

THE MORAL RIGHTS OF THE AUTHOR AND PLAGIARISM

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Abstract

The present paper aims at analysing the non-patrimonial component of the author's rights, namely the moral rights of the author, and, at the same time, at discussing the legal implications of plagiarism. In this context, the moral rights of the author will be analysed as they are configured in the two main traditions protecting literary and artistic works, namely the European, Continental or the 'author's right system' and the 'Copyright system'; while the former is rooted in the civil law tradition, the latter belongs to the common law countries. The concept 'copyright law' will also be employed in a broader meaning, used to designate all the provisions regulating this domain, those of the 'author's right' system included. In the introductory part of the paper, the types of works subject to copyright protection, ownership of copyright and the conditions required for a work to benefit from copyright protection will be mentioned. Special reference will be made to relevant legal instruments, such as the Berne Convention for the Protection of Literary and Artistic Works (1886), the system of protection promoted by the European Union, as well as the national framework, namely Law no. 8/1996 on Copyright and Neighbouring Rights. The moral rights of the author acknowledged in the Romanian law, which belongs to the author's right system, are the following ones: the right to divulgation, the right to paternity, the right to a name, the right to inviolability of the work, and the right to withdrawal. In addition, the legal characteristics of the moral rights of the author will be presented. Furthermore, provisions of other European states will be added for comparison. As far as the Copyright system is concerned, the moral rights have not been at the centre of the legal framework until recent times, the main interest being rather utilitarian, as opposed to the European outlook, focused on the author. However, the two systems seem to increasingly harmonise. A case in point is the Copyright Law of the United States or the Copyright Designs and Patents Act (1988) of the United Kingdom. On the other hand, because nowadays the deceitful practice of plagiarism, especially in the form of 'cut-and-paste', has been stimulated due to the easy access to online sources, it is even more important to lay emphasis on the provisions protecting the rights of the author so as to assure a more reputable educational environment, which is essential both for the intellectual and for the moral formation of a student.

Keywords: moral rights, author's right system, Copyright system, plagiarism.

1 INTRODUCTION

The rights of authors, both moral and material, are acknowledged in Article 27 par. 2 of *the Universal Declaration of Human Rights* (1948), an international document with a high level of moral significance: 'Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'. Being a part of the intellectual property domain, copyright is a property right of a fascinating nature, as the law governing these specific relations 'turns the intangible into property' [8]. As the World Intellectual Property Organization (WIPO) emphasises, copyright protection is highly important for 'promoting, enriching and disseminating the national cultural heritage. A country's development depends to a very great extent on the creativity of its people, and encouragement of individual creativity and its dissemination is a *sine qua non* for progress' [18]. The moral and material attributes of the creator are governed in accordance with the general interests of the society [9].

1.1 The Juridical Nature of Intellectual Property Rights

In order to establish the juridical nature of intellectual property rights, several theories have been proposed, defining the rights of authors in different ways: as a property right, as a clientele right, as ownership of immaterial goods, or as a personality right. It has been observed, though, that none of the theories mentioned above offers a complete view on these rights, and so the theory according to which intellectual property rights have a complex nature seems to be the widely accepted option [15].

Copyright comprises both personal and economic aspects. Starting from this feature, a dichotomy has come into being, namely the monist or unitary theory vs. the dualist theory of copyright. The supporters of the former view assert that there is an indissoluble connection between the author's personality and his creation, so that the moral and the material rights of the author cannot be dissociated. Conversely, those who promote the dualist perspective consider that the two categories of rights are distinct (the moral component being predominant) and, consequently, there is a variation of legal treatment between the moral rights and the material ones [14]. The dualist theory has advanced mainly in France, while the monist theory has been embraced in Germany [5]. The Romanian law, as well as the majority of European Union member states (except Germany, as previously mentioned) adopted the dualist theory, recognising the complex nature of copyright.

The monist theory has been criticised in the Romanian literature [15, 16], the same arguments strengthening the dualist theory: firstly, although the moral and the material rights occur at the same time, the latter are prospective inasmuch the intellectual creation has not been made public; secondly, the intellectual creation represents the product of the creative activity, the relationship between the two being that of cause and effect, and not of identity; lastly, the protection of the personal and economic interests implies the existence of distinct areas of application and distinct objectives. In favour of the dualist theory, several arguments have been mentioned, which can be summarised as follows. The right of the author to obtain financial gain out of the exploitation of his work is the result of the moral right of divulgation. Moreover, the moral rights precede, survive the material ones and permanently influence them. If the author's moral rights have been violated, then the right to material damage arises as a consequence [15].

1.2 The 'Author's Right' System and the 'Copyright' System

The rights of authors acknowledged in the legislation of different countries have generally been configured within two systems, namely the 'author's right' system and the 'Copyright' system. While the former is specific to the civil law tradition, the latter developed largely in the common law tradition. Not only are the traditions from which they stem different [13], but also the philosophical premises of the two systems diverge considerably: the 'author's right' system is based on the ideas of natural rights, whereas the 'Copyright' system is founded on the ideas of utilitarianism [5]. It has been stated [10] that, within the European system, the focus is laid upon the author's interest, while, in the American system, the interest of the industry is prominent.

Be that as it may, the harmonisation of two systems has been fostered within the provisions of *The Berne Convention for the Protection of Literary and Artistic Works* of September 9, 1886 (as completed in Paris in 1896, revised in Berlin in 1908, completed in Berne in 1914, revised in Rome, 1928, in Brussels, 1948, in Stockholm, 1967, and in Paris, 1971, and amended in 1979). The United States of America became a party to the present Convention in 1989. As it has rightly been observed, the gap between the two systems increasingly narrowed in time: 'Just as natural rights philosophy has infiltrated the copyright laws of the common law tradition, utilitarianism has taken root in the author's right laws of the civil law traditions' [5].

The European Union also aims at the uniformity of intellectual property rights within the Union. A noteworthy document in the field of copyright is *Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society*. In the preamble to this Directive, there is reference made to the moral rights of rightholders, the text stating that they should be exercised according to the legislation of the Member States and the provisions of the *Berne Convention*, of the *WIPO Copyright Treaty* and of the *WIPO Performances and Phonograms Treaty*.

The word 'copyright' has its origins in the enactment of the first modern copyright statute, by the British Parliament, named *The Copyright Act* or *The Statute of Queen Anne* (its long title being *An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned*), dating from 1709. Nowadays, not only is the term used in the *Berne Convention*, but it has also started to be preferred in English translations of legal documents belonging to the 'author's right' system, as an equivalent of 'author's right'. The terminological difficulties are increased not only because of cultural differences, but also by the fact that studies in the field admitted the impossibility of translating the term 'copyright' [15]. Thus, in the present paper, the notion of 'copyright' shall be used with the two meanings referred to above, namely as a system shared by common law countries, and as the totality of norms governing the rights of authors, regardless of which of the two systems they belong to.

2 LEGALLY PROTECTED WORKS AND OWNERSHIP OF COPYRIGHT

Before discussing the issues regarding moral rights, a preliminary discussion is necessary in order to establish the scope of copyright, the conditions that must be fulfilled by a work in order to be protected, as well as who owns copyright.

2.1 The Subject Matter of Copyright

In a synthetic definition, the subject matter of copyright consists of the literary, artistic, and scientific works, regardless of their form of expression, value or destination [10]. As a legal institution, copyright comprises the set of norms governing the relations concerning the production and protection of works of intellectual creation [9, 14].

According to the *Berne Convention* [19], the phrase 'literary and artistic works' shall encompass the following elements: 'every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science' (Article 2, par. 1). In the Romanian legislation, *Law no. 8/1996 on Copyright and Neighbouring Rights* (published in the Official Gazette of Romania no. 60/26 March 1996, with subsequent modifications) [20] contains the following legal definition in Article 7: 'The subject matter of copyright shall be original works of intellectual creation in the literary, artistic, or scientific field, regardless of their manner of creation, specific form or mode of expression and independently of their merit and purpose'. In what follows, there is also an enumeration, analogous to the aforementioned provisions of the *Berne Convention*. In accordance with the *Berne Convention*, Law no. 8/1996 stipulates, in Article 8, that copyright also applies to derived works, created on the basis of one or more pre-existing works, without prejudice to the rights of the authors of the original work, such as: 'translations, adaptations, annotations, documentary works, arrangements of music and any other transformation of a literary, artistic or scientific work that themselves entail creative intellectual work; collections of literary, artistic or scientific works, such as encyclopaedias, anthologies and collections and compilations of protected or unprotected material or data, including databases, which, by reason of the selection or arrangement of their subject matter constitute intellectual creations'.

There are also categories of intellectual creations which are excluded from legal protection. Article 9 of the Romanian Law on Copyright and Neighbouring Rights provides that the following shall not benefit from copyright protection: the ideas, theories, concepts, scientific discoveries, proceedings, functioning methods or mathematical concepts as such and inventions, contained in a work, whatever the manner of the adoption, writing, explanation or expression thereof; official texts of a political, legislative, administrative or judicial nature, and official translations thereof; official symbols of the State, public authorities and organizations, such as armorial bearings, seals, flags, emblems, shields, badges and medals; means of payment; news and press information, as well as simple facts and data.

An important distinction to be made is that between ideas and the form of expression of ideas, since only the latter benefits from legal protection: 'The creativity protected by copyright law is creativity in the choice and arrangement of words, musical notes, colors, shapes and so on' [18].

2.2 The Conditions for Protection

In order to have title to protection, the following conditions must be met by a work: to be the result of an activity of intellectual creation performed by the author, to be revealed by means of a concrete form of expression, perceptible to the senses, and, finally, to be susceptible of public disclosure [9, 10, 14].

The first condition requires that the work should be 'original'. The Romanian Law on Copyright and Neighbouring Rights mentions this requirement, but does not define it. The attempt to establish a clear definition of the term under copyright law represents a challenging endeavour. The *Longman Dictionary of Contemporary English* defines 'original' in the following way: '1. existing or happening first, before other people or things', '2. completely new and different from anything that anyone has thought of before' or, in a narrower sense, '3. an original work of art is the one that was made by the

artist and is not a copy'. There have been numerous attempts in the literature on copyright to define originality. Some scholars, such as E. Ulmer (*Urheber und Verlagsrecht*, 1980), have stated that, in order to benefit from legal protection, a work must bear the mark of the author's personality or individuality. H. Desbois (*Le droit d'auteur en France*, 1966) considered that the concept of originality is not equivalent to that of absolute novelty, arguing that, while the former is a subjective and relative criterion (as in the case of derived works), the latter is an objective one [10]. In the view of several authors belonging to the Copyright system [2, 7], for a work to be deemed original, it must come from the author, i.e. it must not be copied from elsewhere. According to this perspective, the focus is shifted from 'original thought' to 'original effort', involving the author's time and skills in the process [7]. As it has been rightly stated, the originality of a compilation resides in the selection and organisation of the material or data [2]. Thus, it can easily be observed that the standard of originality does not generalise the idiosyncratic feature of a work.

As far as the second condition is concerned, the work must be conveyed in a concrete form, which is available to the senses. This has been interpreted in the following way: copyright is activated as soon as the work takes the form of a manuscript, sketch, theme, painting, or any other material shape, which does not imply that the work needs to be fixed on a material support in all cases, with the exception of plastic art [10]. According to Article 1 par. 2 of Law no. 8/1996, 'a work of intellectual creation shall be acknowledged and protected, independently of its disclosure to the public, simply by virtue of its creation, even though in an unfinished form'. This wording has determined a different view from the previous one, namely that, in the Romanian law, the protection of a work depends on its attachment to a material support [14]. In fact, the latter option has also been adopted by the legislation of other countries, such as that of Great Britain, the United States or Ireland. *The Berne Convention* [19] allows national legislation 'to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form' (Article 2 par. 2). For example, in a ruling of the *Tribunal de grande instance de Paris*, first chamber, dating from 11 December 1985, it has been decided that a professor's course represents an original creation and a protected work of intellectual creation [14].

The third condition entails that, in order to be protected, a work must be susceptible of public disclosure. In concrete terms, this can be achieved through reproduction, execution, representation or any other means [10]. However, a work is recognized and protected regardless of its being brought to public attention, as long as it takes a concrete form [14].

2.3 Ownership of Copyright

Chapter II of Law no. 8/1996 deals with ownership of copyright. The norms governing authorship are presented as follows: 'The natural person or persons who created the work shall be the author thereof' (Article 3 par. 1). That is to say, according to the Romanian law, only natural persons can be authors, since the creation of a work is an intellectual activity and only such a person possesses the qualities of a creator, namely intelligence, personality, sensibility, and so on [10, 14].

Concerning the principle of the true author (*principiul adevăratului autor*), the Romanian law stipulates the following presumption: 'Unless proved otherwise, the person under whose name the work was first disclosed to the public shall be presumed to be the author thereof'. If the work was disclosed anonymously or under a pseudonym which prevents the identification of the author, the copyright shall be exercised by the natural person or legal entity that makes it public with the author's consent, as long as the latter does not disclose his identity (Article 4, par. 1 and 2). *The Berne Convention* [19] also contains provisions in this regard: 'In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity'.

The notions of authorship and ownership of copyright are not equivalent, even though this distinction has caused confusion in practice, as the former stems from a legal fact, whereas the latter arises from the law or from a legal deed [14]. Thus, 'in cases expressly provided for by law, legal entities and natural persons other than the author may benefit from the protection granted to the author' and also 'ownership of copyright may be transferred as provided by law' (Article 3 par. 2 and 3 of Law no. 8/1996). These situations are exceptions from the principle of the true author. In this context, a useful distinction has been promoted between *originative or primary* and *derivative or secondary subjects of law*: the primary subject is the author, the direct creator of the work, whereas the secondary subject is

the person who, by virtue of certain circumstances, acquired some prerogatives of copyright that normally belong to the primary author [16].

The literary, artistic or scientific work can also develop from the co-operation of several persons. There are several categories of such works, among which one can distinguish between *works of joint authorship* and *collective works*. The former is created by several co-authors, holding ownership of copyright, and one of whom may be the main author. Unless otherwise agreed, co-authors may only exploit the work by common consent; the refusal of consent by any one of the co-authors must be fully justified (Article 5 of Law no. 8/1996). Works of joint authorship can be dividable or undividable according to how each author's contribution relates to the whole [10]. The collective work is 'a work in which the personal contributions of the co-authors form a whole, without it being possible, in view of the nature of the work, to ascribe a distinct right to any one of the co-authors in the whole work so created. Unless otherwise agreed, the copyright in a collective work shall belong to the person, whether natural person or legal entity, on whose initiative and responsibility and under whose name the work was created' (Article 6 of Law no. 8/1996). Derived works can be created by a plurality of authors as well. *The French Code of Intellectual Property* also mentions the *composite works*, which are new works into which a preexistent work is incorporated without the collaboration of the initial author (Article L113-2).

3 THE MORAL RIGHTS OF THE AUTHOR

This chapter outlines the provisions regulating the moral rights of the author in the continental system (focusing on the Romanian, French and Spanish laws in the field) and common law system of law (the British and American legislation).

3.1 Provisions Regarding Moral Rights in the Continental System

The moral rights of the author are explicitly provided for in Article 10 of the Romanian Law on Copyright and Neighbouring Rights, as follows: the right to decide if, in what way, and when the work is disclosed (the right to divulgation); the right to claim recognition of authorship (the right to paternity); the right to decide under what name the work will be disclosed (the right to a name); the right to claim that others abide by the integrity of the work and to oppose to any modification, as well as to any distortion of the work, if this prejudices the author's honour or reputation (the right to inviolability of the work); the right to retract the work, by compensating, if it is the case, the owners of exploitation rights, prejudiced by the exercise of withdrawal (the right to withdrawal).

The *French Code of Intellectual Property* [20] comprises detailed norms regarding the moral rights of the author (*Droits moraux*) in Articles L121-1 to L121-9. The French law and doctrine regarding this institution are considered to express the purest view of 'droit moral' [4].

Concerning the Spanish copyright law (*derechos de autor*), the main provisions are contained in the *Revised Law on Intellectual Property, regularizing, clarifying and harmonizing the applicable statutory provisions, approved by Royal Legislative Decree 1/ 1996 of April 12, 1996* [20]. The moral rights (*Derecho Moral*) are enumerated in Title II, Chapter III, Section 1, Article 14 of the present law: The author is invested with the following unrenounceable and inalienable rights: the right to decide whether his work is to be disclosed, and if so in what form; the right to determine whether such disclosure should be effected in his name, under a pseudonym or sign or anonymously; the right to demand recognition of his authorship of the work; the right to demand respect for the integrity of the work and to object to any distortion, modification or alteration of it or any act in relation to it that is liable to prejudice his legitimate interests or threaten his reputation; the right to alter the work subject to respect for the acquired rights of third parties and the protection requirements of goods of cultural interest; the right to withdraw the work from circulation for reasons of changed intellectual or moral convictions, after indemnification of the holders of exploitation rights for damages and prejudice; the right of access to the sole or a rare copy of the work, when it is in another person's possession, for the purpose of the exercise of the right of disclosure or any other applicable right. With reference to the right to withdrawal, the law states that 'if the author later decides to resume exploitation of his work, he shall give preference, when offering the corresponding rights, to the previous holder thereof, and shall offer terms reasonably similar to the original terms'. The right of access to the sole or a rare copy of the work 'shall not allow the author to demand the moving of the work, and access to it shall be had in the place and manner that cause the least inconvenience to the possessor, who shall be indemnified where appropriate for any damages and prejudice caused him'.

3.1.1 *The Right to Divuligation*

The right to divuligation, also known as 'the right to first publication' (E. Ulmer), is one of the most personal rights, having an absolute and discretionary nature, being indissolubly linked to the author's personality [10]. In the French literature, H. Desbois commented that the right to divuligation is an attribute of a moral and intellectual nature *par excellence*; the formal aspect resides in the fact that the author can keep his unpublished manuscript only to himself, while the latter allows the author not to publish the work until it conforms to his ideal and expectations [10].

This right manifests *a priori* in relation to all other rights, especially to the material ones, since it makes the work available for public disclosure. The right to divuligation can be exercised not only in the case of the first publication, but also on later occasions. However, after signing a contract in which allowing publication, the absolute nature of the right becomes limited [14].

The Berne Convention [19] defines the expression 'published works' as 'works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work'. The same text provides that the performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture are not considered to be publication (Article 3 par. 3).

3.1.2 *The Right to Paternity*

The right to paternity is based on the connection between the author and his work, implying both a positive and a negative aspect. The positive element enables the author to claim authorship over his work, while the negative component relates to the right to oppose any act of contesting authorship coming from third parties [10].

3.1.3 *The Right to a Name*

The positive aspect of the right to paternity, as Yolanda Eminescu (*Dreptul de autor*, 1997) emphasised, also entails the right to a name, that is, the right to decide whether the work will be disclosed under the author's name, by using a pseudonym or without indicating the name. The author is exclusively entitled to renounce his anonymity or pseudonym at any moment [14].

While the right to paternity always belongs to the natural persons who created the work, the right to a name can also belong, in the case of collective works, to legal entities or natural persons (others than the author) who own the initiative of the work and under whose name the work has been created [15].

3.1.4 *The Right to Inviolability of the Work*

The right to inviolability of the work (also known as the right to respect or to integrity of the work) is the author's prerogative of disclosing the work in the form decided by him. Thus, any removal, modification or addition without the author's approval is forbidden [10].

According to the text of the Romanian law, the author has the right 'to demand respect for the integrity of the work and to oppose any modification or any distortion of the work if it is prejudicial to his honour or reputation' [Article 10 letter d)]. Thus, the protection of this right is only activated against situations which affect the author's honour or reputation (the French law provides for an absolute protection concerning this right). These provisions correspond to the *Berne Convention*: 'Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation' (Article 6^{bis}) [19].

3.1.5 *The Right to Withdrawal*

Article 10 letter e) of Law no. 8/1996 stipulates that the author has the right 'to withdraw the work, subject to indemnification of any owners of exploitation rights who might be prejudiced by the exercise of the said withdrawal right'. The right to withdrawal represents the counterweight of the right to divuligation, being a distinct right, and is a direct consequence of its absolute and discretionary nature. In the hypothesis of joint authorship, the right to withdrawal can simultaneously conflict with both the right to withdrawal of the other authors and with the *pacts sunt servanda* principle. The solution in this case is that of conditioning the right to withdrawal to the existence of justified reasons, which will be evaluated by the court of law [10].

3.1.6 The Juridical Traits of Moral Rights

The juridical traits of moral rights are generally determined by their connection to the author, which is mostly *intuitu personae*, i.e. in consideration of the person [10]. Accordingly, the moral rights have the following traits: they are strictly personal, inalienable, perpetual, imprescriptible, absolute (opposable *erga omnes*), and intransmissible. According to Article L121-1 of the French Code of Intellectual Property, 'an author shall enjoy the right to respect for his name, his authorship and his work. This right shall attach to his person. It shall be perpetual, inalienable and imprescriptible. It may be transmitted *mortis causa* to the heirs of the author. Exercise may be conferred on another person under the provisions of a will'.

The strictly personal feature suggests that the moral rights are to be exercised by the author during his lifetime. According to the provisions set forth in Article 11 par. 1 of Law no. 8/1996, the moral rights may not be renounced or disposed of (inalienability). The following paragraph institutes three exceptions from the intransmissible nature of moral rights: after the author's death, the exercise of the right to divulgation, the right to paternity and the right to integrity of the work shall be transferred by inheritance, in keeping with civil legislation, for an unlimited period of time. If there are no heirs, the exercise of the said rights shall revert to the collective management organization that has managed the author's rights or, as the case may be, to the organization having the largest membership, in the field of creation concerned. The perpetual trait reflects the fact that the work survives the author. Thus, after the author's death, his successors or third parties can exercise the three rights mentioned above (the right to a name and the right to withdrawal can only be exercised by the author [14]). The imprescriptible nature derives from the inalienable and perpetual nature, that is, the enjoyment of moral rights lasts as long as it is the object of utilization. The absolute trait implies the general and abstract obligation of third parties to refrain from any interference in the author's exercise of moral rights.

3.2 Provisions Regarding Moral Rights in the Common Law System

At present, most national laws acknowledge and protect the moral rights of the author, but, as far as the countries of the Copyright systems are concerned, they have not recognised such rights until more recent times (for instance, the *Statue of Anne* did not contain any reference to moral rights, governing only copyright, understood as a right to copy [1]). As mentioned before, the latter have made progress in this direction, just as the countries belonging to the continental system have adopted more utilitarian views [5].

3.2.1 The American Copyright Law

The United States Constitution provides that the Congress has the power 'to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries' (Article 1 section 8).

The American framework law in the field, the *Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code* [20], which comprises the *Copyright Act* of 1976, has incorporated in section 106A the rights of attribution and integrity belonging to the author of a work visual art, independently of copyright registration, and corresponding to the rights established by the *Berne Convention*, presently secured in Article 6^{bis} of the *Convention* (the 1928 *Rome Act* established the two rights as being the minimum rights of the *Convention*). It must be added that copyright registration is a formality generally encountered in the Copyright system, which proves useful in accusations of plagiarism, since the owner of copyright can provide an official copy of the work. The rights to paternity and integrity have been established through 'a mix of federal and state laws, including derivative rights, unfair competition, defamation, and privacy' [5]. The two rights mentioned above can suffer limitations, the provisions regarding *fair use* (section 107 of the U.S. Copyright Law) being a case in point.

3.2.2 The British Copyright Law

The historic evolution has drawn the copyright law of Great Britain and Northern Ireland closer to the continental system, thus the American law seems to express the character of the Copyright system best [10, 15].

The *Copyright, Designs and Patents Act* (1988) of the United Kingdom provides for the following moral rights: the right of paternity, the right to integrity, the right to prevent false attribution, and the right to privacy of certain photographs or films. In strong contrast with the continental view, section 87 of the

1988 Act stipulates that all the aforementioned moral rights, thus including the right to paternity, may be waived either expressly, by instrument in writing signed by the person giving up the right, or tacitly, by means of an informal waiver (resulting from the author's conduct, for example). They may be waived either partially or completely. The right to integrity implies that the author of a copyright literary, dramatic, musical or artistic work, or the director of a copyright film has the right not to have his work subjected to derogatory treatment. Derogatory treatment is defined by the present Act as that which 'amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director' (section 80). Both the paternity right and the right to integrity last as long as they remain in copyright. The right to false attribution, being the converse of the right to paternity, can be exercised by any person, not just the author. Finally, the limited right of privacy aims at protecting certain photographs or films destined for private and domestic purposes [7].

4 PLAGIARISM VS. COPYRIGHT LAW

Plagiarism (the word's origin in English dates back to the early 17th century, from the Latin *plagiarius*, standing for 'kidnapper'), as defined in the *New Oxford Dictionary of English*, is 'the practice of taking someone else's work or ideas and passing them off as one's own'. Nowadays, plagiarism in education has been transformed due to the new possibilities stimulated by technology, especially by the easy access to the Internet. Thus, a new species of this deceitful practice arose, namely the 'cut-and-paste' plagiarism. Not only do students copy large amounts of information from websites, but they can also buy numberless papers online. This has the following negative consequences: first and foremost, using copyrighted material without appropriate citation can entail legal consequences of copyright infringement; secondly, it undermines the student's capacity of independent thinking; finally, if the teacher does not detect plagiarism in a paper, the honest students can be disadvantaged by the comparison between their original, legitimate work and the plagiarised ones [17]. According to N. Willard, executive director of the Center for Safe and Responsible Internet Use (www.csriu.org) [17], there are several signs a teacher should be aware of when tracking plagiarism: use of inconsistent language or of terms which are not typical of the student's level; odd changes of fonts, hyperlinks or differently formatted portions of the text; non-corresponding endnotes or footnotes, as well as the occurrence of the same sentence in different papers.

Cheating in the form of plagiarism in school is likely to have long-term negative effects, as it has rightly been argued: 'When children experience academic dishonesty in their younger years, they are sowing the seeds for later, more venal cheating of all kinds' [12]. Which are, then, the solutions for deterring plagiarism in the educational environment? It is the responsibility of the teachers, parents, administrators, and school boards to find methods and procedures that reduce the possibility for plagiarism and, once this is discovered, to tackle it 'humanely but forcefully' [12]. In a study aiming at finding the college students' rating regarding some of the most acceptable methods which can be used in faculties in order to treat incidents of plagiarism, the findings revealed that the most acceptable treatment is giving the student a failing grade and allowing the student to redo the assignment, whereas lack of action and review board are considered the least acceptable faculty treatments [3].

Committing acts of plagiarism has unfortunately become common practice for students of all ages, including those in the academic environment. Most of the students who cheat are not conscious of their wrongdoing nor do they feel responsible in any way [17], let alone the fact that, once they submit their projects after resorting to plagiarism, their act may have legal consequences, entering the domain of copyright infringement. In a Romanian newspaper article dating from 1887, it was stated that the same graduation project has often been used by several candidates [10]. This also happens today in university centres around the country, either with the consent of the author or by means of intellectual theft. In the former case, it can be observed that, even though the moral right of paternity is inalienable by law, in real life, it is subject to renunciation or waiver. As far as the latter situation is concerned, it is a classic case of plagiarism. In order to prevent such practices from happening, before rendering their final thesis, some faculties in Romania require that students sign a written declaration confirming authorship and the compliance with copyright norms in the elaboration of their work.

In conformity with the provisions set forth in Law no. 8/1996 on Copyright and Neighbouring Rights, the infringement of the moral rights of the author may trigger civil or criminal liability. Thus, if the violation of the right caused damage, there is a right to compensation based on tort liability. According to Article 139 par. 1 of the present law, the owners of the rights under discussion acknowledged and guaranteed by the present law may request to the courts or other competent bodies, as the case may be, the acknowledgment of their rights and of the establishment of the infringing thereof, and may

claim damages for the redressing of the prejudice caused'. The moral rights of the author can be violated through unauthorised acts committed by third parties. For instance, the right to divulgation can be infringed by disclosing the work without the author's approval, the right to paternity by usurping authorship, the right to integrity by modifying or altering the work, the right to withdrawal by publishing or broadcasting the work after the author has renounced to do so, and so on [10, 14]. In some cases, the most serious type of liability, namely criminal liability, is provided for. In the Romanian legislation, as shown in Article 141 of Law no. 8/1996, the infringement of the right to paternity and of the right to a name constitute criminal offences, punishable with imprisonment from 3 to 5 years or with criminal fine: it shall constitute an offence 'for a person improperly to assume the authorship of a work or to disclose a work to the public under a name other than the one decided upon by the author'.

Another issue, which can be of interest to law scholars and legislators alike, is that of unintentional plagiarism or unconscious copying. Although it seems an oxymoron, empirical studies currently reveal that such a phenomenon can be provoked by implicit memory. Both deliberate and unintentional plagiarism fall under the provisions of copyright law, those who violate the specific norms being liable for copyright infringement regardless of this distinction. The current state of affairs has been criticised for being 'at odds with psychological realities' and 'inconsistent with the fundamental purposes of copyright law' [6].

In view of the aforementioned issues discussed, one of the solutions that can be taken into consideration in order to prevent acts of plagiarism is introducing intellectual property programs in the curriculum at the university level, which will be useful for students from a wide range of domains: law, business, the fine arts, engineering, the sciences, journalism, and so on [18]. The choice of universities is justified as they are among 'the largest providers of intellectual property' [10], which increases their responsibility in promoting the observance of intellectual property laws. At the university and law school level, there are four types of such courses, namely Survey Courses, Specialized Courses, Advanced Seminars and Practice Courses [18]. All in all, the basics of intellectual property, in general, and of copyright, in particular, would be extremely useful, as already mentioned, in the formation of a variety of students.

There is a dire need for stressing the moral rights of the author especially nowadays, in the 'age of digital information', since the rights to paternity and integrity are threatened by the incredible extent of the production, processing, and transmission of information [4].

5 CONCLUSIONS

All things considered, it is highly important that, even from a fairly early age, students are gradually warned against resorting to the deceitful practice of plagiarism, by stressing not only the ethical aspects involved, but also the legal ones. As stated in the beginning of the present paper, intellectual property is the most intimate type of property, since the work emanates from the author's creative endeavour and deserves proper respect, which also implies obeying the laws protecting the moral and material rights of the author. Copyright is a complex legal institution which, in practice, touches upon ethical issues; that is why neither of the two areas should be neglected in the process of raising awareness of plagiarism. The respect for the law – and ultimately fear of legal consequences – should, among other factors, motivate students in adopting a fair and responsible attitude towards learning. After all, placing a high value on the works of intellectual creation and on the moral rights that accompany it enhances the cultural heritage of humankind to which the same students may contribute at a given moment. Future research should focus on examining the amount of legal information students generally possess regarding the rights of authors and the degree of their understanding of the legal issues entailed by copyright infringement.

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