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UDC [343.533+347.78]:044 (477)

CURRENT APPROACHES TO CLASSIFICATION OF PLAGIARISM AS A FORM OF RIGHT INFRINGEMENT

The article deals with theoretical and legal aspects of the concept and the essence of plagiarism, according to national legislation and legal doctrine of intellectual property rights. The plagiarism's concepts and essences as a form of copyright infringement have been defined; current classification criteria and their separation of types are analyzed; conclusions and specific proposals under which will be respected the non-property subject's rights of intellectual property have been highlighted.

Key words: *plagiarism, subjects' right of intellectual property, non-property rights, rights to the name, assignment an essay, copyright infringement.*

У статті досліджено теоретико-правові аспекти поняття та сутності плагиату відповідно до національного законодавства України та правової доктрини з права інтелектуальної власності. Визначено поняття та ознаки плагиату як форми порушення авторських прав; охарактеризовано сучасні класифікаційні критерії його поділу на види; сформульовано висновки й конкретні пропозиції, відповідно до яких забезпечуватиметься дотримання особистих немайнових прав суб'єктів права інтелектуальної власності.

Ключові слова: *плагиат, суб'єкти авторського права, немайнові права, права на ім'я, присвоєння твору, порушення авторського права.*

В статье рассмотрены теоретические и правовые аспекты концепции и сущности плагиата в соответствии с национальным законодательством и правовой доктриной права интеллектуальной собственности. Определена концепция и признаки плагиата как формы нарушения авторских прав; характеризуются современные классификационные критерии его деления на виды; сформулированы выводы и конкретные предложения, с помощью которых будет обеспечиваться соблюдение личных немущественных прав субъектов права интеллектуальной собственности.

Ключевые слова: *плагиат, авторское право, немущественные права, права на имя, присвоение произведения, нарушение авторских прав.*

Presentation of the scientific problem. Plagiarism is one form of the author's moral rights infringement. Today study on the definition and classification of combating plagiarism is of particular relevance due to the lack of proper legal regulation. Unfortunately, countering this phenomenon is carried out mostly at the local level, although the new Law of Ukraine "On Higher Education" relieved the problem in education and science.

The purpose of the article is to analyze legislation in the field of intellectual property as well as to study different approaches of scientists on the definition, characteristics and criteria for division of plagiarism as a form of copyright infringement.



The following tasks should be performed to achieve this purpose:

- to characterize the legislative and doctrinal definition of plagiarism and its features;
- to analyze the types of plagiarism and criteria for their division;
- to suggest the ways to address legislative gaps in implementing regulations on plagiarism.

Some aspects of determining the legal nature of plagiarism have been the subject of the study of more than one dozen scientists. But a comprehensive analysis of this phenomenon has not been done.

Thus the general theoretical description of plagiarism, both its key characteristics and features of some types become the subject of such scholars as K.O. Afanasyeva, V.V. Volikov, I.V. Zaitseva -Kalaur, V. Zelenetsky, Yu. Iskov, A. Ermakova, A.V. Kyrylyuk, M.M. Kycherov, E. Kompanets, J. Krause, I.V. Poralo, I.V. Romanov, A. Sychyvytsya, G. Ulyanova, O. Stefan etc.

Legally plagiarism concept was enshrined in the new edition of the Law of Ukraine “On Copyright and Related Rights” in 2001. According to article 50 of the Law plagiarism is a public exposure (publication) of another’s work under the name of a person who is not the author of this work in whole or in part [1].

We agree with statement of N.D. Golev that the law considers plagiarism as a direct overlapping of intellectual (creative) work or its part thereof, including the title, presented in a fixed form, i.e the process of legal protection applies only to the physical properties of the object and cannot fully protect property and moral rights of authors [2, p. 87].

Paragraph 6 of article 69 of the Law of Ukraine “On Higher Education” states that academic plagiarism is publication (partially or fully) of the scientific results obtained by the others as a result of the research and/or reproduction of published texts by other authors without proper reference [3].

Thus, the law on intellectual property doesn’t provide any single definition of plagiarism. I.V. Poralo also agrees with the noting about lack of complete definition of these phenomena due to its versatility, covering all scientific, professional and creative environments [4, p. 20].

Let’s analyze the concept of plagiarism and its essence provided by the legal doctrine of intellectual property rights.

A Big Explanatory Dictionary of Modern Ukrainian defines plagiarism as assigning of authorship of works of science, literature, art or other’s discoveries or innovations and the use of them in one’s works without attribution [5, p. 977].

In the explanatory dictionary of foreign words L.P. Krysinina determines plagiarism as the delivery of another’s work under one’s own name or as literary theft [6].

The dictionary-reference book on intellectual property edited by A.D. Svyatotsky states that plagiarism is unauthorized borrowing, reconstitution of one’s literary, artistic or scientific work (or its part) in one’s own name or a pseudonym and as incompatible with the creative work as well as with the norms of morality and law that protects copyright [7, p. 157].

A. Kyrylyuk, I.V. Romanov consider the historical aspects of the plagiarism formation [8, p. 267–273; 9]; V.V. Volikov, I.P. Dzobko analyze plagiarism in the field of science [10, p. 344–349]; K.A. Afanasyeva, I. Zaitseva-Kalaur, J. Krause, R. Lesechko define plagiarism in the media [11, p. 16; 12, p. 117–118; 13, p. 36–41; 14, p. 241–242]; I. Poralo examines plagiarism in law, economics, education [4]; D. Ulyanov, A. Stephan determine the general theoretical aspects of the concept, the features and responsibility for plagiarism [15, p. 121; 16, p. 17–25].

In particular, A.V. Kyrylyuk considers plagiarism as fraud, the essence of which is stealing of other people’s work or part of it to present it as one’s own; full or partial assignment of intellectual creativity of one person by another, which leads to the violation of moral and (or) property rights of a real author [8, p. 270].

V.V. Volikov, I.P. Dzobko understand plagiarism as assigning of authorship of one’s work in science, literature, art or on someone else’s discovery, invention or rationalization proposal through any means and the use in one’s works of someone else’s work without attribution and (or) a statement in other words in a different order of one’s words, opinions without reference to the actual source of information [10, p. 344–349].



M. Voloshchuk, Ch.P. Yarmak, A.A. Chernyshov understand by plagiarism a publication in full or in part of someone else's work under one's own name, and publication under one's name of a work created in joint authorship or forced co-authorship and the use in one's works of other's works without reference to them [17, p. 139–140].

M. Kruk considers plagiarism as a form of copyright infringement and defines it as a set of disorders that impinge both on the moral rights of the author and the property rights of copyright holders [18, p. 60].

D. Ulyanov defines plagiarism as misappropriation of authorship committed in any form, resulting in revealing of an intellectual property object to undetermined number of persons under the name of a person who is not the author or inventor [15, p. 121].

So plagiarism is a form of violation of the author's moral rights rather the right to a name compiling in assigning of the work all or in part by a person that is not its author (plagiarist) under his own name without specifying the actual source of borrowing.

To understand the nature of plagiarism as a form of copyright infringement let's define criteria for its classification in order to develop areas to its overcome, taking into consideration undue encroachment on moral rights.

There is no classification of plagiarism in law, though its definition according to Article 50 of the Law of Ukraine "On Copyright and Related Rights" provides full and partial plagiarism.

We agree with I.V. Poralo in his statement that the most common phenomenon is the educational and scientific plagiarism to which the lawmakers and scientists mainly pay attention in recent years [4, p. 20].

In confirmation of this in 2014 the Law of Ukraine "On Higher Education" was adopted. It defines legal bases of combating plagiarism etc.

Let's define criteria for division of plagiarism proposed in the legal doctrine of intellectual property rights.

A. Sychyvytsya classifies plagiarism as:

1) shy – the nature of which is the fact that the results of one's scientific research are registered in research papers (already published or not) by the plagiarist and given in other words as well as in a different order, – and of course, without reference to the actual source of this information and its author;

2) gentleman – where it's not only difficult to find direct borrowing in the plagiarist's work but also to differentiate the author's thoughts from the stolen and to eliminate the formal grounds for accusations of plagiarism due to a great number of appropriate links;

3) novolescent – the point is that when the plagiarist-gentleman seeks to become on a par with the true author and agrees with almost all of his ideas, concepts, theoretical framework, arguments, etc. the plagiarist-kicker operates quite differently: he is too ambitious person who tends to become higher than the actual author;

4) compulsion to co-authorship takes place when the both the joint authors and those who actually haven't participated in the relevant scientific work are appended to actual author [19, p. 43].

I.V. Romanov suggests the following plagiarism classification criteria [9]:

1) in terms of unfair borrowing material, i.e. the correspondence of the whole work, its base to the individual elements, the author identifies broad and non broad plagiarism as a violation of the moral rights of the creator, and the person is responsible for them.

Broad plagiarism is understood as appropriation of another's work or chapter/chapters, fragments.

Non broad plagiarism is defined by the author as assigning of a slight amount of work, for example, of the quote.

2) as to the degree of secrecy (masking) of borrowing the author highlights latent and non latent plagiarism. Latent plagiarism is not immediately observed, and therefore, there is hope that it will not be detected, because more often it occurs in the: use of quotation without indicating the author and the source page; transformation of words in quotation that still conveys semantic core of source; reduction of quotations; division of long quotes into separate sentence and so on. Non latent plagiarism implies borrowing of all or part of the work without attribution and sources of borrowing.



3) as to the area of other people's intellectual activities use: educational and scientific, social, professional, regulatory plagiarism.

R. Lesechko, K.A. Afanasyeva divide plagiarism according to different criteria, namely:

– according to the volume of assigned material: full and partial. Full plagiarism is viewed by the author as intentional assigning of the work in its authorship full and partial one defines the use of one's works or parts from one's works of others without specifying the name of the author or without registration of citation as required.

– according to the degree of mediation: direct and indirect. Direct plagiarism involves assigning authorship to someone else's work or passages that used unchanged and indirect plagiarism is assigning authorship to someone else's work or passages that were previously modified by the plagiarist [14, p. 241; 11, p. 17].

In practice semantic plagiarism based on the transfer of copyright text in other words, paraphrasing the same is common. In the explanatory dictionary of the Ukrainian language edited by V.T. Busel says that to paraphrase means to transfer someone's words, statements, slightly changing the shape, and sometimes the content of the presentation [5, p. 831].

Therefore, legally this kind of plagiarism is unfounded, since the Law of Ukraine "On Copyright and Related Rights" protects the form rather than content.

I.V. Poralo depending on activity and scope divides plagiarism into four types with its own purpose [4, p. 21].

Professional provides the assignment of intellectual, creative professional achievements in other professional purposes (goal is earning, prestige, awards, recognition, etc.).

Educational and scientific plagiarism is assigning of another's intellectual heritage only during the period of scientific degree taking, education classification or recognition in these areas.

Social plagiarism occurs in domestic relations and does is not applied to professional activities.

Regulatory plagiarism is appropriation of legislative, legal, methodological, scientific practical developments, the feature of which is that it is common, without belonging to something or someone (such as assigning program of the pension system or disclosure of their authorship developed method of dispute resolution in family law).

In addition, I.V. Poralo having analyzed the international experience, encyclopedias suggests the following types of plagiarism:

1) an exact copy of the existing object published without proper copyright clearance undertaken in this part;

2) repeat of the ideological basis of the work – the plot, which is its value. This type of plagiarism is the most difficult and most controversial, because in that case it's extremely difficult to prove its copy.

3) publication of copyrighted works, the contents of which receives a portion or all of the other's material(s) authors in linguistic, lexical and technological interpretation, thereby changing the author's scheme sign system (probably placing concrete figures liter, what is the example text) that allows to use it as an original for significant system work.

4) errors in references; error in quotations; links to non-existent source; in bringing accurate facts without specifying the source (if not a personal research); Errors are listed in information sources.

IParadigms team authors (San Francisco) [20] divide plagiarism into two groups:

1) borrowing from external sources without reference to it, "ghost writer" – publication without any change of other people's work for its authorship (purchase on demand, direct copying (Internet-resources, books, magazines, etc.) divided into three groups:

– "photocopy" consists of two parts: a material that has been partially copied without change, and personally written; "come-up material" – a work written as a copy, unchanged from multiple sources in the form of text passages joined by the author's own short text;

– "bad masking" with the remaining ideological content of the borrowed text, but some formulations are replaced by synonyms; "work line" consists of borrowed material, but almost all of the text is interpreted (rewritten in other words);



– “stolen from himself” is the presentation of a copy or modification of their previous patients without originality.

2) plagiarism, citing a source of drawing: “forgotten link” and “disinformation” is a work with incorrect decorating of citing sources; “a perfect paraphrasing” involves not including in quotes of the borrowed quotations that look like the view of the author the text; “perfect crime” when only some quotes are given according to all rules, but some are given as the author’s own text; “volume quoting” where the work is represented under all requirements including quotes, links to external sources, but bears no novelty.

We believe that the suggested classification of plagiarism is very complicated and inconsistent because of its structural branching and presence of different criteria for their division within the system.

Summary. Having analyzed the concept of plagiarism given by the legislator and specified in the science of intellectual property rights under the plagiarism as a form of violation of the author’s moral rights – the right to a name refers to the assignment of all or part of the work by a person that is not its author (plagiarist) under its name without specifying the actual source of borrowing scientific, etc. work or part under one’s name or nickname; the use of one’s works without due reference on them; encroachment on personal moral rights – the right to a name; forced collaboration with the person who was not involved creatively in the creation of works of science, literature and art; wrongfulness of plagiarist’s behaviour.

Modern legal doctrine has failed to develop a unified approach to the definition of criteria for plagiarism division. Despite the desire of scientists to suggest a classification of plagiarism one can argue that their views do not contain significant changes, because although results in suggesting different criteria for plagiarism division. This situation is associated primarily with the subjective factor, resulting in a number of criteria of plagiarism division as well their type’s names by different authors.

Without claiming to be the final solution to the problem and determine the nature of plagiarism and its classification criteria, taking into consideration the above statements, we believe that some of its most common types such as educational and scientific plagiarism and plagiarism in the media need further thorough research.

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