

## The modern concepts of author's contract

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**Annotation:** This article reveals the concept of an author's contract. In the article rights of an author who concluded the contract (resale right, right to permit or refuse to third parties, right for reproduction, distribution, etc.) are reconsidered in detail. Also it draws distinction between author's and labor contracts.

**Keywords:** author's rights, author, author's contract, resale right, right for reproduction, labor contract.

Jural fact which entails author's rights occurrence is creation of a work resulting from creative activity. For publishing houses, theatres, studios, and other businesses, for individuals and legal entities the basis of acquisition of rights on the work is contract with the author.

Author's contract — is an agreement between two or more persons, aimed at the establishment, alteration and termination of mutual rights and obligations. The mutual rights and obligations of the parties refer to property and related personal non-property rights.

Author's contract is realization of author's powers, since usage of author's work by other persons shall be allowed only on the basis of contract concluded with author or his successors.

Author's contract – is a contract whose subject is transferring of author's property rights. The author's contract is a variation of license agreement [1].

Usage of author's work by others (users) is carried out on the basis of author's contract, except otherwise is expressly specified by law. Usage of the work on contractual basis better than any other way provides the realization and protection of personal and property rights of an author. In this case interests of users are also protected as they acquire certain rights for use of works that other persons do not have, and therefore can recoup their costs of reproduction and distribution of works and make a profit. Ultimately, society as a whole is interested in usage of works on contractual basis, since this procedure stimulates the creativity of its members and promotes the multiplication of the spiritual wealth of society.

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Author's contract is to be consensual, mutual and compensatory. However, there can be unilateral and gratuitous author's contracts. Author's contract is considered real when both parties at the same time achieve agreement on all essential terms of the contract and provide each other all owed under the contract. An example is the case where author transfers to user rights for usage his creative work, which is ready for use and approved by the user, and the user at the same time pays the author all considered by the contract payment. Provided that the author does not impose any additional obligations, such a contracts at the same time unilateral. Author's contract should be distinguished from other forms of contractual regulation of relations in creation and usage of works of science, literature and art. So, in practice often raises the question of delimitation of author's and labor contracts, which is of great importance for establishing the scope of author's and user's rights. If work is created during performance of duty, rights on its usage belong to employer, who only must ensure compliance with the personal and property rights of author. Publishing houses, scientific, educational and other organizations may reproduce and distribute such works in any period of time, in any amount, including republishing of works without asking consent of authors. Therefore, they often have a direct interest in ensuring that their relationships with authors are considered as labor. For example, publishing house concluded contract with P.on preparation of slides for album. When reprinting, publishing house refused to pay remuneration to author, referring to the fact that the slides are property of the publishing house as the author worked under labor contract. As a proof publishing house pointed to the fact that they paid the author by money order. But that itself is of no importance for determination of contract's nature. As publishing house has not presented other evidence of the employment relationship with the author its arguments were declared insolvent by a court and in the author's favor was recovered compensation for reprint.

In cases where parties concluded a contract, under which a creative work is created, which does not contain a clear indication of its nature, the conclusion of this can be done only under number of certain conditions. First of all, the subject of labor contract is a labor activity of employee corresponding to his position and qualifications. It can be creative in nature, such as work of staff translator in publishing house or magazine staff photographer, but it is understood that we are talking about performance of a specific job description, rather than on the achievement of concrete creative result specified between parties in the contract. In some cases, however, the labor contract may be concluded to perform the establishment of specific creative works, such as decoration or performance of cartographic work. It is important to ascertain whether the author is included in the labor staff of the customer, whether he was under internal regulations and orders of the administration, whether he had labor rights and benefits, whether author received for his work monthly remuneration and etc. If none of abovementioned conditions are fulfilled than there is no reason to qualify relations between the parties as labor.

Author's property rights 1. Author has exclusive right to use work in any form or by any means.

2. When using work, author has the right to allow or prohibit third persons the following acts:

- 1) reproduction of work (right of reproduction);
- 2) to distribute the original or copies of work by any means: sell, change, rent (lease), to perform other operations, including operations in open information and communication networks (right of distribution);
- 3) publicly display work (right of public display);
- 4) public performance of work (right of public performance);
- 5) publicly communicate the work to the public, including communication on the air or via cable (right of communication to the public);
- 6) to transfer the product on the air (broadcast on radio and television), including transmission via cable or satellite (right to broadcast);
- 7) translation of work (right of translation);
- 8) adaptation, arrangement or other transformation of the work (right of adaptation);
- 9) practiced urban planning, architecture, design project;
- 10) carry out other actions not contradicting the legislation.

3. Reproduction is repeated fashioning of workinform which it had in original (publication of the work, reproduction of sound or video recordings, etc.).

4. Where copies of a lawfully published work have been put into circulation by selling them, then their subsequent distribution is possible without author's consent and without payment of remuneration, except in cases stipulated by legislative acts of the Republic of Kazakhstan.

5. Work is considered used, regardless of whether it is sold for profit or its implementation is not directed to it.

6. The practical application of the provisions constituting the content of work (inventions, other technical, economic, organizational solutions, etc.), does not make use of the work in terms of author's right [2].

Right of access to works of art. Resale right. 1. Author of a work of fine art shall have the right to require from owner of the work fulfilment of his right to reproduce his work (right of access). At the same time it cannot be required from the owner of the work to deliver the work to the author. 2. In each case of public resale (through auction, gallery of fine art, art gallery, shop, etc.) of original works of art after first alienation of property rights on the work of art author or his heirs are entitled to receive remuneration from seller in amount of five percent of the resale price (resale right). That right is inalienable during the author's life and goes solely to the author's heirs by law or testament for a period of author's right [3].

Thus, author's contract - is contract in which author of a work of literature, science and art, or his successor, on the one hand, transfer to the other party, the user, property rights in set limits, for a period and territory agreed by the parties, and for set fee or free of charge.

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