

# The Model Law on Intellectual Property

## - A Proposal for German and European Law Reform?

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# The Model Law and the current Reform in Estonia

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# I. Introduction

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- Estonian private law has been thoroughly reformed since 1991
- Very open for academic models (PECL, UNIDROIT-Principles) as well as for direct implementation of int. conventions (CISG)

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- Causes: Increasing significance of creative industries  
(more than 20 % of all registered companies engage in this field)

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- IT, biotech and other high-tech industries are important pillars of Estonian economy (see e.g. Skype), but legally not sufficiently regulated
- Just as in Germany, Estonian IP law has developed organically, providing duplicated/irrational structures





## II. Estonian IP Law

The spirit of Estonian IP law is twofold:

- Estonian private law and Estonian legal thought is historically **based on German law** (13th century – 1918)

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The spirit of Estonian IP law is twofold:

- On the other hand, there is a strong **tradition of free use** of creative works, based on extensive subvention policy in the 1920ies („*kultuurikapital*“); very liberal

## II. Estonian IP Law

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- 2004: EU

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## II. Estonian IP Law

Estonian IP law today:

- Copyright Act of 1992 is modelled on Berne Convention Paris Act / WIPO Model Copyright Act
- ***Droit d'auteur*** approach, but partially (copyright in execution of employment duties) common law ***copyright doctrine***-solutions

## II. Estonian IP Law

Estonian IP law today:

- In 1992, the Copyright Act **complied with all international and almost all European Union standards.**
- Major revisions in 1999



## II. Estonian IP Law

- Copyright Act,
- Patents Act,
- Trade Marks act
- Utility Models Act,
- Competition Act,
- Industrial Design Protection Act,
- Principles of Legal Regulation of Industrial Property.

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- **Task:** Harmonizing IP law to today's needs and providing a comprehensive structure to IP Law
- **Timeframe:**  
20 March 2012 – 30 Sept 2014



## III. The reform project

1. Action Plan, mapping problems 4/2012
2. Identif. of best practices 05-06/2012
- 3. *Preparation in groups* 07/12-01/13**
4. Feedb. from stakeholders 03-04/2013
5. Upgrading drafts 05/2013
6. Expert opinions/suggestions 06-09/13

## III. The reform project

- 7. Upgrading draft 10/2013
- 8. Impact Assessment 11/2013 – 03/2014
- 9. Analysis of IA and implement. 04/2014
- 10. Upgrading draft 05/2014
- 11. Prep. of the final text 06-09/2014

## IV. Reform outline

**Central question:**

One comprehensive codification

or

Copyright Act + Ind. Property Code?

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→ Working group in Oct 2012: **2 acts**

– copyright and industrial property reside in different ministries;



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**Central question:**

One comprehensive codification?

→ Working group in Oct 2012: **2 acts**

- copyright and industrial property resided in different ministries
- **regulatory overlap in these areas is low** (e.g. no registration for copyrights)

## IV. Reform outline

**Structure as follows:**

### **Act on Copyright and related rights**

- *Chapter I: General Provisions/Definitions*
- *Chapter II: Copyright*
- *Chapter III: Related Rights*
- *Chapter IV: Protection, including extensive regulation of free use*

## IV. Reform outline

### Act on Copyright and related rights

- *Chapter V: Entitlement to remuneration*
- *Chapter VI: Exercise of rights*

(incl. exercise by other persons,  
collective exercise of rights,  
succession, orphan works)

- *Chapter VII: Rights and liability*

## IV. Reform outline

### Industrial Property Code

#### Part A - General principles

#### Part B - Industrial property classification

- *Chapter I* - Acquisition of rights
  - **Inventions:**
    - patentable inventions
    - International law
    - European patent specifications

## IV. Reform outline

### Industrial Property Code

#### Part B - Industrial property classification

#### *Chapter I* - Acquisition of rights

- **Industrial Design:**

- Registered design

- International registration

- Design specifications

- Scope of protection

## IV. Reform outline

### Industrial Property Code

#### Part B - Industrial property classification

#### *Chapter II* - Trade marks and trade secrets

- **Trade marks:**

Generally known brands,  
collective characters and warranty

International issues

Community trade mark

## IV. Reform outline

### Industrial Property Code

#### Part B - Industrial property classification

#### *Chapter II* - Trade marks and trade secrets

- Other commercial signs
- Geographical indication;
- Names and trade names;
- Protection against unfair competition

## IV. Reform outline

### Industrial Property Code

- Part C - **Execution and enforcement**
- *Chapter I* - Industrial property debts in:
  - contract law (license, transfer, etc.)
  - rights in rem (pledges etc.)
  - public intervention (stat. comp. license)
- *Chapter II* – Enforcement
  - General principles
  - Rights of third parties



## IV. Reform outline

### Industrial Property Code

- Part C - Institutions
- *Chapter I* - National institutions:  
Patent Office; Office for Ind. Designs  
Jurisdiction
- *Chapter II* - private institutions:  
Authors'/other rights holders' org.,  
Patent attorneys
- *Chapter III* - Industrial Property Registry

## IV. Reform outline

Working structure:

Strategic **alliance** between Estonian  
Ministry of Justice / Faculty of Law of  
the University of Tartu

# V. Aims and content

Transformation into a  
knowledge-based economy

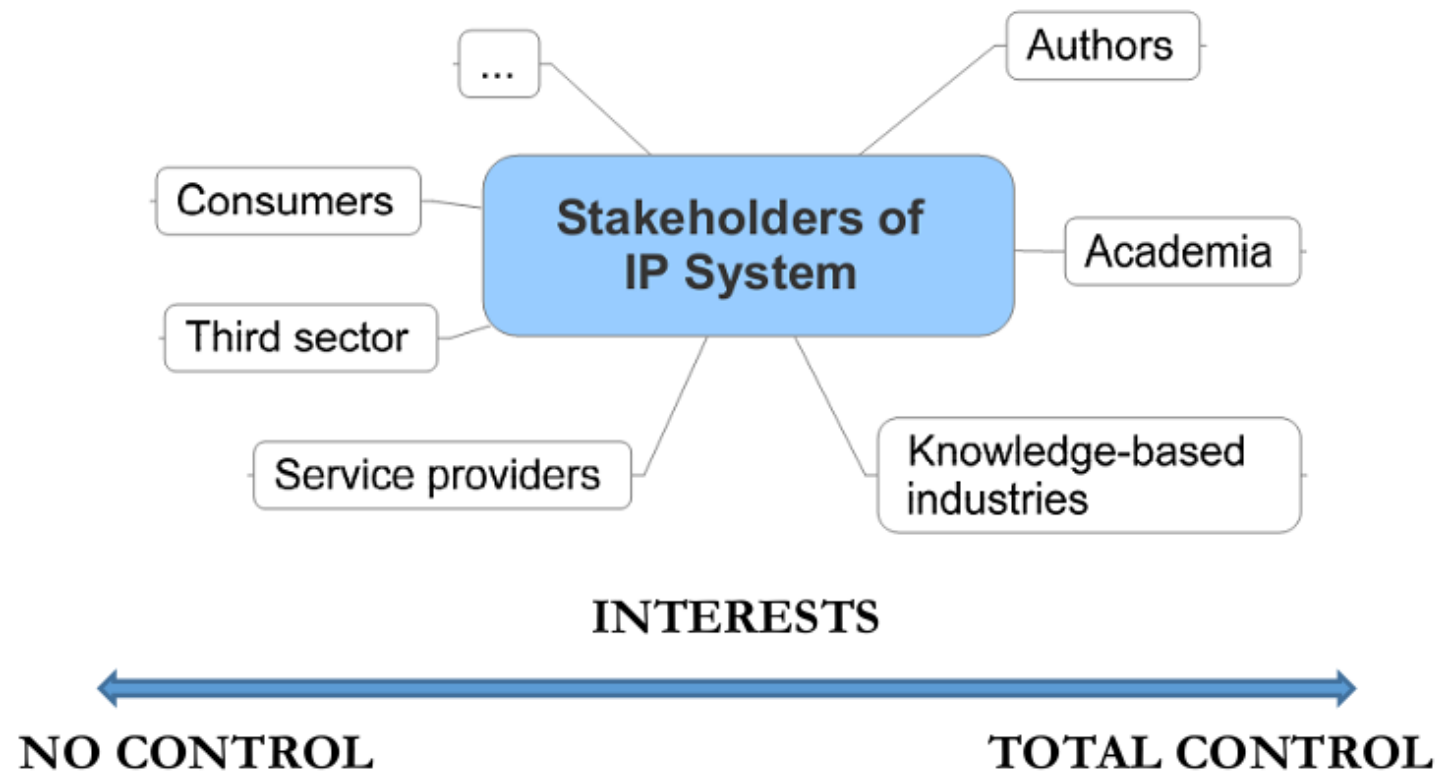
Construction on  
different arenas

**Challenges to IP  
protection**

Technological  
developments

Widening of the  
scope of protection

# V. Aims and content



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- Importance of raising awareness
- Openness of process;
- Access to information and documents
- Open dialogue

## V. Aims and content

- Clear and simple regulation;
- Systematic approach;
- Importance of regulatory impact assessment

## V. Aims and content

Recently discussed problems e.g.:

- Extent of freedom of contract (compensation rights)
- Limitations of copyright, patents
- And again: High-quality regulatory impact assessment

**Täna.**

**Vielen Dank.**

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