

# LEGAL SCIENCES

УДК 330

## THE INDIVIDUAL CREATOR AS THE PRIMARY HOLDER OF INALIENABLE PERSONAL NON-PROPERTY AND PROPERTY RIGHTS TO INTELLECTUAL PROPERTY OBJECTS

**Shlapak Olexandra**

Master's Degree

National University of Technologies and Design

Kyiv, Ukraine

<https://orcid.org/0009-0005-7416-8476>

**Liubymova Natalya**

Senior Lecturer

National University of Technologies and Design

Kyiv, Ukraine

### **Abstract:**

This article examines the fundamental principle that individual creators constitute the primary and original holders of intellectual property rights, encompassing both inalienable moral rights and transferable economic rights. Through analysis of international legal frameworks, particularly the Berne Convention and WIPO treaties, alongside contemporary national implementations including Ukraine's 2023 copyright reform, the research demonstrates how modern intellectual property law recognizes human creativity as the foundational source of authorship. The study explores the dual nature of creator's rights – personal non-property rights that remain permanently with the author, and economic rights that enable commercial exploitation while preserving the creator's fundamental connection to their work. Special attention is given to emerging challenges posed by artificial intelligence and digital technologies, which reinforce rather than diminish the centrality of human authorship in intellectual property systems.

**Keywords:** Intellectual property, creator's rights, moral rights, economic rights, authorship, Berne Convention.

## **Introduction.**

The relationship between individual creators and their intellectual creations represents one of the most fundamental principles in intellectual property law. At the heart of this relationship lies the recognition that intellectual property rights originate with the natural person who brings a work into existence through their own intellectual effort and creative activity. This foundational principle, enshrined in international conventions and national laws worldwide, establishes the creator as the primary and original holder of both personal non-property rights (moral rights) and property rights (economic rights) to their intellectual creations.

According to the World Intellectual Property Organization (WIPO), intellectual property rights protect the interests of innovators and creators by giving them rights over their creations, with copyright legislation forming a crucial component of this broader protective framework [1]. The Berne Convention for the Protection of Literary and Artistic Works, established in 1886 and administered by WIPO, created the international legal foundation recognizing that authors automatically enjoy rights in their literary and artistic works from the moment of creation [2]. This revolutionary principle transformed intellectual property protection by eliminating formalities and acknowledging the inherent connection between creators and their works.

The dual structure of creator's rights – encompassing both inalienable moral rights and transferable economic rights – reflects a sophisticated understanding of the multifaceted relationship between authors and their creative output. While economic rights enable creators to derive financial benefit from their works and can be transferred to third parties for commercial exploitation, moral rights remain permanently attached to the creator's person, protecting their reputation and the integrity of their creative expression. This distinction, though varying in implementation across different legal systems, represents a universal recognition of

the personal dimension inherent in creative activity.

Contemporary challenges, particularly those arising from digital technologies and artificial intelligence, have brought renewed attention to the question of authorship and the primacy of human creators in intellectual property systems. Recent judicial decisions and legislative developments, including Ukraine's comprehensive copyright law reform of 2023, demonstrate how legal systems are adapting to technological change while maintaining the fundamental principle that true authorship – with its attendant moral and economic rights – remains the exclusive domain of natural persons exercising human creativity [3].

This article examines the theoretical foundations and practical implications of recognizing individual creators as primary rights holders in intellectual property law. Through analysis of international treaties, national legislation, and contemporary legal developments, it explores how the dual structure of creator's rights operates to protect both the personal and economic interests of authors while facilitating the dissemination and commercial exploitation of creative works.

#### *The primacy of individual creators in intellectual property law*

The principle that intellectual property rights originate with the individual creator operates as a cornerstone of modern copyright systems. This principle manifests most clearly in the doctrine of automatic protection upon creation, which eliminates formalities as prerequisites for rights acquisition. As WIPO's authoritative publication confirms, "copyright protection is obtained automatically without the need for registration or other formalities" in the majority of countries adhering to the Berne Convention [1]. This automatic acquisition of rights reflects a fundamental recognition that creative works are expressions of the author's personality and intellectual effort, deserving of protection from the moment they achieve fixed form.

The Berne Convention revolutionized intellectual property protection by introducing the concept that protection exists the moment a work is "fixed" in tangible form, with the author automatically entitled to all copyrights in the work [4]. Article 5(2) of the Convention explicitly provides that "the enjoyment and the exercise of these rights shall not be subject to any formality," establishing a direct

and unmediated connection between the act of creation and the acquisition of legal rights [2]. This formality-free approach distinguishes copyright from other forms of intellectual property, such as patents and trademarks, which typically require registration or other administrative procedures.

The definition of authorship in intellectual property law centers on the natural person who creates an original work through their own intellectual and creative effort. WIPO clarifies that "the owner of copyright in a work is generally, at least in the first instance, the creator of a work, i.e., the author" [1, p. 20]. This principle of initial ownership by the creator serves multiple functions: it provides legal certainty regarding the source of rights, establishes the foundation for subsequent transfers or licenses, and recognizes the unique contribution of human creativity to cultural and economic development.

Ukraine's Law on Copyright and Related Rights (Law No. 2811-IX), which entered into force on January 1, 2023, exemplifies contemporary approaches to defining authorship in the digital age. The law defines a work as "an original intellectual creation of an author (co-authors) in the scientific, literary, artistic or other domain, expressed in an objective form" [5]. By explicitly linking originality to the author's creative intellectual activity and defining it as reflecting "the innovative solutions offered by the author during the creation process," Ukrainian law reinforces the anthropocentric foundation of copyright protection while adapting traditional principles to modern requirements of harmonization with European Union standards.

The primacy of individual creators extends beyond initial rights acquisition to encompass fundamental questions about the nature and purpose of intellectual property systems. Authors' rights scholarship emphasizes that both copyright and authors' rights systems emerged in the eighteenth century to address the inequality in relations between authors and publishers when intellectual property lacks recognition and protection [8]. The monopoly right granted to authors for a limited term serves dual purposes: protecting the creator's interests while ensuring that works ultimately enter the public domain for the benefit of society. This balance between private rights and public benefits reflects the inherent tension in intellectual property systems

between incentivizing creation and facilitating access to creative works.

*Inalienable personal non-property rights*

Moral rights represent the personal, non-economic dimension of the creator's relationship with their work, protecting interests that transcend monetary valuation. These rights acknowledge that creative works constitute expressions of the author's personality and that the creator maintains legitimate interests in preserving the integrity of their creative output and receiving appropriate attribution for their authorship. Article 6bis of the Berne Convention establishes two fundamental moral rights: "the right to claim authorship of a work (sometimes called the right of paternity or the right of attribution); and the right to object to any distortion or modification of a work, or other derogatory action in relation to a work, which would be prejudicial to the author's honor or reputation (sometimes called the right of integrity)" [1].

The independence of moral rights from economic rights constitutes a defining characteristic of the authors' rights tradition. WIPO emphasizes that "moral rights allow authors and creators to take certain actions to preserve and protect their link with their work" and that these rights "are independent of authors' economic rights" [1, p. 9]. This independence ensures that even when creators transfer or license their economic rights to publishers, distributors, or other commercial entities, they retain the ability to protect their personal and reputational interests in the work. The separation between moral and economic rights reflects a sophisticated understanding of the multidimensional relationship between creators and their creative output.

The inalienable nature of moral rights represents perhaps their most distinctive feature, particularly within civil law systems. In continental European legal tradition, moral rights are characterized as "perpetual, inalienable, and indefeasible" [6]. French copyright law, which provided the philosophical foundation for the authors' rights tradition, declares these rights non-transferable and enduring beyond the author's lifetime [6]. The Cornell Law School Legal Information Institute confirms that "in continental Europe, moral rights are inalienable and cannot be transferred or waived" [7]. This inalienability distinguishes moral rights from virtually all other property

rights, which typically include the power of alienation as an essential attribute of ownership.

WIPO documentation confirms that "moral rights are only accorded to individual authors and in many national laws they remain with the authors even after the authors have transferred their economic rights" [1]. This persistent connection between creators and their works serves multiple functions. It protects authors against misattribution or false attribution of works they did not create, prevents unauthorized modifications that could harm their professional reputation, and maintains the creator's voice in determining how their creative expression reaches the public. The personal nature of these rights reflects the recognition that creative works embody aspects of the creator's personality and that authors maintain legitimate interests in protecting their creative integrity regardless of who holds the economic rights to exploit the work commercially.

Contemporary legislative developments demonstrate the continuing evolution of moral rights protection. Ukraine's 2023 copyright law expanded the catalogue of moral rights to include the author's right to give the work a title or leave it without one, and the author's right to dedicate the work to someone or something [5]. These provisions, while seemingly modest, strengthen the comprehensive protection of the author's personal connection to their creative output and demonstrate how national legislatures continue to refine and elaborate the fundamental principles established in international conventions.

The duration of moral rights protection varies across jurisdictions, though the Berne Convention establishes that these rights must be maintained "at least until the expiration of the economic rights" [2]. Many countries extend moral rights protection beyond this minimum requirement, with some legal systems, such as France, recognizing perpetual moral rights that continue indefinitely. Article 20 of the Copyright Law of the People's Republic of China provides unlimited term protection for the rights of authorship, alteration, and integrity [9]. This perpetual protection reflects the view that the personal dimension of the creator's relationship with their work transcends temporal limitations and that reputational interests deserve

permanent protection.

### *Property rights and economic exploitation*

While moral rights protect the personal dimension of authorship, economic rights enable creators to derive financial benefit from their intellectual labor and facilitate the commercial dissemination of creative works. Economic rights encompass the various ways in which works can be exploited commercially, granting creators exclusive control over reproduction, distribution, public performance, and adaptation of their works. WIPO identifies the key economic rights as including "rights of reproduction, distribution, rental and importation; rights of public performance, broadcasting, communication to the public and making available to the public; and translation and adaptation rights" [1].

The exclusive nature of economic rights provides the legal foundation for the commercial exploitation of creative works. As WIPO emphasizes, "most copyright laws state that authors or other right owners have the right to authorize or prevent certain acts in relation to a work" [1, p. 10]. This exclusive control enables creators to negotiate licensing agreements, transfer rights to publishers or distributors, and receive compensation for the use of their creative output. The economic rights thus serve as the primary mechanism through which intellectual property law translates creative effort into economic value, providing incentives for continued creative production while enabling the dissemination of works to the public.

A fundamental distinction exists between moral rights and economic rights regarding transferability. While moral rights typically remain permanently with the creator, economic rights can be transferred, licensed, or assigned to third parties. WIPO confirms that "the laws of many countries provide that the initial right owner may transfer all economic rights in a work to a third party, although often moral rights cannot be transferred" [1]. This transferability enables the operation of creative industries, allowing publishers, film producers, record labels, and other commercial entities to invest in the production and distribution of creative works while compensating authors for their creative contributions.

The Berne Convention explicitly recognizes this duality in Article 6bis, which

provides that moral rights shall be independent of the author's economic rights and shall remain with the author even after the transfer of economic rights [2]. This provision ensures that commercial exploitation of works does not extinguish the creator's personal interests in attribution and integrity. The independence of moral rights from economic rights reflects a nuanced understanding of authorship that recognizes both the commercial value of creative works and the non-economic interests of creators in maintaining their reputational and creative integrity.

The duration of economic rights protection, while finite, extends for substantial periods to enable creators and their heirs to benefit from creative works. Under Ukrainian law, copyright protection lasts for the lifetime of the author plus 70 years following the author's death [10]. This extended term, which exceeds the Berne Convention's minimum requirement of life plus 50 years, reflects contemporary assessments of appropriate protection periods that balance creator incentives with eventual public domain access. The Sonny Bono Copyright Term Extension Act of 1998 established similar term lengths in the United States, extending copyright protection to 70 years beyond the creator's death [11].

The transfer of economic rights occurs through two principal legal mechanisms: assignment and licensing. Assignment involves a complete transfer of rights, with the assignee becoming the new rights holder and acquiring the ability to authorize or prohibit uses of the work. WIPO notes that "copyright rights are divisible, so it is possible to have multiple right owners for the same or different rights in the same work" [1]. This divisibility enables sophisticated commercial arrangements where different parties hold rights to various forms of exploitation – for example, one party may hold print publication rights while another holds film adaptation rights.

Licensing represents an alternative mechanism for economic exploitation that preserves the creator's ownership while authorizing specific uses. Under licensing arrangements, the copyright owner retains ownership but grants third parties permission to carry out certain acts for specific periods and purposes. Licenses may be exclusive, where the rights holder agrees not to authorize any other party to carry

out the licensed acts, or non-exclusive, permitting multiple licensees to exploit the work simultaneously [1]. This flexibility in structuring economic rights transfers enables creators to maintain greater control over their works while still enabling commercial exploitation and revenue generation.

### *International legal framework and harmonization*

The international protection of creators' rights rests primarily on the Berne Convention for the Protection of Literary and Artistic Works, established in 1886 and revised multiple times to address evolving technologies and social needs. As of November 2022, 181 states have ratified the Convention, making it one of the most widely adopted international intellectual property treaties [4]. The Convention established revolutionary principles that continue to shape national copyright systems: automatic protection upon creation without formalities, national treatment requiring countries to grant foreign authors the same protection as domestic authors, minimum standards of protection that member states must provide, and recognition of moral rights as distinct from economic rights.

The principle of national treatment, enshrined in Article 5(1) of the Berne Convention, ensures that "authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals" [2]. This principle creates a level playing field for international copyright protection, preventing discrimination against foreign authors and facilitating the global dissemination of creative works. The national treatment obligation represents a cornerstone of the international intellectual property system, extended beyond copyright through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

The WIPO Copyright Treaty (WCT), adopted in 1996, modernized international copyright protection for the digital age while maintaining and strengthening fundamental principles established by the Berne Convention. The treaty requires Contracting Parties to ensure that enforcement procedures are available to provide effective action against infringement of rights, addressing

concerns about digital piracy and unauthorized reproduction facilitated by new technologies [1]. The WCT also clarified the application of the right of communication to the public in interactive digital environments, introducing the right of making available, which grants authors exclusive rights to authorize the making available of their works in ways that enable individual access from places and at times individually chosen by members of the public.

National implementations of international obligations demonstrate how universal principles adapt to diverse legal traditions and contemporary challenges. Ukraine's comprehensive copyright law reform, implemented through Law No. 2811-IX of 2023, represents the first major revision of Ukrainian copyright legislation since 1993 and exemplifies contemporary efforts to harmonize national law with international standards and European Union directives [5]. The law introduces explicit originality requirements, defining originality as characterizing works "created as a result of the author's creative intellectual activity reflecting the innovative solutions offered by the author during the creation process." This definition aligns with European Court of Justice jurisprudence while reinforcing the anthropocentric basis of copyright protection.

The International Comparative Legal Guide confirms that under Ukrainian law, "copyright exists in every original work, published or unpublished, once the work is in a fixed form, without the requirement for registration or any other formalities" [10]. This implementation of automatic protection principles demonstrates Ukraine's adherence to Berne Convention standards while integrating modern concepts of originality and authorship. The comprehensive reform also addresses contemporary issues such as the legal status of works created by artificial intelligence, establishing sui generis rights for non-original software-generated works while maintaining that traditional copyright, with its full complement of moral and economic rights, remains reserved for works created through human intellectual activity.

#### *Contemporary challenges to traditional authorship*

Digital technologies and artificial intelligence have introduced unprecedented challenges to traditional concepts of authorship and the primacy of human creators in

intellectual property systems. WIPO acknowledges that "digital technologies make it easy to transmit and make perfect copies of information existing in digital form, including copyright-protected works" [1]. This ease of reproduction and distribution has necessitated enhanced enforcement mechanisms, technological protection measures, and adaptation of legal frameworks to address forms of infringement inconceivable in analog environments. The challenge extends beyond enforcement to fundamental questions about the nature of creation and the appropriate boundaries of copyright protection.

The emergence of generative artificial intelligence systems capable of producing literary, artistic, and musical works without direct human authorship has sparked intense debate about whether copyright protection should extend to machine-generated outputs. Recent scholarship examines how "works are increasingly produced by machines using artificial intelligence (AI) systems, with a result that is often difficult to distinguish from that of a human creator," raising fundamental questions about what the copyright system should protect and whether human creativity remains essential for copyright eligibility [12]. United States courts have consistently held that copyright protection requires human authorship, with a federal district court confirming in 2023 that "copyright has never stretched so far as to protect works generated by new forms of technology operating absent any guiding human hand" and that "human authorship is a bedrock requirement of copyright" [12].

Ukraine's legislative response to artificial intelligence demonstrates how national systems are adapting to technological change while maintaining fundamental principles of human authorship. The 2023 copyright law introduces *sui generis* rights to protect non-original works created by software without human participation [5]. Significantly, the law specifies that these works cannot have moral rights attached to them; only economic *sui generis* rights exist, belonging to the owner of the software that created the work. This legislative solution preserves the distinction between true authorship – with its full complement of inalienable moral rights and economic rights – and machine-generated outputs eligible only for limited economic protection.

The distinction between human-created and machine-generated works reflects deeper philosophical and practical considerations about the nature of creativity and the purposes of intellectual property protection. Scholars observe that "if the generator of copyright protection has traditionally been the author's creative input, AI forces us to reassess what in the creative process is special in human creativity and where the creative input lies in AI-generated works" [12]. This reassessment, however, has generally reinforced rather than undermined the centrality of human authorship. Legal systems worldwide maintain that copyright's fundamental purpose involves recognizing and protecting the fruits of human intellectual labor, with machines serving as tools that may assist but cannot replace human creativity as the foundation for full copyright protection.

The international discourse on artificial intelligence and copyright reveals consensus that human authorship remains essential for traditional copyright protection, even as legal systems develop alternative frameworks for machine-generated outputs. Research indicates that "the fast-evolving AI paradigm has put pressure on traditional IP structure about authorship, originality, and ownership," with established standards making it "inconvenient to accommodate works created with minimal human intervention" [13]. Rather than abandoning the human authorship requirement, legal systems are developing parallel protection mechanisms that recognize the investment and innovation involved in creating AI systems while preserving the special status of human creative expression. This approach maintains the primacy of individual human creators while adapting intellectual property law to technological realities.

### **Conclusion.**

The individual creator's position as the primary holder of intellectual property rights represents a foundational principle that has demonstrated remarkable resilience across evolving technologies and diverse legal systems. The dual structure of creator's rights – encompassing inalienable moral rights and transferable economic rights – reflects a sophisticated understanding of the multidimensional relationship between authors and their creative output. Moral rights, which protect the personal

and reputational interests of creators through rights of attribution and integrity, remain permanently attached to the author regardless of economic rights transfers. This permanence acknowledges that creative works constitute expressions of the creator's personality and that authors maintain legitimate interests in protecting their creative integrity throughout the work's existence.

Economic rights, while transferable and forming the foundation for commercial exploitation of creative works, nevertheless originate with the creator and embody the principle that intellectual labor deserves recognition and reward. The exclusive rights granted to authors – including reproduction, distribution, public performance, and adaptation – enable creators to derive financial benefit from their intellectual contributions while facilitating the dissemination of creative works to the public. The balance between creator incentives and public access, mediated through limited terms of protection and various exceptions and limitations, reflects the dual purposes of intellectual property systems: protecting individual rights while promoting cultural and economic development.

International legal frameworks, particularly the Berne Convention and subsequent WIPO treaties, have established universal principles that transcend national boundaries and legal traditions. The automatic acquisition of rights upon creation, the independence of moral rights from economic rights, and the principle of national treatment have created a harmonized foundation for international copyright protection. National implementations, exemplified by Ukraine's comprehensive 2023 copyright reform, demonstrate how universal principles adapt to diverse legal contexts while maintaining core commitments to recognizing individual creators as primary rights holders.

Contemporary challenges posed by digital technologies and artificial intelligence have tested but ultimately reinforced the centrality of human authorship in intellectual property systems. Rather than extending traditional copyright protection to machine-generated outputs, legal systems worldwide are developing alternative frameworks that recognize technological investment while preserving the special status accorded to human creative expression. The distinction between works

eligible for full copyright protection, including inalienable moral rights, and machine-generated outputs eligible only for limited economic protection maintains the fundamental principle that true authorship derives from human intellectual and creative activity.

As technology continues to evolve and new forms of creative production emerge, the principle that natural persons exercising human creativity remain the primary holders of comprehensive intellectual property rights continues to define the boundaries of authorship in intellectual property law. This principle, grounded in recognition of the unique value of human creativity and the personal dimension of creative expression, provides the foundation for intellectual property systems that both incentivize creation and protect the fundamental interests of creators in their intellectual and artistic contributions to human culture and knowledge.

## REFERENCES

1. World Intellectual Property Organization. (2016). Understanding Copyright and Related Rights. WIPO Publication No. 909E. Geneva: WIPO. Available at: [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_909\\_2016.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf)
2. World Intellectual Property Organization. Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886). Available at: [https://www.wipo.int/treaties/en/ip/berne/summary\\_berne.html](https://www.wipo.int/treaties/en/ip/berne/summary_berne.html)
3. IPKat. (2023, January 24). New Ukrainian Law on Copyright and Related Rights. Available at: <https://ipkitten.blogspot.com/2023/01/guest-post-new-law-on-copyright-and.html>
4. World Intellectual Property Organization (WIPO). *Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979): Authentic text. WIPO Lex*. Accessed: 09 Nov 2025. URL: <https://www.wipo.int/wipolex/en/treaties/textdetails/12214>
5. PETOŠEVIĆ. (2023, February). Ukraine Adopts New Copyright Law. Available at: <https://www.petosevic.com/resources/news/2023/02/4726>
6. Françon, A., & Ginsburg, J. C. Authors' Rights in France: The Moral

Right of the Creator of a Commissioned Work to Compel the Commissioning Party to Complete the Work. Columbia Law School Scholarship Archive. Available at: [https://scholarship.law.columbia.edu/faculty\\_scholarship/3798/](https://scholarship.law.columbia.edu/faculty_scholarship/3798/)

7. Cornell Law School. Legal Information Institute. Moral Rights. Wex Legal Dictionary. Available at: [https://www.law.cornell.edu/wex/moral\\_rights](https://www.law.cornell.edu/wex/moral_rights)

8. Jewell, C. (2014, April 30). *A Fair Deal for Authors*. WIPO Magazine. Accessed: 09 Nov 2025. URL: <https://www.wipo.int/en/web/wipo-magazine/articles/a-fair-deal-for-authors-38784>

9. U.S. Copyright Office. (2019, April). *Authors, Attribution, and Integrity: Examining Moral Rights in the United States – A Report of the Register of Copyrights*. <https://www.copyright.gov/policy/moralrights/full-report.pdf>

10. U.S. Copyright Office. (2019, April). *Authors, Attribution, and Integrity: Examining Moral Rights in the United States – A Report of the Register of Copyrights*. Accessed: 09 Nov 2025. URL: <https://www.copyright.gov/policy/moralrights/full-report.pdf>

11. Supreme Court Economic Review. (2016). Intellectual Property Rights, Public Choice, Networks, and the New Age of Informal IP Regimes. Vol. 23. University of Chicago Press. Available at: <https://www.journals.uchicago.edu/doi/full/10.1086/686477>

12. Benabou, V. L., & Bensamoun, A. (2024). Elaborating a Human Rights-Friendly Copyright Framework for Generative AI. IIC – International Review of Intellectual Property and Competition Law. Available at: <https://link.springer.com/article/10.1007/s40319-024-01481-5>

13. Navigating the Intellectual Property Landscape in the Era of Artificial Intelligence: Challenges and Solutions for AI-Generated Works. (2024). International Journal of Law, Justice and Jurisprudence, 4(2), 207-215. Available at: <https://www.academia.edu/127766992/>