

ДОГОВОР АВТОРСКОГО ЗАКАЗА ПО ГРАЖДАНСКОМУ КОДЕКСУ РОССИЙСКОЙ ФЕДЕРАЦИИ

Екатерина Метелкина*

Данная статья посвящена договору авторского заказа в российском законодательстве, его составляющим, а также преимуществам заключения такого договора автором и заказчиком. В статье рассматриваются общие положения данного договора, ответственность и обязательства сторон по договору авторского заказа, равно как и право автора на отчуждение оригинала произведения. В качестве вывода приводятся положительные и отрицательные аспекты такого договора.

In recent years, in the RF there has been an increasing interest in intellectual property and its regulations affected by recent amendments made to Russian intellectual property legislation and legal relationships between the author of the work and his (her) customer. A work for hire agreement is a part and parcel of these relationships [4].

A work for hire agreement is one of the most common mechanisms used by the authors to protect their authorship and the content of the work. But this agreement is a novelty for Russian intellectual property law [5]. Recent developments in the Russian Civil Code and especially in Part IV, the so-called "intellectual part of the Civil Code", have made the work for hire agreement one of the most topical issues in the area of Russian copyright.

The aim of this paper is to examine the nature and scope of the work for hire agreement, its effective term, liabilities arising under this agreement, alienation of an original work and exclusive right in a work and the right to access, analyze all pros and cons of the work for hire agreement both for the author and the customer of the work [2].

Article 1288 of the Russian Civil Code defines the work for hire agreement as follows: "One party (the author) undertakes to create upon instruction by the other party (the cus-

tomers) any scientific, literary or artistic work fixed in any tangible or any other form as provided by such contract". Also it's important to state that such work, when fixed in a tangible, shall be transferred to the ownership of the customer, unless the parties agree to transfer the work to the temporary possession of the customer [8].

Time periods

The principal object of the work for hire agreement is to transfer a work to the customer within the time period fixed by the contract. Therefore, if there is no fixed time period in the contract it will be deemed non-concluded. If the author understands, that (s)he won't be able to perform his(her) obligations timely and duly, (s)he may apply for an extensive time period that is called "more extensive grace period" [1]. Such period will not be more than a quarter of the original term. Upon the expiry of the grace period granted to the author the customer will be entitled to unilaterally withdraw from the work for hire agreement [8].

Liabilities under work for hire agreement

The author's liability is limited to the sum of the actual damages caused to the other party, unless a smaller sum of the author's liability is set by the contract.

In the event of a default or the improper performance of a contract, the author should

* **Метелкина Екатерина** – студентка четвертого курса Международного института управления МГИМО МИД России.

compensate to the customer the advance payment and also pay a forfeit money amount. It is obvious that the liabilities of parties to a work for hire agreement differ: author's liability is limited by the sum of the actual damage, while the author is held fully liable [3].

Alienation of Original Work and Exclusive Right in a Work

Where alienation is effected by the author of an original work (manuscript, original work of painting, sculpture etc.), the author will retain his (her) exclusive right to such work, unless otherwise stipulated by the contract. If the exclusive right to the work has not been transferred to the acquirer of the original thereof, then the acquirer may, without the author's consent and paying any royalties, take the following actions: (a) show the original work acquired and reproduce it in the form of the catalogues of exhibitions or publications dedicated to his collection, and (b) deliver the original work to exhibitions held by other persons.

The Right to Access

The author of the work representing a piece of fine arts is entitled to reproduction of his (her) work (right to access). In this case, the right holder of the original work may not deliver the work to the author. Also, the author of a work of architecture may claim for his (her) right to make pictures and video shooting of the work unless otherwise provided by the contract [2].

Having analyzed the theoretical basics of the work for hire agreement, we are going to place special emphasis on practices involving this type of contract and focus on its role in the relationship between the author and the customer. It can be claimed that generally this agreement brings more pros than cons to the parties involved.

First of all, the work for hire agreement ensures that the customer will receive what (s)he wishes to receive by shaping the customer's desires and expectations in written language. Such contract establishes trustworthy business relationship between the author and the customer.

Secondly, this agreement expresses clear project expectations of the author. Specifically, the contract identifies what the author will be doing, the time it will take him (her) to do it, and the fee (s)he will charge. This helps the author to understand what is expected of him and also helps him check off various tasks in the project as he completes them. There won't be any questions as to when payment is due, how much the project will cost, together with any additional fees, shipping options, and any additional requirements.

Thirdly, the author working under the work for hire agreement can manage his(her) time and determine the amount of time spent on the work, the method and place of his work on the order. The customer may not intervene in the author's activities or control him. The work for hire agreement doesn't stipulate any interim deadlines.

The work for hire agreement is also the basic mechanism for determining the allocation of credit for scientific advances and thus the primary basis for assessing a scientist's contributions to new knowledge. The work for hire agreement per se potentially grants both benefits and responsibilities to the author.

But there are no advantages without any disadvantages and the work for hire agreement isn't an exception to the rule. One of them is that work performed by the author, is a single work, thus the author is not sure if the customer will continue to work with him and offer him to enter into another agreement upon the performance of the initial contract obligations.

WORK FOR HIRE AGREEMENT UNDER RUSSIAN CIVIL CODE

The article covers a work for hire agreement available at Russian law, its composition and benefits granted to parties to this contract under Russian intellectual property legislation. The author focuses on the general contractual provisions, liabilities and responsibility of the parties, along with the alienation of an original

work by the author. In conclusion, the article outlines pros and cons of the contract at issue.

Metelkina Ekaterina,
four year student of the International
Institute of Administration of MGIMO
(University) of the MFA of Russia.

Ключевые слова:

договор авторского заказа, автор, заказчик, отчуждение оригинала, право доступа, материальная форма.

Keywords:

work for hire agreement, author, customer, alienation, right to access, tangible form.

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