

ANTICIPATORY LITERARY PLAGIARISM AS PHENOMENON CHANGING COPYRIGHT PARADIGM

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ABSTRACT

The contribution introduces the theory of anticipatory or foreseen plagiarism which should prompt us to reexamine the existing copyright paradigm. The literary anticipation theory creates a hypothesis that some authors to outlive their time due to their literary style or thematic vision and in the process, allegedly “robbing the literary treasury” of authors living and writing centuries later. The foreseen plagiarism theory transcends time and space which allows for an understanding of the mechanisms responsible for the overflow of the literary gene among authors living in different centuries. This article contrasts anticipatory plagiarism with the plagiarism concept of unauthorized and deliberate copying of a work in the past. The article morally assesses different types of plagiarism, therefore explaining the nature of copyright consequences. The legal definition of the concept of plagiarism and its depiction as a social offense the legal consequences of which may affect various areas of the private law, have, in the context of this work, a platform function providing space for developing the hypothesis on the possible existence of another literary phenomenon defined as anticipatory plagiarism. The anticipatory plagiarism theory destroys the inflexible conception of temporal impact which serves as a symbolic key to decoding the context of the development of a number of important but controversial (in terms of authorship) works of world literary heritage. This contribution focuses on clarifying the possible nature of the phenomenon in question while demonstrating the need for reexamination of the existing concept of literary history and the plagiarism phenomenon (in terms of copyright) through the introduction of circumstances discovered. The topic of literary plagiarism is presented in a historical, legal, psychological and economic contexts. The author further develops the anticipatory plagiarism theory described by the French literature professor Pierre Bayard and adds an additional attribute, thus constructing a new legal doctrine with the potential to confirm the nature of the investigated phenomenon. Anticipatory plagiarism is described as a phenomenon on the edge of paranormal phenomena while providing empirical evidence of its existence. The text takes into account the critical approach to the issue in question offering ideal conditions for factual debate and approaching the topic at hand as objective and comprehensively incorporated.

Keywords: *anticipatory plagiarism, authorship, literary work, copyright law, unfair competition*

INTRODUCTION

For centuries, the literary world has been afflicted by a “disease of civilization,” the symptoms of which involve appropriating copyright work of other people. Due to its historical rootedness and topicality, literary plagiarism is a controversial issue that evokes more questions than answers. Moreover, researchers are occupied with a new psychological phenomenon discussed in this article, which changes the existing concept of plagiarism. A new theory has been introduced in the scientific world which postulates the existence of anticipatory plagiarism created unwittingly by anticipating a future work. Theories acknowledging the existence of anticipatory plagiarism destroy the existing paradigm of negatively defined plagiarism, which is based on the intentional plundering of literary texts written in the past. By contrast, anticipatory plagiarism draws upon works which have not been created yet at a given time, therefore the immoral aspect characteristic of classic plagiarism is eliminated, and such a work is divested of copyright liability for stealing a work that does not exist in a formalized form, written or verbal, at that time.

The concept of anticipatory plagiarism proceeds from the assumption that works are created on the basis of blending of the literary energy outside of time and space. Biographical data of authors or the time when their works were created are of no importance in terms of their potential copying. According to this theory, writers draw upon literary vibrations, and as a result of that, many of them can be on the same literary wave regardless of the era in which individual authors lived. Unlike classic plagiarism, when authors appropriately formally express the works of other authors without their authorization, there is no unauthorized drawing upon existing works in the case of anticipatory plagiarism, only linking literary threads among authors from various eras and parts of the world. The writing style of linked authors is then weaved with the same literary thread, even though the authors have no idea of the literary activities of others.

The “black and white” concept of plagiarism is intentionally “blurred” in the theory of anticipatory plagiarism, which encourages the possibility to reassess the existing concept of the literary history describing literature in terms of the formation of literary works on the timeline, from antiquity towards the present time. In fact, according to the theory presented, the history of literature takes place in an environment where no rules of chronology apply. The existence of anticipatory plagiarism in the world’s literature is illustrated with examples of works anticipating writing styles of authors living centuries later, while earlier works include facts and techniques uncharacteristic of the period, which indirectly confirms the theory since the criterion confirming anticipation of literary texts from the future is met. There is still no methodology to provide direct evidence. Another obstacle to direct confirmation of the anticipated mechanism is the society that is insufficiently philosophically sophisticated and unable to accept the principles of the theory, which they do not understand due to the lack of their knowledge.

ESSENCE OF NEGATIVELY DEFINED PLAGIARISM

Plagiarism can be defined as a copy of an artistic or literary work the authorship of which is attributed to the plagiarist instead of the original author. Plagiarism activities mean copying or paraphrasing a copyrighted work or part thereof without the express consent of the copyright holder. In the formation of plagiarism, another author's name is used while the original work's author is intentionally, in some cases unintentionally, concealed. It is often difficult to determine and prove to what extent the work is plagiarism. In practice, this is addressed via the interpretation of copyright. To prove the authorship of a work is very complicated. When proving the authorship, expert opinions from the field of literary science, including comparative analyses of existing works of the author and the plagiarist, are of great importance. [1] Plagiarism is perceived as an activity consisting in the appropriation of the outcome of mental work which is presented as an original work. Considering that the liability for plagiarism of another author's work is a strict liability under copyright, which does not require any fault, in addition to intentional stealing of another author's work, also negligent quoting or inadvertent omission of references or unprofessional working with the original text, whether in the form of inadequate paraphrasing or compilation of the original text, are considered plagiarism. Plagiarism can be described as copying content (whether in part or full) while concealing its original author. Passing ideas of another author as one's own means stealing of intellectual property and a number of sanctions will be imposed against the plagiarist, which is further discussed below.

HISTORY OF LITERARY PLAGIARISM

The history of literary plagiarism in the context of the mass expansion of this ancient phenomenon started to be written with printing ink already in the early modern period. The Guttenberg's invention of the printing press is a milestone in the evolution of mankind which laid the foundations of global literary plagiarism and generally the issue of literary property, which is a narrower definition of intellectual property. As already indicated, the origins of literary plagiarism in its genuine form date back to remote history. Literature has been afflicted by plagiarism from its very beginning. Considerable evidence of this vice can be found already in the literature of the Roman civilization (even though not on a mass scale). The foregoing shall apply both to the negatively defined plagiarism, the nature of which consists in copying historically older works and the unauthorized appropriation thereof by a younger plagiarist, and to anticipatory plagiarism, which is characterized by drawing upon works written in the future. According to many academics researching this phenomenon, the history of anticipatory plagiarism dates back to the very beginning of the world's literature. In this context, the professor of French literature and psychoanalyst, Pierre Bayard, points out the relationship between the Sophocles' work Oedipus Rex and Freud's psychoanalysis in terms of composition and thematic anchoring. Bayard points to the fact that the ancient Greek Athenian playwright apparently

“borrowed” the topic and the structure of the fictional story from the famous European psychoanalyst living about two millennia later. With regard to the fact that the ancient dramatist lived and created a half millennium BC, once his plagiarism is proved, it can be stated that it is a phenomenon which dates back to the origins of mankind. In the context of the topic hereof, it is necessary to address the question of what the relationship between copyright and plagiarism is from the historical perspective. If the relationship is examined in terms of originality and derivativeness, two characteristic concepts of copyright, we come to the conclusion that the originality agrees with plagiarism practices, although it sounds immoral, and it is immoral from today’s point of view without any doubt. However, the past cannot be perceived from the present perspective, so there is nothing else to do but to try to understand the phenomenon of plagiarism in its historical context. We should be particularly cautious when passing moral judgments over plagiarism practices used in times of absence of authorship law and almost zero public awareness of copyright potentiality. Behavior standards reflect the state of the society and law development at that time and this premise should be built on when trying to understand and explain the conduct of plagiarism in the context of a given time. The issue of plagiarism cannot be viewed only from the perspective of the 21st century. When examining this phenomenon, it is necessary to consider the social environment and legal framework of individual eras. Probing this issue shows that due to its multi-layer nature, plagiarism cannot be defined only negatively. This opinion is based on the fact that literary works were initially very often published anonymously. They were legally rewritten and the authors were honored that their works spread. It was perceived as evidence of success of the works and therefore the success of their creative abilities. The viability of works was more important to authors than indicating the author of the work. It is important to mention that plagiarism cannot be regarded as a separate phenomenon. Lawyers and legislators agree that it is a derived phenomenon, since literary piracy reflects the expansion of the concept of intellectual property. [2] Plagiarism activities are simply responses to possibilities that can be very easily, although illegally, drawn upon in the ever-expanding market of copyright works. This idea answers the question why plagiarism is such a prominent issue in the early 21st century. Only a small percentage of people are morally at such a high level that they would resist such temptation. There are only a few commodities in the world which are so attractive and at the same time readily available due to the development of information technology such as literary works. Therefore, the economic factor is of some significance in the case of plagiarism activities.

THEORY OF ANTICIPATORY PLAGIARISM

In terms of the spiritual development of mankind, the history of literature parallels the history of plagiarism. If this statement seems to be bold to the readers, they may be surprised by the elaboration of this thesis, which results in the elucidation of the phenomenon of anticipatory plagiarism. Although literary plagiarism is a priori labeled as a morally despicable phenomenon by society, one

component should be pointed out which makes this phenomenon more attractive. The formula which has been triggering plagiarism activities for millennia is the inspiration in its purest form. If inspiration is seen as an incentive to creation, then it can be inferred that such an incentive instigates more creative ideas, which is very closely related to the development and enrichment of society. Works created by plagiarism may be often of greater value than the original works, which also confirms the hypothesis of a positive impact of plagiarism practices on the overall social progress. At this point, the author would like to mention that this passage talks about plagiarism activities that are not performed to cause harm to the original author and benefit from the simple copying of the work. In fact, there are motives for plagiarism that arise unwittingly and the plagiarist is unaware of them. To intentionally appropriate another author's work and pass it off as one's own work is a completely different situation.

This article presents the phenomenon of plagiarism from another perspective. The mentioned literary phenomenon should be analyzed and subsequently put into a broader context, particularly because it is currently very often "lynched" by academics. Actually, literature offers numerous examples when plagiarism of works of a mediocre artistic value resulted in literary gems holding a place of honor in the chronicle of mankind. Using the modern rhetoric, these plagiarism techniques can be described as a transformation of the original work into a literary work of a higher artistic level. Such an argument would probably stand up to defending plagiarism in the context of following the current trend of social pardoning of those practices of unfair competition and plagiarism which result in social progress. [3] When formulating this idea, the author hereof relies on the belief that inspiration provided by the original work is a trigger for further creation in literature and generally a completely natural and desirable phenomenon from the social point of view. To understand the paradigm, it is necessary to free from the negatively defined perspective on plagiarism. If one is able to do so, he/she witnesses an unexpected finding. The detachment gained from leaving old dogmas behind enables him/her to see literary plagiarism in its plasticity.

When looking more deeply into the issue of plagiarism, one cannot fail to notice a phenomenon which could be a subject of extensive research in the field of parapsychology. It is a phenomenon which destroys the existing simplified notions about the nature of plagiarism and opens the door to an unexplored and for many unsuspected chambers called "anticipatory plagiarism". In its imaginary bookcase, there are valuable literary works, the content and literary form of which seem to be few centuries ahead of the plagiarized work. Even though this phenomenon appears to fall under science-fiction, there is evidence of its existence. This phenomenon which is difficult to understand is already explained by the literary theory. Anticipatory plagiarism arises within a circular process which rediscovers certain themes and literary forms, which have already been discovered and just seem innovatory, in certain cycles. The original work seems to be copying a work created tens or hundreds of years later. The original work is therefore ahead of its time. How is it possible? To find the answer, it is necessary

to free from the linear perception of time. In fact, the history of literature takes place in an environment where no rules of chronology apply. It is formed in certain cycles. As fashion trends recur, the literature also rediscovers long-forgotten themes and forms in certain waves, which thanks to their innovation overshadow similar works created chronologically much earlier. In comparison with common plagiarism, when a historically older work is copied, anticipatory plagiarism is able to “plunder” works before they are created. Anticipatory plagiarism can be therefore recognized only with the benefit of hindsight. Writers who created such anticipatory works can be regarded as visionaries.

The fascinating world of anticipatory plagiarism is revealed to readers by Pierre Bayard, the French psychoanalyst and university literature professor, in his *Le Plagiat par anticipation* (Plagiat by anticipation). [4] The author, who is respected by both readership and the professional community, describes the theory of anticipatory plagiarism which, as premised, had been discovered by many literary theorists before him. However, the Bayard’s study cuts much deeper and puts the topic into a broader context. The author destroys the existing ways of studying literary theory. In his work, he draws the attention to the big mistake consisting in interpreting literature using a timeline directed from the past to the future. On the contrary, according to his theory, it is necessary to disregard the chronology when examining literary phenomena. Bayard’s provocative propositions are directed at an extraordinary idea, namely to examine and interpret literature not only via the usual method, i.e. from the emergence of literature up to its presence, but to assess and classify works regardless of the chronology of their creation and authors irrespective of their biographical data. [5] His work leads to a reassessment of the perspective on literature and, in this context, on the essence and importance of plagiarism.

The author hereof presumes to expand Bayard’s theory with a component that may help to clarify the essence of anticipatory plagiarism. The component, which brings yet another dimension of the issue, is the inspiration in the design phase of the work. A literary work matures in the minds of “literary architects”, often at different times and in different places, and once the work, which is usually marked by a “flash of genius”, comes to light, it is so literary mature that it is ahead of its time. These writers are able to use their writing skills to reach a higher level than their contemporaries and intuitively anticipate the literary style and form for the adaptation of a story published in the future. The “trick” is that only a limited number of genius writers. That is why it does not matter when and where their works were created. What matters is the authors’ ability to tune, even accidentally, the same intellectual and literary-artistic wave. This hypothesis could explain the fact that the literary giant has predecessors in different time periods scattered around the world, whose literary style seems to be copied from the author’s brain, even though these predecessors obviously have not had the possibility to get acquainted with or draw on each other’s work. Basically, it is a spillover of literary energy outside of time and space. The secret of this phenomenon gives a signal to human thinking that it is inevitable to change the view on the issue examined.

A literary work arises from the author's creative activities the essential element of which is originality. With regard to the fact that the author put his/her creativity into his/her work, each copyrighted work shows signs of uniqueness. The current theory of the originality of a copyrighted work is based on the idea that for the above-mentioned reason, it is not possible for two authors to create an identical work independently of each other. The essence of plagiarism is founded on the assumption that if there are two quite similar works of two different "authors", then the newer work is most likely plagiarism of the older one, which has the status of an original copyright work. In the literary history "archive", there are a number of conspicuously similar works of authors who created in different eras, whose works uses the same literary language, while they are not plagiarism according to the above-described copyright approach. On the basis of this finding, literary historians came up with a revolutionary idea which is based on an assumption that literary works are formed in a creative workshop outside time and space. This could explain the fact that authors, whose works were created hundreds or even thousands of years apart, have produced literary works of the same literary substance.

As already mentioned, to understand the theory of anticipation of future literary themes, it is necessary to free from the common perception of time impact. The concept implied works in an environment disregarding the time and space, which allows authors from different eras to communicate with each other through literary waves in the eternal presence. Josef Piaček, the Slovak philosopher and founder of the first original Slovak philosophical concept called syncriticism, offers an explanation to the world that transcends the passage of time through the concept of perichronosophy, a philosophical theory of timelessness. [6] Piaček uses the term perichronosophy, referring to timelessness, eternity, infinity or timeless experience, to describe the basic ontology layer of syncriticism as a philosophical theory. In fact, it is based on the Heidegger's idea that time passes in a timeless manner. Piaček's thoughts related to perichronosophy are directed at timeless characteristics of the historical correlation between a human and the world. Piaček's implied the ability of the human mind to step out of the time frame, which could help to clarify the principles of experience transmitting across eras causing the effects of anticipatory plagiarism.

The theory of anticipatory plagiarism is based on nonconformist hypotheses which are difficult to prove. First scientific attempts to verify these hypotheses, however, use a relatively sophisticated methodology. Bayard is very consistent in proving the functionality of the theory of anticipatory plagiarism. Anticipated plagiarism is subject to a four-criteria test. He claims that to constitute anticipatory plagiarism, the compared works must have these features: resemblance, dissimulation, reversed temporal order meaning that the earlier author copies the later one, and dissonance indicating the transfer of the work within the meaning of plagiarism. The extent of resemblance is determined by a comparative text analysis of works of the plagiarist and the original work's author. The dissimulation factor points to concealing the fact that the plagiarist has used the

theme from other people's resources. To prove the opposite chronological order of the copied and original texts (as opposed to common plagiarism, when the plagiarist copies a work created in the past) is quite a challenging process, which requires a profound knowledge of facts from eras in which individual works were formed. Anticipatory plagiarism is detected when it is discovered that the earlier literary text uses methods and knowledge which were unknown at the time of the work. The aforementioned dissonance, referred to as the fourth feature of anticipatory plagiarism, is an essential element which can be easily revealed by literary theorists. The earlier author who "borrows" the literary material from the later author works with the text tentatively, whether in terms of its form, style or thematic anchoring, since he/she only "pulls the captured literary thread" without knowing exactly how to weave a magnificent work from it. In fact, the author has gained (stolen) the literary material but does not know the instructions for its forming, which mostly results in unskillful improvising. In some cases, however, the anticipating plagiarist may qualitatively surpass the original work. This may happen thanks to the mentioned inspiration or a flash of the author's literary genius. When comparing the works, vigilant literary historians mostly know that there is "something going on", since the plagiarism (even though it is historically older than the original) shows a contextual disparateness.

According to Bayard, a prime example of anticipatory plagiarism is Voltaire's novel *Zadig* predicting the deduction method, which was introduced by Conan Doyle through his private detective Sherlock Holmes more than a century later. In one of his detective stories, Voltaire used an investigative method which was not known at that time. Bayard brings further evidence of plagiarism of future works by proving that Sophocles copied the Oedipus complex from Sigmund Freud about two millennia before the renowned psychoanalyst described this phenomenon. The plagiarism of one of the most important ancient playwrights is demonstrated by the fact that the psychological phenomenon related to sexual relations between a son and his mother was not recognized at the time of Sophocles' life. Bayard is an expert in the field of world's literature and draws lines on an imaginary canvas leading to the paradoxical finding that historically older works plagiarize later works. He claims that the surprising line connects famous predecessors with even more famous successors. For example, Bayard claims that Voltaire plagiarized from Conan, Racine copied from Victor Hugo, and Maupassant drew upon the Proust's work so convincingly that his work presents the Proust's literary world better than works of the French novelist himself. After the existence of all the above-mentioned components is proved, the transfer of work as plagiarism from the future to the author's or plagiarist's presence is evident.

TOWARDS LIABILITY FOR PLAGIARISM

A plagiarist violates the copyright of the original work's author. At the same time, the person makes a personal or financial profit from plagiarism activities to which he/she is not entitled. There is a risk of penalty for the illegal action

pursuant to a number of laws and regulations. The liability for plagiarism may result in legal consequences in the civil, criminal and administrative sphere. Under copyright, the liability for plagiarism is a strict liability which does not require any fault. The issue of liability for plagiarism should be viewed from the perspective of published and unpublished plagiarism. While the liability for unpublished plagiarism is held only by the plagiarist, in the case of published plagiarism, the publisher and other entities that were involved in the publication of the plagiarism may be also liable for the plagiarism apart from the author.

Plagiarist's Liability for Appropriation of Another Author's Work

The liability for an unauthorized appropriation of another author's work is in the case of an unpublished work held by the person who appropriated the authorship. The plagiarist may be sanctioned on the basis of civil liability under Section 40 of the Czech Copyright Act through exercising the right for compensation and surrender of unjust enrichment under the Czech Civil Code. Under the new administrative sanctions of the Copyright Act, the plagiarist is imposed with offense liability for committing an offense or an administrative offense under Sections 105a and 105b of the Czech Copyright Act, and may be also imposed with administrative liability under Section 32 of the Czech act on offenses. In particularly serious cases, the plagiarist may be imposed with criminal liability under Section 152 of the Czech Criminal Code. According to this blanket norm, any unauthorized interference into legally protected copyright is considered an intentional crime.

In this context, it should be noted that these criminal sanctions for copyright infringement in the form of plagiarism may also apply to persons who were knowingly and thus willfully involved in the crime. Such a person may be a publisher carrying on business as a natural person if it published plagiarism and was aware that the person passing himself/herself off as the author is not the author. In addition to Section 152 of the Criminal Code above, the plagiarist may be prosecuted under other provisions of this legal regulation, depending on the nature of damage incurred. If the damage inflicted on the author of the plagiarized text is only of a non-material nature, the plagiarist may be prosecuted under Section 209 of the Czech Criminal Code (infringement on other people's rights). However, if the plagiarist inflicts material damage to the author, which is classified as fraud, the plagiarist may be also prosecuted under Section 250 of the Czech Criminal Code.

Publisher's Liability for Publishing Plagiarism

If plagiarism is published, not only the plagiarist is liable for the unauthorized interference in copyright but also the publisher and other entities involved in the plagiarism publication. In the Czech Republic, the publishing of periodicals, its distribution and the publishers' position is regulated by the Press Act. [7] Under Section 4 of the Press Act, the publisher is responsible for the content of

periodicals. The liability for the content of periodicals is a strict liability, i.e. it does not require the fault on the part of the publisher. The publisher is responsible for its content not only in the journalistic articles representing the opinions of the medium and its editor but also in the articles that do not represent such opinions. [8] The publisher's strict liability has also an impact on the false attribution of authorship or co-authorship. In the event of a false indication of authorship, a publisher's liability for publishing the plagiarism arises and the fact that the publisher did not know about the plagiarist's dishonest conduct is of no legal significance. Any publisher's objections that it was not obliged to verify whether the person claiming his/her exclusive authorship is really the exclusive author and that it did not know about the co-authorship of such person with another person is legally insignificant. [9] This author thus concludes that on account of strict liability, the primary liability for the published work shall be borne by the publisher who may subsequently sue the plagiarist's author, while exercising a whole range of claims and cumulating individual suits.

COPYRIGHT AND UNFAIR COMPETITION ASPECTS OF PLAGIARISM

In the context of the reflection on legal liability for anticipatory plagiarism, it should be mentioned that from the perspective of the current law, the plagiarist's liability has consequences in terms of both authorship and unfair competition. The Copyright Act provides a number of claims which a person who has the standing to bring an action may demand to protect his/her rights to a literary work. The author or another authorized person may choose any of the below claims or cumulate individual claims in the action. It is also possible to assert claims on the basis of copyright and unfair competition through actions applicable by virtue of the two legal areas. In this context, the second sentence of Section 105 is material, which reads as follows: "*Protection of works under copyright shall not exclude the protection stipulated by special legislation.*"

CLAIMS ARISING FROM UNAUTHORIZED INTERFERENCE IN COPYRIGHT

Statutory legal means of authorship protection are based on strict liability in the Czech Republic. It follows that the liability does not require any fault. The general clause of copyright is contained in Section 40 of the Czech Copyright Act. However, this section does not contain special merits as they are known from unfair competition. Unauthorized interference in authorship may have the character of a threat to or violation of this right. The author whose rights are interfered with without authorization can defend themselves against already incurred offenses and also against imminent actions. They can demand a whole range of claims under this provision. The Czech Copyright Act provides a demonstrative list of claims against the violation of and threat to this right. In addition to traditional claims, such as claims seeking a prohibitory injunction, the removal of consequences and satisfaction, the Copyright Act stipulates

particularly the claims for determining the authorship, for disclosure and for the publication of the judgment.

The literary work, which is often a subject of disputes in the matter of plagiarism, is negotiable. Claims arising from the law against unfair competition may be asserted to protect the market aspects of the literary work. Legal means of protection against unfair competition include all legal means which may be used by entities affected by unfair competition to defend themselves. The Civil Code, under which unfair competition is defined in the Czech Republic, is private law and for this reason, its provisions can regulate only civil sanctions. However, unfair competition is also addressed in some public law regulations, under which a person engaged in unfair competition may be punished with sanctions of a criminal nature (pursuant the Criminal Code) or administrative sanctions (e.g. pursuant the Consumer Protection Act or the Advertising Regulation Act etc.). Also, non-legal means of protection, i.e. self-regulation measures, may be used against the potential unfair competition. [10] Sanctions related to unfair competition are regulated in Section 2988 of the new Civil Code. The scope of claims is adopted from the Commercial Code. Persons affected by a violation of or a threat to their rights as a result of unfair competition may ask the infringer to abstain from such conduct or remove the irregular situation. They can also demand reasonable compensation, either in monetary or non-monetary form. Moreover, they can claim damages and surrender of unjust enrichment. For the purposes of claiming damages by virtue of protection against unfair competition, the fact that the claim for damages is newly based on a subjective principle is particularly essential. It is grounded in the fact that the liability to compensate for any damage caused by unfair competition is subject to the infringer's fault. In the antecedent legislation, the compensation was based on an objective principle. With regard to the fact that it was difficult to assert the claim for compensation in the field of unfair competition, it can be assumed that the principle of subjective liability in respect of the claim for compensation in connection with unfair competition will be in practice even more problematic than asserting this claim under the previous legislation. The principle of subjective liability is to be applied only to the claim for compensation and for surrender of unjust enrichment, and therefore cannot be generally applied to legal liability for unfair competition. As with copyright lawsuits, the court may also confer the right to disclose the judgment at the losing party's expense and determine the extent and scope of its disclosure when it comes to actions applied under the law against unfair competition. Individual sanctions may be applied simultaneously.

CONCURRENCE OF THE COPYRIGHT AND UNFAIR COMPETITION PROTECTION OF A LITERARY WORK

It is clear from the previous chapters that legal means of protection against copyright infringement are largely identical with legal means of protection against unfair competition. With respect to the fact that the authorship protection and protection against unfair competition of literary work overlap, the person who has

the standing to bring an action is entitled to assert the claims under both legal areas. If and to what extent the injured person uses legal possibilities under his/her rights falls fully within his/her authority. Civil proceedings are actually based on the disposition principle, when it is the parties (plaintiff, defendant) that dispose of the proceedings and its subject, not the court. *“It means that it depends on the acts of the party (plaintiff) whether the proceedings will be initiated and whether it will continue (disposition of proceedings), and on what issues the court will decide (what rights and to what extent – disposition of the subject).”* (The citation was translated from Czech to English by author.) [11] It should be reminded that the court is obliged to act only within the scope of the demand for relief.

MORAL AND LEGAL ASPECTS OF ANTICIPATORY PLAGIARISM

Many questions arise in connection with the above-defined theory. Is anticipatory plagiarism intentional in the sense of willful stealing of a literary technique, style, theme and formulation method? And if so, can be the plagiarist stealing a work which does not exist at a given time legally responsible for such conduct? The answer to the first question is not entirely definite. Even writers themselves do not know the exact source of the plagiarized material, although they suspect that the work they create does not proceed only from their own literary sources. Many authors agree that in the course of creating a significant and literary valuable work, they were driven by an intensive creative power and felt to be mere intermediaries of a literary statement. [12] As if somebody whispered the text in their ears. The above-mentioned fact implies that these authors knew that their works were not created solely thanks to their literary creativity, but could not identify the source of their inspiration. They could not copy an already written text, as is typical for common plagiarism, because the anticipated work did not exist at that time. They were mere intermediaries of the anticipated, yet not existing, literary text to readers. This gives rise to a theory that anticipating plagiarists had been creating under the influence of creative inspiration or vision, which became real in the future. Another fact aggravating the examination of the case of plagiarism is the complicated provability of the intention to steal a non-existing work, since it is a very non-standard and currently unknown phenomenon.

With regard to the nature of the issue, the answer to the question concerning the legal liability of the plagiarist stealing a work created in the future should be perceived from two perspectives – timelessness and time designation. If the time impact is disregarded and the literature is perceived from the perspective of eternal presence, when all works are created in a certain universe, then the writer anticipating another author's work may be theoretically legally liable for the act because he/she stole an already existing work (since there is no future in timelessness), even though the work will be physically created in the future.

However, the situation is complicated by the fact that while literature takes place outside of time and space according to the theory of anticipatory plagiarism, the authors live in the world where the law of time applies and its linearity prevents the author of the historically older work from being legally responsible for plagiarizing a later work which does not exist at the time of plagiarizing and therefore is not protected by copyright. In the majority of cases, parties to a notional legal relationship do not live in the same time period, that is why the legal relationship cannot be really established. It follows that no claims arising from the unauthorized use of the anticipated work can be asserted. The situation is complicated due to the gap between the time of the creation of the plagiarism and the original work, hence due to different eras in which parties to the dispute lived and created. The legal liability of the author arises already in the initial stage of the formation of a plagiarized work, however, the liability ceases to exist upon the author's death. However, in most cases, the original work which served as the plagiarist's inspiration is yet not created at the time of the plagiarist's life, i.e. in the period of the author's potential liability for unauthorized interference in the original work. That is why we cannot talk about stealing the work because of the chronological flow of time, since the work does not exist at that time. In fact, it would be impossible to prove the theft at the time of anticipatory plagiarism. It is possible with hindsight, but no sooner than at the time of creation of the plagiarized work.

One of the reasons why it is not easy to determine the time definition of anticipatory plagiarism in terms legal liability is that we perceive the issue from the perspective of the 21st century, even though the plagiarism practices were performed several hundred years ago. Under the applicable law, the legal regulation may not be applied retroactively because the genuine retroactivity is considered an inadmissible legislative technique on the ground that it is contrary to the requirement of legitimate expectations and legal certainty. The principle *lex retro non agit* (law is not retroactive) means that only law which is codified at the time, i.e. effective law, is applicable at the time. [13] Legal standards which come into existence in the future are therefore excluded from the applicable law. Moreover, reflections on the legal liability of plagiarism practices which are hundreds of years old may be entirely theoretical because the persons involved have deceased and therefore cannot be judged. Additionally, the status of the copyright at the time of the plagiarized work should be taken into account. It is known that in antiquity, copyright was not regulated by legislation, that is why anticipatory plagiarism created in this period cannot have any legal consequences and the plagiarist of the anticipated text cannot be legally liable for this conduct. Plagiarism activities mean copying or paraphrasing a copyrighted work or part thereof without the express consent of the copyright holder. The author who anticipates a work that does not yet exist at the time does not commit plagiarism under the current conception of copyright in the sense of copyright infringement (related to a historically younger work), because the work has not been created yet, so it is not protected by copyright.

If many literary historians point to the fact that there is a literary connection between a number of authors writing in various eras and in different parts of the world, without being able to influence each other, but their works are almost identical, an organized technique of anticipatory plagiarism may be then considered. In this case, the moral and legal liability for the plagiarism practices is even more difficult to prove and clarify. The fact confirms the Bayard's proposition that the course of the literary world is cyclic and one literary phenomenon or motive may be reflected in works of various authors in certain cycles. The specific reason is unknown. The author hereof believes that it happens under the influence of unwritten laws with the aim to reinstate and restore themes which are fundamental for the society. The subjects of anticipatory plagiarism are usually high-quality literary works, which may serve as a confirmation of the hypothesis. A detailed literary-historical research has to be performed to prove the hypothesis, which may be the subject of a separate scientific research project.

ANTICIPATORY PLAGIARISM AS A CONTROVERSIAL PHENOMENON

The concept of anticipatory plagiarism has both supporters and opponents. The supporters perform a thorough analysis in the scope of their professional orientation in the fields of literary theory, literary history, literary interpretation, psychoanalysis, philosophy and cultural studies, while Bayard transforms the concept into a better definable form and creates an umbrella concept. However, it is still not sufficient to reach a common consensus within the scientific community. The opponents of this extraordinary concept criticize that the theory cannot be supported by empirical evidence. Many of them consider it mistaken. Vernay, for example, described the Bayard's book *Le plagiat par anticipation* as absurd and very funny. [14] By contrast, psychoanalytic philosopher Slavoj Žižek considers the work wonderful. Žižek provides an equally interesting insight into the issue of anticipatory plagiarism, which is also perceived from an unconventional perspective. Žižek also concludes that the existence of anticipatory plagiarism is possible, but he examines the concept using a stricter methodology. Žižek follows the Bayard's dissonance line and develops it into a more sophisticated context. What is scientifically beneficial are the Žižek's objections to insufficiently practiced methodology in the Bayard's work, which may lead to a re-evaluation of certain hypotheses. [15] Žižek's insights, however, points to a number of other related literary works which show signs of anticipatory plagiarism, which may also be perceived as an indirect confirmation of its existence. Žižek sends a peaceful message to the opponents that they should not dismiss the concept only for its provocative tone because it at least contains a certain hidden teleology in which the presence refers to the anticipated future. On the other hand, he believes that the idea is deeply anti-teleological and materialistic and the only thing missing is the key to the concept of retroactivity. [16]

CONCLUSION

Literary plagiarism is a phenomenon that has been accompanying mankind from time immemorial. The issue of literary plagiarism is very controversial in its nature. On one hand, the imitation of already existing works triggers further creativity, on the other hand, this activity often balances on the edge of the law since it involves unauthorized interference in copyright. The idea of the complete elimination of piracy is utopian. Plagiarism has been rooted deeply in society for centuries. The phenomenon of plagiarism is even more controversial due to the fact that it is possible to plagiarize a historically newer work which does not exist at the given time under the influence of literary vibrations. The plagiarist anticipates the work and draws from the future. The fact that literary works which have been created centuries apart could be unwittingly linked with the same writing style, without the possibility to be influenced by a later author who has not been born yet at the time, leads to a re-evaluation of the concept of literary history and the phenomenon of plagiarism. Examining the world of literature from the chronological historical perspective seems to be obsolete. What makes the complexity even greater is the multidimensional nature of the phenomenon which proves the immortality of this conduct. The phenomenon of plagiarism is kept alive by two independent forces – immoral practices of plagiarists are symbolically sanctified by the silent consent of the users (readers) who are indifferent to the origin of the work. The attractiveness of a literary work is more important to readers than the fact whether it is attributed to the real author or a plagiarist. In such situations, the applicability of the standards of copyright and unfair competition in the environment of a social movement against the moral standing of copyright is rather problematic. This proves that plagiarism a serious societal problem and the path to its solution is very complex.

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