


# Copyright law in the digital age: changing legislation

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**Copyright law in the Slovak Republic is currently undergoing an extensive amendment procedure which is expected to have a large impact on the legal position of authors as well as other entities operating in the field of copyright and intellectual property and this may be of importance for business in the entire sector.**

The aim of the changes is to introduce more flexible regulation of the use of copyright works on the Internet. It aims to establish a balance between the current uncertainty of authors who are losing the ability to control the use of their works and also to eliminate barriers and restrictions that licensees and users have to face. In addition, it also transposes various EU directives and provides a regulatory response to the development of the information society.

## Introduction

The Ministry of Culture of the Slovak Republic has prepared a draft of the New Copyright Act that will replace the currently effective Act No. 618/2003 Coll. on copyright and rights related to copyright, as amended ("New Copyright Act"). The interdepartmental consultation process was finalized in January 2015 and the New Copyright Act will now be submitted to the National Council of the Slovak Republic for the finalization of the legislative procedure. The new legislation is expected to become effective as of 1 January 2016.

## Copyright Contractual Law

Pursuant to the draft of the New Copyright Act, a new chapter, the Copyright Contractual Law which comprises provisions regulating Licensing Agreements and related rights and obligations, General Licensing Agreements, Extended General Licensing Agreements and Multi-territorial Licensing of rights to musical works for online use, etc., has been introduced.

The currently effective Copyright Act defines a license as an authorisation of the author permitting the use of his/her

**Unless what is to be considered insufficient or what would justify a change of beliefs are at least approximately stipulated, Licensees may compensate for risks connected with such provisions by offering less favorable conditions to authors.**

work without any statutory obligation to do so. Pursuant to the New Copyright Act, an obligation of a Licensee to use a work will be incorporated and is accompanied by the right of an author to withdraw from an Exclusive License if the Licensee does not use a work at all or sufficiently, but not sooner than 1 year after the execution of the Licensing Agreement. Authors will also be granted the right to withdraw from a Licensing Agreement (irrespective of whether it is an exclusive or non-exclusive license) if the author changes his beliefs. An author will not be allowed to waive these rights in advance. In our opinion, these provisions regarding the obligation to use the work are likely to complicate and jeopardise the use of works from a business

perspective. Neither the draft of the New Copyright Act, nor the Explanatory Report provide an interpretation of what exactly will be considered as "the use of work that is not sufficient" and fail to provide a method for interpreting "change of beliefs".

In our opinion, the above will cause many discrepancies and will create an imbalance between the rights of authors and Licensees. The current wording is likely to provide the authors with a tool for withdrawing Licenses on entirely subjective criteria. Unless what is to be considered insufficient or what would justify a change of beliefs are at least approximately stipulated, Licensees may compensate for risks connected with such provisions by offering less favorable conditions to authors. Despite the fact that the draft of the New Copyright Act stipulates certain rights of Licensees if authors exercise the above-mentioned rights, we do not consider them to be sufficient and we are of the opinion that they are not likely to balance the business risks that Licensees are likely to face.

## Work on Order

In the chapter, Special Creation Regimes, the New Copyright Act introduces the institute of the so-called "work on order" that will replace the currently effective regulation of the specific contractual type represented by a Contract for the Creation of a Work.

Under the new legislation, "work on order" will mean work created by an author on the basis of a contract for work regulated in the respective provisions of Act No. 40/1964 Coll., the Civil Code, as

amended. Should an author create such "work on order", a new statutory presumption is introduced, i.e. that an author automatically grants his/her consent with the usage of "work on order" in a way required to realize the purpose of the contract, unless agreed otherwise. A contractor will only be entitled to use such a "work on order" for other purposes with the author's consent and under a separate Licensing Agreement. Pursuant to the currently effective Copyright Act, the conclusion of a contract for the creation of a work does not constitute the right of the contractor to use the work, even for the fulfilment of the purpose of the contract, unless agreed otherwise. Such a right is only granted if a separate license agreement is concluded at the same time or after the conclusion of a contract for the creation of a work with the author. In our opinion, this amendment will eliminate this impractical and administratively burdensome procedure for the contractor and will contribute to a more effective use of copyright works.

## Conclusion

The above-stated briefly addresses certain provisions of the wording of the New Copyright Act from January 2015. Although it will undergo further amendments prior to its submission to the National Council of the Slovak Republic, as well as prior to its final adoption by the National Council of the Slovak Republic, it provides us with a clearer picture of the direction in which copyright law is heading.