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Some Legal Aspects of Plagiarism Among Students

Abstract: The paper describes the scope of the legal consequences of plagiarism among students in terms of copyright. The main question is connected with the scope and nature of the copyright protection against plagiarism. The issue is related to the specificity of the social role played by a student and to certain customs in the university community which enforce a certain behaviour and do not always require detailed references to the sources used. All university students have administrative and legal liabilities with regard to the university authorities, and in addition they bear full civil liability for their actions.

Keywords: creative activity, copyright, author, legal liability, plagiarism, plagiarised work, protection, university community, work.

Introduction

It can be said that student plagiarism does not seriously infringe the creator's interest because it occurs in a rather narrow university environment. However, the dishonest conduct of a student is assessed not only from the point of view of civil law and copyright law, but also in the light of the administrative law which regulates the operation of an institution of higher education and the rules to be observed by students to complete successive stages of education, and specifi-

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cally, obtain a degree or a certificate of graduation. All university students have administrative, disciplinary legal liability towards the university authorities.[1] In consequence, each graduate student's work is checked in detail by a special computerized system that searches for examples of plagiarism.[2]

General Remarks and Copyright Regulations

In order to analyse the legal aspects of student plagiarism, the basic conceptual categories associated with it must be examined. It is also essential to identify the scope of various legal regulations as well as concepts such as a "work," the "author," "plagiarism" and "plagiarised work." The way these terms are understood is of key importance when plagiarism is to be viewed from a legal perspective. In this paper, the sources which gave rise to the emergence of institutions established to protect authors against plagiarism, which in its essence constitutes an infringement of their rights, will also be highlighted.

What needs to be emphasised here is the dual role played by students involved in plagiarism in a university environment, since one may be the author of the work (intellectual content) which another student uses in its entirety or in part as his or her own.

Private law, both Polish and international law, among other provisions, refers to the Berne Convention of 1886 at the European level,[3] and the Geneva Convention of 1952 at the international level.[4] The provisions of the Berne Convention have been subsequently modified (some of its provisions have been applicable

1 Judgment of the Administrative Supreme Court of 7 April 2022, III OSK 49774/21, *Gazeta Prawna*, 5.05.2022.

2 Article 76.4 and Art. 351.1 of the Act on High Education of 20 July 2018, Journal of Laws of 2021, item 478. Art. 108.3 of the Act provides for punishment of relegation in the case of plagiarism.

3 Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, ratified in accordance with the Act of 5 March 1934 – Journal of Laws, no. 27, item 213; Maksymilian Pazdan, *Prawo prywatne międzynarodowe*. Warszawa, 2012, 213 et seq.

4 Poland acceded to the Universal Convention in 1977 and is bound by the Paris text: Appendix to Journals of Laws of 1978, no. 8, item 28; Pazdan, 213 et seq.

in Poland since 1971 and the latest full version of the Convention has been in force since 1994).[5] Article 4(1) of the Convention stipulates that the works of nationals and residents of the States that have ratified the Convention enjoy protection prior to publication, for example from the time when a manuscript is created or a work is uploaded to the Internet.

However, the works of authors from countries that are not signatories to the Convention are protected only from the moment they are published. However, due to the fact that once a work (or its fragment) in put online it is available to the public, such a work is protected under the Berne Convention also when its author is not a citizen or resident of a signatory State. Article 4(2) of the Berne Convention also introduces a very important principle of territoriality, according to which copyright protection applies to the extent of protection adopted in the norms of a given country's legal system.

The EU copyright regulations are very precise and stipulated in many legislative acts on the protection of the intellectual content and, as J. Kępiński emphasised, "Polish copyright law is under a significant influence of European Union law. The harmonisation of legislation in this field required the adoption of eleven directives and two regulations."[6] Moreover, he also referred to

5 Journal of Laws of 1990, no. 82, item 474.

6 These are:

- Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (Satellite and Cable Directive; OJ L 248, 6.10.1993, 15);
- Directive 96/9/EC of 11 March 1996 on the legal protection of databases (Database Directive; OJ L 77, 27.3.199620);
- Directive 2001/29/EC of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (Info Soc Directive; OJ L 167, 22.6.2001, 10);
- Directive 2001/84/EC of 27 September 2001 on the resale right for the benefit of the author of an original work of art (Resale Right Directive; OJ L 272, 13.10.2001, 32);
- Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights (IPRED; OJ L 195, 2.6.2004, 16);
- Directive 2006/115/EC of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (Rental and Lending Directive; OJ L 376, 27.12.2006, 28);

the case-law of the Court of Justice of the European Union[7] which **"**influenced the interpretation and manner of implementation of the above directives in the national law.**"**

Definitions of Creative Activity, a Work and the Author

Legal considerations concerning student plagiarism should first determine the subject of protection. Under Polish law, the subject of copyright protection clearly separates the creative activity from the work itself. According to Article 1 (1) of the Act of 1994 on copyright,[8] the subject of legal protection (copyright) is a work being "any manifestation of creative activity of individual character, established in any form, regardless of the value, purpose and manner of expres-

- Directive 2009/24/EC of 23 April 2009 on the legal protection of computer programs (Software Directive; OJ L 111, 5.5.2009, 16);
- Directive 2011/77/EU of 27 September 2011 on the term of protection of copyright and certain related rights amending Directive 2006/116/EC (Term Directive; OJ L 265, 11.10.2011, 1);
- Directive 2012/28/EU of 25 October 2012 on certain permitted uses of orphan works (Orphan Works Directive; OJ L 299, 27.10.2012, 5);
- Directive 2014/26/EU of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (CRM Directive; OJ L 84, 20.3.2014, 72);
- Directive (EU) 2017/1564 of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled (Directive implementing the Marrakesh Treaty in the EU; OJ L 242, 20.9.2017, 6);
- Regulation (EU) 2017/1128 of 14 June 2017 on cross-border portability of online content services in the internal market (Portability Regulation; OJ L 168, 30.6.2017, 1);
- Regulation (EU) 2017/1563 of 13 September 2017 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled (Regulation implementing the Marrakesh Treaty in the EU; OJ L 242, 20.9.2017, 1). Accessed from: <https://ec.europa.eu/digital-single-market/en/eu-copyright-legislation>; as in Jakub Kępiński, "Intellectual property law. Copyright law" in *Foundations of Law: The Polish Perspective*, eds. W. Dajczak, T. Nieborak, and P. Wiliński. Warszawa, 2021, 823, 824.

7 Hereinafter: CJEU.

8 Act on copyright and related rights (Copyright Act) of 4 February 1994, Journal of Laws of 2016, no. 666, item 1333.

sion." Human activity is creative only when it is independent and contains an element of novelty. This element contains several characteristic features. Firstly, it is gradual, secondly, it is diversified in kind, and thirdly, it results from the individual abilities of the creator. Finally, and fourthly, within a narrow group of creators there is a particular creative ability which is referred to as creative talent.[9] While a work, on the other hand, has the form of a generally tangible result and can always be described with the use of certain defined parameters. The issue of intangible works such as concerts, recitals, lectures and the like remains debatable, although the accepted practice is to make a recording of the content of such works and preserving it to allow their quality to be verified. A contract commissioning a specific work is always a contract for the creation of a measurable result that is essentially tangible in nature. It is distinguished from a contract of mandate, under which careful work is essential, but which for a number of reasons may not lead to a result.

The object of protection here is intellectual property. Intellectual property may be divided into: 1) works protected by copyright (creative works) and three groups protected in particular by industrial property law: 2) inventions, 3) solutions and utility or industrial designs, 4) signs and symbols, such as trademarks, company name or business designation.[10]

The law defines a work as subject to legal protection and its constitutive features. The work to which students mostly refer in the humanities and social sciences has the form of a text. There are, however, other forms of information contained in the form of tables, charts and diagrams, and students of other sciences also draw information from works of a different nature, such as pictures in the form of photographs, graphics, or sketches. Finally, works of another kind are databases organised in an original way, having the form of

9 Władysław Tatarkiewicz, *Dzieje sześciu pojęć. Sztuka, piękno, forma, twórczość, odtwórczość, przeżycie artystyczne*. Warszawa, 1982, 295 et seq.

10 Act of 30 June 2000, Industrial property law, i.e. patent law, journal of Laws of 2003, no. 119, item 117 as amended. Cf. the division in three groups: Wojciech J. Katner, "Dobra niematerialne" in *Prawo cywilne – część ogólna. System Prawa Prywatnego*, vol. I, ed. M. Safjan. Warszawa, 2007, 1237.

files described and operated by specialised computer programs. This last form of works has currently been increasingly, if not exponentially, widespread. Article 1 of the Copyright Act contains a sample list of works, including:

- works expressed in words, mathematical symbols, graphic signs (literary, journalistic, scientific and cartographic works and computer programs);
- artistic works, e.g. paintings or sculptures;
- photographic works, e.g. portrait photos, landscape photos;
- string musical instruments, e.g. violin, viola, cello, double bass;
- industrial design works, e.g. furniture, shapes of bottles, jewellery;
- architectural works, architectural and town planning works, and town planning works, e.g. buildings, city district development plans;
- musical works and textual and musical works, e.g. songs, melodies;
- stage works, stage and musical works, choreographic and pantomimic works, e.g. dance and movement systems;
- audiovisual works (including films), e.g. feature films, documentary films, serials, commercials.[11]

What is of importance from the point of view of student plagiarism, though, is that discoveries, ideas, procedures, methods, principles of operation or mathematical concepts are not protected by copyright.

The ruling of the Supreme Court regarding the condition necessary to grant a work copyright[12] has established that a copyright work must be of individual character and the individual character implies characteristics which sufficiently individualise the work, distinguishing it from other creations of a similar kind and purpose.[13]

Once the importance of the term "a work" has been established, the next step is to identify the person to whom authorship of the work should be attributed

11 Kępiński, 824. More about description of the diversity of various European definition of work: Dorota Sokołowska, "Omnis definition periculosa, czyli kilka uwag o zmianie paradygmatu utworu" in *Granice prawa autorskiego*, ed. M. Kępinski. Warszawa, 2010, 16–20.

12 Judgment of the Supreme Court of 24 July 2009, II CSK 66/09, LEX no. 794, 575.

13 Judgment of the Supreme Court of 13 January 2006, III CSK 40/05, LEX no. 176385.

(to be distinguished, however, from the person holding the copyright).[14] The author of a work may only be a natural person, or a team of co-creators.[15] Therefore a legal person (e.g. a university, enterprise, company, association[16]) may not be recognised as the author. A work therefore has the character of a legally protected intangible good considered independently of the medium or carrier (*corpus mechanicum*) on which it is recorded.[17] However, the copyright protection is granted to the author of a work from the moment of the emergence of the first creative results. This also applies to results not yet completed or unpublished, regardless of the fulfilment of any formalities by the author (Article 1(4) of the Copyright Act).

Plagiarism, Plagiarised Work and Students' Plagiarism

The third key term, besides the concept of a work and the creative process, is the concept of plagiarism in legal terms. However, this concept has not been defined in copyright law. The absence of a definition was also characteristic of the previous versions of copyright law of 1926 and 1952. Under these circumstances, determination of what plagiarism meant was left to the doctrine. In searching for a definition of plagiarism, attention was turned to sources of a linguistic or lexical nature. It has been established, based on etymology, that the term "plagiarism" is derived from the Latin word *plagiatus* meaning "stolen" and from the word *plagium*, meaning "theft."[18]

14 Copyright may be disposed of by e.g. the publisher to whom the author has transferred the right.

15 Issues of co-authorship are regulated by Articles 9–11 of the Copyright Act, see Mieczysław Szaciński, "Współautorstwo według ustawy z dnia 4 lutego 1994 r. – o Prawie autorskim i prawach pokrewnych", *Palestra* 39, no. 3–4. 1995: 41–43.

16 However, an association of authors may exercise authors' economic rights and protect their copyrights; see Article 104 and subsequent articles of the Copyright Act regulating the functioning of organisations for collective management of copyright or related rights.

17 Janusz Barta, and Ryszard Markiewicz, "Uwagi wstępne" in *Prawo autorskie i prawa pokrewne. Komentarz*, eds. J. Barta, and R. Markiewicz. Kraków, 2011, 18 et seq.

18 Jan Tokarski, ed., *Słownik wyrazów obcych PWN*. Warszawa, 1979, 575.

Also, *plagiator* in Latin literally means "plunderer" and has very clear connotations. A dictionary definition defines plagiarism as "appropriating someone else's work or creative idea," publishing someone else's work under one's own name, and "literally borrowing" from someone else's work and publishing it "as original and one's own."[19] While the adjective "plagiaristic" is "characteristic of the plagiarist" or has the "nature of plagiarism."[20] According to an English dictionary, the term to "plagiarise" means to "take and use somebody else's ideas, words etc. as if they were one's own," and "plagiarism" is an, instance of this.[21] An English dictionary of law contains a broader descriptive definition of plagiarism, as "the act of appropriating the literary composition of another, or parts or passages of his writings, or the ideas or language of the same, and passing them off as the product of one's own mind."[22] A distinction has also been made between plagiarism (*sensu stricto*) which involves copyright infringement, and plagiarism where no copyright infringement occurs. Plagiarism also occurs when, for example, the author's consent has been obtained, in return for payment, for the plagiarist to pass off the author's work as his or her own. The actual author's consent does not entitle the author to seek protection, but does not alter the fact of plagiarism (ghost writing).

This is an important distinction from the point of view of student plagiarism, because in the course of university education such qualified infringements of copyright, as well as actions performed outside the area of this protection, may take place.[23] The same applies in particular to "copying" or reproducing someone else's content and presenting it as one's own in works that are not intended to be made available to anyone other than the academic teacher evaluating them, let alone to be published. It is a peculiar paradox too that

19 Tokarski, 575.

20 Tokarski, 575.

21 Albert Sydney Hornby, and A.P. Crowie, *Oxford Advanced Learner's Dictionary of Current English*. Oxford, 1981, 635.

22 Henry Campbell Black, *Black Law Dictionary*. St. Paul, 1990, 1150.

23 For a broad description of empirical research on the pedagogical aspects of student plagiarism: Anna Sokołowska, *Zjawisko plagiatu a młodzież akademicka*. Poznań, 2020, 82–220.

a student who is awarded a high mark thanks to plagiarism is not interested in a reward or distinction in a form that would make the content of his work public, not even in making it public in the academic community.

Plagiarism may not only be an inaccurate or unfair duplication (copying) of another person's content, but it may also take the form of an alteration of someone else's content. It is important, however, that the fragment used be a part taken from the whole and not one that has already been extracted by another person in the form of an independent fragment not ascribed to any particular work.[24]

Polish doctrine also distinguishes between total plagiarism which is an appropriation of the entire work, and partial plagiarism.[25] Another distinction made is between open plagiarism and concealed plagiarism. In the case of open plagiarism, the work of another person is published unchanged while in the case of concealed plagiarism, the plagiarised work is "edited" to conceal its actual authorship (by way of paraphrasing, the use of synonyms, adding or changing stylistic connectors, the order of arguments, etc.). Still another form of plagiarism is co-authorship plagiarism, in which one of the co-authors appropriates (fully or only partially) as allegedly exclusively his or her own, the intellectual content of the work that has actually been created jointly.[26] In the latter case, however, plagiarism committed with the consent of the other members of the creative team will not constitute copyright infringement although it will still constitute plagiarism. A separate issue is a new co-author joining the subsequent editions of the work, and the "taking over" of the authorship of subsequent editions when the content and the opinions presented in them over time depart from the first editions the work by the original author. Plagiarism may also be divided according to the type of work plagiarised, and

24 Black, 1150.

25 Józef Górski, "O plagiatach i plagiatorach", *Zeszyty Naukowe UJ*, no. 1. 1974: 294.

26 Cf. judgment of the Supreme Court of 18 November 1960, Orzecznictwo SN 1961, no. 4, item 124.

consequently a distinction is made between literary plagiarism, artistic plagiarism, musical plagiarism, invention plagiarism, scientific plagiarism, etc.[27]

With the above in mind, a plagiarised work can be defined as a certain qualified state of affairs resulting from the arbitrary appropriation of another person's intellectual content constituting the results of another person's (or a group of persons') creative work.[28] Plagiarising, in turn, is a term describing a behaviour (an action or an omission to act)[29] leading to the emergence of a plagiarised work. Plagiarism is a phenomenon consisting in attributing to oneself the intellectual content of others, this content either being protected by copyright or, for some reason, not subject to protection.

Presumptions Protecting the Author

Attributing to oneself the authorship of a part or all of a work is related to the operation of the presumption under Article 8 of the Copyright Act, pursuant to which the creator is a person "whose name in that capacity is shown on copies of the work or whose authorship has been made public in any other way in connection with the distribution of the work." Therefore, the inclusion of someone else's intellectual content in a work signed as one's own already constitutes plagiarism. On the other hand, if a student's work is original and particularly exploratory, an important and wide-ranging issue is to ensure legal protection of that student's copyright.

As regards the attribution of authorship, it is extremely important to determine the creative character of the result (product).[30] The feature of a creative

27 More in: Grzegorz Sołtysiak, *Plagiat – Zarys problemu*. Warszawa, 2009, 11 et seq.

28 Sołtysiak, 11 et seq.

29 An example of such an omission is a deliberate failure to rectify a mistake made by the editor of a collective work who has wrongly attributed the authorship of a certain passage to another person.

30 Creativity is characterised by novelty, which is subject to gradation and generic differentiation, and by the intellectual energy required to produce such novelty, which is also evidence of the author's special abilities if not his or her talent: Tatarkiewicz, 295.

character applies only to "works" in the meaning of intellectual content, containing new and hitherto unknown artistic value (literary, musical, artistic) as well as "discoveries" containing new content that uncover hitherto unknown and intellectually or empirically accurate judgements about reality.[31] This applies to the social, natural, technical reality or to purely formal, logical or mathematical relationships.[32]

The creative character of a work is only reserved for human activity that has led to the creation of the work. Works created as a result of the operation of technological devices (mathematical machines or computers) do not have a creative character[33] as they only perform mathematical tasks set for them by computer programmers. However, the creation of programs for computers undoubtedly constitutes the work of their authors (Articles 74–771 of the Copyright Act).[34]

Effects of the Digitalisation of a Work and the Involuntary Adoption of Other People's Content

Today, the exploitation of other people's intellectual content disseminated in digital form is very easy. It may even be said that the majority of the digital information distribution system is geared towards such exploitation. A dilemma arises when it comes to the choice of a systemic reaction to this, and one way of addressing it is to pay authors the benefits due to them. Another way is to provide authors with significant non-remunerative benefits. These non-remunerative benefits are specific and difficult to define. They include, first of all: the author's popularity or (scientific) position) that may in turn lead to – or

31 New scientific theories are protected by copyright in Articles 1 and 28.

32 Janusz Barta, and Andrzej Matlak, eds., *Prawo własności intelektualnej wczoraj, dziś i jutro*. Kraków, 2007, 21 et seq.

33 Currently, computers making calculations in the sphere of electrical impulses are popular, but similar devices based on the flow of liquids or gases are also known.

34 More in: Aurelia Nowicka, *Prawnoautorska i patentowa ochrona programów komputerowych*. Warszawa, 1995.

be conducive to them being offered – good employment, or facilitate contacts with other authors and other similar benefits. Also, a benefit such as social advancement should not be overlooked.

It should be pointed out that sometimes, despite appearances, the author may be interested in others copying and disseminating his or her digitised work, but only on condition that his or her name is mentioned in the other work. Therefore, a failure to mention the authorship of another person's work is considered detrimental and harmful to the original author.

The construction of an audio-visual work and the legal consequences of its digitisation and placement on the internet for use by others was the subject of the judgment of the Court of Appeal in Warsaw of 7 May 2014,[35] in which the Court stated that "Interactivity and the possibility of deciding individually upon the time and object of reception mean that placing a work on a computer server for use online cannot be equated with broadcasting."

In this context, the specificity of didactic content, which is the content that should be incorporated into the student's own system, must be taken into account as it constitutes the purpose of the education process. For instance in certain situations footnotes may not be provided. Moreover, as may be clear from the context of the student's work, it is possible there was no intention at all to borrow certain content; the student may have simply referred to it believing it was public knowledge (known as Copernican content), as is in the case of recognized theories that are widely known to the public.

Different forms in which another's work has been used may also be distinguished and are worth considering from the point of view of copyright law. Work may be used in a legal way as permitted by the law, or illegally, as contrary to the law. Moreover, it is worth noting that between these two demarcation lines there is a wide margin for situations in between. There may be situations in which, for example, unauthorised use is made of someone else's

35 Judgment of the Appellate Court in Warszawa of 7 May 2014, I ACa 1663/13, LEX Ruling no. 1466985.

work, but at the same time the author will be voluntarily compensated later. For instance, someone deliberately (consciously) infringes someone else's rights, assuming "in advance" that afterwards appropriate compensation will have to be paid to the author. In such cases, an advanced agreement to compensation has to be secured.

Infringement of someone else's copyright to a work may also result in the plagiarist obtaining benefits of a very diverse nature. These may be tangible and financial benefits, as well as intangible benefits, but still measurable, e.g. professional benefits. The advantages flowing from them include the prospect of a better professional position, getting a degree, or admission to a competition, e.g. for the best dissertation or theses. Non-financial benefits also include a higher social rank, gaining popularity, better opportunities to obtain contracts, or being commissioned to perform work in a given field.

Another issue is the involuntary adoption of other people's content as one's own, when one is unaware of borrowing somebody else's content, or of other people's authorship. It is not uncommon that certain intellectual content is formulated in such a convincing or suggestive manner that it can be "absorbed," or "internalised," and thus unconsciously believed to be one's own.

Young academics should be made aware of the extensive and detailed regulations in this area and be able to refer to them in the event of irregularities that may occur.[36] First and foremost, there may be obstacles to the transmission of content and works across the national borders. On the other hand, there is also an increase in the illegal use of works obtained in this way, including plagiarism of other people's work.

The case law of the Supreme Court[37] contains a judicial opinion establishing the criterion which distinguishes between a work that has been inspired by another work and a derivative (dependent) work which is an adaptation. This criterion is a kind of a creative modification of the work, which determines its nature. In the

36 Aneta Krzewińska, and Ilona Przybyłowska, "Patologiczne zachowania studentów związane ze studiowaniem", *Normy, Dewiacje i Kontrola Społeczna*, no. 13. 2012: 314–335.

37 Judgment of the Supreme Court of 10 July 2014, I CSK 539/13, LEX no. 1532942.

case of a derivative (or dependent) work, its nature is constituted by elements taken over (from the original work), whereas an inspired work is constituted by its own individual elements. As far as the derivative work – also called an adaptation – is concerned, it should be emphasised that despite the lack of its own individual elements, it is subject to full legal protection because as a whole it is a separate work. From the point of view of external relationships, i.e. the relationships between the author of the adaptation and those who exploit it, the "derivative nature" of the work does not cause any limitations, because it is treated in the same way as the original work. Consequently, the author of the adaptation is entitled to all claims for copyright protection of the derivative work. It should be noted, however, that a derivative copyright can only be established if there is a prior and parallel "original" copyright, to the copyrighted work, as underlined by the Supreme Court in the judgment of 13 January 2006.[38] In the case of internal relationships between the authors of an original work and the adaptation, the "derivative nature" or its dependence on the original work is clearly seen (the judgment of the Appellate Court in Warszawa of 15 October 2010).[39]

The Nature of Copyright Protection and the Functions of the Sanctions for Copyright Infringement

Regarding the nature of copyright, it has to be pointed out that in its objective sense it is a system of norms regulating the legal situation of the author of a work and the ways of protecting the author's rights. However, in the subjective sense, copyright is a subjective right (a range of rights) enjoyed by a particular entity, namely the author of a given work. Such a right is considered in two basic aspects: intangible and tangible (economic) rights.[40]

38 Judgment of the Supreme Court of 13 January 2006, III CSK 40/05, LEX no. 176385.

39 Judgment of the Appellate Court in Warszawa of 15 October 2010, I ACa 604/10, LEX no. 1120158.

40 Dawid Kot, "Zabezpieczenie roszczeń z tytułu naruszenia autorskich praw majątkowych", *Monitor Prawniczy*, no. 23. 2003.

The first aspect includes the author's specific rights to decide on the shape and content of the work, its publication, or its adaptation in another field. It also concerns granting a licence to use this copyright (to dispose of the creative achievement and to decide on the content of the work, its elements and the creative process), or to transfer a part of the rights constituting this right to another entity (e.g. copyright). As far as the economic aspect is concerned, there are entitlements to remuneration (the fee, royalties, licence fees, the amount received as a result of transferring certain entitlements).

According to Polish legislation, the sanctions for plagiarism have various functions, primarily compensatory (by offsetting losses incurred by the author), preventive, i.e. deterring further potential infringements, and repressive, although the scope of this last function is debatable.

As has been pointed out, plagiarism may give rise to two types of sanction. There are sanctions provided for in civil law and criminal sanctions. The former are divided into pecuniary and non-pecuniary sanctions, whereas criminal sanctions may take the form of a fine, a restriction of freedom or even imprisonment for up to five years (Articles 115–122 of the Copyright Act). The question arises here of whether the fact that the Copyright Act contains criminal sanctions means that they should be considered a separate criminal law regulation. What may be assumed is that although they are penal and repressive, they are also applied within the framework of civil law.

Another problem is how to solve a certain contradiction arising between the author's desire to multiply the work in a digital form (wishing to disseminate information about the creation) and the expectation that the copyright will be effectively protected against infringements – both pecuniary and non-pecuniary – of the author's rights. In either case such dissemination may be for a fee or without remuneration.

One more division which also demonstrates certain problems arising in the event of dissemination of a work in a digital form distinguishes this being done with or without the author's consent. Following the previous division,

in the first situation we may speak about paid and unpaid dissemination. In the event that dissemination is without consent, it may still be done with or without respect for the personal aspect of copyright. Finally, an infringement made without the author's permission but with respect for the rights may also be without remuneration or for a fee. Infringement without remuneration is the most relevant for the situation discussed here.

Conclusions

Basically, all university students are adults, already of age,[41] which in addition to their administrative and legal liability towards the university authorities, makes them bear full civil liability for their actions, as well as, in principle, being subject to criminal liability.[42] Indeed, the Copyright Act provides for severe criminal sanctions as well.[43]

The key issue arising in connection with the deliberations presented here is to determine whether a student's behaviour amounts to plagiarism or whether it constitutes another type of infringement. It is worth dividing these behaviours into two categories. One category includes behaviours that have an external effect, for instance when somebody puts his or her own name on content which is the protected intellectual achievement of another person. The other type is behaviours with an internal effect, e.g. when a person uses somebody else's copied content for the purpose of his or her own education but fails to pay the creator or the organisations that represent the creator the due fees. The

41 Due to the fact that education may start at the age of 6, some high school graduates and first-semester university students are not yet adults within the understanding of the legal system, as they are under 18 years of age.

42 However, criminal law divides perpetrators into minors (aged between 15 and 17), underage offenders (aged between 17 and 18) and young offenders (aged up to 21 or up to 24 at the time of adjudication before the court of first instance – Article 115 § 10 of the Penal Code). Each of these groups is subject to certain mitigated penalties and proceedings according to their age and the type of offence committed.

43 For a detailed monographic discussion of criminal sanctions in copyright law see: Anna Gerecka-Żołyńska, *Ochrona praw autorskich i praw pokrewnych w polskim prawie karnym*. Toruń, 2002.

result of the latter behaviour is the acquisition of an ability to reproduce someone else's content and the acquisition of a new ability of one's own, although the intellectual content used is still someone else's.

What is worth attention here is students' blameworthy behaviour in general. The problem concerns the borders and relations between behaviours that are blameworthy but nevertheless tolerable and those which are blameworthy and prohibited. As has already been indicated, these may be behaviours related to the sphere of copyright in its civil law aspect or its criminal law aspect.

Specific behaviours may also be an element of the student's obligation connected with the preparation of a written assignment, and in such a case they are prescribed behaviours. For example, a student is ordered to research sources available online and to formulate synthetic conclusions. An assignment of this type arises from certain custom in the university community and the specificity of the social role played in it by a student, which enforces a certain behaviour, and does not always require detailed references to the sources used. Moreover, many resources found on the internet do not provide the names of the authors of the content made available there.

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