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**Tetyana KURYLO\***  
tetyana.kurylo@usz.edu.pl



**Oleksandr TURCHAK\*\***  
turchak71@ukr.net



**Evghenia GUGULAN\*\*\***  
gugulan.eugenia@gmail.com

## COMPARATIVE ANALYSIS REGARDING PECULIARITIES OF INHERITANCE OF PROPERTY AND PERSONAL NON-PROPERTY COPYRIGHTS OF UKRAINE AND UE COUNTRIES

***Annotation:** The article deals with the peculiarities of the transfer of copyrights through inheritance. The authors point out the importance of intellectual property as a driving factor in the economic, political, and scientific spheres of a democratic society. One of the legal ways of acquiring intellectual property rights is inheritance. It is emphasized that there are differences in the inheritance of intellectual property objects caused by their features as part of the hereditary property, particularly by a special legal regime of use.*

*The legally enshrined definitions of the concepts of "intellectual property", "inheritance", and "copyright" are revealed. The article examines the general characteristics of all intellectual property rights, including their territorial nature and national legal protection by the state where they were created or registered. Finally, some concepts of succession by the author's heirs are distinguished. In most cases, not the work itself in its objective expression is inherited, but the totality of*

\* Associate Professor, PhD, University of Szczeciń, Poland (ROR: <https://ror.org/05vmz5070>), e-mail: [international@usz.edu.pl](mailto:international@usz.edu.pl); ORCID ID: 0000-0003-0039-5121, e-mail: [tetyana.kurylo@usz.edu.pl](mailto:tetyana.kurylo@usz.edu.pl)

\*\* Associate Professor, PhD, Humanitarian Department, „Ivan Bobersky” Lviv State University of Physical Culture, Lviv, Ukraine (ROR: <https://ror.org/04z6kfv30>), e-mail: [info@ldufk.edu.ua](mailto:info@ldufk.edu.ua); ORCID ID: 0000-0002-1806-5289, e-mail: [turchak71@ukr.net](mailto:turchak71@ukr.net)

\*\*\* PhD candidate Lecturer, Head of Department „Private law”, „Ștefan cel Mare” Academy of the MIA of the Republic of Moldova (ROR: <https://ror.org/036kvxa54>), e-mail: [academia@mai.gov.md](mailto:academia@mai.gov.md); ORCID ID: 0000-0002-5960-1164, e-mail: [gugulan.eugenia@gmail.com](mailto:gugulan.eugenia@gmail.com)

copyrights to it. The copyrights are divided into property and personal non-property ones.

Analyzing the standards of the national legislation and the legislation of the European Union countries, the peculiarities of the inheritance of copyrights have been singled out; their categories that can be part of the inheritance are investigated. Considering these categories' complex and interconnected nature, it is underlined that the inheritance of exclusively property rights does not correspond to legal validity. Attention is drawn to the fact that personal non-property rights are not extinguished upon the author's death and are not limited in time of existence. It is concluded that personal non-property rights are closely related to the author's property rights and ensure proper protection and defense of the latter.

Therefore, they can be part of the inheritance, enabling the heirs to fully use the author's property rights during their validity period.

**Keywords:** intellectual property, copyrights, inheritance, personal non-property copyrights, property copyrights, user rights.

## ANALIZA COMPARATIVĂ CU PRIVIRE LA PARTICULARITĂȚILE MOȘTENIRII PROPRIETĂȚII ȘI DREPTURILE DE AUTOR PERSONALE NON-PROPRIETĂȚE ALE UCRAINEI ȘI ȚĂRILOR UE

**Adnotare:** Articolul tratează particularitățile transferului drepturilor de autor prin moștenire. Autorii subliniază importanța proprietății intelectuale ca factor de conducere în sferile economice, politice și științifice ale unei societăți democratice. Una dintre modalitățile legale de dobândire a drepturilor de proprietate intelectuală este moștenirea. Se subliniază că există diferențieri în moștenirea obiectelor de proprietate intelectuală cauzate de caracteristicile acestora ca parte a proprietății ereditare, în special de un regim juridic special de utilizare.

Definițiile consacrate legal ale conceptelor de „proprietate intelectuală”, „moștenire” și „drept de autor” sunt dezvăluite. Articolul examinează caracteristicile generale ale tuturor drepturilor de proprietate intelectuală, inclusiv natura lor teritorială și protecția juridică națională de către statul în care au fost create sau înregistrate. În cele din urmă, se disting unele concepte de succesiune de către moștenitorii autorului. În majoritatea cazurilor, nu însăși lucrarea în expresia ei obiectivă este moștenită, ci totalitatea drepturilor de autor asupra acesteia. Drepturile de autor sunt împărțite în drepturi de proprietate și cele personale non-proprietate.

Analizând standardele legislației naționale și ale legislației țărilor Uniunii Europene, au fost evidențiate particularitățile moștenirii drepturilor de autor; sunt investigate categoriile acestora care pot face parte din moștenire. Având în vedere natura complexă și interconectată a acestor categorii, se subliniază că moștenirea exclusivă a drepturilor de proprietate nu corespunde valabilității juridice. Se atrage atenția asupra faptului că drepturile personale non-proprietate nu se sting la decesul autorului și nu sunt limitate în timpul existenței. Se concluzionează că drepturile personale non-proprietate sunt strâns legate de drepturile de proprietate ale autorului și asigură protecția și apărarea corespunzătoare a acestuia din urmă.

Prin urmare, ele pot face parte din moștenire, permițând moștenitorilor să folosească pe deplin drepturile de proprietate ale autorului în perioada de valabilitate a acestora.

**Cuvinte-cheie:** proprietate intelectuală, drepturi de autor, moștenire, drepturi de autor personale non-proprietate, drepturi de autor de proprietate, drepturi de folosință.

### 1. INTRODUCTION

Developing modern society is possible only by creating intellectual property. Under ongoing globalization, digitalization, the development of innovative technologies, social networks, and an increase in various gadgets, intellectual property is becoming a driving element of the state's economic growth. Scientific and technological development determines the state's well-being, increasing the role and significance of intellectual property

objects. A practical, legally capable system of intellectual property ensures and stimulates economic, social and cultural growth; it is an essential component of the investment attractiveness of any state.

From the outset, it can be acknowledged that there is no EU-wide copyright law; instead, copyright within the EU is a bundle of national laws.<sup>1</sup> Copyright has not traditionally been at the center of harmonizing efforts. This is because of barriers arising from differences in language and cultural traditions among the Member States as well as low economic potential to exploit copyright involving literary and artistic works in trans-border transactions. However, recently, with more economic interests involved in copyrighted works thanks to computer programs, databases and new communication technologies, copyright has gained economic prominence and, simultaneously, has become an increasingly important part of EU law.<sup>2</sup>

In this sense, article 41 of the *Constitution of Ukraine*<sup>3</sup> establishes the right of everyone to own, use and dispose of their property and the results of their intellectual and creative activities. It also stipulates that the right to private property is acquired by the procedure determined by law.

One of the methods of such acquisition is inheritance, which, given the particular object of heritage, will acquire a new meaning and require peculiar legal regulation. Although, at first sight, the legacy of intellectual property rights does not differ from the general succession procedure. However, objects of intellectual property have significant differences from more familiar objects of inheritance, and it causes difficulties and ambiguous approaches in law enforcement activities related to the inheritance of intellectual property rights.

The absence of unified norms concerning the inheritance of intellectual property rights in the national legislation of Ukraine, the presence of an object of heritage with a particular legal regime, as well as the insignificant regulation of inheritance issues in international treaties in the field of protection of intellectual property rights, indicate the relevance of the chosen research question.

Such scientists as O. Dzera, Yu. Zaika, M. Mykhailiv, A. Nykytiuk, O. Pidopryhora, Ye. Riabokon, S. Fursa, and R. Shyshka have considered the issue of the transfer of intellectual property rights through hereditary succession. However, as a rule, these scientists studied the inheritance of intellectual property rights on a general basis without a detailed analysis of the category of rights that pass to the heirs. As a result, many issues of inheritance of intellectual property rights require further research and do not lose their relevance.

The purpose of the conducted research is to reveal the peculiarities of copyright inheritance and to study the category of copyrights that can be part of the inheritance under the norms of the national legislation and the legislation of the European Union countries.

The purpose determines the tasks of the research. They include:

<sup>1</sup> Kur A, Dreier T, Luginbuhl S. *European intellectual property law: text, cases and materials*, 2nd edn. Edward Elgar Publishing, Cheltenham, p.294. 2019.

<sup>2</sup> Hutukka, P. *Copyright Law in the European Union, the United States and China*. IIC 54, 1044–1080 (2023). <https://doi.org/10.1007/s40319-023-01357-0>. Available: <https://link.springer.com/article/10.1007/s40319-023-01357-0#citeas>

<sup>3</sup> <https://rm.coe.int/constitution-of-ukraine/168071f58b> Adopted at the Fifth Session of the Verkhovna Rada of Ukraine on 28 June 1996

the analysis of the legislation of Ukraine and the national legislation of the member states of the European Union in the field of inheritance of copyrights;  
the study of the inheritance of property and personal non-property rights of the author;  
the presentation of one's vision regarding the improvement of the mechanism of legal regulation of the complex inheritance of copyrights.

## 2. METHODOLOGY

For the purpose of a comprehensive study of the research topic, a number of research methods were used, such as: the method of historical analysis, the method of logical analysis (analysis and synthesis), used to synthesize the opinions of different scientists in the field of copyright and related rights protection, the method of comparative analysis, necessary for conducting the comparative study between the positions of different specialists in the field, the method of systemic analysis, used in the study of different legal norms regulating issues related to the possibility of inheritance of copyright and related rights, the method of synthesis, used to generalize the issues under analysis and to clearly and concisely establish the recommendations of the authors and proposals of *lege ferenda*.

### List of abbreviations:

Law of Ukraine No. 2811-IX "On Copyright and Related Rights" – Law No. 2811-IX  
Law of the Republic of Poland "On Copyright and Related Rights" of February 4, 1994 – Law of the Republic of Poland  
European Union – EU

## 3. DISCUSSIONS AND RESULTS.

### 3.1 Peculiarities of inheritance of copyrights in the legislation of Ukraine. Concepts of succession in the European Union countries.

For comprehensive studying the issue of inheritance of copyrights, it is necessary to note that copyrights and neighboring or related rights belong to the group of intellectual property rights.

The most general understanding of the concept of "intellectual property" at the international level is determined by the Convention Establishing the World Intellectual Property Organization of 1967.

The Convention establishes the concept of "intellectual property" as a set of rights relating to literary, artistic and scientific works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavor; scientific discoveries, industrial designs, trademarks, service marks, and commercial names designations; protection against unfair competition, as well as all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.<sup>4</sup>

The Civil Code of Ukraine in Book 4 - Intellectual Property Right establishes that intellectual property right is a person's right to the result of intellectual, creative activity or to another object of intellectual property right defined by this Code and the other law (Article 418). Intellectual property rights consist of personal non-proprietary and (or)

<sup>4</sup> Convention Establishing the World Intellectual Property Organization. URL: <http://consultant.parus.ua/?-doc=00BUE6BDDDB&abz=0T254>

proprietary intellectual rights. This Code and the other law determine their contents concerning specific objects of intellectual property rights.<sup>5</sup>

The general characteristics of all intellectual property rights are their territorial nature and the national legal protection of the state where they are created or registered. In most cases, they combine tangible and intangible nature.

Subjects of intellectual property right are, including others, persons who own personal non-proprietary and (or) proprietary intellectual rights pursuant to this Code, other law or agreement (Article 421 of the Civil Code of Ukraine).<sup>6</sup>

Succession is one of the legally established ways of acquiring intellectual property rights. The Civil Code of Ukraine defines succession as the transfer of rights and obligations (inheritance) from a deceased natural person (testator) to other persons (heirs) (Article 1216). Furthermore, the inheritance includes all the rights and obligations belonging to the testator at the time of opening the inheritance and is not terminated due to the testator's death (Article 1218).<sup>7</sup>

A special law that regulates relations regarding the acquisition, exercise and protection of personal non-property and property copyrights and/or related rights in Ukraine is the Law of Ukraine No. 2811-IX "On Copyright and Related Rights" (hereinafter - Law No. 2811-IX), adopted on December 01, 2022, to replace the previous law with the same title of 1993.<sup>8</sup>

It should be noted that the adoption of the new Law, which entered into force on March 1, 2023, was also caused by problems arising in the practice of copyright and neighboring or related rights management, the impossibility of ensuring the implementation of some of these rights, as well as the need to update the legislation in the aspect of Ukraine's commitments on the performance of EU law on copyright and related rights under the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand.

In Article 5 of Law No. 2811 - IX, the legislator defined the content of copyright based on the combination of personal non-property rights of the author and property rights of copyright subjects. At the same time, unlike the previous law, it is specified that the author of the work is the primary subject of copyright, and other natural persons or legal entities to whom a deed or a law has transferred the property rights to the work may be the subjects of property copyright.<sup>9</sup>

Copyright objects and copyrights as inheritance objects should not be equated. For the most part, not the work itself in its objective expression is inherited, but the totality of copyrights to it. The latter is divided into property and personal non-property copyrights.

Both international private law and the national legislation of the member states of the European Union support this division. At the same time, domestic legislation is en-

<sup>5</sup> Civil Code of Ukraine: Law of Ukraine No. 435-IV of January 16, 2003. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>

<sup>6</sup> Civil Code of Ukraine: Law of Ukraine No. 435-IV of January 16, 2003. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>

<sup>7</sup> Civil Code of Ukraine: Law of Ukraine No. 435-IV of January 16, 2003. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>

<sup>8</sup> On Copyright and Related Rights: Law of Ukraine No. 2811-IX of December 01, 2022. URL: <https://zakon.rada.gov.ua/laws/show/2811-20#Text>

<sup>9</sup> On Copyright and Related Rights: Law of Ukraine No. 2811-IX of December 01, 2022. URL: <https://zakon.rada.gov.ua/laws/show/2811-20#Text>

trusted with normative defining and consolidating the scope and content of the author's property and personal non-property rights and their transferability.

In general, as A. Voitsekhovska points out, property rights ensure the exclusivity of the author in the field of economic exploitation of the work, while personal non-property rights protect the author's emotional connection with his work.<sup>10</sup>

In contrast to the Law of Ukraine "On Copyright and Related Rights", the new Law No. 2811-IX contains a separate Article 32, which discloses the transfer of rights to a work through inheritance in more detail. This article establishes that only the property rights to the work, which are acquired in full together with the right to receive fair remuneration for the use of works provided by law, are transferred to the inheritance. The author's heirs have the right to publish a work that was not promulgated during the author's lifetime unless the author has directly prohibited the publication of such a work.<sup>11</sup> Personal non-property rights belong only to the author, cannot be transferred (alienated) to other persons, and are not inherited (Article 11).

The mentioned legislative provisions comply with the norms of the Civil Code of Ukraine to understand the inheritance content. However, the norms of Law No. 2811-IX established a more specific list of personal non-property rights of the author. For the first time, the list included the right to oppose any perversion, distortion or other alteration of the work, including accompanying the work with illustrations, prefaces, afterword's, comments, etc. without the author's consent; the right to name the work or leave it untitled; the right to dedicate the work to a person(s), event or date.

The regulation of property copyrights has also changed. Article 12 of Law No. 2811-IX states that the copyright holder has the right to use the work in any way (ways), as well as the exclusive right to authorize or prohibit the use of the work by other persons. At the same time, the legislator provided a list of ways of using the work and stated that it is not exhaustive.<sup>12</sup>

Due to the hereditary succession of property copyrights, creative (author's) legal relationships of intellectual property are transformed. As O. Kharytonova points out, during inheritance, "secondary legal relationships of intellectual property in the field of creative activity" arise.<sup>13</sup>

Such succession of property copyrights from the testator to the heirs is enshrined in the national legislation of the most of European Union states.

- It is possible to distinguish four concepts of succession by the author's heirs:
- all the intellectual property rights of the deceased author are transferred to the heirs, and they use them in full;
- exclusively property rights of intellectual property are inherited; the personal nonproperty rights of the author are not included in the inheritance, although the heirs have the right to protect the inviolability of the work;
- the right of intellectual property is transferred as a particular set of personal

<sup>10</sup> Voitsekhovska, A. Personal copyrights and their protection according to the Polish law on copyright and related rights. In: *Intellectual Property*, 2, 2005, p.20.

<sup>11</sup> On Copyright and Related Rights: Law of Ukraine No. 2811-IX of December 01, 2022. URL: <https://zakon.rada.gov.ua/laws/show/2811-20#Text>

<sup>12</sup> On Copyright and Related Rights: Law of Ukraine No. 2811-IX of December 01, 2022. URL: <https://zakon.rada.gov.ua/laws/show/2811-20#Text>

<sup>13</sup> Kharytonova, O. I. *Legal relationships arisen in the sphere of intellectual property as a result of the creative activity (conceptual principles)*: Monograph. Odesa: Fenix. 2011. p.285.

nonproperty and property rights, the scope of which is narrower than that to which the author was entitled;

– only those intellectual property rights that arose and did not terminate before the author's death are inherited.<sup>14</sup>

According to established concepts in the EU, the author's personal non-property (moral) rights include:

- the right to be recognized as the author of a work (“creator's right”);
- the right to allow or prohibit the use of the work under the real name of the author, a pseudonym or without specifying the name, i.e., anonymously (“the right to a name”);
- the right to demand the preservation of the integrity of the work and to oppose any encroachment on the work that may harm the honor, dignity and reputation of the author (“right of integrity”).<sup>15</sup>

### 3.2. *Legislative enshrining copyright inheritance in the Republic of Poland.*

Despite the relatively clear division into the property and personal non-property copyrights, the legislative enshrining the inheritance of the author's property rights, the analysis of the national legislation of the EU member states allows us to conclude that, given the comprehensive and interconnected nature of these categories, the inheritance of exclusively property rights does not correspond to the legal validity.

For example, in the Republic of Poland, the succession of property copyrights is comprehensively enshrined in Article 41 of the Law “On Copyright and Related Rights” dated April 02, 1994. It provides for the possibility of hereditary assignment of copyrights.<sup>16</sup> In addition, the succession of property copyrights is also established by the provisions of Book 4 - “Inheritance Law” of the Civil Code of the Republic of Poland, where Article 922 states that the property rights and obligations of the deceased pass after his death to one or more persons under the provisions of this book.

Property copyrights within the Law “On Copyright and Related Rights” of the Republic of Poland include the right to use and dispose of the work in all areas of use, to grant consent to the commercial use of the work, as well as to remuneration for the use of the work. Furthermore, the heirs have the right to continue disposing of the author's works and receive remuneration.

Here it is worth paying attention to the terminal nature of property rights because, according to the general rule, property copyrights terminate 70 years after the death of the creator, and in the case of co-authored works - from the moment of the death of co-authors who survived others (Article 36 of the Law).<sup>17</sup> With the expiration of the specified term, copyrights become a public heritage.

At the same time, Article 78 of the mentioned Law of the Republic of Poland establishes the procedure for the protection of personal non-property copyrights, enshrines the right of the heirs of the deceased author, if the author did not express another will

<sup>14</sup> Mykhailiv, M.O. Intellectual property rights as an object of international inheritance relations. In: Law Herald, no.3, p.128. 2020. DOI: 9 URL: <https://doi.org/10.32837/yuv.v0i3.1932>

<sup>15</sup> Kapitsa, Yurii, Stupak, Serhii, & Zhuvaka, Oleksandr. *Copyright and Related Rights in Europe: Monograph*. Kyiv: Lohos, 2012, p. 285.

<sup>16</sup> Ustawa o prawie autorskim i prawach pokrewnych z dnia 4 lutego 1994 r. URL: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19940240083/U/D19940083Lj.pdf>

<sup>17</sup> Ustawa o prawie autorskim i prawach pokrewnych z dnia 4 lutego 1994 r. URL: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19940240083/U/D19940083Lj.pdf>

during his lifetime, to file a lawsuit for the protection of personal non-property copyrights. If it does not contradict the will of the author, then the heirs have the right to exercise the personal non-property rights of the deceased author.

It is also worth paying attention that such a right is transferred to one of the spouses, and in his / her absence, in the order of priority, to descendants, parents, brothers and sisters, and their descendants. In addition, it is established that a claim for the protection of personal nonproperty copyrights may be brought by an association of authors responsible for a particular type of creativity or an organization responsible for the collective management of copyrights, which manages the copyrights of the deceased, on an equal footing with the heirs.<sup>18</sup>

Therefore, although the personal non-property rights of the author closely related to the author are not inherited, the legislation of the Republic of Poland provides for the rights of heirs to take actions to protect such rights. It makes it impossible to violate personal copyrights after the author's death because the validity of such rights is not limited in time. To implement such protection, one of the spouses has priority over the children, and protecting the author's rights is indivisible.

### 3.3. Inheritance of copyrights in Italian legislation.

Another interesting example of the legislative regulation of the issue of copyright inheritance is the legislation of Italy. Although the Italian Constitution does not directly contain provisions on copyright protection, it can be inferred from several enshrined general conditions:

- Each Italian citizen, in line with their individual choices, is called upon to engage in activities contributing to the economic and spiritual growth of society;
- Italy promotes the development of cultural, scientific and technical research;
- Control over the content of the work is not allowed. Freedom of expression and freedom of the arts and sciences are ensured;
- The Constitution protects the author's property rights in all forms and practices.<sup>19</sup>

Article 2580 of the *Italian Civil Code*<sup>20</sup> states that copyrights belong to the author and his heirs within limits and for the purposes established by special laws. Copyrights include personal non-property and property rights.

Personal non-property copyrights are not limited in time, are closely related to the creator, are inalienable and cannot be transferred to third parties. Moreover, even when ownership rights are transferred, the author retains the right to claim authorship and oppose any work distortion or actions that may harm the author's honor or reputation. After the author's death, the descendants can invoke these rights. That is, if there is a violation of the personal non-property rights of the author after his death, the heirs can defend them.

In Italy, authors cannot alienate or even renounce their personal non-property

<sup>18</sup> Ustawa o prawie autorskim i prawach pokrewnych z dnia 4 lutego 1994 r. URL: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19940240083/U/D19940083Lj.pdf>

<sup>19</sup> Copyright Law in the EU. Salient features of copyright law across the EU Member States. *Comparative Law Library Unit*. URL: [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/625126/EPRS\\_STU\(2018\)625126\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/625126/EPRS_STU(2018)625126_EN.pdf)

<sup>20</sup> Civil Code of Italy (approved by Royal Decree No. 262 of March 16, 1942, and amended up to Decree No. 291 of December 7, 2016), Italy <https://www.wipo.int/wipolex/en/legislation/details/16608> [accessed on 10.03.2025]

rights, which aligns with the tradition of European copyright.

Concerning property copyrights, the author and his heirs have the exclusive right to publish works and reproduce them within the legal limitations. At the same time, there are no “user rights” or “fair use” of the work in Italian legislation. On the contrary, general copyright is established, and exceptions are provided. These exceptions can be divided into two categories: on the one hand, exceptions that do not require compensation to the author and on the other hand, those for which payment is paid. Regarding the first category, the most important exceptions are the reproduction of current news in articles or broadcasts, reproduction or dissemination of public speeches on matters of political or governmental interest, use of fragments or quotations for criticism, discussion, non-commercial training or research purposes.

#### **3.4. Peculiarities of inheritance of property and non-property rights of the author in the French Intellectual Property Code.**

French copyright law has significantly influenced the development of copyright laws in other civil law jurisdictions and the development of international copyright law, such as the Berne Convention. Relations regarding the exercise of copyrights are enshrined in the French Code of Intellectual Property.<sup>21</sup> In addition, specific provisions are contained in ministerial decisions (“arretes”), and specific requirements regarding intellectual property rights are enshrined in the Labor Code, the Criminal Code, tax or antimonopoly legislation.

The French system of “droit d’auteur” (author’s right), in general, constitutes a unique and complex set of norms and principles, which enshrines a dual concept of copyright:

- copyright arises and is subject to the protection from the very fact of the creation of a work;
- such a right should include mental and moral characteristics, as well as have an economic component.

Furthermore, a work is protected by copyright if it is original and has an objective expression.

Property copyrights in France (the so-called “le droit d’exploitation”) include the right to use and reproduce the work, making a profit from it. Property copyrights also concern the right to resale (“droit de suite”), that is, the inherent right of the performer to receive a percentage of the resale (royalty) of the original work after the first transfer of the work by the author. In the event of the author’s death, the specified rights are preserved for his successors for 70 years. The property rights of the author can be inherited in whole or in part.

The peculiarity of copyrights in France is determined by the French concept of personal non-property copyrights, which are subject to special protection and defense. It is determined by the historical development of intellectual property law and the current judicial practice.

Under the Intellectual Property Code, personal non-property copyrights include the author’s right to respect his name, authorship, and work. Such rights are perpetual and inalienable. A unique feature of French legislation is that these rights pass to the heirs after the author’s death (Article L121-1).<sup>22</sup>

<sup>21</sup> French Intellectual Property Code. URL: <https://www.wipo.int/wipolex/en/legislation/details/21533>

<sup>22</sup> French Intellectual Property Code. URL: <https://www.wipo.int/wipolex/en/legislation/details/21533>

Such a combination of the perpetuity of personal non-property copyrights with the possibility of transferring them to heirs after death is an effective mechanism for controlling the use of the work.

At the same time, it is worth paying attention that personal non-property copyrights cannot be transferred in any other way or sold by the author or legal heirs to third parties. Therefore, any agreement regarding the transfer of such rights is invalid. However, the author cannot be obliged to protect personal non-property rights and always has the right to refrain from exercising them.

Such a succession of personal non-property copyrights is rather an obligation for the heirs than receiving additional benefits.

In addition, establishing the exclusive right of the author to publish the work, the norms of the Intellectual Property Code give the right to the heirs of the author after his death, in the absence of an executor designated by the author, and if it does not contradict the will of the author, to publish posthumously unpublished works. Furthermore, after the author's death, the heirs retain the right to receive remuneration from resale for seventy years from the date of the author's death.<sup>23</sup>

### 3.5. Inheritance of copyrights in Romanian legislation.

In Romania, the first legal provisions regarding the recognition of copyright for literary and artistic works were adopted through the Press Law of 1862<sup>24</sup>, the only law at the time that guaranteed the rights of Romanian writers and artists. However, the first actual copyright law came into effect on June 28, 1923 – Law no. 126/1923<sup>25</sup> – called the Law on Literary and Artistic Property. This law repealed all previous legal provisions. In line with the evolution of the specific legislative framework, it underwent a series of amendments over time, aimed at adapting, supplementing, and/or modifying its provisions.

One of the legal acts that made a significant contribution to the regulation of copyright in our legal system was Decree No. 321 of June 18, 1956, a legal provision that expressly repealed the previous legal regulations.

Currently, the legal act that regulates the legal framework in the field of copyright protection is *Law no. 8/1996 on copyright and related rights, with its subsequent amendments and additions*<sup>26</sup>. It was adopted with the purpose of recognizing, guaranteeing, and protecting copyright over a literary, artistic, or scientific work, as well as over other works of intellectual creation, both in relation to the author as a person and with regard to the moral and economic attributes inherently associated with copyright.

The object of copyright, according to Romanian legislation, is represented by original works of intellectual creation in the literary, artistic, or scientific domain, regardless of the manner of creation, the mode or form of expression, and independent of their value or purpose, such as:

a) literary and journalistic writings, lectures, sermons, pleas, academic presentations, and any other written or oral works, as well as computer programs;

<sup>23</sup> French Intellectual Property Code. URL: <https://www.wipo.int/edocs/lexdocs/laws/en/fr/fr467en.pdf> [accessed on 10.03.2025]

<sup>24</sup> [https://ro.wikisource.org/wiki/Legea\\_presei\\_din\\_1862](https://ro.wikisource.org/wiki/Legea_presei_din_1862) [accessed on 21.04.2025]

<sup>25</sup> <https://legislatie.just.ro/public/DetaliuDocument/24108> [accessed on 21.04.2025]

<sup>26</sup> Law on copyright and related rights No. 8 of March 14, 1996. Published in the Official Gazette of Romania no. 489 of June 14, 2018. Available: <https://legislatie.just.ro/Public/DetaliuDocument/7816> [accessed on 21.04.2025]

- b) scientific works, whether written or oral, such as communications, studies, university courses, school textbooks, scientific projects, and documentation;
- c) musical compositions with or without lyrics;
- d) dramatic, musical-dramatic works, choreographic works, and pantomimes;
- e) cinematographic works, as well as any other audio-visual works;
- f) photographic works, as well as any other works expressed through a process analogous to photography;
- g) graphic or plastic art works, such as sculptures, paintings, engravings, lithographs, monumental art, scenography, tapestry, ceramics, glass and metal art, drawings, design, as well as other works of applied art intended for practical use;
- h) architectural works, including plans, models, and graphic works that make up architectural projects;
- i) plastic works, maps, and drawings in the fields of topography, geography, and science in general.

Also, derivative works that have been created based on one or more pre-existing works constitute the object of copyright.

a) translations, adaptations, annotations, documentary works, musical arrangements, and any other transformations of a literary, artistic, or scientific work that represent an intellectual creative effort;

b) collections of literary, artistic, or scientific works, such as encyclopaedias and anthologies, collections or compilations of materials or data, whether protected or not, including databases, which, through the selection or arrangement of the material, constitute intellectual creations.

The subject matter of related rights and rights is represented by:

performances or executions by performing artists, for their own performances or executions;

sound recordings or phonograms;

visual recordings or videograms;

broadcasts and program services of broadcasting and television organizations;

databases, collections of works, data, or other independent elements, whether protected by copyright or related rights or not, arranged in a systematic or methodical way and individually accessible by electronic means or otherwise.

The content of copyright from the perspective of the patrimonial distinction consists of:

– **moral rights**

a) the right to decide whether, in what manner, and when the work will be made known to the public;

b) the right to claim authorship of the work;

c) the right to decide under what name the work will be made known to the public;

d) the right to demand respect for the integrity of the work and to oppose any modification, as well as any harm brought to the work, if it prejudices the author's honour or reputation;

e) the right to withdraw the work, compensating, if applicable, the holders of usage rights who were harmed by the exercise of the withdrawal.

– **patrimonial rights**

a) the reproduction of the work;

- b) the distribution of the work;
- c) the import for the purpose of commercialization on the domestic market of copies made, with the author's consent, after the work;
- d) the rental of the work;
- e) the lending of the work;
- f) the public communication, directly or indirectly, of the work by any means, including making the work available to the public in such a way that it can be accessed from any place and at any time individually chosen by the public;
- g) the broadcasting of the work;
- h) the cable retransmission of the work;
- i) the creation of derivative works.

The content of related rights and rights – the performing artist has the following rights:

**- Moral rights**

- a) the right to claim authorship of their own performance or execution;
- b) the right to require that their name or pseudonym be indicated or communicated at each performance and at each use of its recording;
- c) the right to demand respect for the quality of their performance and to oppose any distortion, falsification, or other substantial modification of their performance or execution, or any infringement of their rights that would seriously harm their honour or reputation;

**- Economic rights**

- a) the fixation of their performance or execution;
- b) the reproduction of the fixed performance or execution;
- c) the distribution of the fixed performance or execution;
- d) the rental of the fixed performance or execution;
- e) the lending of the fixed performance or execution;
- f) the import for commercialization on the domestic market of the fixed performance or execution;
- g) the broadcasting and public communication of their performance or execution, except where the performance or execution has already been fixed or broadcast;
- h) the right to fair remuneration in cases where the performance or execution has already been fixed or broadcast;
- i) the making available to the public of their fixed performance or execution, in such a way that it can be accessed, from any place and at any time individually chosen by the public;
- j) the cable retransmission of the fixed performance or execution.

**The transfer of patrimonial copyright and related rights** arising from the creation of a literary, artistic, or scientific work may be carried out either in whole or in part, through *inter vivos* acts (such as licensing or assignment), as well as through succession (both legal and testamentary). According to the law, transferable rights include intellectual property rights of a patrimonial nature, whereas, by contrast, non-patrimonial rights (related to existence and physical integrity, identity, and morality) are non-transferable.

In this conception, the entire framework of copyright is centered on moral rights, a notion justified by the inherent nature of a work as an expression of the author's personality. This explains the perpetual, inalienable, and imprescriptible character of moral rights.

By way of exception to the general legal framework, moral rights are considered transferable *mortis causa*, though within certain limits: moral rights encompass both a positive component – the right of disclosure – and a negative component – the right to authorship (paternity of the work) and the right to its integrity, which are exercised through defensive measures. This distinction generally serves as a doctrinal foundation for analyzing the succession of copyright. It is accepted, in principle, within the boundaries defined by the function of this right. Consequently, certain prerogatives cease to exist. Among the positive rights, the only one that endures is the right of disclosure. However, successors may exercise this prerogative solely for the purpose of fulfilling the author's posthumous will. The succession of moral rights thus operates as a metamorphosis of the moral right itself.

If authors agree to admit that, regarding the right of disclosure, the successors must respect the author's will to either communicate or not communicate the work, divergences arise when the issue is how to proceed in cases where the author has not expressed any will. Some authors accept that authorization for publication is presumed.

Unlike the French dualist system, in which moral rights are clearly separated from patrimonial rights, the German system is a monist system, in the sense that the moral right is an element of copyright on the same level as patrimonial rights, with which it shares an equal duration – namely, that established for copyright in its entirety. The consequence of this conception is the admissibility of the transfer of copyright to the author's heirs or to persons designated by the author, with the clarification that, in the hands of the successor, the moral right remains the same absolute and discretionary right as it was for the author. All these rights are characterized by the fact that they are inaccessible during the author's lifetime, non-transferable to heirs, and imprescriptible.

According to Community documents – specifically referring here to the relevant directives – the same methods of transferring intellectual property rights are established: assignment, licensing, and succession.

The mentioned directives provide procedures for simplifying the registration of transfers from the perspective of fulfilling formal requirements, such as the possibility to request the registration of rights transfers for multiple trademarks or designs and models through a single application.

We consider that, through its regulatory approach, our national legislation is aligned with Community provisions regarding the transfer of intellectual property rights. Transfers of rights hold legal and economic significance when it is necessary to determine the holder of the right (applicant, owner, assignee, licensee) in cases involving potential disputes concerning infringements of intellectual property rights<sup>27</sup>.

Moral rights cannot be subject to any waiver or transfer; they are inalienable and imprescriptible, and are protected from the moment of creation until the death of the author.

After the death of the author, the exercise of the following copyright and related rights is transferred by inheritance, according to civil legislation, for an unlimited duration:

- the right to decide whether, how, and when the work will be made known to the public;
- the right to claim recognition as the author of the work;

<sup>27</sup> Postăvaru A. M. *Transmiterea drepturilor de proprietate intelectuală*. [http://www.nos.iem.ro/bitstream/handle/123456789/133/PostavaruAM\\_Ilif.pdf?sequence=1&isAllowed=y](http://www.nos.iem.ro/bitstream/handle/123456789/133/PostavaruAM_Ilif.pdf?sequence=1&isAllowed=y) [accessed on 21.04.2025]

- the right to claim respect for the integrity of the work and to oppose any modification, as well as any harm brought to the work if it damages their honour or reputation;
- the right to claim recognition of authorship of their own performance or execution;
- the right to request that their name or pseudonym be indicated or announced at each performance and with each use of its recording;
- the right to claim respect for the quality of their performance and to oppose any distortion, falsification, or other substantial alteration of the performance or execution, or any infringement of their rights that would seriously harm their honour or reputation.

In exercising these moral rights, the heirs have the obligation to exploit the work in such a way that does not morally harm the memory of the author and fully respects the work exactly as it was created.

The patrimonial rights included in the content of copyright are transferred according to the provisions of the Civil Code, and their transfer is limited in time. Patrimonial rights arise from the very moment the work is created and last for the entire lifetime of the author; after their death, these rights are transferred by inheritance according to civil legislation for a determined period.

After the expiration of the protection term, the work enters the public domain, the exclusivity of exploiting the work granted to the holders of patrimonial rights ceases, and from that moment the work can be freely used, being assimilated to the common heritage of humanity.

Under the previous regulation, the maximum period provided for the transfer of these rights was set by the legislator at 50 years.

Motivated by the transposition of international conventions to which Romania is a party, as well as treaties and European directives into our legislation, the Romanian legislator has harmonized domestic law with European law, so that patrimonial rights are now transferred according to civil legislation for a period of 70 years.

The transfer of economic rights of authorship occurs upon the author's death; however, by way of exception to common law, the provisions of the special law stipulate the calculation of the protection term duration starting from January 1st of the year following the author's death or the public disclosure of the work (Article 34 of Law no. 8/1996), although the date of inheritance opening coincides with the date of the death of the deceased.

Through inheritance, both rights and obligations resulting from the registration of the intellectual property object are transferred. The inheritance, which includes the author's rights, falls under the scope of common law regulations.

In legal literature, one of the debated aspects is the benefit of posthumous works (late disclosure); thus, the person who publishes such a work will benefit from all the patrimonial rights that would have belonged to the author, but only for a period of 25 years, a period that begins to run from the moment the work was first made public.

In the case of vacant succession, the exercise of these rights is transferred to the collective management organization that administered the author's rights or, if applicable, to the organization with the largest number of members in the relevant field of creation.

The same 70-year duration applies to the heirs of a work made public under a pseudonym or without a name being specified, as well as to the heirs of the author of a collaborative work. However, in this case, the 70-year period will begin from the moment of the

last co-author's death. If the contribution of each co-author is distinct, the duration of the patrimonial rights for each of the co-authors' heirs is 70 years from the death of each co-author they inherit.

In the case of collective works, the duration of the economic rights over these works is 70 years and starts from the date the work is made available to the public. If the work has not been made available to the public within this period, the duration of the economic rights expires after 70 years from the creation of the work.

In the case of computer programs, the author's economic rights are transferred by inheritance for a period of 70 years.

From this perspective, the legal act that regulates the legal framework regarding copyright and related rights, Law No. 8/1996, does not include provisions regarding copyright and matrimonial regimes.

On the other hand, the common law provisions, specifically the provisions of Article 340 of the Civil Code of Romania<sup>28</sup>, contain express provisions regarding the qualification as separate property of each spouse, both for the object of copyright and for the intellectual property rights over creations and registered distinctive signs. Subsection d) establishes that: "*Intellectual property rights over one's creations and over distinctive signs registered by them are not common property, but separate property of each spouse.*"

#### 4. CONCLUSIONS

After analyzing the civil legislation of Ukraine and the European Union states in the field of inheritance, we can conclude that personal non-property rights of intellectual property do not depend on property rights of intellectual property and are indissolubly linked with the creator (subject of intellectual property law). However, they are not levelled upon the author's death and are not limited in time of existence.

Such personal non-property rights of the author as the right to authorship and the right to a name are closely related to the creator and cannot be part of the inheritance. Nevertheless, these rights have an independent meaning and are always provided with legal protection, despite the differences between the right to authorship and authorship as a social value.

The succession of such a personal non-property right as the right to the inviolability of the work remains debatable. The legislation of Ukraine and the legislation of the analyzed EU member states impose on the heirs the duty to protect the authorship of the work and to oppose any perversion, distortion or other alteration of the work, as well as any further encroachment on the work that may harm honor and reputation of the author. This obligation corresponds to the right to inviolability of the work, which, although different from the author's right, authorized to make significant changes in the work, nevertheless passes to the heirs to preserve the work for society in its original form.

In this regard, we could distinguish two types of non-property rights of the author seems appropriate:

- personal non-property rights that are closely related to the creator and are inalienable, and therefore cannot be part of the inheritance and cease with the death of the author;
- personal non-property rights that are closely related to the author's property rights, which may be part of the inheritance along with intellectual property rights and

<sup>28</sup> <https://www.codulcivil.ro/art-340-Bunurile-proprie/> [accessed on 21.04.2025]

will further enable the heirs to protect and defend the intellectual property rights of the testator.<sup>29</sup>

This suggestion will ensure proper protection and defense of the copyrights of the testator by the heirs; will enable the heirs to fully use the author's property rights during their validity period.

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