Intro to authors' rights in the Czech Republic

Zdeněk Žabokrtský

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Charles University
Faculty of Mathematics and Physics
Institute of Formal and Applied Linguistics

unless otherwise stated

Outline

The position of authors' rights
within the Czech legal system

Shards from the Czech Copyright Act

License agreement
as defined by the Czech Civil Code

Selected open licenses
for software and data

Four model situations
in the ÚFAL environment

Disclaimer

- I have received no formal education in law, hence I might be wrong in some of my interpretations.
- Translations are mine (hence amateur too).

The position of authors' rights within the Czech legal system

Hierarchy of Law in the Czech Republic

- pyramidal structure: legal norms organized according to their strength
- the lower (weaker) levels must be compatible with the upper (stronger) ones
- with a bit of simplification:
  1. Constitution and constitutional laws (including the Charter of Fundamental Rights and Basic Freedoms) and International treaties ratified by the Parliament
  2. Statutes adopted by the Parliament
  3. Derived legislation (adopted by the government and ministries)
  4. Legislative acts of self-regulated entities (territorial as well as professional)

Time for a question

How many legal norms currently valid in the Czech Republic are there? Can you estimate it?

Sources of law related to authors' rights

There are a few dozens of legal norms (only in the top two levels) that are relevant for authors' rights

1. The Charter (2/1993 Sb.): a general claim that rights to results of creative activity are protected by the law.
2. plus about 20 partially relevant acts adopted by the Parliament
3. plus about 10 partially relevant international treaties (esp. Bern convention from 1886)
4. plus about 10 more EU directives
5. The Copyright Act (Zákon číslo 121/2000 Sb., o právu autorském ...) - this is the most important/detailed/specific one!
6. The Civil Code (Občanský zákoník, 89/2012 Sb.) - defines license agreements since 2014 (contained in the Copyright Act before)

Duality principle

- following the continental tradition in distinguishing moral and economic rights
- different from the previous copyright act valid since 1965 (the two types of rights were inseparable)
- different from the Anglo-American notion of copyright
- a remark on translation: actually the term of "copyright" does not appear in the Czech "Copyright Act" at all

A remark on translation

- actually the term of "copyright" does not appear in the Czech "Copyright Act" at all
- however, I'll be using it as a translation of "autorské právo"
- there are numerous differences between the Czech authors' rights compared and the notion of copyright as used in UK or USA
- among other things, using the word "copyright" or the symbol © has no legal implications in the Czech Republic

Shards from the Czech Copyright Act

The work and the author

- the work (§2)
  - ... literary or other artistic work or scientific work which is a unique product of creative activity of its author and is expressed in any perciptible form
  - a computer program is considered an author's work too, as long as it is original
- the author (§5) - an individual (person) who created the work
- legal presumption of authorship (§6) - the author is the one whose name is stated on the work in a usual way
- coauthors (§8) - the author's rights to a collectively created work belongs to all of them, together and in the same way

Copyright (Autorské právo)

- inception of copyright (§9) – how it comes to existence
  - at the moment when the work is expressed in any perceptible form
  - does not vanish when the work is destroyed
- content of copyright (§10)
  - exclusive moral rights (§ 11)
  - exclusive economic rights (§12)

Conditions for copyright protection

- the author's work is protected automatically, without requiring any formal conditions
- but still: the simplest way to prove the creation of the work is to present its existence publicly
- so-called copyright notice - irrelevant in the Czech legal system
- copy bans - irrelevant too

Moral rights

- decision about publishing the work
- possess the authorship (and whether and how it should be mentioned)
- work intangibility (the right to allow making any changes)
- autor's control (the work cannot be used in a way that decreases its value)
- the right to withdraw from a contract
- the author cannot get rid of the moral rights, nor transfer them to someone else
- moral rights disappear after the author's death

Economic rights

- the author has the right to use the work, and to give someone else the right to use it
- the rights to use the work
  - the right to make copies
  - the right to distribute/leasing/loaning the original or its copies
  - the right to present the work publicly
- economic rights, unless stated otherwise, disappear 70 years after author's death (then comparable to the Anglo-American notion of Public Domain)

Free use (1)

- personal use without any direct or indirect economic profit, is not considered as using the work (and hence cannot be prohibited)
- creating a copy of the work for personal needs does not violate author's rights
- however, using a software for personal needs is considered using the software, and hence is restricted

Free use (2) - citation

- author's rights is not violated by a person which
  - uses excerpts – in justifiable extent – from published works, in his/her own work
  - uses excerpts or small works for review purposes
  - uses a work for illustration purposes during teaching, or during scientific research which is not aimed at direct or indirect economic profit
- still, the name of the author must be mentioned in all cases

Free use (2) – Official and reporting license

- official and reporting license
  - using a work for public security purposes or in a trial...
  - using a work in current affair news
- library license
  - in the case of libraries, archives, muzeums, galleries, schools, universities and other non-profit educational organizations
  - making a copy not aimed at direct or indirect economic profit
  - lending originals or copies of defended diploma, dissertation or habilitation theses
- disabled persons

License agreement
as defined by the Czech Civil Code

License agreement

- license agreement originally defined in the Copyright Act too
- in 2014 moved to the Civil Code (Občanský zákoník), in analogy to other types of agreements

License agreement

- the author grants the acquirer the right to exercise the right to use the work via the license agreement
- unless stated otherwise, the acquirer commits himself/herself to provide the author a reward
- the license can be exclusive or non-exclusive
- the license can be limited to certain types of using the work
- unless agreed otherwise, the acquirer is not allowed to modify the work, its title or author's designation
- the author can withdraw from the contract if it starts violating his/her conviction, but then he/she is obliged to compensate caused losses

Formal content of license agreements

- in written or oral form
- license provider and license acquirer (user)
- work specification
- other required information:
  - way of use (restricted/unrestricted)
  - extent of use (territory, duration, amount)
  - agreed reward for providing the license
- the Copyright Act resolves situations in which some required-information bits are missing

License-less usage

- the author died more than 70 years ago
- personal use
- free-of-charge use granted by the law

Employee work

- unless agreed otherwise, the employer holds the economic rights
- author's moral rights remain unchanged
- computer programs and databases are considered as employee work, even if created not within the employer-employee relation

Selected open licenses for software and data

"Freedom scale"

- open licenses – a rather vague notion, meaning that there are few or no restrictions on how a work can be used, compared to proprietary licenses
- proprietary licenses $<$ copyleft licenses $<$ permissive licenses $<$ public-domain-equivalent licenses
- (the scale is highly simplified, there are multiple dimensions of freedoms, not a total ordering)
- public domain might be legally problematic in some jurisdictions

Two main approaches to “openness”

- copyleft licenses
  - use the copyright law to allow using a work, modifying it and distributing it further...
  - ...but also to enforce that the identical rights rights must be preserved for further users
  - examples: GPL, CC-BY-SA
  - some business companies find copyleft scary because of its “viral” nature
- permissive licenses
  - allow to use, modify, and distribute...
  - non-copyleft
  - examples: BSD, MIT, CC-BY

Data vs. Software

- free software movement – longer tradition, more license types exist (GPL, BSD, MIT, ...)
- more recently – attention paid to freer licensing of non-software too (CC, ODC)
- most license types not applicable to both – e.g. the notion of source code is crucial for software, but irrelevant for data

4 software freedoms

as defined by Free Software Foundation:

- freedom to run
- freedom to read and modify
- freedom to redistribute
- freedom to distribute modified versions

Examples of software licenses

- GPL (copyleft)
- BSD (permissive)
- MIT (permissive)
- Apache (permissive)

GNU General Public License

- free software movement (freedom to use/share/change a software)
- the most popular example of **copyleft** license
- "copyleft"
  - a pun - copyleft is in a sense an opposite of copyright
  - but in fact it relies on copyright law, as it grants the author the right to restrict the ways how other users can use his work
  - in the case of GPL, the author allows anyone doing anything with the work, with a special limitation: if the work or a derived work is distributed further, it must be distributed under GPL

GPL myths

- GPL implies non-commercial
  - No. There are no restriction on charging GPL software.
  - However, one has to find special business models, since anyone else can distribute it further for free.
- GPL is viral
  - Well, yes, in a way. If you include a GPL library into your program, the whole thing can be distributed only under GPL.
  - However, there are ways to escape from it (e.g. you can separate your program processes, or use LGPL)
- You have to distribute your modifications of a GPL software.
  - No! You can create and use modifications and you don't have to distribute anything...
  - but if you start distributing a compiled modification, then the user has the right to get its source code too.

BSD licenses

- (BSD = Berkeley Software Distribution, a unix-like operating system)
- a family of permissive free software licenses
- permissive, minimal requirements
- several versions
- the original 4-clause license - four simple requirements

MIT license

- created at the Massachusetts Institute of Technology
- gives users permission to reuse code for any purpose
- as long as users include the original copy of the MIT license in their distribution ("... this permission notice shall be included in all copies..."), they can make any changes or modifications

Apache 2.0 license

- Apache Software Foundation
- it allows users to use the software for any purpose, to distribute it, to modify it, and to distribute modified versions of the software under the terms of the license

Creative Commons

- a set of several pre-fabricated licenses, intended to simplify licensing in usual situations
- each license from this set is a combination of four basic features:
  - Attribution (BY) - the author has to be mentioned
  - Non-commercial (NC) - can be used only for non-commercial purposes
  - No derivative works (ND) - no modifications allowed
  - Share alike (SA) - derived works can be distributed further only under the same CC license

Creative Commons, cont.

- only 6 supported combinations (out of 2^4), since BY is always present, and ND cannot be combined with SA:
  - CC BY
  - CC BY-ND
  - CC BY-NC-SA
  - CC BY-SA
  - CC BY-NC
  - CC BY-NC-ND

CC0

- yet another CC license
- “No Rights Reserved” - opt out of author’s right protection
- considered as placing a work into the “public domain”, in which anyone can use any work for any purpose
- legally problematic (if not impossible) in the Czech Republic – you are simply not allowed to waive your own moral rights, and they will remain protected regardless of your opinion.

Open Data Commons

- open data - a similar motivation to that of the open source movement
- ODC - for databases and similar datasets
- similarly to the licensing system of CC, ODC offers a few license variants:
  - The Open Data Commons Attribution License (ODC-By) – only attribution
    - enables you to provide your work for copying, distribution and use, to produce works from it and to modify, transform and build upon it for any purpose
    - provide a notice to the original work if additional content is generated during this reuse
  - The Open Data Commons Open Database License (ODbL) = attribution + share-alike
    - Derived databases from the original can be re-licensed with a compatible license only (hence "viral", analogy to copyleft)
    - and one more special condition (TODO)
  - Open Data Commons Public Domain Dedication and License (PDDL) – data dedicated to the public domain

How to choose a license?

a recommendation adopted from
https://wiki.openmod-initiative.org/wiki/Choosing_a_license

	Code	Data	Documentation
Copyleft	GPL, (AGPL)	ODbL	CC BY SA
Permissive	ISC, MIT, BSD, Apache [1]	CC BY, ODC-By	CC BY
Public domain	not recommended	PDDL, CC0	CC0

Of course, as an author you are free to use any other license too, or even write up your own proprietary license (actually it is not that difficult), as long as it conforms to the Copyright Act and the Civil Code.

Four model situations
in the ÚFAL environment

Model situation 1 - a lecturer at ÚFAL

Situation: you are a lecturer at the university, you find a piece of material which you would like to include into your lecture as an illustration, but there's an explicit copyright notice on it prohibiting it ("No part of this book may be reproduced in any form...")

- Don't worry and go use it!
- According to the Copyright Act, you are allowed to, as long as you have no economic profit from using it. § 31 (1) c)
- But you must mention the author's name and information source, if possible.
- Copyright notices are irrelevant, though they appear everywhere. It is the law who decides in this case, not the author's or publisher's wish.

Model situation 2 - a researcher at ÚFAL

Situation: you find an interesting piece of information/data which you would like to use for your research

- Again, you are allowed to use it, but only within the limits needed for the research, the research must non-commercial, and you must cite the author.

Model situation 3 - a student at ÚFAL

Situation: you are a student, you have created a piece of software or data as a part of your study obligations, and you want to distribute further

- a school work, § 35
- you are the holder of economic rights, so it's you who makes the decision about licensing
- but the university has the right to use it internally and for non-profit purposes

Model situation 3 - a student's teacher/supervisor

Situation: your student creates something useful and interesting, and you would like to use it. Consequence of the previous slide:

- Be nice to him/her. If the student does not indicate some specific license for his software, the school has no default right to distribute the software further.
- Ideally, ask the student to publish the work under some permissive license.

Model situation 4 - an employee at ÚFAL

Situation: you are an employee, you have created a piece of software as a part of your job, and you would like to distribute further yourself

- unless stated differently in your contract, it is the employer who holds the economic rights for your works
- so it is the university who decides about licensing your work, not you
- my opinion: in theory, it should be the rector's office who should issue the licenses (obviously intractable)
- widely tolerated: university employees publish their works as open source (no one complained about TrEd which is published since about 2000)
- ways of distribution of your work might be made explicit in grant contracts (e.g. a specific license might be required for publishing all grant outcomes)

Summary

- licensing must conform to the authors' rights implementation in law (the law gives the author/copyright holder the right to specify the license)
- continental Europe view of authors' rights: moral vs. economic rights dichotomy
- license agreement – a legal contract between the author and the user
- freedom scale: proprietary licenses $<$ copyleft licenses $<$ permissive licenses ($<$ public domain)
- examples of licenses focused primarily on source codes: GPL, BSD, MIT, Apache
- examples of licenses applicable on data: CC, ODC

Many undiscussed non-trivial topics remain

- license compatibility
- business models applicable with copyleft and permissive licenses
- software patents
- territoriality collisions (e.g. what if coauthors live in different countries?)
- collisions or personal roles (e.g. what if a work was created by a PhD student who is employed by the university at the same time too?)
- as usual in law, be ready to receive three different answers if you consult two different lawyers :-)