



# SQ282 Moral Rights

Dr. Reinhard Oertli LL.M, Attorney at Law,  
MLL Meyerlustenberger Lachenal Froriep  
Ltd, Zurich

MLL MEYERLUSTENBERGER LACHENAL FRORIEP



# Overview

- Moral Rights in Swiss Copyright Law
- Categories and Limitations of Moral Rights
- Transferability of Moral Rights
- Time factor
- Moral Rights on Related Rights?
- Proposals for Improvements and Harmonisation

## **Moral Rights**

### **Swiss Copyright Law and SQ282 Resolution, adopted at the AIPPI World Congress – San Francisco, 13.9.2022**

- Moral Rights as intellectual, personal relationship of the author to the work
- Connection (“link”) between authors and their work
- Part of the general right to protection of personality (Art. 27 ff. Swiss Civil Code)
- All types of works which are being recognized by Copyright Law are protected by Moral Rights
- Infringement of Moral Rights as copyright infringement

# Categories and Limitations of Moral Rights

- Categories of Moral Rights (SQ282 Resolution 4)
  - Right of first disclosure (*“Erstveröffentlichungsrecht”*) – CopA 9 II
  - Right to claim authorship (*“Recht auf Anerkennung der Urheberschaft”*) – CopA 9 I
  - Right of Integrity (*“Entstellungsschutz”*) – CopA 11 II
  - Protection against destruction (*“Schutz vor Zerstörung”*) – CopA 15, SQ282 Resolution 10
- Limitations of Moral Rights
  - General exceptions of the Copyright Law
  - Specific exceptions
    - E.g., Creation of parodies (CopA 11 III)
    - For categories of works: SQ282 Resolution 5

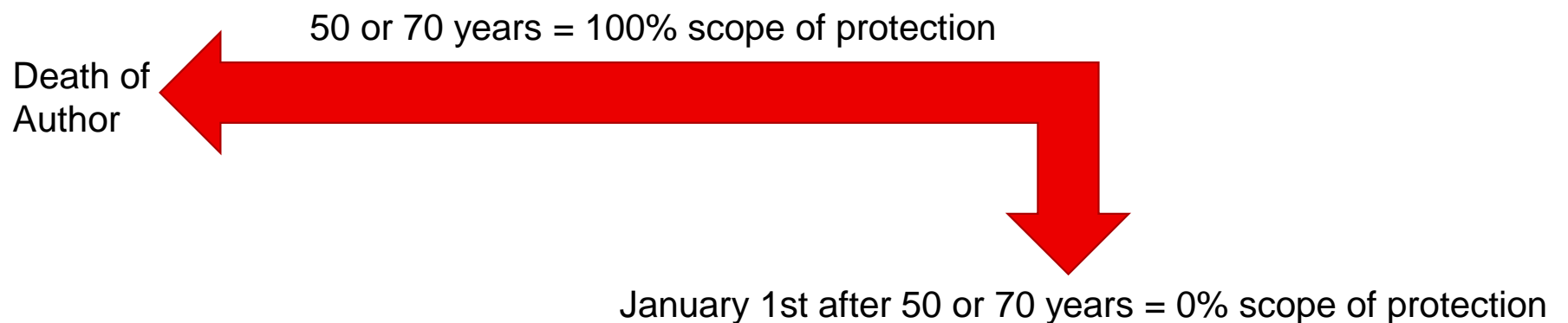


# Transferability of Moral Rights

- Only the author as a natural person can be the initial owner of Moral Rights (not a legal entity, no “made for hire” in Swiss Law, SQ282 Resolutions 6/7)
  - But note Art. 393 Swiss Code of Obligations: copyright lies with the person who has devised the plan; the authors who create their work according to that plan only are entitled to a remuneration.
- Rule: Copyright is transferable and inheritable (CopA 16 I)
  - ***Disputed regarding Moral Rights:***
    - Not transferable by contract etc. (SQ282 Resolution 10), but by sicecession (Art. 6<sup>bis</sup> para. 1 and 2 RBC, SQ282 Resolution 8)?
    - Room for differentiation regarding nature of work, circumstances of creation?

# Time factor

- General terms on the protection of copyrights apply also to Moral Rights (Swiss Law and SQ282 Resolution 9)
- 50 or 70 years after the death of the author
- All or nothing



# Moral Rights on Related Rights?

- Unchartered terrain; not dealt with in Resolution SQ282
- Performers have the right to recognition of their performer status – CopA 33a I
- No other specific Moral Rights for performing artists?
- Protection of their performances as expression of their personality  
Art. 28 ff. Swiss Civil Code



# Proposals for Improvements and Harmonisation

- Ways to increase economic significance of Moral Rights? *Oxymoron?*
- To what extent can Moral Rights be validly assigned?
- Right to integrity (CopA 11 I) with regard to minor changes that do not affect the author's right of personality are not part of the moral rights (so in RBC Art. 6<sup>bis</sup> para. 1, SQ282 Resolution 5 (2<sup>nd</sup> bullet))
- Different scope of Moral Rights depending on the category of work:
  - Proximity to personality of author: poems and novels ≠ computer programs
  - works created according to the author's own plan ≠ works created at the initiative and in accordance with the plan of a principal