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Slyadneva Anna,

Candidate of law,

Associate professor of intellectual property law and corporate law department
of the National University «Odessa Law Academy»

LEGAL FOUNDATIONS OF PLAGIARISM: COMMON KNOWLEDGE

Recently more often began to invoke the concept of plagiary increasingly frequently. This topic is specially relevant under conditions of blustery and chaotically filling of information space. It therefore seems reasonable to conduct research and subsequently making a proposal to adjust the national law turn to the sources of formation and origin of the term «plagiarism» in the world. Views of scientists on issues related to plagiarism radically different. The first group of researchers argues that the term is not even plagiarism apply to the protection of intellectual property, the another group is so widely considered plagiarism, even considered a violation of intellectual property rights of Self-Plagiarism. So in this article we turn to general fundamental knowledge in the sphere of plagiarism

Plagiarism is theft of another person's writings or ideas. Generally, it occurs when someone steals expressions from another author's composition and makes them appear to be his own work. Plagiarism is not a legal term; however, it is often used in lawsuits. Courts recognize acts of plagiarism as violations of Copyright law, specifically as the theft of another person's Intellectual Property. Because copyright law allows a variety of creative works to be registered as the property of their owners, lawsuits alleging plagiarism can be based on the appropriation of any form of writing, music, and visual images.

Plagiarism can take a broad range of forms. At its simplest and most extreme, plagiarism involves putting one's own name on someone else's work

thus, for example, plagiarism can include copying language or ideas from another novelist, basing a new song in large part on another's musical composition, or copying another artist's drawing or photograph. Not every unauthorized taking of another's work constitutes plagiarism. Exceptions are made under copyright law for so-called fair use, as in the case of quoting a limited portion of a published work or mimicking it closely for purposes of Parody and satire. Furthermore, similarity alone is not proof of plagiarism. Courts recognize that similar creative inspiration may occur simultaneously

in two or more people. In Hollywood, for example, where well-established conventions govern filmmaking, this conventionality often leads to similar work. As early as 1942, in *O'Rourke v. RKO Radio Pictures*, 44 F. Supp. 480, the Massachusetts District Court ruled against a screenwriter who alleged that a movie studio had stolen parts of his unproduced screenplay *Girls' Reformatory* for its film *Condemned Women*. The court noted that the similar plot details in both stories—prison riots, escapes, and love affairs between inmates and officials—might easily be coincidental [1].

Sometimes the question is one of proper attribution. In January 2002, two highly regarded historians, Stephen Ambrose and Doris Kearns Goodwin, were accused of plagiarism in *The Weekly Standard*. The magazine revealed that Ambrose (who died in October 2002) took passages from another author's work and used them in his 2001 book *The Wild Blue*, while Goodwin used passages from several authors in her 1987 book *The Fitzgeralds and the Kennedys*. Both authors apologized, acknowledging that they had erred and adding that their failure to provide proper attribution was completely inadvertent. Goodwin went so far as to address her mistakes in an essay in *Time* magazine. They agreed to correct the problem in future editions of the books in question. While some of their colleagues accepted the explanation, others questioned whether authors of such talent and prominence were in fact being disingenuous considering that both had borrowed numerous passages, not just one or two [1].

When the Roman poet Martial accused a rival, Fidentinus, of stealing his verses, he called him a «kidnapper» – in Latin, *plagiarius*. The term stuck. The Latin word made its way into English in 1601 when Ben Jonson described a literary thief as a plagiary, a word Jonson's near-namesake, Samuel Johnson, defined in his *Dictionary* of 1755 as «A thief in literature; one who steals the thoughts or writings of another» and «The crime of literary theft». But, odd though it may seem to us, plagiarism hasn't always been viewed as a crime. Many people throughout

history didn't regard words or ideas as property at all, and saw nothing wrong with «borrowing» liberally from others. For centuries, writers (and painters and sculptors and composers) were actually encouraged to copy the masters as closely as possible. Some writers were blamed for being presumptuous enough to invent their own plots. The situations, characters, and ideas in the classics were, after all, the «publica materies», the common property, which the great Roman poet and critic Horace told young writers to pillage. So you'll find hardly any original plots in Shakespeare's thirty-seven or so plays: as Alexander Lindey put it in his study of plagiarism, Shakespeare «evinced a marked propensity for avoiding unnecessary invention». He routinely inserted speeches from history books and other plays into his own, and even in his least derivative work, *The Tempest*, you'll find long passages copied out of the French writer Montaigne. In the 18th century, writers were still expected to find their material in other writers. Alexander Pope described the plight of the poet who wants to be original by imitating Nature: «Nature and Homer were, he found, the same». We have no choice but to steal from the classics, said Pope, because «To copy Nature is to copy them» [2].

As we can see is not always historically criticized manifestations of plagiarism, sometimes considered plagiarists educated knowledgeable people with a high intellectual level. Much later, started talking about the issues of creativity alternating prism of originality, innovation and creativity.

It was only during the 18th century that «originality» in the modern sense became an ideal. An important milestone is Edward Young's *Conjectures Concerning Original Composition*, which appeared in London in 1759. There Young celebrates novelty and attacks imitation: «Originals are, and ought to be, great Favourites, for they are great Benefactors; they extend the Republic of Letters, and add a new province to its dominion: Imitators only give us a sort of Duplicates of what we had, possibly much better, before». Good authors are original, bad authors copy, and copying is no better than «sordid Theft».

It is, though, an odd sort of theft, because words and ideas are an odd sort of property. If I steal your wallet, your money is gone, but if I steal your words or ideas, you've lost nothing tangible. It's no coincidence that the law began thinking seriously about «intellectual property» – the notion that you «own» your ideas – right around the time poets and critics began to value originality. Although authors had been complaining about literary theft since ancient times, they had no recourse until 10 April 1710, when the world's first copyright act was passed in London: «An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Author's

or Purchasers of Such Copies», known as the Statute of Anne [2].

The story didn't end there. Over the next century, more than two hundred copyright bills were debated in Congress, twenty-five of which became law. At first copyright didn't extend to music or art; it didn't safeguard the right to make «derivative» works like translations or dramatizations; and it didn't respect international copyright conventions. British authors had no protection across the Atlantic, and unscrupulous American printers sometimes bribed their London counterparts to give them advance copies of English books. (Charles Dickens famously complained about the practice: in 1842 he called it «a horrible thing that scoundrel-booksellers should grow rich» from English works in American newspapers that «no honest man would admit into his house, for a water-closet door-mat»). America entered into a few international copyright treaties in the 19th century, but resisted joining the Berne Convention – the modern international copyright system – until 1988, fully 102 years after its founding [2].

This brief history of the first copyright laws might help us to understand the proper function of intellectual property legislation today. Protecting the property rights of authors was only part of their intention: their more important job was protecting the public and promoting the public good. Plagiarists and pirates hurt the people they steal from, but they also hurt their audiences by selling them stolen goods and discouraging writers from sharing their thoughts.

The evolution in technology, The funds Multiplier intellectual product has led to the increasing need to protect. Legal protection in matters of against plagiarism evolve and expanding in parallel with technical abilities of society. If initially we saw dissatisfaction English authors that without their knowledge replicated products in America, but nowadays in connection with the advent of the internet situation in the sphere of rights of authors is compounded

Corporate interests have worked to increase the «limited Times» guaranteed in the Constitution to previously unimagined lengths, hardly distinguishable from the perpetual copyrights the 18-century booksellers urged. The first copyright laws protected a work for fourteen years from its publication. The current U.S. copyright law, by contrast, protects most works for the duration of the author's life plus another 70 years, meaning something published this year may be under monopoly control until the next century. Works published today by a young writer who enjoys a long life may not enter the public domain until 2150, when everyone now alive will be long dead. It is hard to argue that protecting the profits of an author's publisher's stockholders' great-grandchildren a century and a half into the future will encourage

from rewriting for purposes of enhancing their clarity [8]. Unfortunately, there are those, whose writing style is such that they take a liberal approach to using others' text as their own [9]. But, in the current climate of responsible research conduct, such writing practices now run a greater risk of being noticed and, at best, they will be judged with suspicion, for they certainly do not represent high standards of scholarship.

Plagiarism is a disturbing issue among academic societies across the world. More and more students in the higher education levels are resorting to plagiarism to complete assignments, tasks and research papers. In fact, many websites are established to accommodate this need. Research papers are made available for free or at a price online. Despite students having ample warnings, both written and verbal, the rates of plagiarism has increased rather than decreased. When a student enters a tertiary learning institution, he or she is introduced to the concept of plagiarism. In the old days it was called copying. Today, it is known as plagiarism. The act, whether intentionally or unintentionally, may result in the severe punishment of being expelled from an institution. Less major cases may simply result in lowering a student's grade in the subject involved. Regardless of severe warnings to students, cases of plagiarism seem to be on the rise.

The rules on plagiarism are usually published in the handbook on academic rules and regulations. It is a concept that has been embedded in many curriculums across the world. A description of what constitutes plagiarism is also normally given as well as the punishment, the most common form being dismissal from the institution. Nevertheless, those methods have not deterred students from plagiarizing. The effectiveness of those warnings and punishment is yet to be confirmed [4].

It has been suggested in research that the practice of plagiarism is rampant mainly due to the rapid advancement in information technology (Hansen, 2003, Introna et al, 2003). A lot of information, which includes literary composition, journal articles as well as practically anybody's work, is put online, readily accessible to any interested parties. Other reasons or justifications for plagiarizing include pressure to meet deadlines, being encumbered by other responsibilities such as working and family commitments, as well as having poor skills in writing especially for English as Second Language (ESL) and English as Foreign Language (EFL) students (Dawson, 2004). Regardless of the reason, it seems that students in higher education do not take the issue seriously enough [11].

Considering the invaluable international experience and knowledge in the protection of plagiarism, we note that in most countries the term plagiarism

is illegal, and his defense made through copyright or competition law. The main mechanism of protection, most countries choose preventive action, from codes of honor since college. Thus inculcating the future elite of society to respect another's intellectual work and ideas in an ethical manner.

Traditionally the phenomenon of plagiarism is correlated with literary works, but considerably greater number of facts of violation takes place in daily process of information creation.

Law of Ukraine «On Copyright and Associated Rights» includes the following definition of plagiarism: «complete or partial disclosure (publishing) of another person's work under the name of the person who is not the author of this work» [12, p. 50].

Plagiarism is determined as the unpermitted borrowing, reproducing of another person's literary, art or scientific work (or its part) under some person's name or pseudonym insensible with creative activity and moral and legal laws protecting copyright [12, p. 157].

For more deliberate understanding of the above-stated definition we will disclose the essence of the concepts «unpermitted», «borrowing», «reproducing».

Unpermitted is not allowed or approved, is worth conviction; inadmissible [14, p. 756].

Borrowing is adoption of something, assimilation, making of it own attainment [13, p. 415].

Reproducing is creation of one or more copies of work [13, p. 68].

We will give one more definition of concept of «plagiarism». Plagiarism is hand-out of another person's work as somebody's one or illegal publishing of another person's work under own name, literary theft [15, p. 459].

Some people simplify by mistake the definition of plagiarism as the use of available sources.

One of the popular Internet-recourses about plagiarism is TurnItIn web-site. Its authors decided to give the definition of this term contained in Merriam-Webster dictionary. To make plagiarism means: 1) to steal the idea or words of another person and to publish them as own, 2) to use the results of work of another person without mentioning of the source, from which they were borrowed, 3) to steal literary work and 4) to present already existing idea (or product) as new and original one [16].

Plagiarism is manifested in many forms and it can be divided into species conventionally according to the volume of appropriated material – full and partial plagiarism; and also according to the level of authenticity (similar or disputable) texts.

Very often, irrespectively of the fact, if we want this, we become plagiarists unwillingly. It may be successively snatched style of clothing, culinary recipe, style of behavior of the favorite iconic actor... However, this imitation is hardly dangerous.

Under high competition people, who want to create something own, distinguish themselves, shall create their own product and to demonstrate with the help with this own product their own talents, skills, creativity, in few words – creative work. Of course it is the great ethic problem.

On the ground of definitions taken from various sources we can make a conclusion that the essence of such phenomenon as plagiary is serious moral crime, violation of copyright connected with theft and assumption of the results of another person's creative work.

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SUMMARY

Slyadneva A.O. Legal foundations of plagiarism: common knowledge. – Article.

Analysis of questions related to the right of intellectual property is one of most actual that modern period of development of economy and law in Ukraine. Recently they began to invoke the concept of plagiary increasingly frequently. This topic is specially relevant under conditions of blustery and chaotically filling of information space. Traditionally the phenomenon of plagiary is correlated with literary works, but considerably greater number of facts of violation takes place in daily process of information creation. Plagiarism, from the Latin word of plagiatus, – a theft. All of it grounds to examine the origin of plagiarism through the categories of ethics and sociuma.

Keywords: plagiary, information, intellectual property.

АННОТАЦІЯ

Сляднева А.О. Правові основи плагиата: общі знання – Стаття.

Аналіз питань пов'язаних з правом інтелектуальної власності є однією з найактуальніших тем сучасного періоду розвитку економіки і права в Україні. Роль інтелектуальної власності в стабільному процесі економіки і суспільства в цілому важко переоцінити.

Одно из основных искушений в отрасли права интеллектуальной собственности, на которую все чаще стали покушаться, – это результаты чужого интеллектуального труда, а именно – плагиат. Плагиат, от латинского слова plagiatus, – похищение. В каждом конкретном случае свои мотивы плагиата. Все это дает основания рассматривать возникновение плагиата через категории этики и социума.

Ключевые слова: плагиат, информация, интеллектуальная собственность.

АНОТАЦІЯ

Сляднева А.О. Правові основи плагиату: загальні знання. – Стаття.

Аналіз питань пов'язаних з правом інтелектуальної власності є однією з найактуальніших тем сучасного періоду розвитку економіки і права в Україні. Роль інтелектуальної власності в стабільному процесі економіки і суспільства в цілому важко переоцінити. Однією з основних спокус в галузі права інтелектуальної власності, на яку все частіше стали робити замах, – це результати чужої інтелектуальної праці, а саме – плагиат. Плагиат, від латинського слова plagiatus, – викрадення. У кожному конкретному випадку свої мотиви плагиату. Все це дає підстави розглядати виникнення плагиату через категорії етики і соціуму.

Ключові слова: плагиат, інформація, інтелектуальна власність.