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## OBJECTS AND SUBJECTS OF COPYRIGHT: COMPARATIVE LEGAL ASPECT

*European Union legislation describes copyright in an economic point of view: "Copyright is the economic basis for the creative industry, as it stimulates innovation, creation, investment and production. Copyright is an important tool that guarantees remuneration for creative works". Copyright in the objective sense is a set of civil law norms that regulate relations for the recognition of authorship and the protection of works of science, literature and art, the establishment of a regime for their use, the granting of non-property and property rights to their authors, the protection of the rights of authors and other copyright holders. In the subjective sense, copyright is those property and personal non-property rights that belong to persons who have created works of science, literature and art.*

*Keywords: legislation, copyright, civil rights, innovation, subjects and objects.*

## OBIECTELE ȘI SUBIECȚII DREPTULUI DE AUTOR: ASPECTUL JURIDIC COMPARATIV

*Legislația Uniunii Europene descrie dreptul de autor din punct de vedere economic: „Dreptul de autor este baza economică a industriei creative, deoarece stimulează inovația, creația, investiția și producția. Dreptul de autor este un instrument important care garantează remunerarea operelor creative”. Dreptul de autor în sens obiectiv este un ansamblu de norme de drept civil care reglementează raporturile pentru recunoașterea dreptului de autor și protecția operelor de știință, literatură și artă, stabilirea unui regim de utilizare a acestora, acordarea drepturilor de neproprietate și de proprietate autorilor, protecția drepturilor autorilor și ale altor deținători de drepturi de autor. În sens subiectiv, dreptul de autor sunt acele drepturi de proprietate și neproprietate personale care aparțin persoanelor care au creat opere de știință, literatură și artă.*

*Cuvinte-cheie: legislația, dreptul de autor, drepturile civile, inovație, subiecte și obiecte.*

**Introduction:** In the Republic of Moldova, the main source of copyright is the Law of the Republic of Moldova “On Copyright and Related Rights” No. 139 of July 2, 2010. The essence of the law involves the enrichment of the na-

tional cultural heritage, which directly depends on the level of protection of works of literature, art and science, because the higher the level of copyright protection is, the greater the craving for creativity is. The essence of copyright

is to strike a balance between two entities: the first entity is allowed to control the use of their works, while the second entity is allowed to have access to the work of the author.

Copyright and related rights by their nature are exclusive absolute rights. They enable their owners to use the results of their creative activity and dispose of them at their own discretion and prohibit all other persons from performing these actions [26, p. 8]. Like other institutions, copyright also has fundamental principles and functions. Among the first functions is the recognition of authorship and, at the same time, the protection of works of science, literature and art. According to Art. 8 of the Law of the Republic of Moldova "On Copyright and Related Rights" No. 139 of July 2, 2010 [14]: "Authorship of a work belongs to the person(s) under whose name the work was published, unless there is evidence to the contrary. To notify their rights, their owner has the right to use the copyright protection sign, which is placed on each copy of the work and consists of three elements: a) the Latin letter "C" in a circle; b) the name (title) of the owner of exclusive copyrights; c) the year of the first publication of the work. The owner of exclusive copyright in a work, published or not published, may register it in state registers during the term of copyright. A person who registers his work is issued a certificate of the established form. State registration of works of literature, art and science is carried out by the State Agency for Intellectual Property. Let us recall Diderot's quote: "Either the author is the owner of his work, or no one is the owner of his property" [12, p. 161].

The next function of copyright should be considered the approval of the mode of use of works. In accordance with Part. (5) Art. 476 of the Civil Code of the Republic of Moldova: "In accordance with the law, the holder of the right to an object of intellectual property:

a) may effect the alienation of the right by way of assignment;

b) may authorize its use by a third party on the basis of an exclusive or non-exclusive license."

The third function of copyright is to grant intellectual rights to works of science, literature and art by the authors themselves. Intellectual rights include: the exclusive right to a work, which acts as a property right and, at the same time, allows the author of the work to use the work in any form and in any way that does not contradict the law.

The next function of copyright is the protection of the rights of authors, and with them other copyright holders. The possibility of exercising their civil rights and, at the same time, the restoration of their violated rights, and subsequently their judicial protection, allow copyright holders to apply to the court or to the competent authority for the recognition of their rights, in order to establish the very fact of violation of rights, followed by restoration in the future of the situation that was observed before the moment of violation of rights, and in addition, compensation for losses. All these provisions, prescribed by the Law of the Republic of Moldova "On Copyright and Related Rights" No. 139 of 02.07.2010, are among the conditions that allow individuals and legal entities to exercise their rights.

When writing the article, the following **methods** were used: comparative legal, logical, imperial, historical.

Touching upon the issue of copyright protection, it is worth mentioning the scope and influence of copyright, as well as listing and revealing the objects of copyright protected by the legislation of the Republic of Moldova. First of all, as provided for in Art. 6 of the Law of the Republic of Moldova "On Copyright and Related Rights" No. 139 of July 2, 2010 [14]: "Copyright extends to: works, regardless of the place of their first publication, for which the owner of copyright is a natural or legal person of the Republic of Moldova; works published for the first time in the Republic of Moldova, regardless of the permanent or temporary residence of the owner of the copyright in the relevant work; other works in accordance with international treaties to which the Republic of Mol-

dova is a party. A work is also considered to be published for the first time in the Republic of Moldova, if within 30 days after the date of the first publication outside of it was published in the Republic of Moldova”.

It is worth mentioning Art. 2609 of the Civil Code of the Republic of Moldova, which states: “The acquisition, maintenance and termination of copyright in a work are determined by the law of the state in whose territory this work was first brought to the attention of the public by exhibiting, distributing, publishing, presenting or in any other way” [14]. The legislator clearly prescribes the significance of the national law in relation to the definition of those copyrights, and for those works that have not been presented to the public. As for industrial property rights, namely when it comes to their maintenance, acquisition, and subsequent termination, the scope of these rights will be determined by the law of the state where the application for registration or transfer of such rights was filed. The subject, in accordance with the law of the state on whose territory both copyright and, consequently, intellectual property rights, have been infringed in any way, has the right to demand compensation for both material and moral damage caused to him. Moreover, it is not only about the subjects of the Republic of Moldova, regarding foreign citizens, as well as stateless persons who reside on the territory of our Republic, they are also provided with protection of copyrights and intellectual property rights within the framework of national legislation.

Creativity is a new, previously unknown to man. From the statements of I.A. Zenin, “creativity is a subjective criterion. Therefore, it has not yet been possible to find a generally acceptable criterion for creative activity. It should be recognized that in practice the criterion of creativity with good reason comes down to establishing the fact of independent creation of the result of intellectual activity. In other words, any mental activity, and the result of this activity is protected by copyright, unless it is proved

that it is the result of direct copying, “piracy”, plagiarism, or it generally cannot be subject to copyright by law. That is, there is a kind of presumption of a creative nature, as mental activity itself, as well as any of its results”[30, p. 23]. A creative person is a person endowed with the ability to revive perfect images. To be recognized as an object of protection, whether it is a work of science, literature or art, it must be in some kind of objective form. It should be noted that the objective form of the work is one of the criteria for the development of our society. As we know, the first forms of works are drawings painted on the rocks, in the caves of France, Spain with soot, coal, paints, depicting various objects of the animal world. The appearance of this kind of art led to the conclusion that people who painted such images of animals, hunting scenes were intellectually more developed than their predecessors.

Later, people began to express their thoughts through writing on stone, fabric, parchment, and this is how painting arose. For example, Leonardo da Vinci in painting preferred to use wood as a basis - walnut, cypress, pear. Starting from the XVI century. attempts were made to record sound, which were crowned with success through the use of various instruments: barrel organ, music boxes. The next stage in the evolution of the form of the work was devoted to photography. Joseph Niepce, after several attempts in 1826, with the help of a camera, managed to get the first photograph - a view from the window of his studio, as the author himself later called this picture - a solar drawing (heliography).

In 1888, the gramophone was invented by the German Emil Berliner. The very first gramophone record was made of celluloid, and already in 1907 a “new generation gramophone” was presented to the public, called the “gramophone” invented by Guillon Kemmler. Simultaneously with the phonograph, the principle of magnetic recording of sound was also invented. For the first time, the idea that magnetization can be used to record sound was ex-

pressed by Overling Smith in 1888. The device described by Smith had signs of a tape recorder [26, p. 17].

A new breakthrough in sound recording methods was the methods that made it possible to record and reproduce digital information. So in 1980, compact discs were offered, which became very popular recording media.

The need for an objective form leads to disputes about what is ultimately the object of copyright protection - the form of the work itself, or its about content. A number of researchers believe that copyright contributes to the protection of the created work as a whole, i.e. both form and content. Another audience believes that copyright is about protecting the form of a work, not its content. We believe that the answer to this question is written in part (2) of Art. 476 of the current Civil Code of the Republic of Moldova, on the basis of which the objects of copyright are literary, artistic scientific works and related rights (performances, phonograms, videograms and transmissions of broadcasting organizations) [6].

With regard to objects of copyright, attention should be paid to Art. 7 of the Law of the Republic of Moldova "On Copyright and Related Rights" No. 139 of July 2, 2010[14], where the list of objects of copyright is presented in detail: "The objects of copyright are: literary works (stories, novels, essays, novels, poems, etc.); computer programs protected as literary works; scientific works; dramatic and musical-dramatic works, scripts, scenario plans, librettos, film synopses; musical works with or without text; choreographic works and pantomimes; audiovisual works; works of painting, sculpture, graphics and other works of fine art; works of architecture, urban planning and gardening art; works of applied art; photographic works and works obtained by methods analogous to photography; maps, plans, sketches and plastic works relating to geography, topography, architecture and other fields of science; Database; other works." First, we give a brief description of each of the objects of copyright.

According to paragraph (1) Art. 2 of the Berne Convention, literary works cover any production in the field of literature, including books, pamphlets and other written works. A literary work is a typical object of copyright [1]. Regarding the next object of copyright, today the protection of computer programs is of great interest as an object of copyright, being a highly demanded product of the information society. The application of copyright rules is justified, since computer programs are the result of creative activity and exist in an objective form, which ensures their legal protection. The beginning of the legal protection is the fact of creating a computer program in an objective form, which involves the implementation of the creative idea of the author [3, p. 56].

According to the Directive of the Council of the European Communities on the legal protection of computer programs 91/250/EEC of May 14, 1991 [9] in Art. 1 states: "Member States shall protect computer programs by copyright as works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works. The term "computer program" itself contains preparatory design material that can be applied to any form of expression of a computer program. A special place in the creative sphere is given to scientific research, which results in various works of science that are significant for the subsequent development of scientific and technological progress, for strengthening the economy and defense capability of our Republic of Moldova, for solving various kinds of problems, as well as for improving the well-being of citizens. Scientific work as any result of intellectual creativity, consisting in the development and systematization of objective knowledge about the surrounding reality. As a rule, scientific works find their expression in monographs, theses, doctoral dissertations, university courses [4, p. 77]. Regarding dramatic works, presented as a kind of "literary genre, covering works in which ideas and feelings are expressed by characters dynamically presenting their roles on stage, be

then drama (literary (dramatic) and cinematic genre. Received special distribution in the literature of the XVIII—XXI centuries, gradually replacing another genre of dramaturgy - tragedy, contrasting it with a predominantly everyday plot and a style closer to everyday reality. With the advent of cinema, it also moved into this type of art, becoming one of its most common genres [28], tragedy (a dramatic work depicting a tense and insoluble conflict, personal or public catastrophe and usually ending in the death of the hero) [18, p. 344], comedy (a dramatic work with a cheerful, funny plot), tragicomedy (a dramatic work that combines the features of tragedy and comedy) [18, p. 344].

Ozhegov's explanatory dictionary defines music as an art that reflects reality in sound artistic images [18, p. 344]. Today, musical works are a common object of copyright. The Berne Convention contains the general term "literary and artistic works", which includes other types of works, including musical compositions with or without text, therefore, all the main provisions of the Berne Convention apply to musical works [10, p. 24-29].

The next object of copyright is a choreographic work, which is the result of professional creative activity in the field of dance. A choreographic work as an independent object of copyright protection can be presented as separate choreographic numbers in the form of dances in audiovisual works, dance compositions of figure skaters, masters of rhythmic gymnastics, as part of numbers of variety performers (for example, singers), dance scenes in theatrical and entertainment productions, including opera, operetta, ballet, etc. Such objects of copyright have a number of features, primarily due to the fact that when they are created, the choreographer's creativity is limited by the range of expressive means (movements and postures for dance), the scope of the stage, the purpose of the choreographic works (for public performance) and related to this "fleeting" nature of the existence and perception of the audience [25, p. 105-111].

Audiovisual works also act as an object of copyright. According to Art. 3 of the Law of the Republic of Moldova "On Copyright and Related Rights" No. 139 of 02.07.2010 [14]: "an audiovisual work is a work consisting of a fixed series of interconnected frames, accompanied or not accompanied by sound, creating the impression of movement, intended for visual and auditory (if accompanied by sound) perception with the help of appropriate devices". The purpose of an audiovisual work is to perceive it both visually and aurally.

The moral force of art is capable of creating a certain moral and spiritual atmosphere in society and, as a result, political stability and conditions for a balanced socio-economic development of the state. The legally fixed and protected right of copyright holders to works of art, and in particular painting, as objects of intellectual property is a necessary condition for the development of the cultural sphere in modern realities. Paintings as the results of intellectual activity are recognized as traditional objects of copyright as an institution of intellectual property law, and copyright is the basis of civil law relations on the use of works of art [13, p.77-84].

Works of architecture and urban planning, as well as works of landscape gardening art mentioned in the law, have certain specific features in comparison with other objects of copyright. They, like works of arts and crafts, have a dual purpose. Firstly, they serve to satisfy certain material needs of people, and secondly, they act like works of art that are designed to give people a sense of artistic satisfaction. It is noticeable that it is precisely the artistic side of projects, buildings, structures, etc. that is subject to copyright protection. For example, not the entire project and its technical and organizational solutions of architectural ideas in kind, but only its architectural part is recognized as the object of copyright. Copyright protects both works of architectural graphics and plastic arts: sketches, facades, perspectives, development projects, dimensions, drawings, landscaping plans, models, layouts, etc., as well

as works of architecture, urban planning and gardening art in the form of buildings, buildings, building blocks, gardens, parks [8].

Scope of copyright protection for works of arts and crafts, industrial drawings and designs vary from one country to another. Article 2(7) of the Berne Convention allows countries to “determine the extent to which their laws apply to works of applied art, industrial designs and designs, as well as the conditions for the protection of such works, designs and designs” [1]. In a number of countries, industrial designs enjoy a regime of protection closer to copyright than to the patent form of protection, but still different from copyright protection. Some countries are known for the same kind of copyright protection for works of design and artistic performance of works. Such works of decorative and applied art are a kind of works of fine art. The features that are inherent in works of decorative and applied art are: utility and artistry of their execution [29].

The legislation of the Republic of Moldova protects such objects of copyright as photographic works and works obtained by means similar to photography. Copyright extends to both published and unpublished photographic works. It is not related to ownership of the material object in which the work is expressed. The transfer of such a right or the right to own it does not entail the transfer of copyright to the work presented in this object, with the exception of cases provided for by the legislation of the Republic of Moldova. The legal protection of a photograph does not depend in any way on its purpose, dignity, method of expression, and on whether it was created by a professional photographer or an amateur. It should be noted that not every photographic work is subject to copyright. This is not a photograph that was obtained by mechanical fixation, as a result of which the author tries to capture the subject with maximum accuracy. In order for a photographic work to be considered an object of copyright, it must be created as a result of the author’s creative activity, and for this he

uses, together with technical visual and expressive means, while choosing an original composition of the image, a certain shooting point, angle, lighting, while using various methods of making a photograph. Recently, photographic works, in addition to the mass media, are used in the implementation of advertising and tourism activities on the Internet, so the number of violations in this area is constantly increasing. The reasons for this were: unfair behavior of users and ignorance, ignorance of the current legislation in the field of intellectual property, according to which the exclusive right to a work belongs to the author (right holder). He can use the work at his discretion in any way and in any form [5, p. 57-68].

Geographical, geological and other types of maps, plans, sketches and plastic works that relate to geography, topography and other sciences are cartographic works that are under copyright protection.

Cartography is the science of displaying the phenomena of nature and society on geographical maps and other types of cartographic works, the properties of these images, methods of their creation and use. All achievements of cartography are materialized in geographical maps, atlases, relief maps, globe and other cartographic works that make up the products of the cartographic industry [11, p. 4].

Cartography is the area of relations that are created in the process of scientific, technical and industrial activities related to the study, creation and use of cartographic works. Cartographic works as creatively original objects of copyright may differ from each other in scale, conventional signs, coloring and other elements [19, p. 37]. Cartographic works were created not just to provide information about the displayed objects or phenomena, but are also designed to provide it in the volumes that are necessary so that by studying cartographic works it is possible to achieve the solution of scientific problems [24, p. 31-42].

A special place among cartographic works is given to maps and plans. A map is a

reduced, generalized image of the Earth, the surface of another celestial body or extraterrestrial space, built in a cartographic projection, showing the objects located on them in a certain system of conventional signs [23, p. 102]. To establish copyright protection, a map or plan must necessarily be created by the creative work of a citizen. As appropriately noted by A. Sergeev, not every map or plan can be unconditionally attributed to objects of copyright. It is hardly possible to recognize such a map or plan that was compiled exclusively with the help of technical means, for example, by aerospace survey, the results of which were processed by a computer, but in most cases the creation of maps and other cartographic works requires, in addition to a lot of technical work, also the creative contribution of the compiler. It is no coincidence that maps, plans and sketches of the same area, which were compiled by different persons, differ not only in the degree of accuracy, but also in external design, author's style, etc. [22, p. 84]. If the map is recognized as an object of copyright, then it is not allowed to use it without the consent of the author. Currently, cards are actively used for advertising, commercial and other purposes. In cases where the degree of originality of a work is established, as well as other issues, an expert examination may be ordered by a court decision. According to V.I. Serebrovsky, it is necessary to assign the concept of "work" to the competence of civil law [21, p.7]. According to another version, "the work involves any product of activity, the creative work of the author, expressed in an objective form, likely to be perceived by third parties" [16, p.249].

The national literature indicates that "a work is a product of human spirituality, expressed in written or oral form and oriented towards its consumption by society" [27, p.28]. The conclusion is brewing that the work acts as an individual creation that combines the spiritual, cultural and intellectual creation.

The development of science and technology, the widespread introduction of computers

and information technologies contributed to the formation of a modern information society. Society can no longer do without various information, including that produced on the basis of information systems using information technologies in all spheres of human activity, such as: economics, science, industry, politics, etc. With the development of the global Internet, between the subjects of different states, the exchange of information is increasing, in particular, that which is stored in databases.

The production and distribution of databases is growing every day around the world. Databases are essential tools for the development and prosperity of the information market, which have absorbed the results of intellectual creativity, while requiring the investment of significant financial, labor and other resources. The constantly increasing volumes of produced and processed information in various areas of industrial relations require significant investments in information processing systems and, in addition, in databases [20, p.875-883].

On the territory of the Republic of Moldova, there are exclusive rights to the results of intellectual activity, which are limited by international treaties of the Republic of Moldova and the Civil Code of the Republic of Moldova.

In case of recognition of the exclusive right to the results of intellectual activity in accordance with international treaties to which the Republic of Moldova is a party, the content of the exclusive right, the effect and limitation of exclusive rights, the procedure for exercising, as well as protection are established by the legislation of the Republic of Moldova, regardless of the main provisions of the legislation of the country of origin of the exclusive right, if otherwise prescribed by an international treaty or the Code. Based on Art. 46 of the Code of the Republic of Moldova "On Science and Innovation" No. 259 of July 15, 2004 [7]: "Copyright holder - the owner of the exclusive copyright to scientific and technological information from the fields of research and innovation, the author (co-author) or other individual or legal en-

tity endowed with property rights to scientific and technological information products.”

According to Art. 11 of the Law of the Republic of Moldova “On Copyright and Related Rights” No. 139 of July 2, 2010 [14]: “The author or other owner of copyright has the exclusive right to exercise, permit or prohibit the use of a work, namely the following actions: reproduction of a work; distribution of the original or copies of the work; renting (renting) copies of a work, except for works of architecture and works of applied art; importing copies of a work for distribution purposes, including copies made with the permission of the author or other copyright owner; public display of the work; public performance of the work; public communication of the work on the air, including via satellite (TV and radio broadcasting), or by cable; simultaneous and unaltered retransmission on the air or by cable of a work being broadcast or by cable; bringing the work to the public in an interactive mode; translation of the work; processing, adaptation, arrangement or other changes of the work, except for cases when the performance of some of the actions listed in the paragraphs does not relate to the form of expression of the work and for which penalties cannot be established. The author or other owner of exclusive property rights has the right to a fair remuneration. The amount and procedure for paying royalties for each type and method of using a work are established in the author’s agreement or in agreements that organizations for the management of property rights on a collective basis conclude with users.

Based on Art. 5 of the Law of the Republic of Moldova “On Copyright and Related Rights” No. 139 of July 2, 2010 [14]: “The author has the right to copyright protection for his work by virtue of the fact of its creation.” The work-object must meet the following criteria:

- a) the work must be original;
- b) the work must be in the form of an expression;
- c) the work must be brought to the attention of the public.

Regarding the concept of authorship, it can be noted that it determines the belonging of a work to a specific person. This kind of belonging is expressed in two forms: firstly, it is assumed that the author personally created the work with his own labor, and, secondly, the author is free to dispose of his work at his own discretion and at the same time receive remuneration for this. The author is able to create, whether it is a work of art or science. Authorship is protected by the legislation of the Republic of Moldova in the field of intellectual property, and in particular by the Law of the Republic of Moldova “On Copyright and Related Rights” No. 139 of July 2, 2010.

Author’s expertise in establishing the features of the author’s work is based on three main components: the principle of novelty, the principle of originality, the creative nature of the work. The principle of novelty and the principle of originality, as much as they seem similar, they are so different. The principle of novelty presupposes the existence of very new components in the object, which up to this point have not been found in any object. This principle is aimed at protecting the essence of the created work. The novelty suggests that nothing like this has ever been created before. I would like to note that the same object of patent law can be created in parallel by different people, or by different teams, independently of each other. In this case, the priority will be the one who previously registered the work. Regarding the principle of originality, according to the context of the French explanatory dictionary, this concept is interpreted as follows: a) happening for the first time; b) compiled in a new way; c) unlike any of the others [15, p.724]. The principle of originality implies the uniqueness of the very form of presentation, where the content of the work itself is not taken into account. For example, at the ongoing painting competition, two artists painted landscapes. In the presented pictures there was the same sea, the same seagulls. But as a result of creative work, two completely different works of art ap-

peared to the eye, since the creative manner of each of the authors, unique in its kind and for each person, is established by the originality of their works. At the same time, if a person copies the work of another person, passing it off as his own, he violates the law and must be held accountable for his illegal deeds.

Each person by nature is quite unique and endowed with the ability to create a work that will be endowed with a sign of originality. The very question concerning the possession of a sign of originality of works is brewing in the process of litigation concerning disputes regarding the ownership of copyright in works. The sign of originality is determined in comparison with other submitted works. During the examination, it will be possible to determine whether the work is the author's, or whether it was borrowed from someone. Perhaps one should agree with the opinion of A. Bertrand, who considers an original work that is not a simple reproduction of a previous work, but expresses the taste, mind and skill of its author; in other words, his personality in composition and expression [2, p. 136]. For example, V.I. Serebrovsky believes that: "originality is an indispensable element of any creative activity" [21, p. 35].

And finally, the third sign that will need to be investigated as a result of the examination is the creative nature of the work.

According to the current legislation, the work is of a creative nature, being the result of creative activity. The process of creation is creative activity. Nowadays, the concept of "creativity" is widely used, which was adopted from the English language and means an individual property of a person, and in particular the zeal and dedication shown in creativity. Creativity is the creation of completely new objects that are unique in their kind and not like any other. Creativity in its knowledge is a rare gift that not many people can boast of. Creativity in combination with efficiency can present the world with the most valuable pearls of human intellectual activity. The inability to be creative and

recreate world masterpieces, but at the same time, the desire to receive the benefits of the world, push people to commit completely illegal actions, including the appropriation of authorship for other people's works. This is relevant today, when the Internet and information technology have made it possible to gain access to most works of intellectual work. If there is a match with another object in whole or in part, then a dispute about authorship arises. Then it is necessary to determine whether the controversial issue of labor relating to the creative nature, or there are signs of plagiarism.

Exclusive property rights, as well as the right to remuneration, which are provided for by the Law of the Republic of Moldova "On Copyright and Neighboring Rights" and concerning works, are valid throughout the life of the author and for 70 years after his death, the calculation moment begins on January 1 of the year that follows the year of the death of the author himself.

According to Art. 23 of the above-mentioned law of the Republic of Moldova [14]: "Property rights to audiovisual works are protected for 70 years, starting from January 1 of the year following the year of death of the last of the following co-authors: general producer (stage director); screenwriter (screenwriter); dialogue writer; composer - the author of a musical work (with or without text) specially created for this audiovisual work.

The term of protection for a musical work with text expires 70 years after the death of one of the following persons, the last to die, from whether such person is recognized as a co-author: the author of the text and the composer of the musical work, provided that each of them has contributed to a specially created corresponding musical work with text.

Property rights to an anonymous work or a work published under a pseudonym, with the exception of works of applied art, are protected for 70 years, starting from January 1 of the year following the year of the lawful publication of the work. If during this period the author of an

anonymous work or a work published under a pseudonym discloses his identity or his identity becomes apparent, the provisions of paragraphs (1) and (2) shall apply.

Property rights to a work created with a co-author, with the exception of works of applied art, are protected during the life of each of the co-authors and for 70 years, starting from January 1 of the year following the year of death of the last of the co-authors.

The terms of protection of property rights to collective works are determined in accordance with the provisions of paragraph (4). However, the terms of protection of the rights of authors whose contributions are identified are established in accordance with the provisions of paragraphs (1) and (3).

If the work was published in separate volumes, parts, issues or series and the term of protection of the author's rights is calculated from the moment of the lawful publication of the work, the term of protection is established for each such separate part.

Property rights in works of applied art are protected for 25 years from the date of their creation, excluding industrial designs and models not registered in accordance with the Law on the Protection of Industrial Designs and Models created for the purpose of industrial reproduction, which are protected for 3 years from the date of their creation.

If the period of protection of property rights to a work in the country of origin is longer than the periods of protection provided for by this law, the provisions of this law shall apply, and if less, the provisions of the legislation of the country of origin shall apply.

After the expiration of the term of protection of property rights, the work passes into the public domain. Works that have passed into the public domain may be freely used subject to the moral rights of the author and other copyright holders, as well as subject to payment of remuneration. The moral rights of the author are protected indefinitely. The protection of moral rights after the death of the author is car-

ried out by his heirs and organizations, which are entrusted with the protection of the rights of authors in accordance with the established procedure. These organizations perform their functions of protecting the moral rights of authors even if they have no heirs or their copyright has expired."

### **Subjects of Copyright**

*The subjects linking their relationship with the creation, use, and then disposal of copyright can be both citizens (authors of works of science, literature, art, their successors, employers, and other persons who have acquired copyright by law or contract), and legal entities.* One of the main principles fixed in the legislation of the Republic of Moldova, namely in Art. 11 of the Law of the Republic of Moldova "On Copyright and Related Rights" No. 139 of July 2, 2010 [14] article no. 630] prescribed: "The author or other copyright owner has the exclusive right to exercise, permit or prohibit the use of the work, namely the following actions: reproduction of the work; distribution of the original or copies of the work; renting (renting) copies of a work, except for works of architecture and works of applied art; importing copies of a work for distribution purposes, including copies made with the permission of the author or other copyright owner; public display of the work; public performance of the work; public communication of the work on the air, including via satellite (TV and radio broadcasting), or by cable; simultaneous and unaltered retransmission on the air or by cable of a work being broadcast or by cable; bringing the work to the public in an interactive mode; translation of the work; reworking, adapting, arranging or otherwise changing the work, except in cases where the performance of some of the actions listed in paragraphs a) - k) does not relate to the form of expression of the work and for which penalties cannot be established. In the absence of evidence, the natural person under whose name the work was first published will be recognized as the author of the work.

Thus, the exclusive right to the result of

intellectual activity, which was created by creative work, initially arises from the author himself. This right can be transferred by the author to other persons only on the basis of an agreement, as well as on the grounds that have been established by law. Those citizens who did not make their personal contribution to the creation of such a result, as well as persons who only provided the author with technical, consulting, or material assistance, or even contributed to the registration of rights to the result or use, will not be recognized as the authors of the results of intellectual activity.

Also, persons controlling the execution of these works will not be recognized as authors. For example, the author of a term paper or a thesis will be the student himself - the creator, and not his supervisor. Accordingly, he will be recognized as the author, provided that his work has not been downloaded from the Internet and he personally wrote it. The opportunity provided to authors of works of science, literature and art to have their rights is included in the content of the legal capacity of a citizen. According to Art. 24 of the Civil Code of the Republic of Moldova: "the legal capacity of a natural person arises at the moment of his birth and ends with death" [6].

I would like to note that for the recognition of the subject as the author of this work, his age, state of legal capacity do not matter. In practice, there are cases when, at the age of four or six, children write their own drawings, among them there are even children with autism. The legislator provided that in order to exercise their copyright, it is necessary for the subject to reach a certain age. If our author of the work has not reached the age of 14, then in this case his copyright will be exercised by his legal representatives, these may be parents or guardians.

As for minors aged 14 to 18, they can independently exercise the rights of the author of a work of science, literature or art, i.e. without the consent of parents, adoptive parents, or guardians.

In relation to citizens who have been limited by the court in their legal capacity, they can exercise their copyrights only with the consent of their trustees. As for citizens who are recognized by the court as incompetent, copyright will be exercised by their guardians.

The legislator fixes the presumption of authorship, which means that: in the absence of evidence, the author of the work will be considered the person indicated by the author on the original work or its copy. The presumption also applies to an author who is presented under a pseudonym. For the emergence of copyright, a legal fact is required, namely, the creation of a work.

Individual subjects of copyright deserve special attention, namely: co-authors. Based on Art. 13 of the Law of the Republic of Moldova "On Copyright and Related Rights" No. 139 of July 2, 2010 [14]: "Copyright in a work created by the joint creative work of two or more persons belongs to the authors jointly, regardless of whether such a work forms one inseparable whole or consists of parts. Each of the co-authors retains the copyright to the part of the work created by him and has the right to dispose of it at his own discretion, provided that this part has an independent value. A part of a work is recognized as having independent significance if it can be used independently of other parts of this work. Mutual relations of co-authors are determined, as a rule, by the contract. In the absence of such an agreement, the copyright in a work is exercised by all authors jointly, and the remuneration is distributed among them in proportion to the degree of participation of each of them, if it can be determined. If it is impossible to determine the degree of participation of each of the co-authors, the remuneration is distributed equally between them. If the work cannot be divided into parts of independent significance, the co-authors may exercise copyright in it only by agreement between them."

Thus, co-authorship can be conditionally divided into two types, which differ in their

special mode of using works:

a) separate co-authorship, it means that when the co-authors have one copyright for a work that consists of independent parts, and each of them can be used independently of each other, be it a song consisting of words and music). A part of a work that has independent significance and can actually be used independently of other parts can be used by the author at his own discretion, unless otherwise prescribed by an agreement concluded between the co-authors;

b) inseparable co-authorship implies a single copyright for a work by co-authors, assuming a single inseparable whole, where none of the co-authors can, without good reason, prohibit the use of this work. This right to use a joint work applies to all co-authors equally, regulating relations by mutual agreement concluded at any stage of the creation of a collective work, and maybe even after its completion.

All income received in co-authorship from the joint use of the work is distributed equally among all, or their distribution of income may be regulated by the agreement of all co-authors. At the same time, the disposal of the exclusive right to a work that was created in co-authorship will be implemented by them jointly, unless otherwise provided by law. Each co-author can take the necessary measures to protect their rights, even when the work they created is one whole.

The authors of derivative works are translators of literary texts, arrangers of musical works, playwrights who create scripts from someone else's novels, stories, and other processor [26, p. 14]. Compilers of collections, encyclopedias, atlases and other works should be referred to the subjects of copyright. Their copyright extends to their selection, the correct arrangement of materials.

The author of a work included in a collection may use his work independently of the collection, unless otherwise provided by the contract with the creator of this collection. The copyright in a completed translation, col-

lection, or other derivative or composite work shall not prevent other persons from translating or adapting the same original work. The publishers of collections of scientific papers, encyclopedias, dictionaries, newspapers and magazines have the right to use such publications. The publisher, when making any use of such a publication, has the right to indicate its name, or the right to require its indication. For example, a number of publishing houses use the following saying: "Reprinting of materials is possible only with the consent of the editors, expressed in writing." It should be noted that the authors, as well as other owners of exclusive rights to works that were included in such publications, may retain these rights regardless of the right of the publisher himself, as well as other persons to use such publications. At the same time, the exception is cases where there was a transfer of exclusive rights to the publisher, or other persons, as well as the transfer of rights to the publisher, or other persons on other grounds that were prescribed by law.

Authors of service works are another subject of copyright. According to Art. 14 of the Law of the Republic of Moldova "On Copyright and Related Rights" No. 139 of July 2, 2010 [14] : "The moral rights to a work created in order to fulfill an assignment from an employer or official duties (an official work) belong to the author of the official work. The author of a work referred to in paragraph (1) is not entitled to prohibit his employer from publishing the work or otherwise making it available to the public. Unless otherwise provided by law or the terms of the contract, to the extent that the use of a work is conditioned by an assignment to the author to create an employee work, the property rights to the work belong to the employer. The amount of the author's remuneration for each method of using the official work is established by an agreement between the author and the employer. When using a service work, the name of the author is indicated, if it is practically possible. The employer also has the right to require the indication of his name

in any use of an official work.

In this case, the exclusive right to an employee work will belong to the employer, unless otherwise prescribed by the employment contract or other agreement concluded between the employer and the author. The author will own the exclusive right to an employee work, if, within the period established by law, calculated from the day when the employer received the work, and he did not transfer the exclusive right to this work to another person, or did not inform the author at all about keeping the work secret.

If, within the period established by law, the employer uses the employee's work, or transfers the exclusive right to another person, then the author has the right to receive remuneration. In addition, the author acquires the right to receive remuneration even in the case when the employer decided to keep the official work secret, and therefore he did not use the work within the specified period. The procedure itself, the amount of remuneration paid by the employer is established by an agreement concluded between him and the employee, and if a dispute arises, then in court.

The following subjects of copyright are heirs and other successors, due to the fact that the exclusive right to a work is inherited. For example, articles 19, 20, 23 of the Law of the Republic of Moldova "On Copyright and Related Rights" No. 139 of 02.07.2010 [14] prescribed: "The creation and distribution of a work of fine art, which contains a portrait, is allowed only with the consent of the depicted person or his heirs. In each case of resale of an original work of art after the first assignment of ownership of it by the author, the seller is obliged to pay to the author or his heirs a fee of 5 percent of the resale price if this price is at least 20 times the minimum wage (right of succession). This right is inalienable during the life of the author and passes exclusively to his heirs by law or will for the duration of copyright protection. The creation, reproduction, modification and distribution of a photographic work containing a por-

trait is permitted only with the consent of the depicted person or his heirs. The moral rights of the author are protected indefinitely. The protection of moral rights after the death of the author is carried out by his heirs and organizations, which are entrusted with the protection of the rights of authors in accordance with the established procedure. These organizations perform their functions of protecting the moral rights of authors even if they have no heirs or their copyright has expired. The legislation of the Republic of Moldova establishes persons who are required to protect authorship, the name of the author himself, as well as the inviolability of the results of his intellectual activity. These individuals include:

a) testamentary heirs indicated by the testator in the will;

b) heirs by law, in the event that there is no will, or there are no relevant instructions, in case of refusal of the heirs to exercise these powers, or in the event of the death of the said heirs;

c) the executor of the will, successors of heirs, as well as other interested parties, for example, copyright management organizations that have the power to protect the rights of authors after their death. Unambiguously, in order to prevent the subject from abusing the relevant right, upon presentation of the relevant evidence, the court has the right to determine whether there is abuse on the part of this subject or not.

The possibility of protection after the death of the author or the performer of these personal non-property rights can be explained by several reasons. Firstly, despite the fact that the list of subjects entitled to protect the personal non-property rights of the author after his death is quite wide, it is limited and based on the presence of a certain - family, professional, cultural - connection of the persons listed in the law with the author, performer. Thus, the author, the performer either delegates the appropriate powers to certain persons - heirs by law, or these powers are exercised by their

relatives (heirs by will), or persons who have a proven interest in protecting such rights protect them [17, p.160].

The subjects of copyright should also include organizations that are in charge of the collective management of copyright and related rights.

For example, based on Art. 11 of the Law of the Republic of Moldova "On Copyright and Related Rights" No. 139 of July 2, 2010 [14]: "The author or other owner of exclusive property rights has the right to a fair remuneration. The amount and procedure for paying royalties for each type and method of using a work are established in the author's agreement or in agreements that organizations for the management of property rights on a collective basis conclude with users. The right of distribution, provided for in point b) of paragraph (1), is lost with the first sale or other first transfer of ownership of the original or copies of the work on the territory of the Republic of Moldova. When the author transfers or assigns his right to rent (lease) a phonogram or an audiovisual work, provided for in clause c) of paragraph (1), to the producer of the phonogram or audiovisual work, he re-

tains the right to a fair remuneration for each case of rental (hiring). This right is inalienable and is exercised only through organizations managing property rights on a collective basis. The right of retransmission by cable, provided for in point h) of paragraph (1), is exercised only through organizations for the management of property rights on a collective basis".

**Conclusions.** The essence of the law involves the enrichment of the national cultural heritage, which directly depends on the level of protection of works of literature, art and science, because the higher the level of copyright protection is, the greater the craving for creativity is. The essence of copyright is to strike a balance between two entities: the first entity is allowed to control the use of their works, while the second entity is allowed to have access to the work of the author.

The subjects linking their relationship with the creation, use, and then disposal of copyright can be both citizens (authors of works of science, literature, art, their successors, employers, and other persons who have acquired copyright by law or contract), and legal entities.

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