

THE ROLE OF THE STATE IN MANAGING MORAL RIGHTS AFTER THE AUTHOR'S DEATH: A LATVIAN PERSPECTIVE

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Abstract: This paper examines the legal framework and practical challenges of managing moral rights after an author's death in Latvia, with emphasis on the state's role when there are no legal heirs. Copyright law in Latvia recognizes both economic and moral rights, yet posthumous protection, particularly in heirless cases, remains underdeveloped. Under Latvian law, moral rights, such as the right to disclose a work, are inalienable during the author's lifetime and transfer only to heirs after death. When an author dies without heirs, or heirs fail to assert their rights, management of such rights becomes ambiguous. According to the Civil Law, property without heirs is transferred to the state. However, this transfer primarily concerns the economic administration of the deceased's estate, rather than the safeguarding of moral rights. The analysis shows that the state in Latvia, through relevant institutions and in accordance with inheritance law and property governance regulations, takes over administration and sale of property, including valuable cultural items. However, there is no explicit legal provision mandating the state to actively protect or enforce the moral rights of deceased authors, such as ensuring proper attribution or preventing distortion of their works.

Keywords: Moral rights; Posthumous copyright; State intervention; Copyright law; Heirless inheritance; Cultural heritage

Introduction

The posthumous protection of authors' moral rights remains a complex and often overlooked aspect of Copyright law. While economic rights are generally well-regulated and transferable, moral rights - which protect the author's personal and reputational connection to a work - raise distinct challenges, especially after the author's death. Legal traditions differ significantly in how they approach this issue. "Copyright is of fundamental importance both for the individual owner of the right and for society generally."² They arise automatically and are not dependent on state registration or other administrative enforcement requirements. The issue of the

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² SEVILLE, Catherine: EU Intellectual Property Law and Policy. Cheltenham, United Kingdom / Northampton, MA: Edward Elgar Publishing Inc., 2009., p. 325. ISBN 978-18-47201-23-2.

transfer of rights is particularly significant in the broader context of intellectual property law, especially in cases where the author has no heirs, or the existing heirs do not actively protect the author's moral rights after their death. This affects not only the interests of the author but also those of the public after the author's death, particularly when the work holds cultural and historical value. Professor Mira T. Sundara Rajan notes, "it is largely in the context of protection after the author's death that moral rights are transformed into an instrument of cultural policy. After the author's death, moral interests do not cease to be important. Rather, they become different in nature: the public continues to have an interest in maintaining the quality and integrity of its own cultural heritage."³ I agree with Professor Mira T. Sundara Rajan's position. Such a perspective rightly leads to the question of how different jurisdictions ensure the protection of authors' moral rights after death.

In many jurisdictions, the protection of authors' moral rights after death is recognized as an extension of the author's personality and legacy. For instance, other countries such as France, Lithuania and Germany treat moral rights as perpetual, inalienable, and enforceable even in the absence of heirs - often assigning the responsibility of enforcement to public institutions or cultural agencies. Conversely, in common law systems like Latvia, moral rights have traditionally played a more limited role, with weaker posthumous enforcement mechanisms. Within the European Union, harmonization of copyright has largely focused on economic rights, leaving the regulation of moral rights, especially after the author's death, to national discretion. In this context, Latvia's regulatory framework reveals notable gaps, particularly in cases involving heirless estates. A comparative examination highlights how the Latvian approach reflects a passive stance by the state and lacks clear institutional mechanisms for safeguarding moral rights as part of the public interest.

Contribution to the State of the Art

This paper contributes to the limited body of Latvian legal framework on posthumous moral rights by examining the role of the state in heirless situations - a topic that remains underexplored both in academic literature and in legislative debate. While prior discussions have focused primarily on the economic administration of deceased authors' estates, this paper highlights the absence of clear legal mechanisms for the enforcement of moral rights when no heirs are present. By drawing attention to this legal framework, the paper provides a new perspective on the intersection of copyright, inheritance, and cultural heritage law in Latvia, and opens a discussion on whether public institutions should be granted a more active role in preserving authorship.

³ RAJAN, Mira Teresa Sundara: *Moral Rights: Principles, Practice and New Technology*. New York: Oxford University Press Inc., 2011., p. 4. ISBN 978-0-19-539031-5.

Research Question:

This paper asks whether the Latvian legal framework adequately ensures the protection of authors' moral rights in the absence of heirs, and under what conditions the state can or should intervene. Therefore, this article will analyse:

- 1) the role of the state as a subject entitled to exercise the author's moral rights after their death, and
- 2) how states can enforce these rights posthumously in cases where heirs exist but do not actively protect the author's moral rights.

Research Methodology

This paper uses the method of doctrinal legal research, focusing on a systematic analysis of Latvian copyright and inheritance law, with particular attention to the interpretation of relevant legislative acts and Cabinet regulations. It also draws on international instruments, such as the Berne Convention. This approach enables a comprehensive assessment of whether and how moral rights can be protected in the absence of heirs, and what role the state may play in such situations.

Subjects Entitled to Exercise the Author's Moral Rights

The first step is to examine which persons may become the subjects entitled to exercise the author's moral rights after the author's death. According to Article 6bis, paragraph 2 of the Berne Convention, the moral rights granted to the author under paragraph 1 of the same article may, after the author's death, be exercised by persons or institutions authorized under the legislation of the country where protection is claimed.⁴ This provision "allows national legislation where protection is claimed to determine the persons or institutions which can exercise the rights under the moral right after the death of the author or the end of the economic rights."⁵ The Berne Convention "leaves it entirely to the Union countries to determine the persons to exercise moral rights after the author's death; mostly, these persons will be the heirs or, in some countries, others such as public authorities."⁶

Article 7 of the Latvian Copyright Law lists the following subjects of copyright: "the author of the work, co-authors, including authors of audiovisual works, authors of

⁴ Cited from: Berne Convention for the Protection of Literary and Artistic Works, Adopted: 09.09.1886, Amended: 28.09.1979, Article 6bis, paragraph 2.

⁵ World Intellectual Property Organization: Guide to the Berne Convention for the Protection of Literary and Artistic Works. Geneva: WIPO. WIPO Publication No. 615(E), 1978., p. 43; section 6bis.g. ISBN 92-805-0002-3.

⁶ VON LEWINSKI, Silke: International Copyright Law and Policy. New York: Oxford University Press, 2008., p. 136, section 5.105 (v). ISBN: 978-01-99207-20-6.

derivative works, their heirs, and other successors in title.”⁷ The law also provides that these copyright subjects may exercise their rights “personally or through their representatives (including through collective management organizations).”⁸ However, regarding the transfer of moral rights after the author’s death, as Sworn Attorney Māris Grudulis points out, “these may include the author’s heirs, legatees, specifically appointed persons, surviving spouse, duly authorized state or private institutions, as well as any other person to whom the legislation of the respective country grants the right to exercise these rights.”⁹ These subjects may also exercise the inherited or transferred moral rights either independently or through an authorized representative - for example, by authorizing professionals in the field to protect or enforce the rights.

Although the Latvian Copyright Law clearly defines the role of heirs, it is not sufficiently clear who may be considered “other successors to the author’s moral rights.” If, for example, the state can be such a successor, under what circumstances do the author’s moral rights transfer to the state, and can they be transferred at all? Considering that Article 16, paragraph two of the Copyright Law stipulates that only specific economic rights set out in paragraphs one, two, and three of Article 15 may be transferred to other successors (including legal entities)¹⁰, it follows that other successors to the author’s rights may only acquire economic, but not moral, rights.

According to the above-mentioned analysis of the Berne Convention, a state institution may qualify as such a subject. However, the Latvian Copyright Law does not contain a direct provision granting the state the right to exercise the author’s moral rights after their death. In general, it can be stated that upon the author’s death, the heirs inherit both economic and moral rights. If there are no heirs or the heirs do not exercise these rights, situations may arise in which the state becomes involved in the protection of these rights, in accordance with other legal acts, such as inheritance law or regulations on the management of state property. According to Article 416 of the Latvian Civil Law, if there are no heirs after the death of the decedent, or if the heirs fail to appear within the prescribed time or fail to prove their inheritance rights, the property is vested in the state. The Cabinet of Ministers determines the procedure for evaluating and preserving in state ownership any objects of significance contained in heirless estates, including cultural-historical objects, works of art, or natural objects.¹¹ “This means that upon establishing the existence of heirless property in accordance with the procedure set by law, the state does not have the right to refuse it, as the property vests in the state by operation of

⁷ Copyright Law: Law of the Republic of Latvia. Adopted on 06.04.2000, Article 7, paragraph 1.

⁸ Copyright Law: Law of the Republic of Latvia. Adopted on 06.04.2000, Article 7, paragraph 2.

⁹ GRUDULIS, Māris: *Ievads Autortiesībās*. Rīga: Latvijas Vēstnesis, 2006., p. 108. ISBN 9984-731-66-9.

¹⁰ Copyright Law: Law of the Republic of Latvia. Adopted on 06.04.2000, Article 16, paragraph 2.

¹¹ Cited from: Civil Law: Law of the Republic of Latvia. Adopted on 28.01.1937., Article 416.

law. Moreover, the vesting of property should be understood as the obligation or responsibility of ownership, which is not affected by the completion of the procedures required to formalize the state's ownership status."¹² "According to the meaning of Article 416 of the Civil Law, the state is not the heir or successor of the deceased person's obligations; it merely performs a public function to ensure, in the public interest, that heirless property has an owner and is returned to civil circulation."¹³ The state merely ensures "the administration of the process of taking over and selling the property, delegating the implementation of this function to a sworn bailiff."¹⁴ According to Article 306 of the Notariate Law, if within the specified period stated in the inheritance notice no heir has come forward or if the heir has renounced the inheritance, the sworn notary shall issue a notarial deed on the termination of the inheritance proceedings, which shall include the following declaration¹⁵: "a finding that no heirs have come forward within the announced period and that the estate is to be recognized as heirless property."¹⁶ According to Paragraph 86 of Cabinet Regulation No. 618 of 4 August 2008 "Regulations on the Maintenance of the Inheritance Register and Inheritance Proceedings", "if the inheritance proceedings have been terminated in accordance with the procedure laid down in Article 306 of the Notariate Law, the sworn notary shall send a copy of the deed on the termination of the inheritance proceedings to the creditors and to the person who submitted the application initiating the inheritance case."¹⁷ Cabinet Regulation No. 364 of 2 July 2013 "Regulations on the Procedure for the Actions of a Sworn Bailiff Regarding Heirless Property" disposal of heirless property, recognition and satisfaction of creditors' claims, and distribution of the proceeds from the sale, including assessing and determining the necessity to retain in state ownership any heirless property of national significance, including cultural-historical objects, works of art, or natural objects.¹⁸ According to Article 292 of the Notariate Law, the means

¹² Cited from: Judgment of the Department of Civil Cases of the Supreme Court Senate of 17.04.2019 in Case No. SKC-101/2019, section 8.2. Available at: (ECLI:LV:AT:2019:0417.C30486816.2.S).

¹³ Judgment of the Department of Civil Cases of the Supreme Court Senate of 30.05.2019 in Case No. SKC-178/2019, section 7.3. Available at: (ECLI:LV:AT:2019:0530.C32184016.5.S).

¹⁴ Judgment of the Department of Civil Cases of the Supreme Court Senate of 30.05.2019 in Case No. SKC-178/2019, section 7.3. Available at: (ECLI:LV:AT:2019:0530.C32184016.5.S).

¹⁵ Cited from: Notariate Law: Law of the Republic of Latvia. Adopted on 01.06.1993., Article 306, paragraph 1.

¹⁶ Notariate Law: Law of the Republic of Latvia. Adopted on 01.06.1993. Article 306, paragraphs 1 and 2.

¹⁷ Regulations on the Maintenance of the Inheritance Register and Inheritance Proceedings: Cabinet Regulation No. 618 of 4 August 2008., Paragraph 86. Riga: Latvijas Vēstnesis, No.130, 22.08.2008.

¹⁸ Cited from: Regulations on the Procedure for the Actions of a Sworn Bailiff Regarding Heirless Property: Cabinet Regulation No. 364 of 2 July 2013., Paragraph 1. Riga: Latvijas Vēstnesis, No.141, 23.07.2013.

of protecting an estate include: "(1) sealing of immovable property, storage facilities, or packages; (2) seizure of immovable or movable property; (3) seizure of funds."¹⁹ Within the meaning of Cabinet Regulation No. 364 "Regulations on the Procedure for the Actions of a Sworn Bailiff Regarding Heirless Property", heirless property is considered to be property recognized as such by a notarial deed on the termination of the inheritance proceedings, and may include immovable property, movable property, shares in a company's share capital or stocks, and other financial instruments.²⁰

If the movable property is a cultural monument of national significance, the buyer must notify the National Heritage Board (formerly the State Inspection for Heritage Protection), which carries out the evaluation referred to in the sixth paragraph of Article 416 of the Civil Law, in accordance with the procedure for the state's exercise of pre-emptive rights when a cultural monument of national significance is being disposed of.²¹ The consolidated version of the List of State Protected Cultural Monuments is available in the cultural heritage management information system "Mantojums": <https://mantojums.lv>.²² Until the realization, free transfer, or destruction of property vested in the state, its storage must be ensured in accordance with regulatory requirements, including environmental protection regulations.²³ Thus, the up-to-date list of state-protected cultural monuments can be found in the "Mantojums" cultural heritage management system.

From the above, it follows that in Latvia, the state does not exercise direct protection of an author's moral rights after their death - at least not in the sense of safeguarding the author's name or the personal rights associated with their work. After the author's death, their moral and economic rights transfer to their heirs; if there are no heirs, the rights to the estate pass to the state. However, such a transfer primarily concerns the administration of property and its circulation in civil turnover, not the protection of the author's honor or personal rights. Article 416 of the Civil Law and the related Cabinet regulations emphasize aspects of estate management, including preservation and sale of property, rather than the defense of moral rights as set out in Article 14 of the Copyright Law. The state acts as the administrator of heirless

¹⁹ Notariate Law: Law of the Republic of Latvia. Adopted on 01.06.1993., Article 292.

²⁰ Regulations on the Procedure for the Actions of a Sworn Bailiff Regarding Heirless Property: Cabinet Regulation No. 364 of 2 July 2013, Paragraph 2. Riga: Latvijas Vēstnesis, No.141, 23.07.2013.

²¹ Regulations on the Procedure for the Actions of a Sworn Bailiff Regarding Heirless Property: Cabinet Regulation No. 364 of 2 July 2013, Paragraph 101. Riga: Latvijas Vēstnesis, No.141, 23.07.2013.

²² On the List of State Protected Cultural Monuments: Order No. 128 of the Ministry of Culture. Available at: <https://likumi.lv/ta/id/303392-par-valsts-aizsargajamo-kulturas-piemineklu-sarakstu>, [viewed 22.02.2025].

²³ Cited from: Regulations on Competent Institutions and the Handling of Property Vested in the State: Cabinet Regulation No. 901 of 17 December 2024., Paragraph 8. Riga: Latvijas Vēstnesis, No.250, 27.12.2024.

property, in compliance with legal provisions and in the public interest, but it does not actively protect moral rights in the same way as it would for the rights of a living author.

Thus, if someone fails to indicate the author's name on copies of a work (for example, on a book's title page or in film subtitles) after the author's death, it follows from the above that the state would not participate in the protection of moral rights in this context. Accordingly, the state, as an "other successor of the author's rights," acquires and exercises only the specific economic rights set out in paragraphs one, two, and three of Article 15 of the Copyright Law. These provisions allow the state to benefit from the economic exploitation of the work.

By acquiring the economic rights, the state may also exercise the author's moral rights if necessary to protect the work from distortion or other modifications while the work is being administered or sold. Thus, after the author's death, the author's moral rights may be exercised and defended either by the heirs or by the state. "Copyright is not connected with ownership of the material object in which the work is expressed. Copyright to a work expressed in a material object is distinct from possession of that object. The transfer of possession of the material object (including the first fixed copy of the work) does not in itself result in the transfer of copyright to the work."²⁴ Therefore, the state, to which heirless property is vested by operation of law, does not acquire the author's moral rights - they do not transfer to it - but only gains the right to ensure the protection of the work until it is either sold or preserved in state ownership.

Transfer of the Author's Moral Rights to the State

In cases where there are no heirs and the estate is deemed heirless property, the protection of moral rights may theoretically be carried out by the state - for example, in relation to the integrity of the work, by prohibiting any modifications to the work or its title in order to preserve its cultural and historical significance.

However, in other cases where existing heirs do not exercise their legally granted rights to protect the author's moral rights - such as when a culturally significant work of art is inherited - how far can the state intervene in the heirs' private-law autonomy regarding the management of the inheritance? According to Article 11 of the Law of the Republic of Latvia "On the Protection of Cultural Monuments", "natural and legal persons must ensure the preservation of cultural monuments²⁵ that are in their

²⁴ Copyright Law: Law of the Republic of Latvia. Adopted on 06.04.2000., Article 16, paragraph 3.

²⁵ Cultural monuments are part of cultural and historical heritage — cultural-historical landscapes and specific sites (ancient burial grounds, cemeteries, parks, locations of historical events and notable individuals' activities), as well as individual graves, building ensembles and single buildings, works of

ownership (possession). The preservation of cultural monuments that are in state ownership is ensured by their possessors."²⁶ "The owner (possessor) of a cultural monument is obliged to comply with laws and other regulatory enactments, as well as with instructions regarding the use and preservation of the cultural monument."²⁷ Article 13 of the same law provides that "The National Heritage Board has the right to inspect objects that have cultural value in order to decide whether they should be included in the national list."²⁸ Taking into account that, according to the Law "On the Protection of Cultural Monuments", the preservation of cultural monuments is the responsibility of both the owners and the state, state intervention may be justified. However, the limits of such intervention must be assessed by balancing the heirs' private-law autonomy in managing the inheritance and the protection of public interests. Thus, if an author bequeaths a culturally and historically significant work to an heir - for example, a collection of writings or historical books that reveal culturally valuable insights from a particular time period - and the heir does not engage in protecting the author's moral rights (e.g., someone suddenly claims authorship of the collection), then the state may intervene in the protection of the work by including it in the list of state-protected cultural monuments. However, in practice, there have been no identified cases in which a designated state institution in the Republic of Latvia has directly exercised the protection of moral rights in relation to such cultural heritage.

As an example, one may consider a theoretical case where the works of Garlieb Helwig Merkel are published - works that "played a crucial role during the Latvian National Awakening in the second half of the 19th century - in shaping the construction of Latvian national history and the Latvian understanding of their past up to the Crusades of the 13th century"²⁹ - but the author's name is not indicated. Could the state intervene and require that the author's name be stated, thereby influencing how the work is used? According to the above analysis and considering the cultural value of such works to society, the state may become involved in the protection of the moral rights related to such works.

art, installations, and objects that possess historical, scientific, artistic, or other cultural value, and whose preservation for future generations is in the interest of the Latvian state and people, as well as international interests. Law of the Republic of Latvia "On the Protection of Cultural Monuments": Law of the Republic of Latvia. Adopted on 12.02.1992., Article 11.

²⁶ Law of the Republic of Latvia "On the Protection of Cultural Monuments": Law of the Republic of Latvia. Adopted on 12.02.1992., Article 11

²⁷ Law of the Republic of Latvia "On the Protection of Cultural Monuments": Law of the Republic of Latvia. Adopted on 12.02.1992., Article 11.

²⁸ Law of the Republic of Latvia "On the Protection of Cultural Monuments": Law of the Republic of Latvia. Adopted on 12.02.1992., Article 13.

²⁹ Institute of Literature, Folklore and Art of the University of Latvia. Garlieb Helwig Merkel. Available at: <https://www.literatura.lv/personas/garlibs-helwigs-merkeli> [viewed 22.02.2025].

Conclusion

Findings

1. After the author's death, the subjects entitled to exercise the author's moral rights may be their heirs. However, if there are no heirs or the estate is deemed heirless property, then, by law, the heirless property shall belong to the state as another successor of the author's rights.
2. Latvian legislation does not contain a direct provision granting the state the right to protect the author's moral rights after their death. However, in certain cases, the state may exercise such protection indirectly - for example, by managing heirless property or preserving cultural monuments - thus ensuring the inviolability and authenticity of works significant to the public.
3. In cases where the heirs do not exercise the right to protect the author's moral rights after their death, and under the law "On the Protection of Cultural Monuments" the work is considered cultural heritage, state intervention may be justified. However, the scope of such intervention must be assessed by balancing the heirs' private-law autonomy in managing the inheritance and the protection of public interests.

Discussion

The analysis presented in this paper underscores the need to revisit and clarify the legal framework governing the protection of authors' moral rights in Latvia, particularly in cases where no heirs exist. Given the increasing importance of safeguarding cultural and intellectual heritage, future legislation could consider introducing explicit provisions that empower designated state institutions or cultural authorities to act as stewards of moral rights in heirless situations. This could include establishing procedures for ensuring proper attribution, preventing the distortion of culturally significant works, and integrating such protection into the broader national heritage strategy. Strengthening the legal basis for state intervention in this area would not only fill the current normative gap but also reflect a more comprehensive understanding of the lasting public value of authorship.

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