Annex

Annex I: The interface of designs and copyright under Russian law[*]

Under Russian Law, works of applied art can be protected both under copyright and design patents.[383] There seems to be no single filtering requirement,[384] but the system cannot be characterized as one of full cumulation.[385] Pavel Savitsky briefly describes case law as inconsistent; some decisions requiring registration for copyright protection and other relying on a teleological notion of IPRs (right A for x and right B for y) .[386]

The interface between the two types of protection in matters of enforcement was clarified by the Resolution of the Plenum of the Supreme Court.[387] According to paragraph 24 of the Resolution, if the object of the author's rights is registered, **with the consent of the right holder**, as an

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* The translations of the Russian language are the work of Daria Kim, LLM. IP, to whom I express my gratitude not only for that but also for having brought this decision to my attention and elucidating me on several aspects of Russian law.

383 Article 1259 (1) of the Civil Code of the Russian Federation lists works of graphics, design and other works of visual arts as the subject matter of author's rights. The Part IV of the Civil Code of the Russian regulates intellectual property. It came into force as of January 1, 2008. An English unofficial translation can be found on the website of the Federal Service for Intellectual Property (Rospatent) <http://www.rupto.ru/rupto/nfile/3b05468f-4b25-11e1-36f8-9c8e9921fb2c/Civil_Code.pdf.> accessed 29 August 2013.

384 Elaborating on the current criteria see P Savitsky, 'Protection of product appearance in Russia' [2013] EIPR 143, 146.

385 Pursuant to paragraph 1 of Art. 1357 of the Civil Code of the RF, the author of the industrial design has the right to obtain the patent for industrial design. According to paragraph 2 of the same article, the contract for assignment of the right to obtain patent for industrial design has to be concluded in the written form, otherwise it shall be void. There are special rules regarding rights ownership in industrial designs created within employment duties (Art. 1370 of the RF Civil Code) ; under commissioning contract (Art. 1372) and under municipal and government contracts (Art. 1373) .

386 (n 384) 148.

387 The Resolution of the Plenum of the Supreme Court of the Russian Federation and the Supreme Commercial Court of the Russian Federation No. 5/29 of March 26, 2009 "On Certain Questions Arising in Relation to the Enactment of the Fourth Part of the Civil Code of the Russian Federation.".

industrial design, the means of enforcement of the exclusive rights shall depend on the nature of the infringement (emphasis added) .[388]

If cumulation occurs and the plaintiff claims protection from both regimes in the same action one distinction will be drawn. In particular, if the alleged infringer performs actions using the industrial design by means affecting exclusive rights in the industrial design, the plaintiff can only invoke industrial design rights. In case of the violation of exclusive rights in the copyrighted work by means not related to the use of the industrial design, the copyright holder can invoke her exclusive right.

The boundary between acts that only are copyright infringement and not design infringement is very hard to draw and the Resolution provides no guidance in this respect. Even though copyright and design deal with commercial exploitation, the difference might lie in the mass reproduction (design-type infringement) vs. "plagiarism"/isolated copying (copyright-kind) .[389] Even if that is a distinction that might have some bearing in applied arts if we think of copyright in books, music or computer programs it loses its meaning as these works also aim at mass reproduction.[390]

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388 In particular, if the alleged infringer performs actions using the industrial design by means prohibited under Article 1358 of the RF Civil Code, a patent holder can invoke industrial design rights in accordance with Articles 1406, 1407, and 1252 of the RF Civil Code. In case of a violation of exclusive rights in a work as provided under Article 1270 of the RF Civil Code, by means not involving the use of the patented industrial design incorporated in the work at issue, the copyright holder can invoke the rights according to the rules and procedures provided under Articles 1301 and 1252 of the RF Civil Code.

389 This is the criterion used in the United Kingdom but, as noted, there are several criteria used to make the distinction between the two areas, such as artistic nature, artistic merit, form of reproduction, etc. Reasoning on a similar basis see A Quaedvlieg, 'Concurrence and Convergence in Industrial Design: 3-Dimensional Shapes Excluded by Trademark Law' in W Grosheide and J Brinkhof (eds) , *Articles on Crossing Borders Borders between traditional and actual Intellectual Property Law* (Intersentia 2004) 23, 39 ("the character of the work and the mode of exploitation") .

390 S. 52 CDPA and The Copyright (Industrial Process and Excluded Articles) (No. 2) Order 1989 (providing: "An article is to be regarded for the purposes of section 52 of the Act (...) as made by an industrial process ift is one of more than fifty articles") . Precisely because of such objection the Order excludes "printed matter primarily of a literary or artistic character, including book jackets, calendars, certificates, coupons, dress-making patterns, greetings cards, labels, leaflets, maps, plans, playing cards, postcards, stamps, trade advertisements, trade forms and cards, transfers and similar articles.".

Design law scope is wider than copyright, as its protection is objective, there is no need to prove copying.[391] There are, nonetheless, certain actions covered by copyright and not by design law.[392] For instance, most copyright laws, including Russian law, establish moral rights[393] that give the author[394] certain powers and prerogatives. Moreover, the reproduction of a 3-d design in two dimensions is clear copyright infringement, whereas it constitutes a debatable issue in the case of designs.[395]

What seems to result from the Resolution is: in the overlapping area design patents prevail. But that prevalence does not preempt copyright in the design because there are other areas where there is no overlap. And in those areas copyright exists and might act without being hindered by design law.

The Resolution is silent in the matter of exceptions but they seem to have to be considered only in the context of the applicable regime. If the infringement is characterized as "design-type" and is later excused under a certain design specific defence, it does not seem possible for the owner to claim copyright additionally.

This constitutes an example of prevalence.[396] The Resolution of the Plenum of the Russian Supreme Court does not address directly the ownership problem but mentions the consent of the right holder. As the applicant for a design patent needs not to prove entitlement[397] this does not filter legitimacy of ownership. It is also not clear what are the consequences of a

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391 Art. 1229 of the RF Civil Code defines exclusive rights for all types of intellectual property. To compare the scope of exclusive rights in artistic works and industrial designs, see Articles 1270 and 1358 of the RF Civil Code.

392 P Savitsky, (n 384) 144.

393 Russian law follows the European continental *droit d' auteur* tradition and provides for moral rights. Like the CDR, Russian law has a paternity right, i.e., the right to be recognized as the author of the invention, utility model and industrial design for the designer. This right cannot be assigned/transferred. (See Art. 1356 of the RF Civil Code) .

394 Or her successor in title in the rare countries where assignment of moral rights is possible.

395 See the decision of the BGH *Deutschebahn v Fraunhofer* with a favourable annotation by H Hartwig [2011] GRUR 1117.

396 See **III.B.2**.

397 According to the paragraph 5.1. of the Administrative regulation of the Federal Service for Intellectual Property, Patents and Trademarks regarding application, examination and granting patents of the Russian Federation for industrial designs (Annex to the Order of the Ministry of Education and Science of the Russian Federation of October 29, 2008 No. 325) , the applicant does not need to provide a document proving the right to obtain the patent.

registration without the consent of the right owner. Most likely he will be able to claim entitlement to the design patent, pursuant to art. 1357(1) Civil Code of the RF.

Annex II: Selected Legislative Provisions

The provisions presented are those cited in the text and which are not of usual access. Therefore international treaties, directives and regulations in force are not shown. Unless otherwise noted the translation are the author's responsibility.

UK Copyright, Designs and Patents Act 1988

9 Authorship of work.

(1) In this Part "author", in relation to a work, means the person who creates it.
(2) That person shall be taken to be—
(aa) in the case of a sound recording, the producer;
(ab) in the case of a film, the producer and the principal director;
(b) in the case of a broadcast, the person making the broadcast (see section 6(3)) or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast;
(c) ……..
(d) in the case of the typographical arrangement of a published edition, the publisher.
(3) In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.
(…)

10 Works of joint authorship.

(1) In this Part a "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.

(1A) A film shall be treated as a work of joint authorship unless the producer and the principal director are the same person.
(2) A broadcast shall be treated as a work of joint authorship in any case where more than one person is to be taken as making the broadcast (see section 6(3)) .
(3) References in this Part to the author of a work shall, except as otherwise provided, be construed in relation to a work of joint authorship as references to all the authors of the work.

11 First ownership of copyright.

(1) The author of a work is the first owner of any copyright in it, subject to the following provisions.
(2) Where a literary, dramatic, musical or artistic work or a film, is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.
(3) This section does not apply to Crown copyright or Parliamentary copyright (see sections 163 and 165) or to copyright which subsists by virtue of section 168 (copyright of certain international organisations) .
(…)

51 Design documents and models.

(1) It is not an infringement of any copyright in a design document or model recording or embodying a design for anything other than an artistic work or a typeface to make an article to the design or to copy an article made to the design.
(2) Nor is it an infringement of the copyright to issue to the public, or include in a film or communicate to the public, anything the making of which was, by virtue of subsection (1) , not an infringement of that copyright.
(3) In this section—
"design" means the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article, other than surface decoration; and
"design document" means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise.

52 Effect of exploitation of design derived from artistic work.

(1) This section applies where an artistic work has been exploited, by or with the licence of the copyright owner, by—

(a) making by an industrial process articles falling to be treated for the purposes of this Part as copies of the work, and
(b) marketing such articles, in the United Kingdom or elsewhere.
(2) After the end of the period of 25 years from the end of the calendar year in which such articles are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.
(3) Where only part of an artistic work is exploited as mentioned in subsection (1) , subsection (2) applies only in relation to that part.
(4) The Secretary of State may by order make provision—
(a) as to the circumstances in which an article, or any description of article, is to be regarded for the purposes of this section as made by an industrial process;
(b) excluding from the operation of this section such articles of a primarily literary or artistic character as he thinks fit.
(5) An order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
(6) In this section—
(a) references to articles do not include films; and
(b) references to the marketing of an article are to its being sold or let for hire or offered or exposed for sale or hire.
(…)

173 Construction of references to copyright owner.

(1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Part is the person who is entitled to the aspect of copyright relevant for that purpose.
(2) Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in this Part to the copyright owner are to all the owners, so that, in particular, any requirement of the licence of the copyright owner requires the licence of all of them.

The Copyright (Industrial Process and Excluded Articles) (No. 2) Order 1989

(…)
2. An article is to be regarded for the purposes of section 52 of the Act (limitation of copyright protection for design derived from artistic work) as made by an industrial process if—
(a) it is one of more than fifty articles which—
(i) all fall to be treated for the purposes of Part I of the Act as copies of a particular artistic work, but
(ii) do not all together constitute a single set of articles as defined in section 44(1) of the Registered Designs Act 1949; or
(b) it consists of goods manufactured in lengths or pieces, not being hand-made goods.
3.—(1) There are excluded from the operation of section 52 of the Act—
(a) works of sculpture, other than casts or models used or intended to be used as models or patterns to be multiplied by any industrial process;
(b) wall plaques, medals and medallions; and
(c) printed matter primarily of a literary or artistic character, including book jackets, calendars, certificates, coupons, dress-making patterns, greetings cards, labels, leaflets, maps, plans, playing cards, postcards, stamps, trade advertisements, trade forms and cards, transfers and similar articles.
(2) Nothing in article 2 of this Order shall be taken to limit the meaning of "industrial process" in paragraph (1) (a) of this article.

Ireland Copyright and Related Rights Act, 2000

23.—(1) The author of a work shall be the first owner of the copyright unless —
(a) the work is made by an employee in the course of employment, in which case the employer is the first owner of any copyright in the work, subject to any agreement to the contrary,
(b) the work is the subject of Government or Oireachtas copyright,
(c) the work is the subject of the copyright of a prescribed international organisation, or
(d) the copyright in the work is conferred on some other person by an enactment.

(2) Where a work, other than a computer program, is made by an author in the course of employment by the proprietor of a newspaper or periodical, the author may use the work for any purpose, other than for the purposes of making available that work to newspapers or periodicals, without infringing the copyright in the work.

Austrian Copyright Act

§ 10. (1) Urheber eines Werkes ist, wer es geschaffen hat. (…)	**Section 10.** (1) The author of the work is the person who created it. (…)
Miturheber. **§ 11.** (1) Haben mehrere gemeinsam ein Werk geschaffen, bei dem die Ergebnisse ihres Schaffens eine untrennbare Einheit bilden, so steht das Urheberrecht allen Miturhebern gemeinschaftlich zu.	**Co-authors** **Section 11.** (1) When more than one person has created a work so that the result constitutes and indivisible unity, copyright belongs jointly to all co-authors.
(2) Jeder Miturheber ist für sich berechtigt, Verletzungen des Urheberrechtes gerichtlich zu verfolgen. Zu einer Änderung oder Verwertung des Werkes bedarf es des Einverständnisses aller Miturheber. Verweigert ein Miturheber seine Einwilligung ohne ausreichenden Grund, so kann ihn jeder andere Miturheber auf deren Erteilung klagen. (…)	(2) Each co-author can by himself enforce the copyright. To modify or exploit the work the consent of all co-authors is required. In case of denial without sufficient reasons, each co-author can sue the remainder for consent. (…)
(3) Die Verbindung von Werken verschiedener Art – wie die eines Werkes der Tonkunst mit einem Sprachwerk oder einem Filmwerk – begründet an sich keine Miturheberschaft. (…)	(3) The combination of works of a different type – like a work of music with a literary work or a film – does not imply co-authorship. (…)

Übertragung des Urheberrechtes. **§ 23.** (1) Das Urheberrecht ist vererblich; in Erfüllung einer auf den Todesfall getroffenen Anordnung kann es auch auf Sondernachfolger übertragen werden. (…)	**Transfer of Copyright** **Section 23.** (1) Copyright is hereditable; it can also be transferred by special testamentary disposition. (…)
(3) Im übrigen ist das Urheberrecht unübertragbar.	(3) Otherwise, copyright is unassignable.
(4) Geht das Urheberrecht auf mehrere Personen über, so sind auf sie die für Miturheber (§ 11) geltenden Vorschriften entsprechend anzuwenden.	(4) If the copyright is transferred to more than one person, the rules regarding co-authorship are applicable with the necessary adaptions.

German Copyright Act[398]

§ 7 Urheber Urheber ist der Schöpfer des Werkes.	**Section 7 Author** The author is the creator of the work.
§ 8 Miturheber (1) Haben mehrere ein Werk gemeinsam geschaffen, ohne daß sich ihre Anteile gesondert verwerten lassen, so sind sie Miturheber des Werkes.	**Section 8 Joint authors** (1) If several persons have jointly created a work that is not seperatley (individually) exploitable, they are joint authors of the work.
(2) Das Recht zur Veröffentlichung und zur Verwertung des Werkes steht den Miturhebern zur gesamten Hand zu; Änderungen des Werkes sind nur mit Einwilligung der Miturheber zulässig. Ein Miturheber darf jedoch seine Einwilligung zur Veröffentlichung, Verwertung oder Änderung nicht wider Treu und Glauben verweigern. Jeder Miturheber ist berechtigt, Ansprüche aus Verletzungen des gemeinsamen	(2) The right of publication and of exploitation of the work is owned jointly by the joint authors; alterations to the work shall be permissible only with the consent of the joint authors. However, a joint author may not refuse his consent to publication, exploitation or alteration contrary to the principles of good faith. Each joint author shall be entitled to assert claims arising from violations of the joint copyright; he may, however,

398 A translation by Ute Reusch can be found at http://www.gesetze-im-internet.de/englisch_urhg/index.html. The translation provided here is however mine.

Urheberrechts geltend zu machen; er kann jedoch nur Leistung an alle Miturheber verlangen.	demand performance only to all of the joint authors.
(3) Die Erträgnisse aus der Nutzung des Werkes gebühren den Miturhebern nach dem Umfang ihrer Mitwirkung an der Schöpfung des Werkes, wenn nichts anderes zwischen den Miturhebern vereinbart ist.	(3) Profits resulting from the use of the work are due to the joint authors in accordance to the extent of their involvement in the creation of the work, unless otherwise agreed between the joint authors.
(4) Ein Miturheber kann auf seinen Anteil an den Verwertungsrechten (§ 15) verzichten. Der Verzicht ist den anderen Miturhebern gegenüber zu erklären. Mit der Erklärung wächst der Anteil den anderen Miturhebern zu.	(4) A joint author may waive his share of the exploitation rights (Article 15) . He shall make a declaration of waiver to the other joint authors. Upon his declaration his share shall accrue.
§ 9 Urheber verbundener Werke Haben mehrere Urheber ihre Werke zu gemeinsamer Verwertung miteinander verbunden, so kann jeder vom anderen die Einwilligung zur Veröffentlichung, Verwertung und Änderung der verbundenen Werke verlangen, wenn die Einwilligung dem anderen nach Treu und Glauben zuzumuten ist.	**Section 9 Authors of connected works** Where several authors have combined their works for the purpose of joint exploitation, each may require the consent of the others to the publication, exploitation or alteration of the compound works if the consent of the others may be reasonably expected in good faith.
§ 29 Rechtsgeschäfte über das Urheberrecht (1) Das Urheberrecht ist nicht übertragbar, es sei denn, es wird in Erfüllung einer Verfügung von Todes wegen oder an Miterben im Wege der Erbauseinandersetzung übertragen. (…)	**Section 29 Transactions regarding copyright** (1) Copyright is not assignable unless in execution of a testamentary disposition or to co-heirs as part of the partition of an estate. (…)
§ 31 Einräumung von Nutzungsrechten Entsprechendes gilt für die Frage, ob ein Nutzungsrecht eingeräumt wird, ob es sich um ein einfaches oder ausschließliches Nutzungsrecht handelt, wie weit Nutzungsrecht und Verbotsrecht reichen und welchen	**Section 31 Grant of exploitation rights** corresponding rule shall apply to the questions of whether an exploitation right has in fact been granted, whether it shall be a non-exclusive or an exclusive exploitation right, how far the exploitation right and the right to forbid extent, and to what limitations the exploitation right shall be subject.

Einschränkungen das Nutzungsrecht unterliegt.	
§ 43 Urheber in Arbeits- oder Dienstverhältnissen Die Vorschriften dieses Unterabschnitts sind auch anzuwenden, wenn der Urheber das Werk in Erfüllung seiner Verpflichtungen aus einem Arbeits- oder Dienstverhältnis geschaffen hat, soweit sich aus dem Inhalt oder dem Wesen des Arbeits- oder Dienstverhältnisses nichts anderes ergibt.	**Section 43 Authors in employment or service relation** The provisions of this Subsection are applicable if the author has created the work in the fulfilment of duties resulting from an employment or service relationship, unless it results otherwise from the terms or nature of the employment or service relationship.
§ 69b Urheber in Arbeits- und Dienstverhältnissen (1) Wird ein Computerprogramm von einem Arbeitnehmer in Wahrnehmung seiner Aufgaben oder nach den Anweisungen seines Arbeitgebers geschaffen, so ist ausschließlich der Arbeitgeber zur Ausübung aller vermögensrechtlichen Befugnisse an dem Computerprogramm berechtigt, sofern nichts anderes vereinbart ist.	**Article 69b Authors in employment or service relation** (1) If a computer program is created by an employee in the execution of his duties or following instructions by his employer, the employer is exclusively entitled to exercise all economic rights in the computer program, unless otherwise agreed.
(2) Absatz 1 ist auf Dienstverhältnisse entsprechend anzuwenden. (…)	(2) Paragraph (1) applies mutatis mutandis to service relationships. (…)
(5) Sind bei der Einräumung eines Nutzungsrechts die Nutzungsarten nicht ausdrücklich einzeln bezeichnet, so bestimmt sich nach dem von beiden Partnern zugrunde gelegten Vertragszweck, auf welche Nutzungsarten es sich erstreckt.	(5) If the types of exploitation have not been specifically designated when an exploitation right was granted, the types of use to which the right extends shall be determined in accordance with the purpose envisaged by both parties to the contract. A

French Intellectual Property Code

Article L111-1 L'auteur d'une oeuvre de l'esprit jouit sur cette oeuvre, du seul fait de sa création, d'un droit de propriété incorporelle exclusif et opposable à tous. Ce droit comporte des attributs d'ordre intellectuel et moral ainsi que des attributs d'ordre patrimonial, qui sont déterminés par les livres Ier et III du présent code. L'existence ou la conclusion d'un contrat de louage d'ouvrage ou de service par l'auteur d'une oeuvre de l'esprit n'emporte pas dérogation à la jouissance du droit reconnu par le premier alinéa, sous réserve des exceptions prévues par le présent code. Sous les mêmes réserves, il n'est pas non plus dérogé à la jouissance de ce même droit lorsque l'auteur de l'oeuvre de l'esprit est un agent de l'Etat, d'une collectivité territoriale, d'un établissement public à caractère administratif, d'une autorité administrative indépendante dotée de la personnalité morale ou de la Banque de France. (…)	**L-111-1** The author of an intellectual work enjoys, by the mere fact of its creation, a right of intellectual property exclusive and opposable to everyone. That right comprises attributes of moral and intellectual nature as well as the ones of economic nature that are established in the first and third chapters of the present Code. The existence or the signing of a commissioning or labour contract by the author does not imply any derogation of the right recognised in the first paragraph, unless otherwise provided in the code. Under the same conditions that right is also not affected when the author is a State agent or worker of a local entity or a public establishment of administrative nature, of an independent administrative authority with legal personality or the Bank of France. (…)
Article L113-2 Est dite de collaboration l'oeuvre à la création de laquelle ont concouru plusieurs personnes physiques. Est dite composite l'oeuvre nouvelle à laquelle est incorporée une oeuvre préexistante sans la collaboration de l'auteur de cette dernière. Est dite collective l'oeuvre créée sur l'initiative d'une personne physique ou morale qui l'édite, la publie et la divulgue sous sa direction et son nom et dans laquelle la contribution personnelle	**L – 113-2** The work in whose creation several natural persons took part is called a collaborative work. The new work which incorporates a previous work without the collaboration of the author of the former is called a composite work. The work created by the initiative of a legal or natural person that edits it, publishes it and discloses it under its direction and name and in which the personal contributions of the several

des divers auteurs participant à son élaboration se fond dans l'ensemble en vue duquel elle est conçue, sans qu'il soit possible d'attribuer à chacun d'eux un droit distinct sur l'ensemble réalisé.	authors that took part in its elaboration is merged in a unity without being possible to attribute each of them a distinct right on the unity created is called a collective work.
Article L113-3 L'oeuvre de collaboration est la propriété commune des coauteurs. Les coauteurs doivent exercer leurs droits d'un commun accord. En cas de désaccord, il appartient à la juridiction civile de statuer. Lorsque la participation de chacun des coauteurs relève de genres différents, chacun peut, sauf convention contraire, exploiter séparément sa contribution personnelle, sans toutefois porter préjudice à l'exploitation de l'oeuvre commune	**L-113-3** The collaborative work is common property of the co-authors. The co-authors must exercise their rights in mutual agreement. In case of disagreement, civil court shall rule. When the contributions of each of the co-authors belongs to different genres, each of them can, unless otherwise agreed, exploit his contribution separately, without however harming the exploitation of the common work
Article L113-4 L'oeuvre composite est la propriété de l'auteur qui l'a réalisée, sous réserve des droits de l'auteur de l'oeuvre préexistante.	**L 113-4** The composite work belongs to the author that has created it, without prejudice to the rights of the author of the previous work.
Article L113-5 L'oeuvre collective est, sauf preuve contraire, la propriété de la personne physique ou morale sous le nom de laquelle elle est divulguée. Cette personne est investie des droits de l'auteur. (…)	**L-113-5** The collective work, unless proven otherwise, belongs to the legal or natural person under the name of which it is disclosed. That person owns the copyright. (…)
Article L132-31 Dans le cas d'une oeuvre de commande utilisée pour la publicité, le contrat entre le producteur et l'auteur entraîne, sauf clause contraire, cession au producteur des droits d'exploitation de l'oeuvre, (…) .	**L-132-31** In the case of a commissioned work used in advertising, the contract between the producer and the author implies, unless otherwise stated, an assignment to the producer of the exploitation of the work (…)

Italian Copyright Act

Art. 2. In particolare sono comprese nella protezione: (10) ***Le opere del disegno industriale che presentino di per sé carattere creativo e valore artistico***.	**Art 2.** Among others are protected by copyright the: (10) works of industrial design that have creative nature and artistic value.
Art. 3. Le opere collettive, costituite dalla riunione di opere o di parti di opere, che hanno carattere di creazione autonoma, come risultato della scelta e del coordinamento ad un determinato fine letterario, scientifico, didattico, religioso, politico od artistico, quali le enciclopedie, i dizionari, le antologie, le riviste e i giornali, sono protette come opere originali indipendentemente e senza pregiudizio dei diritti di autore sulle opere o sulle parti di opere di cui sono composte.	**Art 3** Collective works, resulting from the gathering of works or part of works, that constitute an autonomous creation, as a result of selection and combination in order to achieve a certain literary, scientific, teaching, religious, political or artistic goal, like encyclopaedias, dictionaries, anthologies, magazines and newspapers, are protected as original works independently and without prejudice to the copyright in the elements that constitute it.
Art. 6. Il titolo originario dell'acquisto del diritto di autore è costituito dalla creazione dell'opera, quale particolare espressione del lavoro intellettuale.	**Art. 6** The original title of copyright is acquired by the creation of the work as a particular expression of intellectual labour.
Art. 7. È considerato autore dell'opera collettiva chi organizza e dirige la creazione dell'opera stessa. (…)	**Art. 7** It is considered the author of a collective work the one who organizes and directs its creation. (…)
Art. 10. Se l'opera è stata creata con il contributo indistinguibile ed inscindibile di più persone, il diritto di autore appartiene in comune a tutti i coautori. Le parti indivise si presumono di valore eguale, salvo la prova per iscritto di diverso accordo.	**Art. 10** If the work has been created with the indistinguishable and indivisible contributions of several persons, the copyright is owned jointly by all co-authors. The undivided parts are presumed to be of equal value, unless otherwise agreed in writing.

Sono applicabili le disposizioni che regolano la comunione. La difesa del diritto morale può peraltro essere sempre esercitata individualmente da ciascun coautore e l'opera non può essere pubblicata, se inedita, né può essere modificata o utilizzata in forma diversa da quella della prima pubblicazione, senza l'accordo di tutti i coautori. Tuttavia in caso di ingiustificato rifiuto di uno o più coautori, la pubblicazione, la modificazione o la nuova utilizzazione dell'opera può essere autorizzata dall'autorità giudiziaria, alle condizioni e con le modalità da essa stabilite.	The rules that regulate co-ownership are applicable. Each author can always exercise his moral rights individually and the work cannot be published, if unpublished, cannot be modified or used in a different way than the one according to which it was in its first publication, without the agreement of all the co-authors. However, in case of unjustified refusal by one or more co-authors, the publication, modification or new use of the work can be authorized by the judicial authorities and used accordingly.
Art. 11. Alle amministrazioni dello Stato, alle Province ed ai Comuni, spetta il diritto di autore sulle opere create e pubblicate sotto il loro nome ed a loro conto e spese. Lo stesso diritto spetta agli enti privati che non perseguano scopi di lucro, salvo diverso accordo con gli autori delle opere pubblicate, nonché alle accademie e agli altri enti pubblici culturali sulla raccolta dei loro atti e sulle loro pubblicazioni.	**Art. 11** All the State administrations, provinces and communes own the copyright in the works created and published on their behalf and at their expenses. The same applies to the not for profit private entities, unless otherwise agreed with the authors of the published works, and to all universities and other public cultural entities on the collections of their proceedings and publications
Art. 12bis. Salvo patto contrario, il datore di lavoro è titolare del diritto esclusivo di utilizzazione economica del programma per elaboratore o della banca di dati creati dal lavoratore dipendente nell'esecuzione delle sue mansioni o su istruzioni impartite dallo stesso datore di lavoro. (…)	**Art 12bis** Unless otherwise agreed, the employer is the owner of an exclusive right of economic use of the computer programs and the databases created by his employee in the context of his employment, according to instructions given by the employer. (…)
Art. 34. L'esercizio dei diritti di utilizzazione economica spetta all'autore della parte	**Art. 34** The exercise of the right of economic use belongs to the author of the musical

musicale, salvi tra le parti i diritti derivanti dalla comunione.
Il profitto della utilizzazione economica è ripartito in proporzione del valore del rispettivo contributo letterario o musicale.
Nelle opere liriche si considera che il valore della parte musicale rappresenti la frazione di tre quarti del valore complessivo dell'opera.
Nelle operette, nei melologhi, nelle composizioni musicali con parole, nei balli e balletti musicali, il valore dei due contributi si considera uguale.
Ciascuno dei collaboratori ha diritto di utilizzare separatamente e indipendentemente la propria opera, salvo il disposto degli articoli seguenti.
(…)

part, except for the rights arising out of the joint ownership between the parties.
The profits of the economic use are shared according to the value of the literary and musical contribution.
In the lyrical works the contribution of the musical part is considered to be three quarters of the overall value of the work.
In the *operette*, melologues, musical compositions with words, balls and musical ballets, the value of the two contributions is considered the same.
Any of the contributors has the right to use his own work separately and independently, except in the cases provided in the following article.
(…)

Art. 37.
Nelle opere coreografiche o pantomimiche e nelle altre composte di musica, di parole o di danze o di mimica, quali le riviste musicali ed opere simili, in cui la parte musicale non ha funzione o valore principale, l'esercizio dei diritti di utilizzazione economica, salvo patto contrario, spetta all'autore della parte coreografica o pantomimica, e, nelle riviste musicali, all'autore della parte letteraria.
(…)

Art. 37.
In the choreographic or pantomimic works and in other works which have music, words or dance, like the revue and similar works, in which the music does not have the main function or value, the exercise of the rights of economic use, unless otherwise agreed, belong to the author of the choreographic or pantomimic part and, in the musical revue, to the author of the literary part.
(…)

Sezione II
Opere collettive, riviste e giornali
Art. 38.
Nell'opera collettiva, salvo patto in contrario, il diritto di utilizzazione economica spetta all'editore dell'opera stessa, senza pregiudizio del diritto derivante dall'applicazione dell'art. 7.
Ai singoli collaboratori dell'opera collettiva è riservato il diritto di

Section II
Collective works, magazines and newspapers
Art. 38.
In the collective work, unless otherwise agreed, the right of economic use belongs to the editor of the work, without prejudice to the right resulting from article 7.

utilizzare la propria opera separatamente, con la osservanza dei patti convenuti e, in difetto, delle norme seguenti.	The contributors to the collective work retain the right to use their own work separately, in accordance to what has been established and, in absence of agreement, according to the following rules.

Portuguese Copyright Act

SECÇÃO II **Da atribuição do direito de autor** **Artigo 11.º** **Titularidade** O direito de autor pertence ao criador intelectual da obra, salvo disposição expressa em contrário.	**Section II** **Of copyright ownership** **Art 11** **Ownership** Copyright belongs to the intellectual creator of the work, unless otherwise stated.
Artigo 13.º **Obra subsidiada** Aquele que subsidie ou financie por qualquer forma, total ou parcialmente, a preparação, conclusão, divulgação ou publicação de uma obra não adquire por esse facto sobre esta, salvo convenção escrita em contrário, qualquer dos poderes incluídos no direito de autor.	**Art 13** **Subsidized work** Whoever pays or subsidizes in any way, totally or partially, the preparation, conclusion, disclosure or publication of a work does not, by that reason, unless agreement in writing to the contrary, any copyright.
Artigo 14.º **Determinação da titularidade em casos excepcionais** 1 – Sem prejuízo do disposto no artigo 174.º, a titularidade do direito de autor relativo a obra feita por encomenda ou por conta de outrem, quer em cumprimento de dever funcional quer de contrato de trabalho, determina-se de harmonia com o que tiver sido convencionado. 2 – Na falta de convenção, presume-se que a titularidade do direito de autor relativo a obra feita por conta de outrem pertence ao seu criador intelectual.	**Art. 14** **Determining ownership in exceptional cases** 1 – Without prejudice to article 174, the ownership of copyright either in a commissioned work or a work created in fulfilment of duties arising out of a labour contract is to be determined according to what has been established. 2 – In the absence of agreement, it is presumed that the copyright in work created on request belongs to its creator.

3 – A circunstância de o nome do criador da obra não vir mencionado nesta ou não figurar no local destinado para o efeito segundo o uso universal constitui presunção de que o direito de autor fica a pertencer à entidade por conta de quem a obra é feita.	3 – The absence of the name of the creator according to common usage establishes a presumption that the copyright is owned by the entity for whom the work was created.
4 – Ainda quando a titularidade do conteúdo patrimonial do direito de autor pertença àquele para quem a obra é realizada, o seu criador intelectual pode exigir, para além da remuneração ajustada e independentemente do próprio facto da divulgação ou publicação, uma remuneração especial: a) Quando a criação intelectual exceda claramente o desempenho, ainda que zeloso, da função ou tarefa que lhe estava confiada; b) Quando da obra vierem a fazer-se utilizações ou a retirar-se vantagens não incluídas nem previstas na fixação da remuneração ajustada.	4 – Even when the copyright belongs to the entity for whom the work was created, its intellectual creator can demand, on top of the established compensation and independently of disclosure or publication, an equitable remuneration: a) When the intellectual creation clearly exceeds the performance, even if zealous, of the function or task that was attributed to him; b) When out of the work's exploitation result advantages that were not foreseen or predicted in the remuneration established.
Artigo 16.º **Noção de obra feita em colaboração e de obra colectiva** 1 – A obra que for criação de uma pluralidade de pessoas denomina-se: a) Obra feita em colaboração, quando divulgada ou publicada em nome dos colaboradores ou de algum deles, quer possam discriminar-se quer não os contributos individuais; b) Obra colectiva, quando organizada por iniciativa de entidade singular ou colectiva e divulgada ou publicada em seu nome. 2 – A obra de arte aleatória em que a contribuição criativa do ou dos intérpretes se ache originariamente	**Art. 16** **Definition of collaborative work and collective work** 1 – The work created by several people is called: a) Collaborative work, if it has been disclosed or published under the name of the collaborators or one of them, independently of the possibility to differentiate individual contributions: b) Collective work, when organized by the initiative of a singular or collective entity and disclosed or published under its name. 2- The aleatory work, in which the creative contribution of one or several interpreters is predicted is considered a collaborative work.

prevista considera-se obra feita em colaboração.	
Artigo 17.º **Obra feita em colaboração** 1 – O direito de autor de obra feita em colaboração, na sua unidade, pertence a todos os que nela tiverem colaborado, aplicando-se ao exercício comum desse direito as regras de compropriedade. 2 – Salvo estipulação em contrário, que deve ser sempre reduzida a escrito, consideram-se de valor igual às partes indivisas dos autores na obra feita em colaboração. 3 – Se a obra feita em colaboração for divulgada ou publicada apenas em nome de algum ou alguns dos colaboradores, presume-se, na falta de designação explícita dos demais em qualquer parte da obra, que os não designados cederam os seus direitos àquele ou àqueles em nome de quem a divulgação ou publicação é feita. (…)	**Art. 17** **Collaborative work** 1 – The copyright in a collaborative work, in its entirety, belongs to all that took part in its elaboration and the rules on common property are applicable to the common exercise of copyright. 2 – Unless otherwise agreed in writing, the collaborator's contributions are presumed equal. 3 – If the collaborative work is disclosed or published under the name of only one or some of the collaborators it is presumed, unless otherwise stated, that the remainder have given up their rights to the ones under whose name the work is published or disclosed. (…)
Artigo 18.º **Direitos individuais dos autores de obra feita em colaboração** 1 – Qualquer dos autores pode solicitar a divulgação, a publicação, a exploração ou a modificação de obra feita em colaboração, sendo, em caso de divergência, a questão resolvida segundo as regras da boa fé. 2 – Qualquer dos autores pode, sem prejuízo da exploração em comum de obra feita em colaboração, exercer individualmente os direitos relativos à sua contribuição pessoal, quando esta possa discriminar-se.	**Art. 18** **Individual rights of the authors of the collaborative work** 1 – Any of the authors can demand the disclosure, publication, exploitation or modification of the collaborative work and, in case of divergence, the dispute shall be settled according to the rules of good faith. 2 – Any of the authors can, without prejudice to the joint exploitation of the collaborative work, exercise his own individual rights in the contribution inasmuch it is distinguishable.

Artigo 19.º **Obra colectiva** 1 – O direito de autor sobre obra colectiva é atribuído à entidade singular ou colectiva que tiver organizado e dirigido a sua criação e em nome de quem tiver sido divulgada ou publicada. 2 – Se, porém, no conjunto da obra colectiva for possível discriminar a produção pessoal de algum ou alguns colaboradores, aplicar-se-á, relativamente aos direitos sobre essa produção pessoal, o preceituado quanto à obra feita em colaboração. 3 – Os jornais e outras publicações periódicas presumem-se obras colectivas, pertencendo às respectivas empresas o direito de autor sobre as mesmas.	**Art. 19** **Collective work** 1 – The copyright in a collective work is attributed to the natural or legal person that has organized and directed its creation and in whose name it has been disclosed or published. 2 – If, however, in the collective work, it is possible to distinguish the individual contribution of any of the collaborators, the rules on collaborative works are applicable. 3 – Newspapers and other periodic publications are presumed to be collective works, and the copyright on these belongs to the respective companies
Artigo 20.º **Obra compósita** 1 – Considera-se obra compósita aquela em que se incorpora, no todo ou em parte, uma obra preexistente, com autorização, mas sem a colaboração do autor desta. 2 – Ao autor de obra compósita pertencem exclusivamente os direitos relativos à mesma, sem prejuízo dos direitos do autor da obra preexistente.	**Art. 20** **Composite work** 1 – It is considered to be a composite work, that in which a pre-existing work is incorporated with the authorization but without the collaboration of its author. 2 – The author of a composite work is the sole owner of copyright in it, without prejudice to the copyright in the pre-existing work.
Artigo 165.º **Direitos do autor de obra fotográfica** (…) 2 – Se a fotografia for efectuada em execução de um contrato de trabalho ou por encomenda, presume-se que o direito previsto neste artigo pertence à entidade patronal ou à pessoa que fez a encomenda. 3 – Aquele que utilizar para fins comerciais a reprodução fotográfica	**Art 165** **Right of the author of a photographic work** (…) 2 – If the photograph is taken in the context of employment or was commissioned, it is presumed that the copyright is owned by the employer or the commissioner. 3 – The one that uses the photographic work for commercial purposes shall pay the author equitable remuneration.

deve pagar ao autor uma remuneração equitativa.	

Greek Copyright Act[399]

Article 8: Employee – Created Works

Where a work is created by an employee in the execution of an employment contract the initial holder of the economic and moral rights in the work shall be the author of the work. Unless provided otherwise by contract, only such economic rights as are necessary for the fulfilment of the purpose of the contract shall be transferred exclusively to the employer.
The economic right on works created by employees under any work relation of the public sector or a legal entity of public law in execution of their duties is ipso jure transferred to the employer, unless provided otherwise by contract.

Dutch Copyright Act[400]

Article 5

1. If a literary, scientific if artistic work consists of separate works by two or more persons, the person under whose direction and supervision the work as a whole was made or, if there is no such person, the compiler of the various works, is taken to be the maker of the whole work, without prejudice to the copyright in each of the separate works.
2. Where a separate work in which copyright subsists is incorporated in a whole work, the reproduction or communication to the public of any such separate work by any person other that its maker or his successor in title is regarded as infringement of the copyright in the whole work.

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399 Law 2121/1993 Copyright, Related Rights and Cultural Matters (Official Journal A 25 1993) , extracted from the Hellenic Intellectual Property Office's website <http://web.opi.gr/xres/p/EN/web.opi.gr/portal/page/portal/opi/info/law2121.html> Acessed 02 September 2013.

400 This is taken from Mireille Van Eechoud, 'Copyright Act – *Auterswet* Unofficial translation in B Hugenholtz, A Quaedvlieg and D Visser (eds) *A Century of Dutch Copyright Law* (deLex 2012) 505.

3. Unless otherwise agreed between the parties, if such a separate work has not previously been made public, the reproduction or making public of that separate work by its maker or his successor in title is regarded as an infringement of the copyright in the whole work of which it is part.

Article 7

Where labour which is carried out in the service of another consists in the making of certain literary, scientific or artistic works, the person in whose service the works were created is taken to be the maker, unless the parties have agreed otherwise.

Article 8

A public institution, an association, a foundation or a company that makes a work public as its own, without naming any natural person as the maker, is taken to be the maker of that work, unless it is proved that in the circumstances the making public of the work was unlawful.

First Proposal for a Council Directive on the legal protection of databases
COM (92) 24 final, 13 May 1992

Art. 2
(…)
(5) Member States shall provide for a right for the maker of a database to prevent the unauthorized extraction or re-utilization, from that database, of its contents, in whole or in substantial part, for commercial purposes. This right to prevent unfair extraction of the contents of a database shall apply irrespective of the eligibility of that database for protection under copyright. It shall not apply to the contents of a database where these are works already protected by copyright or neighbouring rights.
Art. 3
(…)
(4) Where a database is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all economic rights in the database so created, unless otherwise provided by contract.

European Copyright Code[401]

Art. 2.5 – Works made in the course of employment

Unless otherwise agreed, the economic rights in a work created by the author in the execution of his duties or following instructions given by his employer are deemed to be assigned to the employer.

Art. 2.6 – Works made on commission

Unless otherwise agreed, the use of a work by the commissioner of that work is authorised to the extent necessary to achieve the purposes for which the commission was evidently made.

401 On the project see B Hugenholtz, 'The Wittem Group's European Copyright Code' in T-E Synodinou (ed) , Codification of European Copyright Law (Kluwer Law 2012) 339; J Ginsburg, 'European Copyright Code – Back to First Principles (with Some Additional Detail) ' (2011) Columbia Public Law Research Paper No. 11-261.<http://ssrn.com/abstract=1747148> Acessed 02 September 2013.