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THE AUTOMATIC TRANSFER OF RIGHTS IN WORKS OF EMPLOYEE AUTHORS

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Abstract

This dissertation was written as part of the MA in Art Law and Arts Management at the International Hellenic University's School of Humanities, Social Sciences, and Economics and lay within the field of Copyright Law. It is a result of bibliographical and case law research.

In the following pages, the writer examines, to the extent allowed within the limited framework of the hereon, the provisions given by the Greek legislator concerning the transfer of rights in case of works created under a contract of employment.

The starting point of the dissertation is in the law's general principle of the transfer's (or contract's) purpose, as formulated by theorists and courts. Following this, the specification of the rule of the purpose as accepted in works created by employees in the private sector, as well as in the public sector, and in the case of computer programs is further analyzed in order to determine the applicable law and examine the reasons for the differentiation in the existing provisions. Lastly, after the main points detected above are summarized, the writer attempts to reach some conclusions.

At this point, I would first like to thank my supervisor and professor, Mrs. Irini Stamatoudi, whose expertise and knowledge was invaluable in writing the current dissertation. I would also like to thank all other master's professors each for sharing their knowledge to their field of expertise.

Keywords: intellectual property law – copyright – the purpose of the contract – works created under a contract of employment

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Introduction

In Greek Copyright Law the initial holder of both the economic and moral rights shall be its author, who, as a rule is a natural person (art. 6(1)). Exception to the above, also allowing a legal person to be considered as the initial right holder of economic and moral rights, is the case of lawfully making available to the public anonymous or pseudonymous works (art. 11).
Concerning "works of joint authorship", which are the result of the direct collaboration of two or more authors, the initial right holders shall be the co-authors of the work (art. 7(1)); regarding "collective works", which are created through the independent contribution of several authors acting under the intellectual direction and coordination of one natural person, that natural person shall be the initial right holder of the economic and moral rights in the collective work, whereas each author of the separate contribution shall be the initial right holder of the copyright in his/her own contribution, provided it is capable of separate exploitation (art. 7(2)); in "composite works", where each part is created separately, the authors of all of the parts shall be the initial co-holders of the rights in the composite work, and each author shall be the exclusive initial holder of the rights of the part of the composite work that he/she has created, provided that, that part is capable of separate exploitation (art. 7(3)). Finally, in audiovisual works, the director shall be considered its author (art. 9).
Special provisions apply to employee-created works with further differentiations based on whether the employer is of the private, or public sector. Lastly, special presumptions concern computer programs. Those issues will be further discussed hereafter.

(1) THE GENERAL PRINCIPLE OF TRANSFER'S (OR CONTRACT'S) PURPOSE AS A RULE FOR THE INTERPRETATION IN THE FIELD OF INTELLECTUAL PROPERTY LAW.

As it is known, the parties do not always provide a clear answer within the contract to all issues of the contractual relation. Therefore, an interpretation of the contract is often needed.

1. The principle's origin and content

The principle of the transfer's or contract's purpose constitutes a fundamental rule for the interpretation of contracts in the field of intellectual property law[1]. The principle, which today appears to prevail internationally[2], was initially conceived around 1921 in Germany by Wenzel Goldbaum. According to German law, as in force at the time, intellectual property rights could be wholly transferred. However, this raised a question on who the right-holder of future rights (to be created) would be if such transfer were concluded. After taking for granted that the transfer of the rights happens to serve a purpose, Goldbaum concluded that because of the application of the "principle of parsimony" as he called it, every time the author transfers his or her right(s), such transfer is limited to the extent necessary to fulfill the respective purpose[3].
In Greece, the abovementioned principle was initially accepted by courts "for the author's benefit" (in dubio pro auctore) by interpretation[4], and is nowadays expressly set in art. 15(4) of the Greek Copyright Act, where it is given that when the contract does not fix the extent and the means of exploitation which the transfer concerns, it shall be deemed that the said acts refer only to such extent and means as necessary for the fulfillment of the aim of the contract[5]. It is noted that for the principle to apply, the dividable of economic rights on one's work is a prerequisite by reason. The dividable of the economic rights results in this case from art. 15(1)[6].

2. Relation to other rules of interpretation

The principle of the transfer's (or contract's) purpose prevails to the general rules for the contracts' interpretation since such interpretation may be issued *erga omnes.* It is said that, because of the general copyright's rule that the rights on a work shall remain with their author, the principle of purpose lies in-between the field of the contract's interpretation and correction[7].

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[1] It is noted that the term will be hereon used to only refer to copyright law, unless otherwise specified.
[2] Kotsiris, "Intellectual property law and acquis Communautaire", 2017, Sakkoulas Publications, p. 201 (*translation from Greek*).
[3] Asprogeraka – Griva, "Intellectual property issues", 1970, p. 54, Koriopoulou Aggeli "The contractual limitations in the exploitation of intellectual property rights", 1994, p. 6-7, Kotsiris L. "Intellectual property law", 2005, p. 198-199.
[4]Kotsiris, "Intellectual property law and acquis communautaire", 2017, Sakkoulas Publications, p. 201-2 (*translation from Greek*).
[5] Koumantos – Stamatoudi, Greek Copyright Law, 2014, p. 53.
[6] Xristodoulou K., "Intellectual Property Law", 2018, Nomiki Bibliothiki, p. 20 et. Seq (*translation from Greek*).
[7] Kotsiris, "Intellectual property law and acquis communautaire", 2017, Sakkoulas Publications, p. 202 (*translation from Greek*).

Nonetheless, the general principle of art. 15(4) shall recede to more *specific rules* for the contracts' interpretation as for example the rule of art. 17[8] (*providing that the transfer of the ownership of the physical carrier into which the work has been incorporated, does not constitute a transfer of the copyright on the work*), art. 34(1) and (2)[9] (*providing that in audiovisual production contracts the producer shall be deemed to obtain only those rights which are necessary for the exploitation of the audiovisual work*), art. 35[10] (*providing rules relating to broadcasting by radio and television*), 38(2)[11] (*providing that in case the publication of a photograph is facilitated by the surrender of the photographic negative, use of the negative shall be limited to the first publication of the photograph*), and most importantly the rules provided in art. 15(2) and (3) regarding the duration and geographical extent of transfer and exploitation contracts and licenses[12].

3. The principle's field of application

It goes without saying that the principle's application is required only in those cases where the parties' will concerning the extent of rights transferred, is not expressly provided within the contract. Therefore, it shall be deemed that the author transfers only those rights which are necessary for the fulfillment of the contract's purpose, and any further rights shall remain with the author. Future rights regarding unknown means of the work's exploitation are considered to remain with the author[13].

It shall be clarified that the principle under examination does not constitute a prohibition for further transfer of rights laying out of the contract's purpose, since such regulation would contrast to the general principles of individual's autonomy, and trade safety. However, for such, more extensive transfer, to be deemed valid, the specific economic rights transferred shall be clearly concluded within the contract. General clauses, referring to *the transfer of all economic rights*, with no further specifications shall be interpreted restrictively for the author's rights, by applying the principle of the transfer's purpose[14].

Regarding the purpose of the transfer, it is accepted that to be detected, one must investigate the mutual purpose that led the parties to the conclusion of the contract. Indications for such interpretation which may be of use are considered the nature of the contract, the obligations that the parties committed to, the amount of the remuneration paid to the author, the professional activity of the parties, relevant market conditions (such as trade manners, usual means of exploitation in similar works, occupational manners etc.), past collaboration between the parties, as well as the objective level of knowledge of the stakeholders[15].

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[8] https://www.opi.gr/en/library/law-2121-1993#a17, visited on 22 March 2022.
[9] https://www.opi.gr/en/library/law-2121-1993#a17, visited on 22 March 2022.
[10] https://www.opi.gr/en/library/law-2121-1993#a17, visited on 22 March 2022.
[11] https://www.opi.gr/en/library/law-2121-1993#a17, visited on 22 March 2022.
[12] Kotsiris, "Intellectual property law and acquis communautaire", 2017, Sakkoulas Publications, p. 202-203 (*translation from Greek*).
[13] *Despotidou A.,* "A few thoughts on the "principle of the transfer's purpose", Armenopoulos Vol. 4, 2020, p. 625 (*translation from Greek*).
[14] *Despotidou A.,* "A few thoughts on the "principle of the transfer's purpose", Armenopoulos Vol. 4, 2020, p. 625-626 (*translation from Greek*).
[15] *Despotidou A.,* "A few thoughts on the "principle of the transfer's purpose", Armenopoulos Vol. 4, 2020, p. 626-627 (*translation from Greek*).

Following the above-mentioned, it has been accepted by Courts that in contracts for publishing a book the rights of reproduction and distribution of the works' physical carriers are not only necessary but also enough for attaining the purpose of the contract. Therefore, the publisher by proceeding to the book's translation or adaptation infringes the author's rights[16]. Similarly, when the author has transferred to a third party his or her right to publish the work as a book for educational purposes, the party may not proceed to further uses of the work or to its publishing for non-educational purposes[17]. Additionally, a journalist's consent for publishing his article in a newspaper which at the time of the contract circulates only in hard copy does not allow its publishing in a book or in digital carriers or in the newspaper's website created after the said transfer[18].

4. The principle's extent of application

The general rule of art. 15(4) is complemented by the rules provided in art. 15(2) and 15(3) regarding the duration and the geographical application of economic right(s) transfer, as well as the rules regarding special contract relations[19] (*such as those of art. 8, 34, and 38*). However, it is an issue of utmost importance whether the principle applies to the author's moral rights, if it also refers to *secondary* transfers, and if its application may be extended to related rights.

Firstly, for the extension of the rule's application in the author's moral rights, it is noted that it contrasts in principle with the general rule of art. 12(2) providing that *the moral rights shall not be transferable between living persons.* Yet, for new generation works, as well as for occasions where the limitation of moral rights constitutes a prerequisite for the work's exploitation, the application of the transfer's purpose may be used to set a clear and unified measure for the identification of the limitations on moral rights, having always in mind the author's interests[20].

Concerning the rule's application in secondary transactions, meaning transactions in which the author is not a contracting party, it is accepted as more appropriate that, following the purpose that the rule is to serve (which, as already mentioned above, is that of the protection of the author from a disproportional and extensive transfer of his or her rights) the rule's application shall be limited only in cases where the same needs are met[21].

Last but not least, regarding the application of the principle in the field of related rights, it is not yet concluded whether the purpose that the principle serves also exists for related rights holders. In specific, the related rights holders do not usually seem to need

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[16] *Despotidou A.,* "A few thoughts on the "principle of the transfer's purpose", Armenopoulos Vol. 4, 2020, p. 627 (*translation from Greek*) with further reference to decision no. 4499/2000 of Athens Court of Second Instance, KritE 2000,253; decision no. 5745/2002, DIMEE 2004, 98; decision no. 6084/1996 of Athens' Single Membered Court of First Instance.

[17] Decision no. 6466/1995, NoB 1996, 470, commented by Kallinikou.

[18] *Despotidou A.,* "A few thoughts on the "principle of the transfer's purpose", Armenopoulos Vol. 4, 2020, p. 627 (*translation from Greek*).

[19] *Despotidou A.,* "A few thoughts on the "principle of the transfer's purpose", Armenopoulos Vol. 4, 2020, p. 631 (*translation from Greek*).

[20] Kotsiris – Stamatoudi, "Interpretation of Law 2121/1993", art. 15 (24) (Despotidou A.) (*translation from Greek*).

[21] Despotidou A., "The publishing contract", 2003, Sakkoulas publications, p. 48-49 (*translation from Greek*).

such protection since they do not appear as the weaker party in negotiations[22]. It is hereon reminded that among the related rights holders are the producers of sound and visual recordings[23], radio and television organizations[24], and publishers[25], meaning organized legal entities with freedom of negotiation, and legal consultants or in most cases legal departments within the company, to lead them in such. However, such need may exist for the performers and performing artists[26]. An added argument towards the exclusion of the principle in related rights is that when the legislator considered that an application by means of analogy was required, he expressly provided so[27].

5. Initial Conclusions

In the writer's view, the hereon examined principle provides with fair solution for both contracting parties in cases where they did not expressly predetermine the extent of rights to be transferred. At the same time, it protects the authors' rights preventing an extensive transfer. It is in my opinion also a way of correcting the contract, and when complemented by the general rules for the contracts' interpretation, as well as the general rule of civil code for the abuse of rights, may give an answer at issues not expressly regulated by law.

[22] Kotsiris – Stamatoudi, "Interpretation of Law 2121/1993", art. 15 (23) (Despotidou A.) (*translation from Greek*).
[23] Art. 47 of the Greek Copyright Act, https://www.opi.gr/en/library/law-2121-1993#a8, visited on February 10, 2022.
[24] Art. 48 of the Greek Copyright Act, https://www.opi.gr/en/library/law-2121-1993#a8, visited on February 10, 2022.
[25] Art. 51 of the Greek Copyright Act, https://www.opi.gr/en/library/law-2121-1993#a8, visited on February 10, 2022.
[26] Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*), accessed via https://www.sakkoulas-online.gr.
[27] Kotsiris – Stamatoudi, "Interpretation of Law 2121/1993", art. 15 (23) (Despotidou A.) (*translation from Greek*).

(2) WORKS CREATED UNDER A CONTRACT OF EMPLOYMENT IN THE PRIVATE SECTOR.

The Greek Copyright Act only dedicates to the "employee author" the provision of art. 8, while in art. 40 the matter of computer programs' development by employees is specifically regulated[28]. As Mr. Marinos rightfully identifies[29], the role of the employee author constitutes a point of intersection and, at the same time, a matter of conflict among intellectual property law and labor law, among business logic and the principle of administration's efficiency on the one hand and the creative process on the other hand.

1. The legal framework

In the general field of labor law, there is no doubt that the employer obtains an exclusive right of exploitation as well as all proprietary rights to employees' work since it is considered that the funding party, also bearing the business risk of the investment, shall be able to legally proceed with the exploitation of the work's result. In Anglo-American legal systems, where the economic aspect of intellectual property works is considered to prevail the author's personal bond to it, as well as in many European systems, the above-mentioned position is thought to also extend in the field of copyright. The reason for the above appears to be transactions' safety[30].
The Greek legislator, however, made a deliberate choice concerning the employees of the private sector to only apply the above-said to some extent, by limiting the rights transferred to the employer only to those necessary for the fulfillment of the contract's purpose, while providing at the same time that the rest rights shall remain to their author. Therefore, for reasons of transactional convenience, and in order to avoid any disputes, the law provided with an automatic (cessio legis) transfer of those rights to the employer. In specific, as provided in art. 8 of the Greek Copyright Act, where a work is created by an employee in the execution of an employment contract, the initial holder of the economic and moral rights shall be the author of the work. Therefore, the Greek legislator repeats the general principle of the author, as set in art. 6[31]. Nevertheless, according to sent. b. of art. 8, when the agreement does not otherwise provide, the economic rights necessary for the fulfillment of the purpose of the contract shall be transferred exclusively to the employer[32].

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[28] Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*) accessed via https://www.sakkoulas-online.gr with further reference to work of the same Elliniki Dikaiosini 1995, 543 and the same's "Software, protection, and contracts." II 1992, 38 et. Seq.
[29] Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*) accessed via https://www.sakkoulas-online.gr with further reference to the similarities presented between labor law and intellectual property law, laying to the fact that in both legal fields, the primary purpose is the protection of the employee or the author respectively, as the weaker party of the negotiations.
[30] Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*), accessed via https://www.sakkoulas-online.gr.
[31] Kallinikikou D., "Intellectual property and related rights", P.N. Sakkoulas publications, 4th edition, p. 144 (*translation from Greek*), where she further refers to the explanatory report of the Greek Copyright Act.
[32] https://www.opi.gr/en/library/law-2121-1993#a8, visited on March 13, 2022.

Out of the law's wording, it becomes clear that in order for art. 8 sent. b to apply the following conditions shall be met
a) Creation of work by an employee.
b) The work's creation to be in the execution of the employment contract; and
c) The contract to not provide otherwise.

2. Article 8's scope of application - The different work relations

The most crucial term in Greek Labor Law is that of so-called dependent employment, given that, as it is primarily accepted, only in this form of work relation do the protective provisions of labor law apply[33]. Thus, it is a matter of utmost importance to detect the elements of such work relation and distinguish it from other similar associations. This is hereafter analyzed because, according to the prevailing opinion, art. 8 and 40 of the Greek Copyright Act directly apply only to those authors, who provide their work under a dependent work relation[34].

2.1. The "dependent" author

As already mentioned, Labor Law provides that its protective legal framework shall apply to those employees who are "dependent" on their employer. This constitutes the so-called theory of dependence, developed by theorists and case law to identify who shall be characterized as an "employee." According to this theory, initially developed in Germany, one's work dependence is manifested by, a) commitment to the time and place where one shall be in order to provide with his or her work; b) the obligation to follow the employer's directions concerning the manner in which the work shall be executed, as well as to be subjected to the employer's control; c) one's integration in a third party's work organization[35], and d) the obligation to provide the work in person. On the other hand, the duration of one's obligation to provide with his or her work, the amount of money one receives from such work, the nature of the work, the way the salary is paid, whether the work is provided as main profession or not, and the characterization of the contract by the parties', are irrelevant[36].
Concerning works created by employee authors, and the provisions set in art. 8 sent. a and b, it goes without doubt that they shall apply for the case of dependent employees. It is noted that in the field of labor law, employees with a limited level of control by the employer, the so-called managerial employees, are thought to be excluded from some of the law's protective provisions. However, in case of copyright works created by them, it is accepted that the provision of art. 8 shall also cover them, if they are still under a contract of employment (and not under any other work relation)[37].

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[33] Zerdelis D., "Labor law – Individuals' employment relations," 2011, Ant. N. Sakkoulas publications, p. 4 (*translation from Greek*).
[34] Kotsiris – Stamatoydi, "Interpretation of Law 2121/1993", art. 8 (5) (Papadopoulou A.) (*translation from Greek*); contrary to recent decision no 849/2020 of the Supreme Court to which further reference will be made hereafter.
[35] Supreme Court's decision no. 946/2005, NOMOS database, visited on February 20, 2022.
[36] Zerdelis D., "Labor law – Individuals' employment relations", 2011, Ant. N. Sakkoulas publications, p. 7 et seq. (*translation from Greek*).
[37] Kotsiris – Stamatoydi, "Interpretation of Law 2121/1993", art. 8 (12) (Papadopoulou A.) (*translation from Greek*); contrary Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*) accessed via https://www.sakkoulas-online.gr.

2.2. The free-lance author.

As it becomes clear from the extensive litigation on the matter[38], the relation presenting most similarities to "dependent" employment, and therefore the one which seems to be the most difficult to differentiate from, is the one provided by freelance workers (or the so-called employed under a contract of "independent" services). Both relations concern the provision of work for pay. However, the element of dependency concerning the manner, time, and place of work is (mostly) absent for free-lance workers[39], who may freely configure their occupational activity, bearing their own business risk[40]. Only the development of initiation may not, however, provide a safe criterion of differentiation among a dependent and an independent work relation, especially when providing services of creative nature[41]. The combination of more than one element is, in this case, of utmost importance. Elements indicating a dependent work relation are considered, one's intention to become a part of the employer's organizational scheme of the holding, to execute with due diligence the employer's commands and directions, a time extended contractual relation, the absence of one's liability to business risk, etc.[42].

At this point, it is of interest to refer to the recent decision no. 849/2020 that Greece's Supreme Court reach. The case before Court was that of a photographer requesting to be recognized as providing his work to a photo agency under a dependent work relation, and following that to receive compensation for overtime, dismissal, etc., pursuant to labor law's provisions. The Court dismissed his action by accepting that, the nature of creating intellectual property works, usually indicates a freelance author rather than a dependent employee, since in intellectual and artistic creation the exercise of supervision is usually more compatible with the exercise of managerial power. It shall be noted that this was a case of labor law where no copyright issue was initially raised. However, what is of interest is that the Court used the nature of the work provided as means to indicate the work relation of the photographer. In the writer's opinion, such criterion may prove dangerous in the future, where workers of the so-called creative professions may encounter difficulties in proving the dependency to their employer and therefore be excluded from the rights awarded under labor law[43].

In every case, concerning the freelance authors, it is thought to be excluded from art. 8's scope. Nevertheless, it is accepted that, in cases where the contract does not otherwise provide, the automatic transfer of those economic rights, necessary for the fulfillment of the contract's purpose, as provided in sent. b of art. 8, shall also apply in the case of freelance authors by means of analogy[44]. Recent litigation, however, seems

[38] Indicatively, Supreme Court's decision no 849/2020, 953/2020 etc., NOMOS database.

[39] Zerdelis D., "Labor law – Individuals' employment relations", 2011, Ant. N. Sakkoulas publications, p. 28 (*translation from Greek*).

[40] Zerdelis D., "Labor law – Individuals' employment relations," 2011, Ant. N. Sakkoulas publications, p. 19 (*translation from Greek*).

[41] Vlastos, Vlastos, "Individuals' Labor Law short edition,"2001, Sakkoulas publications,no. 59.

[42] Kotsiris – Stamatoudi, "Interpretation of Law 2121/1993", art. 8 (par. 60) (Papadopoulou A.) (*translation from Greek*).

[43] https://lawdb.intrasoftnet.com, visited on February 17, 2022.

[44] Kotsiris – Stamatoudi, "Interpretation of Law 2121/1993", art. 8 (par. 62) (Papadopoulou A.) (*translation from Greek*).

to accept the application of the article's provision directly in both work relations[45], since *the article's wording shows that the law does not distinguish, in terms of the acquisition of intellectual property rights by copyright holders, the cases of employees with a contract of employment (under labor law) from those with an employment contract of independence services*.

2.3. Works created under a "work's contract" – works created upon order.

As mentioned above, in the case of employment contracts (both those concerning the dependent and the freelance workers), the contract's subject matter is the work per se, provided for a definite or indefinite time (continuous relation). However, in the case of the so-called work's contracts, the contract's subject matter lies in the work's result, in the "construction" of a piece, by the making of which the agreement is automatically terminated, with no specific interest on the time and effort required for its fulfillment (transient relation)[46].

As is usually the case, works upon order are deemed to be created as part of a "work's" contract relation. In this case, the author undertakes an obligation to create a specific work or works, as further determined within the parties' contract. This type of author does, for sure, not fall under the labor law's protective scope regarding dependent employees, and therefore, according to the prevailing view is considered to be excluded from the scope of art. 8 sent. a and b[47]. Following this, in order for the one giving the order to be in a position to economically exploit the work, it is necessary that either by the initial contract of order or by a later one in writing, the author transfers or provides to the one giving the order with a license to exploit his or her work[48]. Any use of the work without such written agreement is considered as an infringement of the author's rights[49]. It is hereon reminded that the transfer of the physical carrier of the work does not constitute a transfer of the author's economic rights on it[50].

However, in the writer's view, the above-mentioned prevailing position of theorists and Courts contrasts to the Greek legislator's will and constitutes an unjustified restrictive interpretation of art. 8's rule at the expense of the interests of the person (natural or legal) setting the order. In specific, according to the Greek Copyright Act's Explanatory Report "article eight repeats the general principle of article 6 for works created under a contract of employment or under a work's contract, according to which the initial copyright-holder is the work's real author". It is clear that if the legislator's will was to exclude work's contracts from art. 8's scope, there would be no need to make reference to them, or rather it would be expressly provided that such work relations are indeed

[45] Supreme Court's decision no. 849/2020, Athens' single-member Court of First Instant decision no. 5046/2013 (*translation from Greek*), https://lawdb.intrasoftnet.com, visited on February 17, 2022.

[46] Supreme Court's decision no. 544/1995, Elliniki Dikaiosini 1996. 431; Athens' Second Decree Court decision no. 8342/2002, DEE 2003, 682.

[47] Kotsiris – Stamatoudi, "Interpretation of Law 2121/1993", art. 8 (par. 64) (Papadopoulou A.) (*translation from Greek*).

[48] Kotsiris – Stamatoudi, "Interpretation of Law 2121/1993", art. 8 (par. 67) (Papadopoulou A.) (*translation from Greek*) with further reference to decision no. 2864/2007 of Athens' Secondary Court, DEE 2007, II82 with Koriatopoylou – Aggeli's comments; decision no. 7902/2002 of Athens' Secondary Court, Elliniki Dikaiosini 2004, p. 239.

[49] Decision no. 223/2003 of Athens' single-member Court of First Instance, https://lawdb.intrasoftnet.com, visited on February 23, 2022.

[50] Art. 47 of the Greek Copyright Act, https://www.opi.gr/en/library/law-2121-1993#a8, visited on February 10, 2022.

excluded from its scope. However, by referring to work's contracts as well as employment contracts, the legislator expressed the will for such relations to also be included, and therefore for the application in them of the automatic transfer of those economic rights which are necessary for the fulfillment of the contract's purpose. After all, such an interpretation does not constitute an unjustified restriction to the author's rights but rather restores the trade balance and sets limitations to any potential abuse of rights by the author.

2.4. Work created as contribution in a personal company

As provided in Greek Civil Code, a company contract is, when two or more persons undertake a mutual obligation to pursue, with joint contributions, a common purpose and, in particular, an economic purpose[51]. Furthermore, in the case of personal companies, it is provided that the parties may contribute to the company, among other things, their personal work[52]. It is often hard to determine whether a relation is that of employment or that of a company, especially since when it is agreed that a partner will contribute only his or her work, he or she is excluded from company losses[53]. Additionally, it is common in practice that one may provide with a company contribution, as well as with his or her work, in which case it is possible to have two separate contractual relations[54].

To identify whether work is provided as a contribution to the company or whether it falls under a contract of dependent employment, one shall research whether the conditions under which the work is provided indicates an intention for corporate cooperation, expressed with the equality in the parties' behavior, and with the common effort to fulfill the company's purpose by undertaking risks, or whether, on the other hand, if the work is provided under the supervision, directions, and control of the rest of the partners regarding the time, place and manner in which the work is provided[55].

In case of works created by company partners, who contribute their work towards the fulfillment of the company's purpose, the company is deemed to obtain the rights to the work secondarily[56]. However, if it is deemed that there is a separate contract relation for the partner, making him or her a company's employee, then the provisions of art. 8 shall apply[57].

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[51] Art. 741 of the Greek Civil Code, https://lawdb.intrasoftnet.com, visited on February 20, 2022.

[52] Art. 764 of the Greek Civil Code, https://lawdb.intrasoftnet.com, visited on February 20, 2022.

[53] Art. 764(2) of the Greek Civil Code, https://lawdb.intrasoftnet.com, visited on February 20, 2022.

[54] Zerdelis D., "Labor law – Individuals' employment relations," 2011, Ant. N. Sakkoulas publications, p. 33 (*translation from Greek*).

[55] Zerdelis D., "Labor law – Individuals' employment relations," 2011, Ant. N. Sakkoulas publications, p. 34 (*translation from Greek*).

[56] Such an example detected in the Supreme Court's decision no. 1065/2014, https://lawdb.intrasoftnet.com, visited on January 12, 2022.

[57] Kotsiris – Stamatoudi, "Interpretation of Law 2121/1993", art. 8 (par. 15) (Papadopoulou A.) (*translation from Greek*).

3. The extent of the economic rights' transfer

3.1. The meaning of "works created in the execution of the contract of employment"

It is accepted that for work(s) not created within the contract of employment's scope, art. 8 sent. b is of no application, and therefore no automatic transfer of rights occurs[58]. The contract of employment's subject matter, as well as the general obligations of the employee, are usually determined by the contract, while they may also be amended by mutual agreement at the contract's duration. By ordering the creation of a work the employer is considered to exercise his managerial right in order to specify the content of the contract[59]. In case of doubt, criteria to indicate the extent and type of employee's obligations are considered: the employee's specialization related to the business's object, his or her position within the company, the importance of the work's use for the employer, occupational habits, etc. If taking into consideration the circumstances for the determination of the employee's obligations shall be researched in an objective manner, and the parties' subjective will is of no importance. What is considered as crucial is that the work created shall be in the execution of the contract of employment, and it does not matter if it was made within the place or time of work[60].

On the other hand, works created out of the employment contract's subject matter, such as those irrelevant to the employees' obligations, are not included within art. 8's scope[61]. The same applies for works that the employee created prior to the conclusion of the employment contract, as well as those created upon the employer's order but laying out of the employee's contractual obligations[62].

Concerning works which are not created in the execution of the contract of employment but on the occasion of it, it is considered that while the employer does not automatically obtain economic rights on it, the employee has an obligation of the first offer to the employer, arising from his general obligation of allegiance[63]. If the employer accepts the offer of such work, further remuneration to the employee is due to payment. An employer using an employee's work created on the occasion of the employment contract with no additional agreement is considered as infringing the author's rights[64].

3.2. The purpose of the employment contract as a mean to determine the transfer's extent

As already mentioned, art. 8 is considered as a provision like the one already analyzed above regarding the transfer's (or contract's) purpose, set in art. 15(4) of the Greek Copyright Act. Therefore, in this case of employee created works when the contract of

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[59] Decision No. 611/2004 of Athens Multimember Court of First Instance, DEE 2001, 60; Kotsiris – Stamatoudi, "Interpretation of Law 2121/1993", art. 8 (par. 16) (Papadopoulou A.) (*translation from Greek*).

[60] Kotsiris – Stamatoudi, "Interpretation of Law 2121/1993", art. 8 (par. 16) (Papadopoulou A.) (*translation from Greek*).

[61] Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*) accessed via https://www.sakkoulas-online.gr.

[62] Kotsiris – Stamatoudi, "Interpretation of Law 2121/1993", art. 8 (par. 20, 21) (Papadopoulou A.) (*translation from Greek*).

[63] Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*) accessed via https://www.sakkoulas-online.gr.

[64] Decision no. 632/2006, Athens' Multimember Court of First Instance, DEE 2006.

employment does not provide otherwise, it is required to detect the purpose of it in order to determine which economic rights fall within the contract's purpose and are therefore automatically obtained by the employer.
As per practice, the contract of employment does not usually expressly provide with its purpose, leading to the need of detecting it within the nature of the work relation, the employee's educational level, position, and obligations he or she has within the holding, the usual manner of exploitation of similar works, and other possible indications which could objectively make the contract's purpose clear[65].
The employer's business activity is taken into consideration restrictively, meaning regarding the specific holding in which the employee was recruited. When the holding constitutes a company, the business activity is determined by the corporate purpose as expressed in its statute. It is relevant for the determination of the transfer's extent whether the employer has other business activities with different entities[66].
At this point, it is relevant to refer to the example provided in the law's Explanatory Report referring to an employee journalist who shall be deemed to transfer to the newspaper's publisher the right of publication of his or her article in the newspaper, but no further rights such as its publication as part of a book collection, or its translation, or its broadcasting.

4. The applications of general rules concerning the exploitation of one's work, in works created by employee authors

As Mr. Marinos identifies, there are three cases where both intellectual property and labor law's provisions apply unanimously. To begin with, it goes without question, as it is easily understood out of art. 8's wording that the provisions within the employment contract prevail to the rules set by copyright law. Additionally, labor law's mandatory provisions prevail over those of art. 8. However, a question rises concerning whether some regulations of copyright shall retreat in favor of labor law, or if they shall apply as are. The latter is an issue mainly concerning the moral rights of the "dependent" author, but also referring to the provisions adopted for the protection of the independent author. The answer to the above-mentioned will not be given by pre deciding that either labor or copyright law shall prevail, but rather shall be a result of balancing among the provisions of the two legal fields, in order for both the efficiency of the contract of employment and the protection of the author's rights to be reached[67]. In order to achieve the needed balance, it is necessary to conduct a purposive interpretation of the law's provisions[68].
Following the above, it is accepted that contrary to art. 13(5) 's provision, art. 8 also covers works not yet created by the employee insofar their creation is within the contract's duration and in the execution of the employment contract. However, the

[65] Kotsiris – Stamatoudi, "Interpretation of Law 2121/1993", art. 8 (par. 28) (Papadopoulou A.) (*translation from Greek*).
[66] Kotsiris – Stamatoudi, "Interpretation of Law 2121/1993", art. 8 (par. 29) (Papadopoulou A.) (*translation from Greek*).
[67] Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*) accessed via https://www.sakkoulas-online.gr.
[68] Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*) accessed via https://www.sakkoulas-online.gr.

employee author is not obliged to transfer his rights to works he or she created prior to or after the conclusion of the employment contract[69].
Additionally, within the employment contract the employer obtains an exclusive right of exploiting the employee's work, and unless otherwise provided by contract the exploitation is not limited in time, while the employee may not request additional payment for future exploitation. The employee's payroll constitutes the price for the work's creation and not for its legal exploitation or use[70]. It is noted that as expressly provided under art. 32(2) of the Greek Copyright Act, the percentage fee payable to authors, is not given for works created by employees.
Concerning the geographical limitations set in art. 15(3) it is considered to also apply in the case of employee authors, insofar the employer has no international activity. However, it is noted that in case the employer is part of a business group, the transfer only concerns the specific company member where the author works, and the work's use by other members is prohibited.
Lastly, unknown exploitation uses are not transferred to the employer. This creates difficulties in cases where the employee has already transferred to Collective Management Organizations his or her economic rights prior to the conclusion of the employment contract. In this case, the employer shall not only pay the employee's salary but also the fee to the Collective Management Organization.

5. The limitations of moral rights in works created by employee authors

As already mentioned above, the employee author is the initial right-holder of copyright in his or her work. Therefore, he is the exclusive right-holder of moral rights which by the principle of art. 12(2) of Law 2121/1993 may not be transferred between livings. However, in order for the employer to be able to procced with the exploitation of the work, it is necessary to set limitations in the enforcement of author's moral rights. Therefore, it is accepted that the author shall not exercise his or her moral rights when such exercise may set unreasonable obstacles to the intended by the employer use of the work. On the other hand, the moral rights' core, which expresses the author's indestructible bond to his or her work, shall always be respected by the employer[71].
Limitations to the author's moral rights may be expressly given by the contract if the employee provides his or her explicit or implicit consent. In specific, as provided in art. 16 of the Greek Copyright Act, although the author may not transfer his or her moral rights on the work, may, however, provide with his or her consent to certain actions or omissions which would otherwise constitute an infringement of his or her moral rights[72]. The consent provided by the author pursuant to art. 16 is considered by principle as irrevocable, except when the author reserved a right to revoke it or in case the contract

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70 Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*) accessed via https://www.sakkoulas-online.gr.

71 Kotsiris – Stamatoydi, "Interpretation of Law 2121/1993", art. 8 (42, 43) (Papadopoulou A.) (*translation from Greek*).

72 Paramithiotis I., "The employee author – a point of intersection between labor law and intellectual property law", 2017, p. 232, accessed through https://www.didaktorika.gr/eadd/handle/10442/41539; Kotsiris – Stamatoydi, "Interpretation of Law 2121/1993", art. 16 (115) (Despotidou) (*translation from Greek*).

is terminated for good reason. In the latter case the revocation concerns the future use of the work[73]. As Mr. Paramithiotis detects, in case we accept that the employee has indeed consented to the use of his or her work by the employer, there an issue may rise for any further transfers conducted by the employer to third parties. The third parties have no right to raise a claim pursuant to the consent given to the employer and therefore may only be protected under the conditions of art. 281 of the Greek Civil Code in case of an abuse of right[74].

Additional ways for setting limitations to the enforcement of employee authors' moral rights are considered the ones expressly provided within the contract as well as a written waiver of the employee's right to sue after an act deemed as infringing those rights (pursuant to art. 454 of the Greek Civil Code)[75].

Lastly, limitations to the enforcement of moral rights may also come as a result of trade ethics (art. 288 of the Greek Civil Code) constituting a measure for one's general behavior in the trades as well as in the specific business or occupational field. Some also argue that perhaps there is a need to extend the automatic transfer of rights pursuant to the contract's purpose in the field of moral rights[76], an opinion which to the writer's view seems like the most effective and practical.

5.1. The right of publication

The moral right of publication is mostly limited in cases of employee-created works. Whether the work will be published, as well as when such publication will be conducted is within the power of the employer. It has been asserted that by the transfer of economic rights to the employer the employee implicitly waives his or her right of first publication[77], as well as that for the fulfillment of the contract's purpose the employee grants his or her consent to it. In addition, it is also accepted that the employer holds the right to publish an employee's work even contrary to his or her will. However, in this case, the employee has the right to request for the omission of his or her name[78]. It is noted that the right of publication is not consumed by the first publication, and, therefore, other means of publication, not within the contracts purpose, remain to their author.

5.2. The right of paternity

The right of paternity may not generally be limited by the contract of employment, and the employer has no right to present the employee's work as his own, while at the same time a contractual clause obliging the employee to bear the presentation of a third person as the work's author is null and void. However, the author has a right to allow by

[73] Paramithiotis I., "The employee author – a point of intersection between labor law and intellectual property law", 2017, p. 234, accessed through https://www.didaktorika.gr/eadd/handle/10442/41539.
[74] Paramithiotis I., "The employee author – a point of intersection between labor law and intellectual property law", 2017, p. 234, accessed through https://www.didaktorika.gr/eadd/handle/10442/41539.
[75] Kotsiris – Stamatoydi, "Interpretation of Law 2121/1993", art. 8 (43) (Papadopoulou A.) (*translation from Greek*).
[76] Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*) accessed via https://www.sakkoulas-online.gr.
[77] Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*) accessed via https://www.sakkoulas-online.gr.
[78] Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*) accessed via https://www.sakkoulas-online.gr.

contract a third person to be presented as the work's author, as is the case of the so-called *Ghostwriter*[79].

Regarding the obligation of mentioning the author's name on the work when presented in public, it is accepted that may be limited by occupational habits, as is the case in the field of advertisements, and mass-produced works. For photographic works and translations, it is accepted that the provisions of art. 38(4) and 33(7) respectively, shall apply in the case of employees as in free authors[80].

5.3. The right of integrity

The right of integrity is usually the one setting most obstacles in the work's economic exploitation since it is often necessary for the employer to be in position to modify the work in order to increase its commercial success. Therefore, the employee may contractually allow certain limitations to his or her right of integrity. Limitations to the right of integrity may also result out of good faith as interpreted within the contract's purpose and out of occupational habits[81].

Within the integrity right, the right to prohibit any offense to the author due to the circumstances of the work's presentation in public is also included. This right's aspect for employee authors is deemed limited to the employee's right to demand that his or her name be omitted when he or she considers that how the work will be presented is offensive. However, when the author's name is already known, an offensive presentation of the work is deemed as constituting an infringement of his or her moral right of integrity[82].

5.4. The right of access

This moral right usually becomes of interest after the termination of the employment contract. How the right will be asserted is monitored by the general rule prohibiting rights abuse. In every conflict of the author and employer's rights, the solution is usually given after balancing the opposing rights[83].

5.5. The right of repudiation

In case the right of repudiation is enforced by the author, the employer's purpose of exploiting the work would be canceled. However, this goes against transactional manners given that the employer has already fulfilled his part of the contract by paying the respective salary to the employee author. Additionally, such conduct may also constitute a reason for the termination of the employment contract. Therefore, in case of conflict between the author's right to his or her personality and the employer's

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[79] Kotsiris – Stamatoydi, "Interpretation of Law 2121/1993", art. 8 (48) (Papadopoulou A.) (*translation from Greek*).

[80] Kotsiris – Stamatoydi, "Interpretation of Law 2121/1993", art. 8 (49-50) (Papadopoulou A.) (*translation from Greek*).

[81] Kotsiris – Stamatoydi, "Interpretation of Law 2121/1993", art. 8 (51-52) (Papadopoulou A.) (*translation from Greek*).

[82] Kotsiris – Stamatoydi, "Interpretation of Law 2121/1993", art. 8 (54) (Papadopoulou A.) (*translation from Greek*).

[83] Kotsiris – Stamatoydi, "Interpretation of Law 2121/1993", art. 8 (55-56) (Papadopoulou A.) (*translation from Greek*).

economic rights on the work, a solution may be given by omitting the employee's name on the work[84].

6. Initial conclusions

Out of the above-mentioned, it becomes clear in the writer's view that the legislator tried to regulate the issue of employee-created works in a way that both the employees' personal bond to his or her work is respected, and the employers' economic interests are fulfilled. In doing so the purpose of the contract and the automatic transfer of the rights needed for its fulfillment, provided with fair, balancing factors.
Modern transactions, however, require, in the writer's opinion, a broader interpretation of the *contract of employment* so as for other relations, presenting similarities, to be included. And this is in conjunction with what will be hereafter said regarding works created by those authors providing their services in the public sector as well as for employee-authors of computer programs.

[84] Kotsiris – Stamatoydi, "Interpretation of Law 2121/1993", art. 8 (58) (Papadopoulou A.) (*translation from Greek*).

(3) WORKS CREATED UNDER A CONTRACT OF EMPLOYMENT IN THE PUBLIC SECTOR.

Art. 8 of the Greek Copyright Act was amended by art. 8(17) of Law 2557/1997, and sent. c was added in order to regulate the matter of transfer of rights for those serving in the public sector[85]. Before this addition, it was not clear whether the law's regulation could also apply to them[86].

1. The legal framework

For works created by those serving in the public sector, the Greek legislator respected the general principle providing that the initial right-holder of all rights in a work shall be its author but at the same time chose to differentiate the extent of the economic rights, automatically transferred to the employer. In specific, art. 8 sent. c of the Greek Copyright Act provides that the economic rights on works created by employees under any work relation of the public sector or a legal entity of public law in the execution of their duties is ipso jure transferred to the employer unless provided otherwise by contract[87].

From the law's wording, it is clear that the presumption already discussed above is reversed in this case of works. Therefore, the employer is deemed to obtain ipso jure all economic rights to the work and not only those which refer to the contract's purpose. In order for this to apply, the following requirements must be met:

1. Creation of work by an employee under a work relation of the public sector or a legal entity of public law.
2. The work's creation to be in the execution of their duties or on the occasion of them; and
3. The contract to not provide otherwise.

It is accepted that within this provision shall fall all works created within or on the occasion of the duties that the author has been assigned to serve at the specific public service[88]. Following the above, works irrelevant to the person's duties, or those created with the author's initiation, or those created upon order by the public sector per se or legal entities of the public sector, are deemed as excluded from the law's scope[89].

It is noted that official texts expressive of the State's authority, notably to legislative, administrative or judicial texts are in general not protected as copyright works (art. 2(5))[90].

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[85] https://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=b24617c4-819a-4ef3-867f-fcdbfe90c723, visited on March 23, 2022.

[86] Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*) accessed via https://www.sakkoulas-online.gr.

[87] https://opi.gr/en/library/law-2121-1993#a8, visited on March 13, 2022.

[88] Kotsiris – Stamatoydi, "Interpretation of Law 2121/1993", art. 8 (77) (Papadopoulou A.) (*translation from Greek*).

[89] Kotsiris – Stamatoydi, "Interpretation of Law 2121/1993", art. 8 (78) (Papadopoulou A.) (*translation from Greek*).

[90] https://opi.gr/en/library/law-2121-1993#a8, visited on March 13, 2022.

2. The non-applicable of the principle of the contract's purpose – extent of the economic rights' transfer

It comes from the law's wording that the general principle of the contract's purpose does not apply for those authors, serving in the public sector, since it is provided that in this case all rights shall be transferred to the "employer" and not only those necessary for the fulfillment of the contract's purpose. The legislator could have followed the regulation regarding works created by employees in the private sector. However, a deliberate choice was made to differentiate its position at the expense of the author's rights.

The reason for such differentiation is not that apparent. Some detect it to the general practice followed in Greek law where increased protection is asserted in the public sector to avoid possible conflicts and disputes. In contrast, others claim that since the article's amendment regarding works created by public servants came later in time, the provision constitutes a change in law's view towards including copyright law to company law[91].

No matter the reason providing such an extensive transfer for public sector, it has been rightfully asserted in the writer's opinion that the treatment of private and public sector employees in a different way, is not justified and goes against the constitutional principle of equality and necessity[92].

3. Considerations on moral rights

Regarding the moral rights of those working in the public sector it is accepted that what has already been said for the employee authors in the private sector shall apply in this case as well. The only differentiation lies within the counterbalance at issue for any limitations to these rights, since here there is a matter of public interest rather than business purposes[93].

4. Initial conclusions

In the writer's opinion there is no reason for treating those authors serving in the public sector differently than those providing their work in the private sector. Such differentiation is unjustified and constitutes another aspect of discreet treatment for the State. At the same time, it is indeed against the constitutional principle for equality and creates discrimintation at the expense of authors rights.

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[91] Marinos, "The dependent author", Elliniki Dikaiosini 1998, 263 et. seq. (*translation from Greek*) accessed via https://www.sakkoulas-online.gr.

[92] Xristodoulou K., "Intellectual Property Law", 2018, Nomiki Bibliothiki, p. 260 et. Seq (*translation from Greek*).

[93] Paramithiotis I., "The employee author – a point of intersection between labor law and intellectual property law", 2017, p. 232 (*translation from Greek*), accessed through https://www.didaktorika.gr/eadd/handle/10442/41539.

(4) THE CASE OF EMPLOYEE-CREATED COMPUTER PROGRAMS.

As expressly stated in art. 2(3) of the Greek Copyright Act, computer programs and their preparatory design shall be deemed to be literary works within the meaning of the provisions on copyright protection. Protection by this Law shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected under this Law. A computer program shall be protected if it is original in the sense that it is the author's personal intellectual creation[94]. The provision constitutes a result of integrating into Greek law the regulations of Directive 91/250 regarding the protection of computer programs.

1. The legal framework

Art. 40 of the Greek Copyright Act provides that "The economic right in a computer program created by an employee in the execution of the employment contract or following instructions given by his employer shall be transferred ipso jure to the employer unless otherwise provided by contract[95]".
From the above it appears that for the article's provision to apply the following conditions should be met

1. Creation of computer program by an employee.
2. The computer program created to be in the execution of the employment contract or following instructions given by the employer; and
3. The contract to not provide otherwise.

2. The non-applicable of the principle of the contract's purpose – the extent of economic rights' transfer

As it becomes clear from what has already been discussed above, the provision for computer programs is similar to the one for works created by employees in the public sector and appears to have a broader scope, since it refers not only to computer programs designed in the execution of the employment contract but also those created while following the instructions given by the employer. Following these it is obvious that the general principle of the contract's purpose does not apply, since by the law, all rights are transferred to the employer, even those not relevant to the contract's purpose. This admission consequently leads to the fact that the provisions of art. 15(2) and (3) are also non-applicable.
Some argue that the exclusion of computer programs from the protective scope of art. 15's interpretation rules infringe the principle of equality and constitute non-justified discrimination at the expense of those employees. However, the fact that the nature of

[94] https://www.opi.gr/en/library/law-2121-1993#a2, visited on March 24, 2022.
[95] https://www.opi.gr/en/library/law-2121-1993#a2, visited on March 24, 2022.

this category of works is technical rather than creative may be the reason allowing such differentiation to the extent of rights transferred[96].

3. Considerations on moral rights

As already mentioned above, computer programs' nature is more technical rather than creative and therefore there is limited need for protecting the author's personal bond to his or her work. Therefore, it has been accepted that in case of conflict, the protection of employee-author's moral rights recedes to protecting employer's economic rights on the work[97].

Following the above, regarding the author's right of publication, it is deemed as de facto transferred to the employer, and this shall refer to both preparatory and completed software[98].

Concerning the right of paternity's aspect, providing that the author shall be acknowledged as the work's creator it is deemed to also apply in computer programs since the employer has no interest in denying its application. The other aspect of the paternity's right, however, meaning the one dictating that the author's name shall be indicated on the work, is not applicable. Reason to this constitutes art. 4b's provisions as well as trade habits, where it is not usual that the author's name is referred on computer programs[99].

Moreover, after being noted that computer programs' exploitation requires continuous modifications following technological advances, it is thought that the employee's moral right of integrity shall recede for the employer's economic rights to exploit the work[100].

Furthermore, regarding the right of access while by principle applicable in case of employee-created computer programs may be limited in order to protect the employer's commercial secrets[101].

Lastly, the right of repudiation is not recognized in case of employee-created computer programs[102].

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[96] Paramithiotis I., "The employee author – a point of intersection between labor law and intellectual property law", 2017, p. 301 (*translation from Greek*), accessed through https://www.didaktorika.gr/eadd/handle/10442/41539.

[97] Paramithiotis I., "The employee author – a point of intersection between labor law and intellectual property law", 2017, p. 301, with further references to Lowenheim and Marinos (*translation from Greek*), accessed through https://www.didaktorika.gr/eadd/handle/10442/41539.

[98] Paramithiotis I., "The employee author – a point of intersection between labor law and intellectual property law", 2017, p. 301, with further references to Lowenheim and Marinos (*translation from Greek*), accessed through https://www.didaktorika.gr/eadd/handle/10442/41539.

[99] Paramithiotis I., "The employee author – a point of intersection between labor law and intellectual property law", 2017, p. 302 - 303, with further references to Lowenheim and Marinos (*translation from Greek*), accessed through https://www.didaktorika.gr/eadd/handle/10442/41539.

[100] Paramithiotis I., "The employee author – a point of intersection between labor law and intellectual property law", 2017, p. 303 - 304, with further references to Lowenheim and Marinos (*translation from Greek*), accessed through https://www.didaktorika.gr/eadd/handle/10442/41539.

[101] Paramithiotis I., "The employee author – a point of intersection between labor law and intellectual property law", 2017, p. 304 - 305, with further references to Lowenheim and Marinos (*translation from Greek*), accessed through https://www.didaktorika.gr/eadd/handle/10442/41539.

[102] Paramithiotis I., "The employee author – a point of intersection between labor law and intellectual property law", 2017, p. 305, with further references to Lowenheim and Marinos (*translation from Greek*), accessed through https://www.didaktorika.gr/eadd/handle/10442/41539.

4. Initial conclusions

It is the writer's opinion, that the law's view on computer programs created by employees (as initially referred in the Directive), and the extend of transferred rights to the employer reflects the current commercial needs for the exploitation of such works. Therefore, contrary to what is said for works created by those serving in the public sector, in this case, the differentiation provided is justified, and does not insert unfair treatment between the employee-authors. This has mainly to do with the nature of the work, which is more technical than creative.

Conclusions

Out of all of the above, the writer reached the following conclusions:
1. The general principle of the transfer's (or contract's) purpose for the interpretation of contracts in the field of copyright law, provides with fair solutions both to the author and the other contracting party. It is also a means for the correction of the contract when the parties did not expressly provide with the rights meant to be transferred.
2. The provisions for employee-created works in the private sector complement the general principle of the transfer's (or contract's) purpose and provide with a fair solution both respecting the employees' personal bond to his or her work and making the exploitation of the work effective for the employer. However, modern transactions require, in the writer's opinion, a broader interpretation of the *contract of employment* so as for other relations, presenting similarities, to also be included. In every case those rights necessary for the fulfillment of the transfer's purpose shall also be extended to other work relations and not be limited to those regarding the so-called dependent author.
3. The law's differentiation regarding works created by authors providing their services in the public sector inserts a discreet treatment for the State and goes against the constitutional principle for equality and creates discrimination at the expense of authors rights.
4. On the other hand, the nature of computer programs allows for a more extensive transfer of rights to the employer.

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