries in turn influence the changing of the economic sphere, culture, the social sphere, and law.

Based on the hypothesis of the study and the Estonian Copyright Act, the author defines copyright industries as economic activities closely related to the substantive rights of authors and other creative artists that are carried out as an independent industry or within a conventional industry, covering:

- printing and publishing of books, periodicals, etc., and music publishing;
- musical performances and sound recordings;
- theatre;
- film industries, cinemas, and video distribution;
- software industries;
- database and multimedia industries;
- online services;
- broadcasting;
- architecture;
- the visual arts;
- applied art;
- certain types of design (textile or clothing design);
- photography;
- advertising;
- other, similar production and distribution; and
- collective or individual management of rights and licensing.⁶

The author of the article uses ‘industries’ within the above definition of copyright industries in a special meaning as clusters of activities. The author’s approach is based on the approach of WIPO (the World Intellectual Property Organization): ‘industries’ mean clusters of activities that can be identified and are statistically measurable, as well as activities that have a certain scale and structure.⁷

From the macroeconomic or statistical classification angle⁸, copyright industries are not industries or a branch of industry⁹, as this field cannot be delimited institutionally — i.e., as a set of independent industrial enterprises.¹⁰ Instead of copyright industries with a single economic organisation, there is plurality of copyright industries.¹¹ The differences in economic organisation arise from development of copyright industries

³ ‘Copyright industries’ is not the only concept used. Standard practice in other countries and legal, economic, and socio-philosophical literature use other terms instead of or in parallel with ‘copyright industries’: cultural industries, creative industries, and entertainment industries. Based on the relevant practice and special literature, the author has concluded that the areas of cultural, creative, and entertainment industries are often used as identical or close in scope to copyright industries. The cultural economics specialist R. Towse has referred to an increasing tendency toward defining cultural and creative industries via copyright industries. – See R. Towse. Introduction. – Copyright in the Cultural Industries. R. Towse (ed.). Cheltenham, Northampton: Edward Elgar 2002, pp. xvii–xviii.

⁴ The author of the idea is T. Adorno, who used it in creating and developing his theory of the culture industry. See H. Steinert. Kulturindustrie. Münster: Westfälisches Dampfboot 1998, p. 42. The author of the article uses this idea outside the context of Adorno’s critical-minded theory.

⁵ Socialisation has many meanings. Each definition depends on the science or discipline using it.

⁶ See A. Kalvi. Kultuuritööstuse olemus ja selle osatähtsus rahvamajanduses (The nature of cultural industry and its role in the national economy). – *Juridica* 2002/10, pp. 656–657 (in Estonian).

⁷ WIPO Guide on Surveying the Economic Contribution of the Copyright-based Industries. WIPO: Geneva, 2003, p. 26.

⁸ E.g. International Standard Industrial Classification, ISIC, Rev. 3.1. Available at: <http://unstats.un.org/unsd/cr/registry/regcst.asp?CI=17>; Statistical Classification of Economic Activities in the European Community, NACE, Rev.1.1. Available at: <http://www.stat.ee/klaskifikaatorid>.

⁹ See T. Price. The Economic Importance of Copyright. London: The Common Law Institute of Intellectual Property 1993, p. 9; A. Kalvi (Note 6), p. 658 with references.

¹⁰ Cf. the approach of I. Maaros: copyright industries are a cluster of enterprises engaged in activities producing or using copyright-protected materials. – I. Maaros. Autoriõigusel põhinev tööstus Eesti Vabariigis. Diplomitöö (Copyright-based industries in the Republic of Estonia. Diploma thesis). Supervisor H. Pisuke. Tartu University, 1992, p. 5 (in Estonian).

¹¹ See M. Dorland. Cultural Industries and the Canadian Experience: Reflections on the Emergence of a Field. – The Cultural Industries in Canada: Problems, Policies and Prospects. M. Dorland (ed.). Toronto: James Lorimer & Company Publishers 1996, p. 359.

based on the way the copyright-based product reaches the consumer.^{*12} In view of these circumstances, the Ministry of Culture of the Republic of Estonia uses the term ‘creative economy’ instead of ‘copyright industries’.^{*13} The creative economy is defined in Estonia on the following mainstays:

1. reliance on an idea, talent, skills, and/or verbal creative work and
2. the concepts of copyright and intellectual property.^{*14}

In the Estonian study, the creative economy covers ten sectors: architecture, design, the visual arts, museums, music, theatre, literature and publishing, audiovisual arts, advertising, and entertainment software (computer games etc.).^{*15}

The mainstays and sectors of the Estonian creative economy directly refer to the UK definition of creative industries.^{*16} The Estonian concept of creative economy is not identical to that applied under the WIPO approach and by the author of this article to copyright industries or to WIPO’s approach to the creative industries. According to WIPO, ‘creative industries’ is a broader concept, covering cultural industries and all live and industrial artistic and cultural production (including the production of single articles).^{*17}

The majority of the economic activities of copyright industries are closely related to the use of authors’ rights. The conditions of exploitation of an author’s rights are prescribed by copyright law.^{*18} Consequently, copyright law influences the bases and conditions of the economic activities of copyright industries. To be more exact, copyright law is the legal framework for market transactions involving the results of creative work.^{*19} In the global economy, protection of copyright creates the basis for copyright industries. Copyright is thus a powerful source of economic growth, job creation, and trade stimulation.^{*20} These arguments give rise to a hypothesis that copyright industries may have a potential interest in influencing copyright law in a direction beneficial for copyright industries.

Copyright industries have a certain function of a producer and communication intermediary. An author’s work or a performing artist’s performance becomes an ordinary commodity via the role of copyright industries. The role of copyright industries as communication intermediary allows such commodities to be distributed to the persons interested in those commodities. At the same time, the communication intermediary’s role enables copyright industries to have control over what content is intermediated and to whom, especially in the Internet environment. These two roles of copyright industries are closely related to the exercise of the author’s substantive rights — specifically, the right to reproduce and distribute the work or communicate it in an intangible form. The author’s substantive rights are provided for by copyright law. One may presume that copyright industries have an interest in copyright law, owing to their position in society.

The economic activity of copyright industries as producers and distributors is mainly carried out in the private sector.^{*21} Because of the incidental nature of, and a certain non-elasticity in, the demand for cultural products^{*22}, copyright industry activities have always been considered a risky business. Despite the financing risks, investment in copyright industries or in some of their activities has grown popular and profitable as society becomes more prone to exploit and value information and symbols. Good examples can be found in the US copyright industries.^{*23} Reduction of high risks through suitable legal regulation is the next potential presumption as to why copyright industries may be interested in influencing copyright law.

¹² See T.D. Selz, M. Simensky. *Entertainment Law: Legal Concepts and Business Practices*. Vol 1. Colorado Springs, Colorado: Shepard’s/McGraw-Hill 1984, § 1-02, pp. 1–5.

¹³ The term was proposed by the staff of the Estonian Institute of Economic Research. Source: private conversation with institute staff.

¹⁴ K. Herkül. *Mis loom on loomemajandus (What is creative economy?)* – Postimees, 1 June 2005 (in Estonian).

¹⁵ *Ibid.*

¹⁶ Creative industries are those industries that have their origin in individual creativity, skill, and talent and that have a potential for wealth and job creation through the generation and exploitation of intellectual property. See *The Creative Industries Mapping Document 2001*, Part 1. Available at: <http://www.culture.gov.uk/NR/rdonlyres/338EFCBC-F706-4191-A1A4-CCB7EFF7EDAE/0/foreword.pdf> (29.06.2005).

¹⁷ According to WIPO, the cultural industries produce products of culturally significant content by way of industrial-scale reproduction. This industrial activity combines the creation of a work or another intangible and cultural form of expression, making copies, and marketing these. See the WIPO Guide (Note 7), pp. 18, 85.

¹⁸ See also, concerning the economic features of copyright, R. Towse. *Copyright and Cultural Policy for the Creative Industries*. – Economics, Law and Intellectual Property. O. Granstrand (ed.). Boston etc.: Kluwer Academic Publishers 2003, p. 421 et seqq.

¹⁹ For greater detail, see the WIPO Guide (Note 7), p. 20 et seqq.

²⁰ *Ibid.*, p. 2.

²¹ A.H. Olsson. *Copyright in the National Economy*. Some reflections on the basis of a Swedish study on the economic impact of copyright law. – *Copyright 1982/4*, p. 132; R. Towse (Note 1), p. 107; A. Kalvi (Note 6), p. 658.

²² For greater detail, see J.-G. Lacroix, G. Tremblay. *The ‘Information Society’ and Cultural Industries Theory*. London etc.: SAGE Publications 1997, p. 45.

²³ See R. Bettig. *Copyrighting Culture. The Political Economy of Intellectual Property*. Westview Press 1996, pp. 37–38.

In examining the social dimension, it should be noted that it was thanks to copyright industries that social groups of authors and other creative artists emerged. Copyright industries cannot function without authors and performers. Hence, copyright law that completely inhibits the creative work of authors and performers could not be in the interest of copyright industries.

2. Impact of copyright industries on copyright law via economic effects

The author of this article sees the impact of copyright industries on copyright law in the enactment of legal rules that are beneficial, or the non-enactment of legal rules that are non-beneficial, to copyright industries. Lobbying among politicians and officials is an instrument of influence for copyright industries. Lobbying may be conducted on various territorial levels: domestic, regional, and global. Although lobbying is one of the backstage areas for development of today's copyright law and policy, it is usually not addressed by scientific sources dealing with copyright.^{*24} Because of the scarcity of these sources, it is difficult to demonstrate the impact of copyright industries' lobby on copyright law in this article. Therefore, the author demonstrates the indirect impact of copyright industries on copyright law by pointing out the importance of copyright industries in the national economy.

To prove the indirect impact of copyright industries, the author presents below the percentage of GDP achieved by copyright industries. The author uses the following logic in proving this indirect impact.^{*25} When copyright industries have a substantial share in the economic indicators of their country of origin or operation, copyright industries are presumed to have a certain economic importance and value in that country. Copyright industries are interested in securing their future importance, using, *inter alia*, positive law. Hence, copyright industries are interested in the content of copyright law and presumably lobby toward the goal of making copyright law more beneficial for their business.^{*26} On the regional and global levels, copyright law can be influenced by copyright industries having economic importance and power on the local level. Through representation and collaboration mechanisms, copyright industries with smaller-scale economic indicators also have their influence on the regional and global levels.

The author's logic concerning the indirect impact of copyright industries on copyright law is supported by many studies on the economic indicators of copyright industries.^{*27}

The contribution of copyright industries to GDP within the European Union (EU) was assessed on the basis of statistical data from the year 2000. The study focused on the turnover, value added, and employment of copyright industries.^{*28} The share of the EU copyright industries in foreign trade was not assessed. In contrast to the scope of the activities of the core copyright industries in the WIPO classification scheme^{*29}, the EU study included only two branches of copyright industries: the core copyright industries and copyright-dependent industries. The EU classification excluded, *inter alia*, the activities of collective management organisations.^{*30}

It was found as a result of the study that the contribution of the copyright industries of the 15 member states to the EU GDP was 5.27%, of which 3.99% was accounted for by the core copyright industries.^{*31} The productivity of the EU core copyright industries was 1/3 higher than that of dependent industries. The authors of the EU study concluded that copyright industries had remarkable possibilities for further economic growth.^{*32} However, this conclusion of the EU study can hold true as regards future annual economic growth of copyright industries only if the scope of copyright industries is not extended to activities that exhibit little or no economic growth.^{*33} This conclusion was developed in the USA in a study published in 2004.

²⁴ One exception is T. Hoeren. Entwurf einer EU-Richtlinie zum Urheberrecht in der Informationsgesellschaft – Überlegungen zum Zwischenstand der Diskussion. – MMR 2000, Book 9, p. 515.

²⁵ For the background of this logic, see H. Cohen Jeroham. Kritische Überlegungen zur wirtschaftlichen Bedeutung des Urheberrechts. – GRUR Int. 1989, Book 1, pp. 25–26; A. Kalvi (Note 6), p. 656 et seqq.

²⁶ See also the theory of P. Drahos. – P. Drahos. A Philosophy of Intellectual Property. Dartmouth 1996, p. 145 et seqq.

²⁷ See, providing a summary of this, A. Kalvi (Note 6), p. 664 et seqq.

²⁸ EU copyright contribution (Note 2), p. 1.

²⁹ Cf. WIPO Guide (Note 7), p. 31.

³⁰ Cf. EU copyright contribution (Note 2), pp. 20–23.

³¹ *Ibid.*, pp. 1–2.

³² *Ibid.*, p. 9.

³³ The activities of the new EU member states' copyright industries are added to this.

An important conclusion of the authors of the EU study is that the share of copyright industries to the GDP^{*34} is influenced by the strength (or weakness) of other industries and sectors in addition to the activities of the copyright industries themselves in the national economy.^{*35} Thus, if the activities of conventional industries are at a low point for a few years, then copyright industries as well exhibit a low at that time.

It was concluded in the EU study that the contribution of copyright industries to the GDP exceeds the economic contributions of many other industries.^{*36} When value added as a percent of total value added is considered, the contribution of copyright industries to the EU economy is calculated to be 2.5 times more than that of the transport equipment industry.^{*37} These comparison data refer to the strong economic position of the EU copyright industries when it comes to lobbying to guarantee copyright laws and policies suitable for them.

In the United States, nine earlier studies^{*38} on the role of copyright industries in the economy were updated in 2004, and updated data were published for that year.^{*39} The updated study, based on the WIPO guidelines and the UN International Standard Industrial Classification (ISIC) reported the contribution of the core copyright industries and total copyright industries to the US GDP to be 5.98% and 11.97%, respectively, in 2002.^{*40} The increased size of copyright industries in this updated study resulted in a decline in its annual growth rates for the copyright industries over time. According to the new methodology, the real annual growth rate of the US core copyright industries' value added over the period 1997 through 2002 was 3.51%, while the real annual growth rate for total copyright industries was only 1%. This relatively low annual growth rate was, *inter alia*, caused by the slower economic growth rate of the copyright-dependent industries.^{*41}

The growth rate in value added achieved by the US core copyright industries for the period 1997-2000 (3.48%) exceeded that of the US economy as a whole (2.47%); the growth rate in value added of total copyright industries for the same period was lower (2.07%).^{*42}

These data on the economic contribution of the US copyright industries to the GDP confirm the economic power of these industries and their interest in maintaining and strengthening their economic power via copyright law.

The above data on the contribution of the EU and US copyright industries to GDP indicate that the economic 'say' of the US copyright industries is potentially stronger on the international level in absolute terms. The comparison is speculative, as the data are not directly comparable.^{*43}

The following summary may be made on the basis of the above as well as other studies:

1. The contribution of copyright industries to the GDP is larger than it was predicted to be before the studies were carried out.^{*44}
2. Copyright industries are a rapidly and dynamically developing sector of the economy today.^{*45} The share of copyright industries in foreign trade is also increasing.^{*46}
3. The employment rate of copyright industries is higher than the average employment rate of the country concerned.^{*47}
4. The principle of copyright protection contributes to such development of copyright industries.^{*48}
5. The study results have already been used for lobbying with the legislative and executive powers of many countries. Lobbying is aimed at the paying of more attention to the development of

³⁴ Also the contribution of copyright industries to employment.

³⁵ EU copyright contribution (Note 2), p. 120.

³⁶ *Ibid.*, p. 8.

³⁷ *Ibid.*

³⁸ Carried out in 1997-2001.

³⁹ See S.E. Siwek. Copyright Industries in the U.S. Economy – the 2004 Report. Available at: www.iipa.com/pdf/2004_SIWEK_FULLL.pdf (28.02.2005).

⁴⁰ *Ibid.*, p. iii.

⁴¹ *Ibid.*, p. iv.

⁴² S.E. Siwek (Note 39), p. iv.

⁴³ See A. Kalvi (Note 6), pp. 662-664 with references.

⁴⁴ WIPO Guide (Note 7), p. 11.

⁴⁵ *Ibid.*, pp. 12, 37.

⁴⁶ Unfortunately, this has been studied in few countries so far. See WIPO Guide (Note 7), p. 12.

⁴⁷ *Ibid.*, p. 12.

⁴⁸ See WIPO Guide (Note 7), p. 9.

copyright law and a suitable copyright policy. In some cases, the study results led to the establishment of new copyright law.^{*49}

Summary of the study results confirms the author's logic concerning the indirect impact of copyright industries on copyright law.

The Ministry of Culture of the Republic of Estonia initiated a study of the creative economy in 2004.^{*50} The first stage of the study involves defining the scope of the creative economy, identifying its links with other areas of the economy, and assessing its importance and potential as a sector of the economy. The second stage is mapping and economic analysis: measuring the volume, employment level, turnover, number of enterprises, tax burden, and contribution to the GDP of the creative economy. Foreign trade indicators are not currently included in the working plan of the study group. The third stage of the study comprises assessment and specific proposals.^{*51} The study group^{*52} plans to present the results of the creative economy mapping to the government for discussion before the end of the year (2005).^{*53}

The Estonian study follows the lead of a study of the UK creative industries.^{*54} Since studying the economic indicators and relationships of the creative industries is beyond the legal system, the differences in the copyright traditions of Estonia and the UK do not present a problem here. Nevertheless, the author of this article suggests that the next study of the Estonian creative economy be based on the WIPO study methodology for copyright industries. The author relies on the fact that using a single study methodology will enable Estonia to compare its creative economy indicators in the near future with those of the other European Union member states that use the WIPO methodology and share a similar economic environment. More importantly, a common methodology allows for study into the implementation and impacts of economic, copyright, and cultural policy measures relating to the cultural industries^{*55} in the European Union and elsewhere. The author of this article believes that the globalisation of the economy, including globalising copyright industries, is another reason to use a common methodology.

Before the current study of the creative economy was undertaken, the indicators of the Estonian copyright industries were informally studied by student I. Maaros in 1990.^{*56} According to Maaros, copyright industries included, *inter alia*, advertising, computer software, and various types of consultation. The indicators studied were the number of copyright industry enterprises, their turnover and product characteristics, and the number of employees and their wages.^{*57}

The study by Maaros showed that in 1990 copyright industries contributed 8.9% to the Estonian GDP; Estonia's major copyright industries in 1990 were architecture, the music industry, and publishing.^{*58} When the current study of the creative economy yields results similar to those obtained by Maaros, a hypothesis can be established for new studies concerning the prospects of the Estonian creative economy and its power in both enriching economic life and influencing copyright law in Estonia. It is already known, however, that the Estonian statistics on which basis copyright industries could be studied contain large gaps.

⁴⁹ See WIPO Guide (Note 7), p. 11.

⁵⁰ The term 'creative industry' was initially used instead of 'creative economy'. See Kultuuriministerium peab oluliseks loovtööstuste levikut (The Ministry of Culture attributes importance to the spread of the creative industry). – Uudised (News), 26.10.2004. Available at: <http://www.kul.ee/> (10.12.2004) (in Estonian).

⁵¹ K. Herkül (Note 14), p. 18.

⁵² Kultuuriministri 03.12.2004 käskkiri nr 239: Töörühm loovtööstuse sektori kaardistamisprotsessi ettevalmistamiseks ja läbiviimiseks (Ministry of Culture Directive No. 239 of 3 December 2004: Working Group for Preparations for and Conduct of Mapping of the Creative Industry Sector). Available at: <http://www.kul.ee> (10.12.2004) (in Estonian).

⁵³ Kultuuriministerium soovib arendada loovtööstuse sektorit (The Ministry of Culture wishes to develop the creative industries sector). – Uudised (News) 15.12.2004. Available at: <http://www.kul.ee> (16.12.2004) (in Estonian).

⁵⁴ This is confirmed by the fact that the British Council's creative industries programme, which includes advising on creative industries studies, has been extended to the Baltic States. Under the British Council project, experts familiar with the UK creative industries will help our Ministry of Culture define and map the creative industry and carry out awareness-raising activities. See Central and Eastern European Pilot Project: Latvia, Lithuania, and Estonia. Available at: <http://www.britishcouncil.org/arts-creative-economy-transitional-economies-latvia.htm> (01.06.2005).

⁵⁵ A. Kalvi (Note 6), pp. 667–668.

⁵⁶ See I. Maaros (Note 10).

⁵⁷ *Ibid.*, p. 18. The author collected the study data through a survey of enterprises and local governments. The research methods were statistical and logical analysis and comparison. See I. Maaros (Note 10), pp. 16–17.

⁵⁸ I. Maaros (Note 10), p. 28.

3. Change in copyright law with influence from copyright industries

Political, economic, and legal measures can be used to influence copyright law on the international, regional, and national levels.

For example, on the international level, the USA, as a major exporter of copyright-based products, pursues a foreign trade policy that invites other states to eliminate trade barriers to the export of goods and services from the USA, as well as to investments by US undertakings in other countries.^{*59} The US foreign policy related to copyright industries has influenced the Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPS agreement) annexed to the 1994 Agreement Establishing the World Trade Organization.

Economic measures include, for example, trade barriers restricting the import of the products of another country's copyright industries until the state amends its copyright law.

Legal measures can be taken under international treaties. The most important international agreements of contemporary copyright are the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) adopted at the WIPO Diplomatic Conference in 1996. These treaties have been referred to as the Internet-era treaties, setting out new standards of copyright protection raised by the development of digital communication technologies. Therefore, these treaties are certainly important for the copyright industries.

The WCT and WPPT enable copyright industries to legally protect the technological measures that these industries use in connection with the results of creative work.^{*60} Modern digital and other technologies enable certain technological measures to prevent or restrict the use or accessing the results of creative work that is not authorised by rightholders. For example, phonorecords can be released on non-copiable CD-like discs or ones that can be copied only once, certain TV programmes can be viewed only through the use of a certain decoding device, etc.

The WCT and WPPT indirectly gave a green light to copyright industries for using such technologies: the countries having ratified these treaties have to ensure legal measures for the protection of such technologies. This approach is beneficial for copyright industries: relying on legislation, the industries can apply control over who can access the results of creative work and how. Securing the use of technological protection measures by legal means does not, however, mean that the purpose of the WCT and WPPT was to prejudice against the interests of consumers of creative works. How to balance the interests of consumers as the public against the interests of copyright industries in technological protection methods is up to each sovereign adopting such legal measures.^{*61}

In European Community (EC) law, copyright is an important area of harmonisation. In each copyright system a balance between the interests of copyright owners and the public at large must be ensured.^{*62} Although this principle is widely recognised in EC copyright law, it is not the cornerstone for copyright harmonisation.

The harmonisation of copyright law proceeded in the European Communities from the objective of completing the European Communities' internal market. The harmonisation of copyright had to eliminate any negative impacts of differences in legislation on the trade of copyright-based products in the common market.^{*63}

The principle of common market completion has remained a main goal in the further harmonisation of copyright law. For example, it was the main objective of one of the latest directives, Directive 2001/29/EC^{*64} of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.^{*65}

⁵⁹ H.L. Hefter, R.D. Litowitz. *Intellektuaalse omandi kaitse (Protection of intellectual property)*. – Sari 'Majanduslik õitseng' ('Economic prosperity' series). Vienna: USIA Regional Program Office, *sine anno*, pp. 8–9 (in Estonian).

⁶⁰ See WCT Art. 11; WPPT Art. 18.

⁶¹ Concerning relevant practice in the EU member states, see S. von Lewinski. *Rights Management Information and Technical Protection Measures As Implemented in EU Member States*. – IIC 2004/7, pp. 844–849.

⁶² S.M. Stewart. *International Copyright and Neighbouring Rights*. 2nd ed. London: Butterworths 1989, p. 5.

⁶³ White Paper on the Completion of the Internal Market. COM (85) 310. See also H. Cohen Jehoram. *The EC Copyright Directives, Economics and Authors' Rights*. – IIC 1994 (25) 6, p. 821.

⁶⁴ Hereinafter 'the InfoSoc directive'.

⁶⁵ Its preamble states: '[...] Having regard to the Treaty establishing the European Community, and in particular Articles 47 (2), 55 and 95 thereof, [...] Whereas: 1) The Treaty provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Harmonisation of the laws of the Member States on copyright and related rights contributes to the achievement of these objectives.' – OJ L 167, 22.06.2001, p. 10 et seqq.

The common market principle is also what triggers the harmonisation of the principles of collective management of rights in the EU.^{*66} Under collective management of rights, licensing agreements are concluded and a fee is collected for creators for the use of their work. Common principles in this area again simplify the use of works in the common market. Such a trend is highly favourable for copyright industries and has also been influenced by the size of copyright industries' contribution to the EU's GDP.

It has been mentioned that the harmonisation of copyright law in the EU has taken account of the growing economic importance of copyright industries at least from 1988^{*67} to this day.

Given the nature of the European Communities and the environment created by the modern market economy, as well as the competition between developed countries as regards national economic indicators, such an approach to the harmonisation of copyright law is logical. At the same time, it creates a potential that, if necessary, copyright rules could be interpreted such that copyright industries as actors in the market and contributors to national economy become the main beneficiaries of these rules, before authors and the public. This and the above-mentioned national economy indicators suggest that developments in society (including the existence of copyright law) have led to a situation where copyright industries have become a considerable economic force and can influence the interpretation of copyright law if necessary. At this moment, copyright law is fortunately interpreted following the principle of balance between the interests of different social groups.

The US and EU copyright industries have also had their direct or indirect impact on amendments to the Estonian Copyright Act.

The first Estonian national Copyright Act was adopted in 1992.^{*68} The first notable influence of foreign copyright industries on our Copyright Act dates to 1999, when a package of amendments to the Copyright Act was adopted.^{*69} Those amendments included the legal definition of a pirated copy and improved copyright enforcement measures. In the fight against piracy, some grounds for the free use of works that were earlier allowed under the Berne Convention for the Protection of Literary and Artistic Works were cancelled.^{*70}

The amendments of 1999 were in part caused^{*71} by an address of the USA to the Government of the Republic of Estonia in connection with piracy of copyright-protected works. The US copyright industries are interested in effective enforcement and copyright protection in countries importing their products. The lack of effective intellectual property law (including copyright law) is treated in the USA as a strong trade barrier. Every year, the USA lists the countries that it considers do not provide adequate protection of intellectual property; after more serious cases manifest themselves, trade sanctions^{*72} or other measures may be employed against some countries.

The main objective of the 1999 amendments to the Copyright Act^{*73} was to harmonise it with the EC copyright standards. The first noteworthy amendment concerned the purpose of the act. An economic dimension was added alongside the cultural dimension in the purpose of the Copyright Act. Besides the consistent development of culture, the purpose of the updated act is to ensure the development of copyright-based industries and international trade.^{*74} This wording expressly fixed the ensuring and protection of the interests of copyright industries in the Estonian Copyright Act. This addition was triggered by the TRIPS agreement. Hence, the amendment was indirectly influenced by copyright industries, which have a certain power over international trade.

The Copyright Act set out the rights for the makers of databases and producers of the first fixations of films. This also meant a broadening of the circle of copyright industries for whom the law guarantees individual exclusive rights to protect investments made in the production of creative works or information processing.

⁶⁶ See Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee. The Management of Copyright and Related Rights in the Internal Market. COM (2004) 261.

⁶⁷ For more detail, see H. Cohen Jehoram (Note 63), p. 838, here presented without further reference.

⁶⁸ Autoriõiguse seadus (Copyright Act). – RT 1992, 49, 615 (in Estonian).

⁶⁹ Autoriõiguse seaduse, haldusõiguserikkumiste seadustiku, kriminaalkoodeksi, tarbijakaitseseaduse ja tolliseaduse muutmise ja täiendamise seadus (Copyright Act, Code of Administrative Offences, Criminal Code, Consumer Protection Act and Customs Act Amendment Act). – RT 1999, 10, 156 (in Estonian).

⁷⁰ These provisions had already been restored by the end of 1999.

⁷¹ For other reasons, see H. Pisuke. Autoriõigus ja autoriõigusega kaasnevad õigused: saavutused ja perspektiivid (Copyright and related rights: achievements and prospects). – Õigusinstituudi Toimetised 2000/3, p. 4 (in Estonian).

⁷² H.L. Hefter, R. D. Litowitz (Note 59), pp. 8–9.

⁷³ Autoriõiguse seaduse ja sellega seonduvate seaduste muutmise seadus (Copyright Act and Related Acts Amendments Act). – RT I 1999, 97, 859 (in Estonian).

⁷⁴ Subsection 1 (1) of the Copyright Act. See also H. Pisuke. Cultural Dimension in Estonian Copyright Law. – *Juridica International* 2004 (IX), pp. 45–46.

Such exclusive rights arose from harmonisation with the EC copyright standards. However, another reason behind the provision of these substantive rights for database-makers and producers of the first fixations of films was a development in social and economical life in EU that necessitated the extension of the scope of related rights. Hence, these changes in the Estonian copyright law arose from the natural course of development of the EU copyright industries. It is important that these new rights vested in copyright industries do not prejudice against the authors' rights. Authors' rights continue to be well protected, besides investors' rights.

On 16 October 2002, the Riigikogu passed an act^{*75} aimed at harmonising the regulation of copyright contracts of the Copyright Act with the corresponding regulation of the Law of Obligations Act^{*76} and maintaining in the Copyright Act those provisions that arise from the specificity of copyright.^{*77} The Law of Obligations Act is based on the principle of freedom of contract. The principle has been in general transplanted in to the author's contract provisions of the Copyright Act. Since Estonian practice regarding authors' contracts is strongly in favour of the stronger party to the contract, the undertaker, some restrictions were provided on the principle of freedom of contract.^{*78} The author of this article believes that such a solution on the level of a legislative act is balanced. From the standpoint of practice, these restrictions are currently not sufficient for so-called primary author's contracts, i.e. those contracts to which the author himself or herself is a party. Estonian practice regarding author's contracts demonstrates a lack of knowledge and experience on our authors' part, leaving them at the mercy of copyright industry businesses as the stronger party to the contracts. The author as the weaker party does not have adequate copyright guarantees in the Copyright Act for protecting his own interests, a contrast to, e.g., German copyright law. Thus, the plain application of the principle of freedom of contract in the Estonian handling of author's contracts may become our copyright industries' ball in the authors' goal. The author of this article hopes that Estonian practice related to author's contracts shall develop in the coming years and that there will be no need to establish further restrictions on the freedom of contract as regards so-called primary author's contracts. Copyright and related rights management organisations constitute the most active part of the Estonian copyright industries as regards participating in copyright law amendment. These organisations and other copyright industries have for the most part participated in amending the Copyright Act via the work of the copyright committee and by reviewing the draft amendments. The copyright committee is a committee of copyright experts set up with the Republic of Estonia's Ministry of Culture. Eight of the 14 members of the committee are currently representatives of or directly related to copyright industries.^{*79} According to the Copyright Act, the committee monitors the compliance of the level of protection of copyright and related rights with the international obligations assumed by the Republic of Estonia, analyses the country's practice in implementation of copyright legislation, and makes proposals to the Government of the Republic for amendment of copyright legislation and accession to international agreements.^{*80} The committee's reports on the copyright situation in the Republic of Estonia, which the committee draws up for the government twice a year, give a good overview of how the committee manages its tasks, including proposals for amendments to copyright law.^{*81} The most recent review was completed in June 2005.^{*82}

The author of this article has information that texts of draft laws for the amendment of copyright law, prepared on the initiative of the Ministry of Culture, have been presented to the Estonian collective management organisations for examination and opinions. The opinion of the Estonian copyright industries on the amendment of copyright law has so far not been contrary to the authors' interests. The author believes that, for the Estonian copyright industries to be able to consistently and transparently participate in the discussions of draft copyright laws, such participation should be organised and made a tradition. To secure compliance by the principle of the balance of interests, more authors' representatives should be involved in the discussion of the amendments to copyright law.

In summary, it should be said that, although Estonian copyright law has been influenced by the local, EU, and US copyright industries, our copyright has remained the author's right.^{*83} The fact that the Copyright

⁷⁵ Autoriõiguse seaduse muutmise seadus (Copyright Act Amendment Act). – RT I 2002, 92, 527 (in Estonian).

⁷⁶ Võlaõigusseadus (Law of Obligations Act). – RT I 2001, 81, 487; 2004, 90, 616 (in Estonian).

⁷⁷ Seletuskiri 'Autoriõiguse seaduse muutmise seaduse' eelnõule (Explanatory memorandum to the draft Copyright Act Amendment Act). 08.05.2002. Available at: www.kul.ee (in Estonian).

⁷⁸ For more details, see: A. Kalvi. Autorilepingu uus kuub (New author's contract format). – *Juridica* 2003/4, p. 255 (in Estonian).

⁷⁹ See Autoriõiguse asjatundjate komisjoni moodustamine. Vabariigi Valitsuse 12.02.2002 korraldus nr 113-k ('Setting up a committee of copyright experts', Government of the Republic Order No. 113-k of 12.02.2002). – *RTL* 2002, 28, 399; 2005, 57, 815 (in Estonian).

⁸⁰ Copyright Act § 7 (1) 1)–3).

⁸¹ These reviews are available in Estonian at: <http://www.kul.ee>, valdkonnad>autoriõigus>autoriõiguse asjatundjate komisjon (in Estonian).

⁸² Ülevaade Vabariigi Valitsusele autoriõigusealasest olukorras Eesti Vabariigis. Autoriõiguse asjatundjate komisjon, Kultuuriministeerium, juuni 2005 (Review of the copyright situation in the Republic of Estonia for the Government of the Republic. Committee of copyright experts, Ministry of Culture, June 2005). Available at: http://www.kul.ee/webeditor/files/Raport_2005_I_ilmal_lisata.rtf (1.09.2005) (in Estonian).

⁸³ See H. Pisuke (Note 74), p. 50.

Act reflects an economic approach and references to copyright industries, in keeping with the development of socio-economic life, has not, as a rule, infringed authors' rights or made the law solely an instrument of the copyright industries. Hence, the indirect impact of the copyright industries on the Estonian Copyright Act has not, at least on the legislative level, caused imbalance between the interests of copyright owners and those of the public. This state of affairs shows that the impact of copyright industries on copyright may be beneficial for other social groups as well.

A similar conclusion can be drawn concerning the impact of copyright industries on copyright law in the EU and at the global level. Although the level of socialisation strengthens the position of copyright industries in regional and global trade and thus increases their potential interest in influencing copyright law, the law cannot so far be identified as having negative consequences for the authors or the public. This conclusion does not preclude judicial practice related to copyright matters having an unfavourable influence on authors or the public. But this is a topic for another study.

4. Summary

The author, based on her hypothesis and the Estonian Copyright Act, has defined copyright industries as economic activities based on the exploitation of the rights of authors and other creative artists such as is carried out in an independent industry or within a conventional industry.

The impact of copyright industries on copyright law means the enactment of copyright rules that favour these industries or the non-enactment of such rules that do not favour them. The article first demonstrated the indirect impact of copyright industries on copyright law — i.e., via the contribution of copyright industries to the GDP. Studies of the contribution of the EU and US copyright industries to the respective GDP show that copyright industries are a rapidly and dynamically developing sector of the economy in the EU and USA. Such development of copyright industries is largely contributed by copyright law. The assessments given in these studies demonstrate the strong economic position of copyright industries to lobby for copyright law suitable for the industry. Relevant assessments have already been used for lobbying with the legislative and executive powers of many countries.

The Ministry of Culture of the Republic of Estonia commenced a study of the creative economy in 2004, based on a study of the UK creative industries. In the author's opinion, it would be justified to follow the study methodology worked out by WIPO, as the latter would enable Estonia in the near future to compare its creative economy's economic contribution with the other European Union member states that use this methodology and have a similar economic environment. The study of the creative economy will be completed in 2005.

Of copyright industry members domiciled in Estonia, collective management organisations are the most active to take part in amendments to copyright law. These organisations and others in copyright industries have participated in amending the Copyright Act, mainly via the work of the copyright committee and by reviewing the draft amendments. Estonian copyright law has been influenced by the EU and US copyright industries as well. Nevertheless, copyright has remained the author's right in Estonia. The economic approach taken in the Estonian Copyright Act does not damage the rights of authors or make the law an instrument for the copyright industries. Thus, the indirect impact of copyright industries on the Estonian Copyright Act has not, at least on the level of legislation, lead to imbalance between the interests of copyright owners and the public.