

# ADMINISTRATIVE AND LEGAL PREVENTERS AGAINST PLAGIARISM IN UKRAINE

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## ABSTRACT

*The article is devoted to the analysis of modern interpretation of the concept of «plagiarism» in the area of doctrinal achievements and scientific activities. The purpose of the study is to determine the features of proper implementation of personal non-property and property rights of authors through various systems of «Anti-plagiarism». The general tools and measures of responsibility for violation of personal non-property and property rights of the authors and inventors are investigated. The proposals for innovations of expert research in the area of property protection are offered. The critical analysis of the provisions of current legislation in Lithuania on this issue is provided. The main aspects of administrative and legal protection of copyright and related rights in Ukraine were highlighted. The need to introduce the institution of authorship examinations by the National Repository and to strengthen administrative liability for copyright infringements is proved.*

**Keywords:** Plagiarism, Anti-Plagiarism System, Copyright, Related Rights, Copyright, Examination.

## INTRODUCTION

The area of protection of copyright and related rights is an urgent issue under modern conditions given the academic integrity. This situation should strengthen the role of the National Repository of Academic Texts in the area of copyright through the granting of powers not only to implement national register of academic texts, but also the authority to implement administrative means of protection through the implementation of author's examinations.

Thus, the above indicates the urgent necessity to study this issue in terms of both scientific and theoretical and practical significance, which in turn lies in the need to modernize the mechanism of scientific activity at the national and intra-organizational levels. The formulation of the principles, on which the Anti-Plagiarism system is based, is grounded on the experience of the Republic of Lithuania, and is aimed to improve and adapt various systems to a common, balanced procedure.

Achieving the desired outcome and meeting the relevant needs is impossible without the appropriate powers and clearly defined legislation in this area.

Nowadays, control and verification of educational and scientific achievements in the so-called system of “*Anti plagiarism*” has become a well-established practice and a mandatory rule to ensure the doctrinal space from violating the rules of academic ethics approved at various levels of regulation.

However, the discussion on the problems in the application of this system is currently intensifying. The authors express their own opinions on the rapid development of scientific support of various fundamental spheres of life. In general, the system of establishing plagiarism and detecting academic dishonesty has emerged in response to numerous inquiries from science, which has faced crisis factors that can create significant risks for its further development. The urgent needs were related to the reality, which depended, first of all, on the historical changes in the State, which affected the scientific space and, in fact, the development of this institution.

## MATERIALS AND METHODS

In regard of stated above, Kuhn (1970) noted that the change in the fundamental organizational principle of scientific activity - the focus on the study of a fundamental nature — acquires the significance of a “*scientific revolution*”. Besides, the scientist argued that: “*although the world does not change with the change of paradigm, scientists should work according to other rules, in a new way, in a changed world*”.

Since then, the researchers have had to work under new conditions – in the scientific space, in which they had to accept the fact that “*the rationality of many doctrinal ideas are beyond their control*” (Hardwig, 1991). The development of information technologies has strengthened definitions of trends through which rapid growth increase in the quality of scientific achievements is perceived (Levin, 2018).

The basic normative principle for classical science was the rule “*Nullius in verba*”, which means “*Nothing in words*”, formulated by the founder of the London Royal Organization. The meaning of this statement was that by giving the doctrinal space to certain research, the scientist had to provide a complete and comprehensive interpretation of all the tools that were used in studying a particular issue. Plagiarism has always been a problem of academic society, regardless of its form, volume, content, intensity; this problem is becoming increasingly common, especially in educational institutions. Despite the widespread use of a variety of information technologies, countless open sources, the Internet and other means of easy access to the information, which are usually the subject matter of intellectual property, this phenomenon is becoming even more important.

In this regard, Shapoval et al. (2021) noted that the world community is aware of a number of cases of literary piracy that have taken place in some universities dominating in the research area of the countries. First of all, it negatively affects the authority of the University itself, where unscrupulous scientists work or where a scientific paper containing literary piracy was written.

The methods of this research are the methods of cognition of objective reality, which represented a certain sequence of actions, techniques, operations. Thus, the authors used methods of empirical, theoretical and metatheoretical levels. In particular, among the methods of empirical level such methods as description, comparison, etc were used. Among the methods of

theoretical level axiomatic, hypothetical (hypothetical and deductive) methods, methods of formalization, abstraction, logical methods (analysis, synthesis, induction, deduction, analogy) etc. were applied. General (philosophical) and general scientific methods were used in order to distinguish general and legal and conceptual nature of the regulation of the scope of installation and operation of administrative measures of protection.

## RESULTS AND DISCUSSION

Nowadays, detecting plagiarism has become much easier, as several different programs are available to academic community. Thus, it is necessary to pay attention to the experience of other countries, in particular to the development of the system of protection of academic integrity of Lithuania. It should be noted that Lithuanian higher education institutions have been using the general Anti-Plagiarism system since 2013, which was created and implemented as a result of the project “*Creation and development of integrated eLABa services*” conducted by Vilnius University and funded by EU Structural Funds. The projects aimed to create a unified, non-duplicate, convenient and easily manageable information system of the Lithuanian Academic Electronic Library eLABa. In particular, it was planned to create a sub-system for reconciling documents. This system was created by developing the internal system of Vilnius University, but the project results are now used by most Lithuanian universities. It should be noted that this document matching system detects matches between documents uploaded to the eLABa system. In Lithuania, all master's and bachelor's theses must be submitted to this system before the defense Elaba (2013).

Due to the extensive system of protection of academic integrity and protection of copyright and related rights, the authors consider it necessary to analyze the subject system of judicial protection of copyright by the competent authorities of Lithuania. Thus, the Supreme Court of Lithuania in its decision in the case on the misappropriation of authorship declared that “*copyright protection extends to any research work regardless of its value. It is important that the scientific work meets the basic requirements for the work as an object of copyright*” (Cases, 2014).

One of the most famous cases concerned the interpretation and application of legal norms governing the abolition of doctoral degrees. In 2012, a well-known Lithuanian researcher was accused of co-authoring his dissertation, which he defended in 2002. The subject matter of the dispute was the decision of the Rector of Kaunas University of Technology, which had revoked the Doctoral Degree due to plagiarism. The applicant's main argument was that the determination of the integrity of research appeared in the internal rules of Kaunas University of Technology only in 2011, thus having defending in 2002, he could not have violated it because it was not in force at the time. The Supreme Court of the Republic of Lithuania concluded that “*the right of the University to revoke a degree does not follow from the law, but from the constitutional principle of the University autonomy and academic freedom, which provides for the respective responsibilities of the University. Thus, the plaintiff's expresses verbs on this right cannot determine the existence or absence of this right, as it arises from the provisions of the Constitution*” (Cases, 2015).

According to Article 60 of the Lithuanian Law on Higher Education (Law of the Republic of Lithuania, 2009), research and academic community enjoy academic freedom and adhere to the Code of Academic Ethics, which is prepared and approved by the university taking into account the recommendations of the Commissioner for Academic Ethics and Procedures. This means that each higher educational institution should prepare such a code of academic ethics as proof of ITS academic autonomy. Therefore, the rules set out in such codes should comply with national and international standards in this area.

Codes of academic ethics in higher educational institutions do not define plagiarism, but they usually refer to plagiarism as a possible violation of academic ethics. Some codes provide a clearer list of the characteristics of plagiarism. For example, the Code of Ethics of Vilnius University (Vilnius, 2018) states that plagiarism is characterized by the following features: *“the person submits work prepared in whole or in part for a fee; the person uses the ideas, illustrative material, excerpts from written or unwritten (video, audio, etc.) sources, other information of the others without indicating the source; the person submits work using the statements from another person’s work, slightly changing the words or structure of sentences, without indicating the source or without specifying it inaccurately; the person submits text written by another person, without quotation marks or other type of exception; commits other fraudulent acts that give rise to accusations of plagiarism”*.

All codes of academic ethics adopted by higher education institutions in Lithuania play a crucial role in the area of anti-plagiarism. Despite the fact that the definition of plagiarism is not enshrined, Lithuanian universities are familiar with this phenomenon and provide severe sanctions for such violations of academic integrity in the Codes of Academic Ethics.

According to the data presented in the 2020 report by the Office of the Ombudsman for Academic Ethics and Procedures, higher education institutions investigated 736 complaints related to the violations of academic ethics during 2017-2020 (209 in 2020). 79 % of them were related to student activities. In 2020, the Free Economic Zone detected plagiarism in 28 cases. In 2019, this number was several times higher – 70 cases. The Covid-19 pandemic may be the cause of such a dramatic change.

Today, Ukraine needs to reveal and consolidate general definition of plagiarism, as the current situation shows different understandings in the scientific community. In addition, legal sanctions for intellectual property infringements related to plagiarism should be assessed from a practical point of view, as in practice real legal liability for such infringements is very rare. Academic ethics as part of academic culture requires constant attention and dissemination. All higher education institutions should be subject to unavoidable disciplinary action, including dismissal, in order to demonstrate the importance of integrity in academia.

As Shapoval et al. (2021) correctly pointed out: *“It should be emphasized that scientifically harmful problem of academic dishonesty is observed mainly among young and insufficiently qualified or inexperienced professionals; but the cases of literary piracy can be found among the scientific works of the so-called great scientists as well. It should also be added that the problem of literary piracy is not unique to Ukraine”*.

The current legislation of Ukraine provides the definition of plagiarism. Thus, in accordance with Par. c), Part 1, Article 50 of the Law of Ukraine *“On Copyright in Related Rights”* (Law of Ukraine, 1994) plagiarism is the act of publishing in full and in part of a work

by a person who does not act in accordance with the provisions of current legislation of Ukraine as the actor copyright to this work. Both civil and criminal liability, as well as liability for committing administrative offense is provided for such acts.

Thus, Article 51-2 of the Code of Ukraine on Administrative Offenses (Law of Ukraine, 1984) establishes liability for illegal use of intellectual property rights (literary or artistic works, and related rights, including the performance, publication of phonograms, broadcasting, computer programs, databases, scientific discoveries, inventions, utility models, industrial designs, marks for goods and services, topographies of integrated circuits, innovation proposals, plant varieties, etc.), attribution of authorship to such objects or other intentional infringement of rights (personal non-property and (or) property) on objects of intellectual property rights, which are protected in accordance with the current legislation of Ukraine.

Besides, the above law also establishes liability for violating the terms and conditions determined by the procedure for preventing infringements of copyright and related rights using the Internet.

In order to fully understand the interpretation of such preventers, it should be noted that the Anti-plagiarism system is a specific project on the Internet, which is a certain hardware and software complex that is designed to check text documents downloaded through the online resource, considering the existence of borrowing, plagiarism or piracy from other ones that not belonging to the subject of the verification and are under the authorship of another person.

Among the main ones that exist on the Internet are:

1. Text.ru-set of information, web forms, software and hardware and intellectual property (including computer software, database, Site Content and services), the access to which is provided by the User's devices using special software for viewing web pages (browser) by domain name (or (sub) domain name, if the domain name has the appropriate feature) name: text.ru, exclusive rights and/or the right to use which belong to the Company LLC TEXT MEDIA).
2. Copyscape – is Indigo Stream Technologies Ltd private company, co-founded by Gideon Greenspan, which also provides Giga Alert and Siteliner. The system is to check the website for plagiarism.
3. Istio – semantic analysis of the text.
4. TextBroker – complex copywriting system and standard system “*Anti-plagiarism*”.

The main systems of “*Anti-plagiarism*” also include “*Advego Plagiatus*”, “*Olsabbmitter Module*” and others. All the above systems and modules are the same in nature, but we propose our own table of the types of anti-plagiarism systems by highlighting their main features.

The Ministry of Education and Science of Ukraine has introduced Repository System and a corresponding register in our country almost 10 years ago. The legislator has named it a Nationwide Distributed Electronic Database that collects, stores and systematizes academic texts. The purpose of the Repository was to promote the development of educational, scientific, technical and innovative space and activities, performing the measures aimed at improving the access to academic texts and promoting academic integrity.

The Repository should operate in accordance with the rules established in the Regulations, the main task of which is to determine the procedure for filling the Repository, storage of academic texts, systematization, processing, analysis and struggle for academic integrity (Order of the Cabinet of Ministers of Ukraine, 2017).

The Order stipulates that the purpose of the National Repository is to make scientific information as accessible as possible, which will promote the development of educational, scientific, technical and innovative activities by improving access to academic texts and promoting academic integrity. The resources of the National Repository help to check academic texts and graphic fragments and to conduct an examination for plagiarism, including academic one. The resources of the National Repository cannot be used by the Administrator to issue any documents on the absence (presence) of plagiarism in academic texts.

The statistics indicate the rapid development of the scientific space of Ukraine. Thus, according to the information provided by the National Repository, each year it accepts for publication about 2050 academic texts (complete) and 21,900 metadata about these texts. In total, the repository contains 97,108 full academic texts and 98,946 dissertations with abstracts (National Repository of academic texts, 2021). If we talk about the actors of the order, then about 80% of them are students of higher educational institutions, both full-time and part-time; 10 – 15% are the students of the second (master's) level of higher education and 5% percent are post-graduate students who need to write an article.

Authorship examination is also one of the preventers against plagiarism in Ukraine. In accordance with the Instruction on the appointment and conduct of forensic examinations and expert research (Order of the Ministry of Justice of Ukraine, 1998) autobiographical examination solves identification tasks (regarding the identification of the author of the text), as well as diagnostic tasks (regarding the conditions, peculiarities of the text, misrepresentations of written language, places of formation of speech skills, native language, education of the author, etc.)”.

However, this Instruction does not contain complete and exhaustive list of circumstances that must be established during such an examination, and most importantly, it should be borne in mind that the procedure of such examination is very complex and incomprehensible given the number of author's academic texts, which are submitted each day.

In this regard, we propose to amend the Instruction in order to improve the system of administrative preventers in the area of protection of personal non-property and property rights of the authors. Thus, we propose to amend the Instruction by introducing paragraph 2.1.1.1. (Authorship examination by the expert commission of the National Repository)

The staff of the National Repository includes the Expert Commission on Copyright (hereinafter – the Expert Commission).

The expert commission may appoint an authorship examination on the basis of the revealed violations of personal non-property and property rights of the authors from the texts provided to the Repository or at the request of the interested persons.

The Repository has the right to contact the person who identifies himself (herself) as the author of the disputed text in the course of authorship examination in order to obtain clarification on certain issues.

Authorship examination can be carried out only if the investigated text contains approximately 1500 words.

In view of the above, the approval of the Regulations for conducting authorship examination by an expert commission on copyright issues is an important issue nowadays, as it will help to fully, comprehensively and impartially protect the academic integrity and fundamental rights of the authors.

The scientific area of Ukraine includes a very large number of copyright objects. Such indicators emphasize the importance of establishing clear and balanced system of preventers that could prevent copyright infringement.

Besides, the issue of specific liability, which should be determined by sectoral procedural law, such as the Code of Administrative Offenses and / or the Criminal Code, is urgent.

Having analyzed the current legislation of Lithuania in the area of protection of personal non-property rights, namely copyright and other related rights, we emphasize the need to implement general provisions on liability for copyright infringement in order to protect their owners from arbitrary interference with their rights and their effective protection by public administration bodies.

In this regard, we propose to supplement the disposition and change the sanction of Article 51-2 of the Code of Administrative Offenses of Ukraine, setting it out as follows:

Illegal use of intellectual property (literary or artistic work, their performance, phonograms, broadcasting), computer program, database, scientific discovery, invention, utility model, industrial design, mark for goods and services, topography of the integrated circuit, innovation proposal, plant variety, etc.), the proposal made to create an object of intellectual property, expressed in any form, including by committing implicit and nonverbal acts, appropriation of authorship of such object or other intentional infringement of rights to the object of intellectual property rights protected by law, which, in turn, may be established by the Expert Commission of the National Repository, entail the imposition of a fine on the actors of the offense in the amount of 1,000 non-taxable minimum incomes.

## CONCLUSION

With the use of technical means, copying the provisions of someone else's research has reached a new level and has become easier to implement. In turn, tracking a text that does not belong to a particular researcher is much more difficult task because of the rapid jump in the quality of scientific materials and number of materials themselves. The number of researchers of various ranks and titles, who prepare their materials using the method of copying, is increasing every year.

The plagiarism is a type of violation of personal non-property and property rights of the author or inventor, which lies in the intentional assignment of authorship of someone else's literary or scientific work, expressed ideas, proposed hypotheses. In this regard, it is necessary to immediately settle the legal aspect of this issue and use the views of the leading scholars expressed in scientific works and general doctrine to regulate the protection of personal non-property rights and establish the system of administrative preventers to reach this target.

Having analyzed a number of other scientists' works on this issue, the provisions of the current legislation of Ukraine, we propose our own ideas, which are subject to approval because of improper functioning of the copyright protection system in Ukraine. In particular, we prove the need to introduce the institution of authorship examinations by the National Repository and to strengthen administrative liability for copyright infringements.

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