

SCTMG 2020**International Scientific Conference «Social and Cultural Transformations in the
Context of Modern Globalism»****INHERITANCE OF EXCLUSIVE COPYRIGHT IN CASE OF ONE
OF CO-AUTHOR'S DEATH**

Elizaveta Yurievna Martyanova (a)*

*Corresponding author

(a) Perm State National Research University, 15, Bukireva Str., Perm, 614990, Russia, lizaveta.fomina@mail.ru

Abstract

The article considers the models of construction of the legislative mechanism of regulation of inheritance of the share in the exclusive copyright for the work, created in co-authorship. It reveals how the status of the co-author is taken into account in the domestic and foreign legal order when designing the legal regulation of the inheritance of the share in the exclusive copyright in case of death of one of the co-authors. There is an attempt to identify the reasons for the establishment of a differentiated approach to inheritance of the exclusive copyright of a work created in co-authorship. The methodological basis of the study was formed by specific-historical, comparative-legal approach, the method of economic analysis of the law. In the course of the analysis of domestic and foreign legislation four main models of building normative regulation of inheritance of the share of the deceased co-author in the exclusive right were defined. The necessity of establishing of pre-emptive rights of surviving co-authors to acquire a share of the deceased co-author is justified. In the case of heirs, it is possible to establish rules according to which surviving co-authors should be granted the right to buy out from the heirs of the deceased co-author the respective share in the exclusive copyright.

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1. Introduction

The results of intellectual activity and means of individualization form is an independent sector of economic relations. Exclusive copyright, possessing the property nature, is a separate unit of civil circulation. The key trends of the global and national economic development are the growth of indicators of the corresponding volume of the copyright market and the intensive commercialization of the use of works. According to WIPO, for the 14 countries that reported on the creation, use and disposal of works, revenues from exclusive copyright turnover amounted to \$42.5 billion in 2018. The high cost characteristics of such objects predetermine the importance of establishing a legal regulation that meets the needs of the turnover, provides an appropriate level of legal protection and balances the interests of rights holders and society.

The activity on creation of objects of copyright has its own tendentious directions of development. According to Price (1986), the increase in the number of works created as co-authors, is one of the biggest changes in scientific and creative activity. There are numerous studies confirming the thesis about the growth of the number of works created by joint creative work in comparison with the works created by a single person. For example, Fanelli and Larivière (2016) cite evidence that, while most authors did not collaborate at the beginning of the 20th century, the number of works created together increased significantly at the end of the 20th century, with the number of co-authors ranging from two to seven.

The foregoing demonstrates the wide spread of co-authorship relations, the involvement of many people in this type of legal relations, which suggests the need for special attention to be paid by legislators, law enforcers and the scientific community to the regulation of these relations.

2. Problem Statement

Taking into account the designated vectors of development of public relations it becomes obvious that an essential part of the turnover is made by exclusive copyrights belonging to several persons. It seems that the construction of the legal mechanism of turnover of the mentioned subjective civil right, complicated by the multiplicity of persons, should include: fixing the legal status of the co-author, determining the grounds for the establishment and termination of the co-authorship regime, the order of implementation and disposal of the right, as well as the legal status of the person who is not a co-author, but became the owner of the exclusive copyright on contractual and non-contractual grounds, along with the co-author (co-authors).

One of the most common ways to create a civil law community consisting of co-authors and co-owners who are not co-authors is to acquire a share of the exclusive copyright from the deceased co-author as a result of inheritance succession. Inheritance is traditionally positioned as a derivative ground of acquisition of exclusive rights (Novoselova, 2017; Ruzakova, 2016; Sidorkin, 2012) as a basis for the transfer of exclusive rights without a contract by virtue of Article 1241 of the Civil Code of the Russian Federation. At the same time, it should be noted that due to the provisions of domestic legislation, the surviving co-author(s) do not have preferential rights to receive a share in the exclusive right over the heirs of the deceased co-author, moreover, the preferential rights are not established even for co-authors-heirs over heirs who are not co-authors. Surviving co-authors also do not have any legal instruments to prevent heirs from joining the civil-law community. The existing normative regulation in the Civil Code

of the Russian Federation leads to the possibility of a situation of forced reporting, conflict within the mixed community of informants in the absence of mechanisms to overcome it. With regard to exclusive copyright, the necessity of notification, the conflict in the civil-law community can cause harm not only to the interests of the surviving co-authors and heirs themselves, but also to society. If the co-owners of exclusive copyright in respect of the work will not be able to coordinate their will and make a joint decision on the disposal of the right (Art. 1229 of the Civil Code of the Russian Federation), in particular on the conclusion of a license agreement, it will lead to paralysis of the rights of the owners, the impossibility of granting rights to use the work to other people.

3. Research Questions

This article attempts to answer the following questions:

How does the domestic and foreign legal order take into account the status of the co-author when designing the legal regulation of the inheritance of shares in exclusive copyright in the event of the death of one of the co-authors?

What are the reasons for the establishment of a differentiated approach to the inheritance of exclusive copyright in a work created by co-authors?

4. Purpose of the Study

The purpose of this work is to identify the main models of construction of the legal mechanism of inheritance of shares in exclusive copyright in the event of the death of one of the co-authors on the basis of the analysis of foreign legislation, the history of development of the domestic legal system, the general theoretical concept of reporting exclusive copyright, developed by the legal doctrine.

5. Research Methods

The methodological basis of the study is a specific historical, comparative and legal approach, as well as the method of economic analysis of law. The first of these means of research allows us to trace the development of the legal system of Russia and other countries in terms of establishing the rules of inheritance of shares in the exclusive copyright for a work, created in co-authorship. The comparative legal method is aimed at comparing various legal systems in order to identify common and different, as well as attempts to identify the causes and consequences of the establishment of a particular legal regulation. The use of the method of economic analysis of law, namely the normative approach, is conditioned by the presence of the property nature of exclusive copyright and the presence in the designated legal relationship of economic content, and the need to take into account not only legal, but also economic consequences in the implementation of legislative activities. The conclusion on the significance of the application of methods of economic analysis of law is contained not only in scientific papers (Karapetov, 2016), but also reflected in the position of the higher courts, in particular in the Decree of the Constitutional Court of the Russian Federation of 20.12.2011 No. 29-P.

6. Findings

Domestic and foreign legislators are aware of the cases when the normative mechanism of inheritance of a particular property is designed taking into account the legal status of persons participating in this type of succession. In particular, special rules of inheritance are established for persons who were members of the civil law community of co-owners of an indivisible thing in the event that the share in such property is part of the hereditary mass: on the basis of paragraph 1 of Art. 1168 of the Civil Code of the Russian Federation such persons are granted a preferential right of inheritance of this share over other heirs who are not co-owners. When inheriting a share in the authorized capital of a business company, it is provided, firstly, for the possibility of the company's shareholders to establish a prohibition on the inclusion of the heir in the composition of the company's shareholders, and secondly, for the right of the shareholders to fix the need to obtain the consent of all shareholders to join the company (part 8 of Art. 21 of the Federal Law of 08.02.1998 № 14-FZ (ed. of 23.04.2018) "On Limited Liability Companies"). Satisfaction with the property interest of such heirs is carried out through the payment of the actual value of the inherited share (paragraph 1 of Art. 1176 of the Civil Code). According to the fair comment of Kropocheva (2018), understanding at the theoretical level of the peculiarities of inherited legal relations with the participation of certain categories of heirs is one of the conditions for the effectiveness of legal regulation.

The fact that a person is part of the community of exclusive copyright holders is also considered to be a significant circumstance affecting the fate of the exclusive copyright (share in it) within the framework of the universal succession. The first steps in fixing the peculiarities of inheritance of this right in the domestic legislation were reflected in part 2 of Article 7 of the Law "On Copyright of Russia" of 20.03.1911, which contained a provision on the transfer of the exclusive rights of the deceased co-author to surviving co-authors in the event that the deceased has no heirs. A similar provision was contained in foreign legislation: for example, Article 7 of the Copyright Act of Bulgaria of 1921 established that "Copyrights on the death of one of the co-authors of a work created jointly by several persons shall pass to surviving co-authors of the same work, unless the deceased has otherwise disposed of his copyright during his lifetime and has left no heirs" (Koepfle, 1963, p. 3).

Article 51 of the Code on Copyright and Neighbouring Rights of the Republic of Cape Verde establishes that if, after the death of one of the co-authors of a work done in collaboration, his property is transferred to the ownership of the State, the copyright of the work as a whole belongs to the surviving authors (Código do Direito de Autor e dos Direitos Conexos (Decreto Lei No. 02/2017). A similar provision is set out in the Code on Copyright and Related Rights of the Republic of Sao Tome and Principe (art. 51 of the Code on Copyright and Related Rights (approved by Decree-Law No. 02/2017) and the Code on Copyright and Related Rights of Portugal (Código do Direito de Autor e dos Direitos Conexos (conforme alterado de acordo com DL n.º 100/2017, de 23/08)).

Uruguayan legislation provides that in the event of the death of a co-author who does not have heirs or forced heirs, the income from the work to which he would be entitled for fifty years after his death is credited to General Revenue (art. 15 Law No. 9.739 of December 17, 1937, on Literary and Artistic Property (as amended up to Law No. 18. 046 of October 24, 2006). The provisions of Article 11 of the Law "On Intellectual Property in Saudi Arabia" proclaim the rule that if one of the authors dies with-

out leaving the heirs, his share passes to the co-authors or their heirs, unless otherwise specified or agreed (Said, 2018).

Russian legislation establishes the following peculiarities of inheritance of shares in exclusive copyright: Article 1283 of the Civil Code of the Russian Federation in case of existence of grounds for recognition of the hereditary masses as escheat, the fate of exclusive copyright is put in dependence on the regime in which the work was created: in separate or inseparable co-authorship. In the first case, the exclusive copyright will go into the public domain, and in the second case, it will go to the surviving co-authors in equal shares. It seems that the differentiation of the order of inheritance in respect of works created in separate and inseparable co-authorship does not have sufficient justification. The selection of different types of co-authorship is important only for the resolution of the issue of the use of the work and parts of work by the co-authors. Article 1258 of the Civil Code of the Russian Federation does not establish any differences in the legal regime of the exclusive right in relation to various types of co-authorship. There are dissimilarities only in the order of use of the work.

The Civil Codes of Belarus and Kazakhstan, the Law of the Republic of Kazakhstan No. 6 of June 10, 1996 "On Copyright and Related Rights" (as amended by the Law of the Republic of Kazakhstan No. 419-V of November 24, 2015) do not contain rules establishing the peculiarities of inheritance of exclusive copyright in case of death of one of the co-authors.

When formulating legal provisions in the specified area, it seems necessary to understand the reasons for the prevalence of the approach according to which the rules of succession are established taking into account the legal status of persons participating in it. The cost component of an exclusive copyright enabling it to participate in the turnover should not be the only factor prejudging the mechanism of transfer of such a right. It seems that the existence of a person's personal non-property and property rights has an effect exceeding the simple amount of these rights. That is why, despite the general rule that the attribution of the estate to escheat leads to the transfer of such estate to the State, an exception is established in many jurisdictions for works created as co-authors: either the exclusive copyright itself or the proceeds from its use are transferred to surviving co-authors. However, it seems necessary to develop the idea of taking into account the rights of co-authors at the time of inheritance and when a person has heirs, but one of them is a co-author of the work. In this case, it seems necessary to apply the criterion of equity in the sense of the theory of normative economic analysis of law (Calabrezi, 2016): in the case of two heirs, one of whom has the status of co-author and the other does not, it is necessary to establish the pre-emptive right of the heir co-author to receive as an inheritance a share in the exclusive copyright of the work created in co-authorship.

7. Conclusion

As a result of the conducted research it was revealed that the system of domestic legislation contained elements of a differentiated approach to the establishment of the legal status of the exclusive copyright holders in the pre-revolutionary period, which was manifested in the construction of rules on the inheritance of the share in the exclusive copyright, referred to the escheat. Proceeding from the given review of foreign and domestic legislation, it seems possible to identify the following models of con-

structing a legal mechanism of inheritance of the share in exclusive copyright in case of death of one of the co-authors:

1. If the deceased co-author has heirs, the law does not establish any rights of advantage for surviving co-authors. However, when attributing a share in exclusive copyright to escheat, it is the surviving co-authors who acquire the rights to this share.

2. If the deceased co-author has heirs, the law does not establish any rights of advantage for surviving co-authors. However, when attributing a share in the exclusive copyright to the escheat, the surviving co-authors do not acquire the rights to the share in the exclusive right itself, but acquire the right to receive income from the use of the work as a whole.

3. If the deceased co-author has heirs, the law does not establish any rights of advantage for surviving co-authors. In case of inheritance of escheat property the order of inheritance depends on the regime in which the work was created in co-authorship. When creating a work in the regime of inseparable co-authorship, the surviving co-authors acquire the rights to this share. In case of creation of a work in the regime of separate co-authorship, the surviving co-authors do not acquire rights to this share.

4. No rights are established for surviving co-authors with respect to the share of deceased co-authors.

It is desirable to apply the following approach: for the surviving co-authors the preferential rights are established at inheritance of the share of the deceased co-author at recognition on the investigated property as escheatable irrespective of the fact that in the regime of separate or inseparable co-authorship the work is created. If there are heirs, it is possible to establish rules similar to the inheritance of a share in the authorized capital of an economic society: granting the surviving co-authors the right to repurchase the respective share in the exclusive copyright from the heirs of the deceased co-author.

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