[FI] New provisions on reasonable contract terms in copyright assignments

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New provisions on the adjustment of contract terms on transfer of copyright by the original author were included in Section 29 of the Finnish Copyright Act (404/1961). Previously, Section 29 only referred to the general provisions of the Contracts Act (228/1929), Section 36 of which provides for adjusting or setting aside contract terms which are unfair or the application of which would lead to an unfair result. A “lex specialis” has been included in the Employment Contracts Act (55/2001), among others. The new provision entered into force on 1 June 2015.

According to the new Section 29(1), a term in a contract on transfer of copyright concluded by the original author may be adjusted or set aside if it is unreasonable in a way that contradicts established contractual practice in the field or in some other way, or if its application would result in an unreasonable outcome. The assessment must take into account the entire content of the contract, positions of the parties, underlying and subsequent circumstances, as well as other factors (paragraph 29(2)). If a term, pursuant to paragraph 1, is such that the rest of the contract cannot be fairly enforced without alterations, the contract may be adjusted in other regards or declared terminated (paragraph 29(3)). Section 29(4) notes that an agreement on the amount of remuneration for the assignment is also deemed a contract term. However, terms relating to an assignment of copyright via an employment contract may be adjusted pursuant to Section 2 of Chapter 10 of the Employment Contracts Act (paragraph 29(5)). In other cases, the general provision in the Contracts Act applies (paragraph 29(6)).

The legal framework on creative works has undergone profound changes in recent years and authors may not have much negotiating power when assigning their copyright. The reform thus aims for preventive effects and increased fairness in negotiating copyright assignments with the original author. The new provisions do not cover the subsequent transfer of rights. The scope of the provisions is further restricted by the fact that fairness of contract terms in employment relations would still be governed by the provisions of the Employment Contracts Act. The solution was deemed as a compromise between more detailed legislation and settling for a blank reference provision. The new provisions largely follow the wording of the general provision on adjusting contract terms and have a narrow scope of application. In the preparatory works, the proposed provision was not deemed able to change the legal state and its expected practical effects were left somewhat open. Notably, authors often do not have the courage or the financial

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means to initiate legal proceedings, while already the previous provisions aimed at preventive effects. The impossibility of making wider changes including, for instance, procedural or contract law provisions to enable collective action was also noted in the preparatory works.

Hallituksen esitys eduskunnalle laiksi tekijänoikeuslain muuttamisesta (HE 181/2014 vp)

https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/he_181+2014.pdf

Government bill on Act amending the Copyright Act

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