

THE INTERACTION BETWEEN CREATIVITY AND LAW: ARTISTIC FREEDOM AND PUBLIC INTEREST IN LATVIA

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Abstract

The interaction of creativity (terms “innovation”, “creative process”, “creative activity” and “creativity” are also used synonymously) and law gives rise to discussions and issues of application of legal norms, trying to ensure a balance between manifestations of legal norms, creative freedom and public interests. Creativity exists within a legal framework that both promotes and restricts its expression. Laws regulating creative activities are necessary to protect the rights of creative individuals, promote cultural development and maintain societal values while protecting public interests related to social responsibility and ethics. Creative freedom allows artists to address controversial or provocative issues, challenge societal norms and promote public debate. However, it is not absolute. Legal boundaries are set to prevent expressions of creativity that harm public interests. The task of setting boundaries without violating creativity is a challenge for the legal system and the legislator. Public opinion, cultural values and historical context influence what is considered acceptable or unacceptable in creative activity. Legal regulations that protect public morals or safety may impose restrictions, but it is important to ensure a foundation and balance so that creative activity maintains its freedom and continuity. As part of the study, the authors examine the understanding of creativity in law, including the freedom of creativity stipulated in Article 113 of the Constitution of the Republic of Latvia, the priorities for the expression of creativity set out in the policy planning

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documents of the Republic of Latvia, as well as current practice of analysis (the so-called “Puppet Opera” case, “Gossip Case”, “Brekte’s Mural”).

The aim of the study is to explore the understanding of creativity in law and to clarify how the legal system and public interests influence creative expressions, focusing in particular on the restrictions on freedom of creativity and the legal framework that promotes or restricts creativity in modern society, answering questions about the proportionality of creativity and legal framework – to what extent is freedom of creativity protected by law, and how are limits set to prevent potentially harmful effects on society, and what protective mechanisms are necessary for the legal framework to proportionately ensure both creativity and public interests without turning into censorship.

The study concludes with conclusions and proposals for the development of the understanding of creativity, including the improvement of legal framework: a diverse understanding of creativity is observed in Latvian regulatory acts, mostly associating it with artistic creativity. This approach is not only restrictive of the expressions of creative persons, but can also limit the rights and legal protection of creative persons – including, but not limited to authors. The assessment of creative work is always related to a certain context, including public opinion, cultural values and historical events, as well as the knowledge, experience, perception and assessment of each member of society. This is relevant for the possible impact of creativity on society and its various groups. The state is obliged to balance the protection of freedom of creativity and the interests of society.

Keywords: *artistic freedom, creativity, law, normative regulation, public interests*

Introduction

Creativity (as well as terms “innovation”, “creative process”, “creative activity” and “creativity” are also used synonymously quite often, although the authors of the article are aware that it is possible to reveal their terminological specifics) is mostly associated with culture, with artistic activity and its manifestations. However, it is also undeniable in the manifestations of other sectors and professional fields of activity, emphasizing a different perspective on a specific situation or problem, creating innovations, a different approach or thinking [Why do We Need Creativity? Child’s Creativity Lab]. For example, in legal science and practice, the term “legal creativity” is used, as well as “normative act creativity”, respectively, denoting “a wide set of actions and consequences, as a result of which the legal system is improved, amended or supplemented with new regulatory material” [Guide to the development of regulatory acts].

Creativity and interaction often spark debates and legal issues, particularly regarding the balance between freedom of expression and societal interests. Creativity exists within a legal framework that both promotes and restricts its expression. Laws that regulate creative activity are necessary to protect the rights of creative individuals, promote cultural development and maintain societal values, to determine and protect the interests of society, which relate to social responsibility and ethics. Creative freedom allows artists to address controversial or provocative issues, challenge societal norms and promote public debate [Bieczyński 2021]. However, it is not absolute. Legal boundaries exist to determine when expressions of creativity may harm certain interests and to protect the state, society, public figures, and individuals (for example, children). Public interests is a concept that can be interpreted in many ways and includes public safety, health, morality, labour and consumer protection and also public administrative control [Vadlīnijas par Valsts valodas likumā lietotā jēdziena “likumīgas sabiedriskās intereses” skaidrojumu 2013].

The task of determining boundaries without violating creativity is a challenge for the legal system and the legislator. Public opinion, cultural values and historical context influence what is considered acceptable or unacceptable in creative activity. Legal frameworks that protect society or security may lead to restrictions, but there must be a basis and balance for creative activity to be free and continue.

The aim of the study is to explore the understanding of creativity in law and to clarify how the legal system and public interests influence creative expressions, focusing in particular on restrictions on freedom of creativity and the legal framework that promotes or restricts creativity in modern society in Latvia, answering questions about the proportionality of creativity and legal framework – to what extent is freedom of creativity protected by law, and how are limits set to prevent potentially harmful effects on society, and what protective mechanisms are necessary so that the legal framework proportionately ensures both creativity and public interests without turning into censorship.

The article applies both general scientific research methods and methods of legal interpretation. General scientific methods such as analysis and synthesis, comparison, and case study are used to examine the concept of creativity in Latvian law, its connection with policy documents and legal practice, and how it manifests in disputes between creative freedom and societal or individual rights. The research also includes identifying causal relationships between creative expressions and their societal impact. In terms of legal interpretation, the article uses grammatical interpretation to establish the literal meaning of legal provisions, historical interpretation to understand their background and the legislator's intent, comparative interpretation to consider international approaches, and teleological interpretation

to assess the broader purpose of legal norms, particularly in reconciling creative freedom with public interests.

1. Understanding of creativity in Latvian legislation

Article 113 of the Constitution of the Republic of Latvia states: “The State shall recognise the freedom of scientific research, artistic and other creative activity, and shall protect copyright and patent rights” [Constitution of the Republic of Latvia 2014]. Thus, creativity and its freedom are a constitutional value aimed at creating unprecedented material and intangible values [Litvins 2022]. It is essential for every person, ensuring a wide range of rights to (self)expression in various sectors and areas and is closely related to freedom of speech (in the process of creativity, the author expresses his views and values) as a mechanism for protecting and guaranteeing various verbal and non-verbal expressions.

Essentially, creativity manifests itself as an activity that results in original, previously unprecedented results of mental activity (the author’s works possess originality, uniqueness), or as the discovery of new, previously unknown regularities, or the use of already known regularities in a previously unknown way. In this context, the determination of creativity must take into account the extent to which the person (author) has had the opportunity to make a free choice and express their personality in the process of creating the work [Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības 2011].

Thus, creativity is a creative process that results in the creation of original ideas, products or solutions that provide added value to society, a specific industry or an individual. It is the human ability to combine knowledge, inspiration and imagination to create something new or significantly improve the existing one. Creativity is not limited to art or culture; it is widespread in all areas of human activity, including science, technology, business and social processes.

In addition, creativity has an individual and collective dimension – it can be expressed both in the work of a single individual and in group cooperation, for example, in collective art projects, various projects or scientific research.

Creativity is usually associated with innovation, which can lead to both positive and unintended or disruptive changes. However, this human way of thinking and ability can also be provocative, even destructive, depending on how it is used and in what context it operates. For example, provocative creativity occurs when ideas or works of art challenge societal norms, traditions, or prejudices. Such creativity is often used to stimulate discussion, draw attention to social problems, or make the viewer reconsider their own beliefs. Destructive creativity occurs when creative abilities are used in a way that causes harm to people, the environment, or society

as a whole. This type of creativity is often deliberately directed towards destructive goals [Mehlum, Moene, Torvik 2003].

Creativity has a dual nature – it can be both a powerful driver of positive change and a tool for destructive action. Ethical issues play a crucial role here. Who determines what the acceptable limits of creativity are, and where does it become a dangerous or destructive force? Is provocation always valuable, or can it create more division than understanding? On the one hand, creativity must be free from constraints in order to implement new ideas and perspectives. On the other hand, this freedom requires responsibility, because the impact of each creative act can be broader than initially intended.

The balance between freedom and responsibility in creativity is a challenge that requires both individual ethical awareness and the ability of society to openly evaluate and respond to diverse creative events, provocations.

The diverse manifestations of creativity make it difficult to define clear and unambiguous terms and to regulate them legally.

Creative expressions can raise complex issues regarding the rights of others, societal values, and the common good. Particularly problematic are cases where a creative activity, although formally artistic, can offend human dignity, promote social division, or create other negative consequences that society or the legislator cannot ignore. In such situations, not only legal but also ethical assessment is essential – whether the specific expression promotes responsible public discussion and reflection, or whether it violates the boundaries that protect values entrenched in society. The balance of freedom and responsibility in creativity requires both individual ethical awareness and the ability of society to critically evaluate various creative expressions. Article 116 of the Constitution of the Republic of Latvia (*Satversme*) provides for the possibility of restricting freedom of expression and creativity if this is necessary to protect the rights of others, public security, the welfare of the state, or morality. As emphasized in the Commentaries on the Constitution, these restrictions must be assessed within the framework of the principle of proportionality – they may only be those that are necessary, legitimate and proportionate to the protected interest [Latvijas Republikas Satversmes komentāri 2011].

Artistic expressions that use provocation, irony or exaggeration should be assessed in context, taking into account their impact, public resonance and potential harm. Therefore, it is proposed to clarify the content of the concept of “destructive creativity”. For example, it can be divided into two types: 1) intentionally harmful creativity, such as hate speech or provocations with the intention of harm, and 2) unintentionally harmful creativity, such as works of art that accidentally offend or traumatize. Such a typology would help to more clearly define borderline situations and legally justify when and how expressions of creativity should be restricted. This search for a balance

between creativity and societal values is also highlighted in scientific literature. For example, Martha Nussbaum emphasizes that creativity can be both a means for the ethical growth of society and a potentially destructive force if it is exercised without empathy and responsibility for the consequences [Nussbaum 1997]. Paul Kearns analyses the limits of freedom of artistic expression, emphasizing that the concept of “responsible creativity” is necessary especially in cases where expressions affect children, minorities or the general perception of dignity of society [Kearns 2013].

This assessment is also significant in the context of copyright. Article 4 of the Copyright Law states that the subject of copyright protection is the author’s original literary, artistic or scientific work, regardless of its form, mode of expression or value [Copyright Law 2000]. Thus, protection applies to the result of creativity – the work, not to the creative process or idea itself. If the work is not original or does not reach the socially accepted threshold of creativity, it may not be recognized as an object of law. Mark Rose emphasizes that copyright is a social contract – it is based on an assessment of what a given society recognizes as valuable, imitable and shared [Rose 1993]. David Throsby, in turn, reminds us that creativity has not only economic, but also cultural and ethical value, which can be threatened if creativity is directed towards destruction or social polarization [Throsby 2001]. Thus, if the result of creative expression causes significant harm or ignores the common values of society, such expression may not only be limited by legal norms, but also not be considered an object of copyright protection if it does not meet the criteria for qualifying a work. Freedom of creativity always exists alongside responsibility – both in a legal and ethical sense.

This approach is also confirmed by the opinion established in Latvian law that copyright is not absolute and can be limited for the benefit of public interest, for example, for the needs of education and scientific research. As Rihards Gulbis and Ilona Tomsone point out, such a limitation is legally permissible if it is justified, proportionate and serves the broader public good. The area of freedom of creativity should also be assessed analogously – freedom is not permissiveness, and the protection of the fundamental interests of society can justify certain limits on creative expressions [Gulbis, Tomsone 2013].

Analysing the provisions of Latvian regulatory enactments, it can be concluded that there is terminological diversity in them, both in designating and defining creativity, and also in determining its framework. For example, Article 1, Clause 7 of the Law “On Prevention of Conflict of Interest in Activities of Public Officials” includes the term “creative work”, which (relatively narrowly) means journalistic, literary or artistic activity for which a royalty or fee is received [Law “On Prevention of Conflict of Interest in Activities of Public Officials” 2002]. In contrast, the purpose of the Law on the Status of Creative Persons and Professional Creative Organisations

is to promote the development and strengthening of professional artistic and scientific creativity, by which is meant professional artistic creativity in the fields of architecture, design, theatre, music, visual arts, dance, literature and cinematography and scientific creativity in the relevant creative fields, emphasizing in particular that the regulation of the law does not apply to creativity as an expression of amateurism, crafts and scientific creativity not related to creative fields [Law on the Status of Creative Persons and Professional Creative Organisations 2017]. In turn, a creative person within the meaning of this law is a natural person – an author or performer within the meaning of the Copyright Law – if:

- 1) he is a member of a professional creative organization;
- 2) he creates or interprets works of art in the creative fields specified in the law;
- 3) the works or performances created by him have been made public within the meaning of the Copyright Law for at least three years before acquiring the status of a creative person;
- 4) this person contributes to the development of professional art and culture through his creative activity and this is confirmed by the relevant professional creative organization [Law on the Status of Creative Persons and Professional Creative Organizations 2017].

As can be seen, the concept of creativity and its manifestations within the meaning of the Law on the Status of Creative Persons and Professional Creative Organizations is narrower than that set out in the Copyright Law, defining every work of an author as the result of creative activity in the field of literature, science or art, regardless of the type, form and value of its expression [Copyright Law 2000].

A more extensive explanation of creative activity is included in the “Cultural Policy Guidelines for 2022–2027 “Cultural State””, indicating that creative activity is any “cultural process that results in the creation or communication of cultural values”, respectively, cultural values being defined as the results of artistic, industrial or craft creative activity, which, in addition to their possible commercial value, also have symbolic meaning and cultural value, and which create or may create intellectual property, regardless of whether they are protected under existing intellectual property legislation or not [Cultural Policy Guidelines 2022–2027 “Cultural State” 2022]. In contrast, the understanding of a creative person in these guidelines is relatively narrower, appropriately emphasizing their authorship within the meaning of the Copyright Law, professionalism and remuneration – “a creative person – an author or performer – who carries out professional creative activity in the cultural and creative sectors, creating and communicating cultural values and contributing to the development of culture; creative persons usually have education and skills appropriate to the specifics of creative activity, and they receive remuneration for creative activity” [Cultural Policy Guidelines 2022–2027 “Cultural State” 2022].

Based only on the above-mentioned findings, creativity, according to the guidelines, is still a priority of cultural policy, in fact, continuing the previous cultural policy guidelines “Creative Latvia” [Kultūrpolitikas pamatnostādnes 2014.–2020. gadam “Radošā Latvija” 2014].

The creativity of every person and its promotion as a fundamental principle in the regulatory framework, moreover, going beyond the framework of the culture and art sector, has been strengthened in the Latvian general education curriculum, emphasizing that “creativity is a process in which new ideas arise that are useful for a person or a group of people, but entrepreneurship allows these ideas to be implemented in practice, achieving personal and societal goals” [Caurviju prasmes]. For example, in the state basic education standard, one of the transversal skills is “creativity and entrepreneurship” – “a student is open to new experiences and challenges, seeks and sees diverse opportunities to improve the current situation, takes the initiative and is persistent in turning an idea into a useful solution or product” [Cabinet Regulation No. 747 Regulations Regarding the State Basic Education Standard and Model Basic Education Programmes 2018]. The aforementioned perceptual skill is developed and deepened in secondary education – “a student, looking at the situation with interest and from different points of view, notices new opportunities and offers various, original solutions, proactively seeks opportunities to improve the quality of his or her own and others’ lives, knows how to manage the process from idea creation to implementation, uses mistakes as an opportunity for growth, and maintains calm and openness in atypical situations” [Cabinet Regulation No. 416 Regulations Regarding the State General Secondary Education Standard and Model General Secondary Education Programmes 2019].

As noted at the beginning of this article, freedom of creativity, which is inextricably linked to freedom of expression, is not absolute. Article 116 of the Constitution of the Republic of Latvia provides for the possibility of restricting freedom of expression “in cases provided for by law in order to protect the rights of other people, the democratic state system, public security, welfare and morality” [Constitution of the Republic of Latvia 2014]. Similarly, any person, taking into account the need to protect their privacy or other essential interests and rights, may request restrictions on various expressions of creativity.

2. Creativity and its limitations in the practice of applying Latvian law

In accordance with the purpose of Part 1 of this article, the authors have chosen to analyse three situations frequently encountered in Latvia, when expressions of creativity were ambiguously assessed from the point of view of society (its possible

representatives or groups), accordingly requiring them to be limited in their consideration of the interests of the state, society and the relevant individuals.

- 1) The so-called “Puppet Opera” case. The essence of the case: At the beginning of 2008, information was disseminated that the Latvian National Opera’s advertising poster for the play by J. Lūsēns and M. Zālīte “Puppet Opera” contained child pornography. In the centre of the poster, a naked puppet with a long nose “Pinocchio” was depicted. The aforementioned became the basis for criminal proceedings. After approximately four years, the State Police terminated the criminal proceedings. Solution: In the specific materials, when assessed in the overall context, the child’s genitals are not visible at all, therefore the child’s gender can only be determined based on the context of the performance. In fact, the specific image depicts an image, not a specific person, its purpose is to illustrate the idea of the performance through artistic means. The Latvian Human Rights Centre has also concluded: “Works of art are not evaluated mechanically, but in the context of the idea they illustrate, restricting the artist’s freedom of expression only in individual cases when it is truly necessary to protect public interests... In this specific case, by obviously misunderstanding the concept of pornography and not sufficiently delving into the content and context of the advertising material, freedom of expression is inappropriately restricted and the creative environment is endangered” [Pūce 2008].
- 2) The so-called “Gossip Case”. The essence of the case: Rihards Bargais published the work “Gossip” in the literary monthly “Karogs” in August 2007, in which, despite the disclaimer: “Since this is only gossip, all the events described therein are most likely fictional and any coincidence with real life is to be considered a happy coincidence”, some persons recognized themselves, filing a lawsuit in court, “the statement in the publication in a humiliating, false and defamatory manner offends the honour and dignity of the plaintiff, humiliates the plaintiff in front of her children, friends, readers and Latvian society”. Solution: The Senate of the Supreme Court of the Republic of Latvia overturned the regional court’s judgment, which required an apology and compensation for the violation of her honour and dignity, and found:

“Freedom of creativity and expression is not absolute and can be limited with the aim of protecting the rights of other people (...) However, restrictions on freedom of creativity must be justified, because any case of civil liability in connection with publications in literature must also be assessed as a potential act restricting freedom of creativity, which can lead to censorship. Thus, whether there is a legitimate aim

for restricting freedom of creativity must be assessed in each specific case, taking into account the principle of proportionality.

When assessing the necessity of restricting the freedom of creativity, it is important, first of all, to identify whether the specific object is a creative work and to what genre it belongs. Based on the genre of the work, the court must assess the relationship of the literary work to reality (is it fiction or does it contain information, facts that can be verified from the point of view of objective truthfulness), the form of artistic expression of the work, its content and the entire context. These are especially serious cases when the creative work is based on real events, facts, including elements of fiction.

In the event that restrictions are necessary to protect a person's reputation or privacy, the nature of the offensive elements, including the style of the offensive statements, the person's status in society, and the possibility of being recognized in the specific creative work, are of particular importance. It should also be taken into account that any creative work is essentially fiction (fiction), therefore restrictions are permissible only in exceptional cases" [Judgment of the Civil Cases Department of the Senate of the Supreme Court of the Republic of Latvia of 12 September 2012 in Case No. SKC-482/2012].

- 3) "Brekte's Mural". The essence of the case: Parents of students at Riga Secondary School No. 40 have objected to the mural by artist Kristians Brekte on the school building, depicting four women (goddesses) and adding a quote from artist Džemma Skulme: "We are like earthworms that must loosen the soil". Solution: The Ombudsman of the Republic of Latvia has acknowledged: "in order for a work of art to be considered in the legal sense as posing a threat to a child's mental development, it must be proven that it contradicts socially recognized standards of decency and morality. This task of proof could be extremely complex, taking into account the changing expectations and understanding of what is acceptable and what is not acceptable over time of different generations and society as a whole... Art is present in the everyday life of society, but not everyone has the ability to see and appreciate art in a work of art.... The fact that a group of people does not like a work of art is acceptable. There are also groups of people who like it or who are completely indifferent to it. However, the views of one or another group of people about a work of art should not contribute to its censorship, which is prohibited according to the Constitution" [Tiesībsargs: Murāli uz skolas sienas nav saskatāmi draudi bērnu garīgajai veselībai 2021].

Similarly controversial cases can be observed in the practice of creativity worldwide. For example, globally, one of the provocative cases in the art world is the work of the American photographer Andreas Serrano "Piss Christ" (1987). This photograph depicts a crucifix immersed in the artist's urine. A. Serrano created this work to express his attitude towards the commercialization of religion and the hypocrisy of society. However, it causes widespread public discontent and discussions about the role of religion and art in society [Campbell 2011]. In 2022, a wide resonance was caused by the advertising campaign of the fashion house Balenciaga, which used teddy bears dressed in sex toy costumes. CNN wrote: "However, there was an angry reaction on social networks to the footage showing small children with teddy bear bags dressed in outfits that looked like BDSM-inspired outfits. One child is depicted with an assortment of empty wine glasses" [Kolirin 2022].

Concluding this review of socially significant cases where expressions of creativity were assessed ambiguously, the authors of the article would like to join the recognition of the Council of Europe Commission for Democracy through Law (Venice Commission) that a democratic state should not be afraid of debates even about the most shocking and anti-democratic ideas. Such ideas should be refuted, and the superiority of democratic values should be proven in open debates. Persuasion in the course of open debates, rather than prohibitions and repressions, is the most democratic means of protecting fundamental values [Opinion of the Council of Europe Commission for Democracy through Law (Venice Commission) of 23 October 2008 CDL-AD(2008)026.].

However, all issues of creative expression should be resolved through legal regulation. Ethical norms are those through which each act of creative expression should be evaluated. The ethical aspects of creativity are complex and multifaceted, as they encompass issues of responsibility, impact on others and society, as well as the value system that determines the permissibility of a creative act. These aspects become especially important when creativity affects not only the creator, but also the wider society. Here we need to talk about the "responsibility" of creativity, namely, through creativity we can talk about influencing people: art, literature and technology can change people's views and actions. For example, an artist who uses provocative images can create discussion, but also hurt or offend, which is especially relevant today, given the speed of information circulation, its distribution "without borders". The consequences of creativity must undoubtedly be assessed: Does creative work serve society, or does it promote destructive values? For example, advertising creativity can be used to manipulate people's emotions and desire to consume. Creativity often also tests societal norms and boundaries, but this process must be based on an understanding of the consequences. The problematic issues arise from certain clashes between creative freedom and respect: everyone has the right

to expression, but where does creative freedom end and the violation of the dignity of others begin? For example, satire can be both entertaining and offensive.

Likewise, “cultural sensitivity” is becoming more relevant today, which includes the need to assess whether creative works respect cultural or religious values, or do they ignore or violate them?

The ethics of creativity require continuous reflection and discussion, as different people and cultures may interpret the boundaries of creativity differently. The main question that must always be asked during the creative process: “What will be the impact of my work on others?” If creativity is directed for good, it can promote positive change. However, without ethical awareness, as mentioned, it can become a harmful tool that promotes division, manipulation or destruction.

From a legal perspective, the conflict between the autonomy of the artist and the interests of society is also important, for example, in the protection of intellectual property rights [Bartholomew]. Copyright, although it promotes the development of creativity, can limit artistic freedom, as it stipulates that others do not have the right to use protected works of the author without the author’s consent. Such an approach can become an obstacle to the creation of new works, especially in today’s digital environment, where “remix culture” and the practice of collective creativity are widespread.

The role of the state is to balance the freedom of creativity with the protection of public interests. This balance becomes especially relevant when works of art challenge public moral norms or contain provocative messages. Legal regulation in such cases can serve as an instrument that ensures liability for possible harm, while preventing excessive censorship. Thus, creativity and law interact as a dynamic process in which creative freedom is protected, but it coexists with the requirements of the law to protect the common interests of society.

Conclusions

Considering the analysis of the legal regulation of freedom of creativity and its interaction with public interests, it is possible to identify several significant problems that affect both the legal understanding of creativity and the mechanisms for its protection and restriction in Latvia:

- 1) Both in terms of terminology and content, a diverse understanding of creativity is observed in Latvian regulatory acts, mostly associating it with artistic creativity. This approach is not only restrictive of the expressions of creative persons, but can also limit the rights and legal protection of creative persons – including, but not limited to authors.
- 2) Restriction of creative freedom is possible on the basis of law in order to balance and protect essential interests of the state and society, as well as

individuals who protect their privacy and the protection opportunities provided for in regulatory acts.

- 3) The assessment of creative work is always related to a certain context, including public opinion, cultural values and historical events, as well as the knowledge, experience, perception and assessment of each member of society. This is relevant for the possible impact of creativity on society and its various groups.
- 4) Excessive restrictions on creativity may indicate de facto censorship, limiting the expression of creativity, effectively developing mechanisms of self-censorship. Consequently, the benefit to society in this case will be significantly less than the possible losses, because restrictions on creativity may negatively affect culture, the daily life of society, scientific progress, etc.
- 5) From a legal perspective, the conflict between the autonomy of the artist and the interests of society is also significant. Copyright, while promoting creativity, can limit artistic freedom because it prohibits others from using protected works without the author's consent.
- 6) The state is obliged to balance the protection of freedom of creativity and the public interests of society, establishing monitoring/control mechanisms and limiting destructive creativity, while proportionately protecting the rights of the majority to development, security and morality. The legal framework provides the prerequisites for freedom of creativity and regulates the possibilities of its expression, while at the same time determining liability for possible damage. Thus, freedom of creativity is protected, but it exists alongside the requirements of the law to protect the common interests of society.

Although the current regulation provides for the possibility of restricting the freedom of creativity in order to protect the essential interests of the state and society, in practice the content of such interests must be assessed in a specific context, taking into account the criteria set out in Article 116 of the *Satversme*, such as public security, the rights of other persons, the welfare of the state or morality. In defining these interests, compliance with the principle of proportionality is essential – any restriction must be legitimate, necessary and proportionate. When determining restrictions on the freedom of creativity, it is essential to apply internationally recognised legal criteria to ensure their legality and proportionality. In accordance with Article 10, paragraph 2, of the European Convention on Human Rights, freedom of expression (including creativity) is not absolute – it may be restricted if it is “prescribed by law”, “necessary in a democratic society” and serves a legitimate aim, such as the protection of public security, the rights of others or morality. This so-called “triple test” has become the leading standard for assessing restrictions on freedom in the case law of the European Court of Human Rights. [European

Convention on Human Rights Art. 10(2)]. Similarly, UNESCO's 2023 report on freedom of creativity emphasizes that any restrictions on creative expression are permissible only if they meet three criteria: 1) necessity, 2) proportionality, and 3) prohibition of the destruction of freedom. The restriction must be directed at a specific threat, must not be excessive, and must leave room for free expression, including on sensitive issues [UNESCO 2023]. The application of such international criteria allows for a more precise definition of what is meant by "vital interests of the state and society", as well as ensuring that restrictions on creativity are based not on subjective values, but on objective, legally verifiable parameters.

Although Article 100 of the *Satversme* explicitly prohibits censorship, it is also recognized that freedom of expression and creativity is not absolute – it can be restricted in the cases provided for in Article 116 of the *Satversme*, subject to the principle of proportionality. In practice, this means that a clear legal framework is needed that would allow for the identification of when creative expressions may cause significant harm to the human rights of other persons, public security or common moral norms.

Taking these considerations into account, it would be useful to include a provision in the Copyright Law that would clearly state that copyright protection does not apply to works that contain or promote a direct call for violence, hatred or discrimination, are contrary to the fundamental values of the Constitution (human dignity, equality, democracy), violate the rights of others to privacy or honour, cause significant and demonstrable harm to public security, health or morality.

Such regulation would not serve as censorship, but rather as a proportionate boundary between individual creative freedom and the common good of society. Therefore, it would be useful to supplement Article 6 of the Copyright Law (unprotected works) with a new provision in the following wording: "contains a direct incitement to violence, hatred or discrimination or significantly violates the fundamental rights of other persons or threatens public safety, health or morals".

Although the proposal to supplement Article 6 of the Copyright Law with a provision that explicitly excludes from protection works that contain a direct incitement to violence, hatred or discrimination or significantly violates the fundamental rights of other persons or threatens public safety, health or morals would not in itself eliminate all the previously identified problems in the legal regulation of creativity, it would nevertheless make a significant contribution to ensuring legal clarity and proportionality. Such a provision would serve both as a legal framework and as a symbolic signal that freedom of creativity is not unlimited or absolute, but must be implemented responsibly, respecting the fundamental rights of other persons and the fundamental values of society. This would strengthen the balance between individual freedom of creativity and the common good of society.

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