

AUTOPLAGIARISM AND SCIENTIFIC RESEARCH ACTIVITY

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Abstract

Writing a PhD thesis involves a long and profound scientific research activity. In this context of research, a number of incident factors may lead to the elaboration of a PhD thesis that is original or not. Some of these factors would be plagiarism and autoplagerism. This paper aims to highlight the issue of plagiarism and autoplagerism in the context of scientific research activity, while at the same time reaching some essential points regarding the intellectual property right. Last but not least, this paper aims to present some issues related to the current regulation of plagiarism and autoplagerism, through legal provisions aimed at ensuring good conduct in the scientific research and development activity, but also their relations with the rules on the protection of intellectual property rights.

Keywords: *Intellectual property right, copyright, plagiarism, research activity, autoplagerism*

1. Introduction

1.1. Intellectual property right

In order to understand the phenomenon of plagiarism and autoplagerism, the matter that governs and protects scientific, literary works, copyright and not only has to be identified. So, before we come to the essence of the issue, we will present some essential elements about the importance of intellectual property right.

In the doctrine, the intellectual property right was defined as “*the set of legal rules regulating the relations regarding the protection of intellectual creation in the industrial, scientific, literary and artistic fields, as well as distinctive signs of trade activity*”¹.

However, it is also shown that, “*in accordance with international provisions, which have been taken up in our domestic law, the intellectual property right has two sub-branches: a. copyright and rights related to copyright; b. industrial property*”².

Thus, the notion of copyright has several meanings: (i) the legal institution that includes the rules and principles applicable to intellectual creation; (ii) the subjective right itself, which belongs to the author of a work.

Copyright has been defined in the literature as “*the set of legal rules governing the social relations that arise from the creation, publication and exploitation of copyrighted works*”³, namely: *all works in literary, scientific, artistic, musical,*

cinematographic, visual art, architecture, maps etc., these being exemplified in Art.7 and Art.8 of the Law no.8/1996 on copyright and related rights.”⁴

As far as copyright subjects are concerned, it should be noted that “*author*” has several meanings. In a first sense, author means “*the creator of the literary, scientific or artistic work*”, and in a second sense, “*author*” means the person from whom, in favour or on behalf of another person, a right or obligation or a universality of rights and obligations is transferred⁵. To conclude, the subject of copyright is the person in whose favour the copyright is acknowledged, so we cannot put the mark of equality between the capacity of author of a work and the capacity of copyright holder.

Therefore, in the literature it is stated that “*the author (s) of the intellectual creation work is/are the person (s) who created the works, and the copyright owner is the person who acquired/owns the copyright on an intellectual creation work. But, if the identity between the capacity of author of the work and that of copyright holder of a work does not exist, then the rights enjoyed by the author and, where appropriate, the subject of copyright, are different. Only the author of the work, the primary subject, enjoys all rights*”⁶.

The location of the matter in this issue is Law no.8/1996 on copyright and related rights. Art.3 para.(1) stipulates that the subject of copyright may be only the natural person or natural persons who created the work, *per a contrario*, the legal person may not be the subject of copyright. This is a natural issue because the legal person is a creation of law that is not capable of performing a literary work, for example. The legal person lacks those elements specific to man, such as

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¹ Ioan Macovei, *Dreptul proprietății intelectuale. Ediția a 2-a*, C. H. Beck Publishing House, Bucharest, 2006, p. 5.

² Viorel Roș, *Dreptul proprietății intelectuale. Vol. I. Dreptul de autor, drepturile conexe și drepturile sui generis*, C. H. Beck Publishing House, Bucharest, 2016, p. 16.

³ A. Lucas, H.-J. Lucas, A. Lucas-Schloetter, *Traite de propriété littéraire et artistique*, 4ed., LexisNexis, Paris, 2012, p. 20. *in V. Roș. op. cit.*, p. 157.

⁴ V. Roș. *op. cit.*, p. 157.

⁵ V. Roș. *op. cit.*, p. 159.

⁶ *ibidem*

intelligence, emotion, creativity, originality, etc., which prevents it from expressing its personality through a work, and therefore is not original in the sense of copyright.

Further, according to Art.4 para.(1), it is presumed to be author, unless the contrary is proved, the person under whose name the work was first brought to the attention of the public. The law establishes a **relative presumption**, which can be overturned by any means of proof. Thus, it is obvious the interest the author has to bring to the attention of the public the work he has done.

As shown in the doctrine, the author of a work acquires, by the creation and the power of the law, the capacity of subject of copyright. *“But the capacity of author and the capacity of subject of copyright are two distinct notions: if the former is a matter of fact, the second is a matter of law; as we will see, a person may have the capacity of author without having the capacity of subject of copyright and vice versa; a legal person may not have the capacity of author, but may be the subject of copyright prerogatives; the capacity of author derives from a legal fact, the capacity of subject of copyright derives from a legal document.”*⁷

1.2. Scientific research activity

Scientific research activity is a factor contributing to the social and economic development and implicitly is a fundamental component in the writing of a scientific paper, especially a PhD thesis.

Research activity, in the form of scientific research, consists of theoretical activities carried out mainly in order to acquire new knowledge without aiming, in particular, the immediate application or use⁸.

This matter is governed by Law no. 206/2004 on good conduct in scientific activity, technological development and innovation.

As stated in Law no. 206/2004, as it appeared in its original form at the time of entry into force, the research activity is based on a series of rules and principles. As early as in Art.1 of this law, it is shown that:

“(1) Ethics in scientific research, technological development and innovation activities, hereinafter referred to as research and development activities, is based on a set of moral principles and procedures for their compliance.

(2) The moral principles and procedures for their compliance are those incorporated in the Code of Ethics and Professional Deontology of research and development staff, elaborated by the state authority for research and development.

*(3) Compliance with these moral principles determines **good conduct** in the research and development activity.”*

Therefore, ethics, moral principles and good conduct are an integral part of scientific research

activity and play an important role in making a work, regardless of its type, which fulfils the condition of originality.

In Art.2 para.(1) of the aforementioned law, it was stated that “the research and development activity must be carried out in respect for the human being and dignity as well as for the suffering of the animals, which must be prevented or minimized.”

Also within the same Art., **good conduct** “*must be carried out with the protection and restoration of the natural environment and ecological balance, ensuring their protection against any aggression produced by science and technology.*”, and this excludes: “**a)** hiding or removing unwanted results; **b)** making results; **c)** replacing results with fictitious data; **d)** deliberately distorted interpretation of results and deformation of conclusions; **e)** plagiarizing the results or publications of other authors; **f)** deliberately distorted presentation of the results of other researchers; **g)** not correctly assigning the paternity of a work; **h)** introducing false information in grant or funding applications; **i)** non-disclosing conflicts of interest; **j)** misappropriating research funds; **k)** non-recording and/or non-storing the results, as well as the erroneous recording and/or storage of the results; **l)** the lack of informing the research team, before the start of the project, regarding: salary rights, responsibilities, co-authorship, rights to research results, funding sources and associations; **m)** lack of objectivity in evaluations and non-compliance with confidentiality requirements; **n)** repeated publication or funding of the same results as scientific novelties.”

Subsequently, the Law⁹ indicated above was amended by Law no. 398 of October 30, 2006; Ordinance no. 28 of August 31, 2011; Ordinance no. 2 of January 19, 2016. The most important contribution to bringing the law in the current form and which brought the greatest changes was Ordinance no. 28/2011. Through this Ordinance, Art. 1 was amended and it was stipulated that: “**(1)** Good conduct in scientific research, technological development and innovation activities, hereinafter referred to as research and development activities, is based on a set of good conduct rules and procedures for their compliance. **(2)** The rules of good conduct are set out in this law and are supplemented and detailed in the Code of Ethics and Professional Deontology of research and development staff, hereinafter referred to as the Code of Ethics, provided by Law no. 319/2003 on the Status of research and development staff, as well as in the codes of ethics by field, elaborated according to Art.7 (b). **(3)** Procedures to comply with these rules are brought together in the Code of Ethics, in compliance with the provisions of this law and of the National Education Law no. 1/2011. **(4)** Compliance with these rules by the categories of staff carrying out research and development activities, stipulated in the

⁷ V. Roş, *op. cit.*, p. 162.

⁸ <http://uac.incd.ro/Art/v3n2a08.pdf>

⁹ <http://legislatie.just.ro/Public/DetaliuDocument/52457>

Law no. 319/2003, as well as by other categories of staff, from the public or private sector, benefiting from public research and development funds, determines the good conduct in the research and development activity.¹⁰

At the same time, Art. 2 was amended, having the following content: “Rules of good conduct in research and development activity include: a) rules of good conduct in scientific activity; b) rules of good conduct in the communication, publication, dissemination and scientific popularization activity, including within the funding applications submitted within publicly funded project competitions; c) rules of good conduct in the activity of institutional evaluation and monitoring of research and development, evaluation and monitoring of research and development projects obtained through actions within the National Plan for Research, Development and Innovation and of people assessment for awarding degrees, titles, positions, prizes, distinctions, bonuses, certifications or certificates in the research and development activity; d) rules of good conduct in leading positions in research and development activity; e) rules of good conduct on respect for human being and dignity, avoiding the suffering of animals and protecting and restoring the natural environment and ecological balance.”¹¹

Further on, it was introduced a new Art. 2¹ where, in para.(2), it is shown that the deviations from the good conduct rules provided by Art. 2 (b), to the extent that they do not constitute a criminal offense under criminal law, include: a) plagiarism; b) autoplagerism etc.

Thus, it can be noticed that, in the scientific research activity, plagiarism and autoplagerism constitute serious violations, contrary to the rules of good conduct.

Before going into the issue of plagiarism and autoplagerism, it should be noted that, in the case of PhD theses, an important ground is added, namely, GD 681/2011 on the approval of the Code of Doctoral Studies, together with the Annex regarding the Code of Doctoral Studies.

2. Content

2.1. Plagiarism

According to The Explanatory Dictionary of the Romanian Language, to **plagiarize** means “to appropriate, to copy totally or partially someone’s ideas, works, etc., presenting them as personal creations; to commit a literary theft.” The word plagiarism entered the Romanian language vocabulary through the French word plagier, and has its etymology in the Latin word plagiūm, which, in Roman law, meant the kidnapping of a slave or a child.

Initially, in Law no. 206/2004, plagiarism was defined, in Art. 4 (d), as “the appropriation of the ideas, methods, procedures, technologies, results or texts of a person, regardless of the way they were obtained, presenting them as personal creation.”

Subsequently, this article was amended by Ordinance no. 28 of 2011 whereby plagiarism was defined as “exposure, in a written work or oral communication, including in electronic format, of texts, expressions, ideas, demonstrations, data, hypotheses, theories, results or scientific methods extracted from written works, including in electronic format, of other authors, without mentioning this and without referring to the original sources”.

The same definition of plagiarism is found in Order no. 3482/2016 of March 24, 2016 on the approval of the Regulation on the organization and functioning of the National Council for Attestation of University Titles, Diplomas and Certificates, issued by the Ministry of Education and Scientific Research.

“An author of scientific literature, in order not to be accused of plagiarism, must meet two essential conditions. Above all, he has the obligation to very clearly delimit his own ideas, interpretations and formulations from those of other authors, whose works he consulted during the documenting process. The second condition is originality: the work must be the result of an innovative synthesis and reflection effort, not just a concatenation of formulations and ideas taken from other sources, even if they are quoted correctly.”¹²

Therefore, it is not enough for the author of a scientific/literary work to correctly indicate or quote the source of inspiration but he must also present an element of originality, the author’s vision/perspective must be captured. Such a work or paper does not fulfil the condition of originality if it is merely a compilation of works, texts and paragraphs, either with accurate and precise indication of the source.

At the same time, as mentioned in the previous quote, the author of a scientific work must have a very clear delimitation between his own ideas, interpretations, formulations, expressions, etc. which do not belong in fact to the authors studied, their resumption, but in another form, but to be personal.

I believe that the condition of originality is fulfilled if the author brings an element of novelty, if he succeeds in putting the results of his research in another light and if he brings a point of view about the things envisaged in the documenting process.

Plagiarism knows several forms¹³. A first form is that of *qualified/absolute plagiarism*, when the plagiarist presents a work, regardless of its form, elaborated by someone else, as his own creation. Another form is plagiarism by *copying from the*

¹⁰ <https://lege5.ro/Gratuit/gi3danzxha/articol-unic-ordonanta-28-2011?dp=gu3dqojsge2tq>

¹¹ <https://lege5.ro/Gratuit/gi3danzxha/articol-unic-ordonanta-28-2011?dp=gu3dqojsge2tq>

¹² Robert Coravu, *Ce este plagiatul și cum poate fi prevenit (dacă se dorește)*, available on the Internet at: https://www.academia.edu/2700465/Ce_este_plagiatul_%C5%9Fi_cum_poate_fi_prevenit_dac%C4%83_se_dore%C5%9Fte_

¹³ ibidem

original source, when the author copies paragraphs, passages he inserts into the paper/work and presents them as his own expressions, without indicating the source quoted. In this form of plagiarism is also included the takeover or use of quotes from the papers consulted, without indicating the original source or the source that originally consulted them. Another form of plagiarism is *the use of footnotes* after each sentence or paragraph, because no sentence or no paragraph belongs to the author, the condition of originality not being met. *Partial plagiarism or partial compliance with the citation rules* is the case where the author indicates the original source, but only for some of the ideas, and he paraphrases the rest of them or appropriates them as his own creation. *Plagiarism by paraphrasing* involves changing certain sentences, restructuring their word order or replacing words with synonyms and without indicating/quoting the source. If such a method is used, it is imperative that the author quotes the paraphrased source, because the idea is not original, it does not belong to him. This issue leads us to the last form of plagiarism, namely *plagiarism by not using quotation marks*, when the author, although indicating the source, does not put between the quotation marks the sentence/paragraph taken as such, leaving the impression that it is a paraphrasing.

Art. 310 of Law no. 1/2011 on the National Education Law, with the subsequent amendments and completions, stipulates that plagiarizing the results or publications of other authors are serious violations of good conduct in scientific research and academic activity.

Finally, it should be noted that, according to Art.20 para.(3) of GD 681/2011 regarding the approval of the Code of Doctoral Studies, plagiarism within the doctoral school is *academic fraud*, a violation of academic ethics and a deviation from good conduct in scientific research.

2.2. Autoplagiarism

After the above, regarding the issue of plagiarism, it is time to go to the quintessence of the present work, namely what autoplagiarism is and what problems it raises.

In Law no. 206/2004, with the subsequent amendments and completions, autoplagiarism was defined, in Art. 4 para.(1) (e), as being: *“the exposure, in a written work or oral communication, including in electronic format, of texts, phrases, demonstrations, data, hypotheses, theories, results or scientific methods extracted from written works, including in electronic format, of the same author (s), without mentioning this and without referring to the original sources.”*¹⁴

“The legal definitions of (plagiarism and autoplagiarism) share two cumulative requirements to

qualify a deed as plagiarism and autoplagiarism: retrieving information from the categories listed, from other previously published works *without mentioning this and without referring to the original sources.*¹⁵“

As stated above, plagiarism and autoplagiarism represent, in accordance with Law 206/2004, deviations from the rules of good conduct in research and development activity.

At the same time, autoplagiarism is not a form of plagiarism, it is self-standing. In the case of autoplagiarism, the takeover is not done from the works of other authors, but from its own works, but without showing/indicating that the “new” work reproduces or copies a former work of the same author (s).

Plagiarism is a poor scientific conduct and also a deviation from the rules of good conduct in the research activity. This has to be discouraged, as it can lead to the unfounded professional recognition of an author by repeatedly publishing the same work in several forms or under multiple names, not being, in fact, several intellectual creation “products” but the same one.

A person is therefore responsible for autoplagiarism when it publishes, once again, under another title or with another content or in other context, a text or ideas from a text already published/made known to the public, presenting it as a new creation.

“Incriminating” autoplagiarism is justified because it prevents a person from obtaining scientific recognition without making an additional effort, by presenting the same work “endlessly” as a new and original one.

With the help of autoplagiarism, the author creates the false public impression that he is the author of several papers/works, being in fact just one, thus gaining undeserved benefits.

Like plagiarism, autoplagiarism knows many forms. A first form is *qualified/absolute autoplagiarism*, through which the author takes over entirely a work already made known to the public and changes its title; for example, the author changes the title of a book already released and presents it as a new own creation. Another form is *partial autoplagiarism*, through which the author takes passages, paragraphs, sentences (in full), from a previous own work and without indicating/quoting the previous source. Another form is “*using your own text already published in a magazine or volume without requesting the publisher the right to publish (this is not just autoplagiarism but also the violation of intellectual property rights).*”¹⁶

“*The translation of a PhD thesis to be published in another country does not constitute autoplagiarism, but its use to get a new doctoral degree in that country is fraud.*”¹⁷“

¹⁴ <https://lege5.ro/Gratuit/gi3danzxha/articol-unic-ordonanta-28-2011?dp=gu3dqojsge2tq>

¹⁵ Sorina Florea. *Plagiatul și încălcarea drepturilor de autor.*, available on the Internet at: <https://www.juridice.ro/467536/plagiatul-si-incalcarea-drepturilor-de-autor.html>

¹⁶ <http://araba.ils.unibuc.ro/wp-content/uploads/2014/10/Ghid-impotriva-plagiatiului.pdf>. P.10

¹⁷ *Ibidem*

I believe that textbooks, books and treatises appearing under a new edition are not circumscribed to autoplagiarism, because the author “warns” the reader that it is the same volume (as the one previously published) but in an edited form, by using the formula “x edition, revised and added”, being obvious that it is the work of the same author, but in a new, edited and supplemented form.

It is important to note that autoplagiarism does not sanction the takeover of own ideas, texts, arguments expressed in a previous own work, but their takeover without mentioning that they are taken over, without referring to the original source.

Considering that the mission of the scientific research and development activity consists in the scientific development and the generation of new knowledge¹⁸, it is easy to understand why autoplagiarism is a violation of the rules of good conduct in research and development activity.

3. Conclusions

The subject of plagiarism or autoplagiarism has been and is being debated for a long time in the Romanian press, overexciting the attention of the public.

Both plagiarism and autoplagiarism are defined in Romanian law but not also by Law no.8/1994 on copyright and related rights.

“Regulating and sanctioning plagiarism and autoplagiarism as “deviations from the rules of good

conduct in scientific research, technological development and innovation” [the provisions of art. 2¹ para.(2) and of art. 14 para. (1²) and (2) of Law no. 206/2004], or as “serious deviations from good conduct in scientific research and academic activity” [the provisions of art. 310 of Law no. 1/2011 on national education] or as “[...] academic frauds, violations of academic ethics or deviations from good conduct in scientific research [...]” [art. 20 para. (3) of GD no. 681/2011], distinct from the regulation of the legal regime applicable to copyright and other intellectual property rights corresponds to the standards of good conduct in academic activity already adopted and acquired in European universities”¹⁹.

Both plagiarism and autoplagiarism can take on many different forms, but the “effect” they produce is the same, it affects the activity of scientific research.

Economic and social development cannot take place through scientific research activity if it is full of plagiarized or autoplagiarized works. Recognition of a work that fulfils the criterion of originality must be based on a long, thorough and serious scientific research activity, that comes up with something new and that brings, as I said, the economic and social development.

Autoplagiarism and plagiarism are a real problem, as claimed authors appropriate creations that do not belong to them (plagiarism) or which, although belonging to them, exploit the same work several times - without indicating this - in order to gain scientific recognition and to benefit from a greater number of benefits, such as financial ones (autoplagiarism).

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¹⁸ Sorina Florea. *op. cit.*, available on the Internet at: <https://www.juridice.ro/467536/plagiatul-si-incalcarea-drepturilor-de-autor.html>

¹⁹ Ibidem