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Assessing Creativity from the Viewpoint of Law

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ABSTRACT

Originality is the main criterion for creating an author's work. However, authors are often influenced by previous works of other authors that they have seen, heard or experienced. The aim of this study is to identify criteria for determining creativity in authors' works, trying to find and define the difference between accidental influence and deliberate misappropriation or plagiarism. This article does not claim an in-depth analysis of creativity and originality from a social science perspective. It is more a scientific essay on creativity from a law science point of view, so that further research can be carried out in the field of authorship and its determination. In order to find an answer to the research question (Where does influence end and plagiarism begin?), theoretical framework and knowledge about creativity were observed, international and national laws were studied, case law from different countries was researched, materials of international conferences were examined, as well as information accessible on the Internet on copyright issues was observed. The research used a descriptive method to investigate the works of various researchers on the types of mutual influence, regulatory framework and court practice in this field, as well as a grammatical, systemic, teleological, and historical interpretation of legal norms to assess the inadequacy of existing legal norms and propose the necessary amendments in legislative enactments. The main result of this study is understanding that the factor of consciousness or subconscious forms the main criteria. If the influence is unintentional, the copyright of the original work is not infringed, but if repetition is intentional, when it goes beyond originality, the new work is considered to be an appropriation of authorship or plagiarism.

KEYWORDS:

copyright, moral right, creativity, influence, appropriation plagiarism

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INTRODUCTION

Originality is the main criterion for creating an author's work. But how can it be assessed? What are the characteristics of creativity? What are the criteria for its recognition? Can an author be influenced by the works of other authors and still produce their original work? People are strongly influenced by other people's previously created works, which is quite natural.

The use of influenced arrangement, musical technology, or sampling is a common practice in the music industry. It is not possible by law to prohibit anyone from considering the inspiration or influence of past artists (Lacey-Smith, 2019). According to the basic principles of copyright, the author's work may not be used without the author's permission, but contemporary art trends clearly show that popular artists unobtrusively violate the boundaries of copyright laws and that such behavior is accepted by the public and authors whose rights are potentially infringed. A number of examples that are created daily in the modern visual art world illustrate the contemporary art trend and possibly the dissonance of the fundamental principles of copyright that are too inflexible for the contemporary art environment (Žīgurs, 2017).

Authors are often influenced by previous works of other authors that they have seen, heard or experienced, which is quite natural. At what point does this influence reach the point where the work created by the author is no longer recognized as original work, but is called plagiarism instead? Plagiarism is deliberately passing work created by another author as one's own (appropriation of authorship). However, influence occurs unconsciously when the author does not wish to infringe upon the rights of any other author, but the work has been implanted deep in their subconscious layers as a result of their life experience. One must be able to distinguish between the concepts of influence and misappropriation, the former being the result of an unconscious act, while the latter is the result of a conscious act.

The main research question is – where does influence end and plagiarism begin? Someone may criticize that the research question is too ambitious. A simple answer is not possible to it. From the point of view of social perception, it may not be possible to answer it at all. However, in order to attempt to find an answer, theoretical framework and knowledge about creativity were observed, international and national law were studied, case law from different countries was researched, and materials of international conferences were examined.

The aim of this study is to identify criteria for determining creativity in authors' works, trying to find and define the difference between accidental influence and deliberate misappropriation or plagiarism. Freedom of the arts cannot guarantee the possibility of free use of whatever is wanted for creative purposes (Rosati, 2018). However, rights granted to the copyright owner are not absolute, because they include a condition for the fair use of the work for the advancement of knowledge and legitimate use, which is neither copyright infringement, nor plagiarism (Satija & Martínez-Ávila, 2019). This issue is relevant in the modern age of technology, when computer systems, the so-called "artificial intelligence," are becoming more independent from human influence as they evolve. This would be the basis for future studies in the field of originality and creativity.

The author of this article will look at the concept of creativity mainly from the perspective of law, rather than analyzing the theoretical framework and empirical evidence regarding the social perception of creativity. Scientific literature in the field of law will be examined more than in the field of social sciences. This article does not claim an in-depth analysis of creativity and originality from a social science perspective. It is more a scientific essay on creativity from a law science viewpoint, so that further research can be carried out in the field authorship and its determination.

However, it will not be possible to study the relationship between creativity and law without looking at the theoretical framework and knowledge about creativity. Various literature sources were reviewed to explore key theoretical concepts, classical discussions, and research results in the field of creativity. This issue has been researched and analyzed for many years; the field of creativity studies has roots in the 1930s, 1940s, and 1950s. Domain differences were examined in the 1930s and social criteria of creativity relying on consensual agreement go back at least to 1953 (Runco & Jaeger, 2012). Many authors have developed a theoretical framework for creativity and sought empirical evidence regarding the social perception of creativity. The 4Ps Model of Creativity has been one of the key ones here. According to this model, creativity can be viewed from four different perspectives: product, process, person, and press (or the environment). Thus, the main question tackled here is how creativity can be stimulated by attending to each of these components (Gruszka & Tang, 2017). Runco (2007) was searching for an answer to the question of whether creativity is influenced by nature or nurture, what research has indicated of the personality and style of creative individuals from a personality analysis standpoint, and how social context affects creativity.

Some theories distinguish the levels of creativity as everyday, professional or eminent: everyday creativity (also called "little-c") can be found in nearly all people, but eminent creativity (also called "Big-C") is reserved only for the great (Kaufman & Beghetto, 2009). However, from the viewpoint of law, there is no difference in the level of creativity – the law equally protects all kinds of creativity, that created by greats and that created by any person in their professional creative daily work.

METHODS AND MATERIALS

In order to find an answer to the research question, international and national law was studied, case law from different countries was researched, materials of international conferences were examined, as well as information accessible on the Internet on copyright issues was observed. The research used a descriptive method to investigate the works of various researchers on the types of mutual influence, the regulatory framework and court practice in this field, as well as a grammatical, systemic, teleological, and historical interpretation of legal norms to assess the inadequacy of existing legal norms and propose the necessary amendments in legislative enactments. The paper deals with the sources of literature over a long period of time, such as the scientific research of Paklone (1997, 2014), Imran (2010), Runco (2007), Runco and Jaeger (2012), Rosati (2018), Hare and

Choi (2019), etc. Several Court of Justice of the European Union (CJEU) cases have been examined (Infopaq, 2008; Painer, 2010; Sanoma, 2016; Cofomel, 2019; Pelham, 2019, etc.), along with several national court cases. Copyright laws in Latvia (2000), Lithuania (1999), USA (2016), etc. have been interpreted.

RESULT

Unintentional influence from other authors

Using a previously created work or object in a new work in visual art is not new or unusual – almost every visual art work is based on something previously created, and copying is considered to be one of the ways of mastering art. Compared, for example, to the music industry, where even a tiny fraction of a composition can create immediate associations with the composition from which the particular musical phrase is appropriated, visual art is characterized by an ambiguous and changing attitude of the audience towards the message of the work (Žīgurs, 2017). In the United States, quite a number of musicians accuse each other of attempts at appropriation, but in most cases, it is recognized as an influence or is deemed justifiable by the so-called "fair use." The fair use concept is described in U.S. Copyright Law, which says that fair use of a copyrighted works is allowed without permission by owner for purposes of criticism, comment, news reporting, teaching, scholarship, and research. Such use can only be non-commercial, and in the amount and substantiality of the portion used in relation to the copyrighted work as a whole (U.S. Code, 2016, §107). In most cases, they are random sound compositions that are unknowingly included in different songs, or frequently used phrases, the use of which in lyrics is common.

Songwriter Benny Mardone spoke out against singer-songwriter Cyndi Lauper, claiming Lauper used music from Mardone's "Into the Night" in her Broadway musical "Kinky Boots." Mardone believes that both the notes and the words "raise you up," which are sung repeatedly, are taken from her lyrics "pick you up" in "Into the Night" (Stempel, 2019). As the parties reached a settlement, it is not known how this influence would have been assessed by the court.

Justin Bieber and Usher were sued by a musician named Devlin Copeland, over a similarity between their song "Somebody to Love" and Copeland's song with the same name (U.S. Court of Appeals, 2015). In the present case, the court held that the two songs "did not have enough elements in common" to be recognized as similar. "In fact, the songs are very different, they are related only by just a few words from the lyrics," the judge said. The songs have some elements that could be recognized as similar, and the most obvious similarity between the two songs is the lyrics to "love someone." However, this short, commonly used phrase is generic, widely used, and therefore not subject to copyright protection". This phrase has been used as a song title in over 130 musical works (WIPR, 2016).

Music can only be made from a certain number of notes, and certain genres have a specific chord sequence. For example, more than 45 popular songs use the same four chords, ranging from

The Beatles' "Let It Be" (1970) to "If I Were a Boy" (2008) by Beyonce (Lacey-Smith, 2019). One always wonders why all these pop songs sound the same? Well, it's pretty simple – they all use the same four chords![1] "We'll handle the E key and you'll need the E, B, C # mi and A chords to work out the rest." (White, 2014). If by some magic a man who had never known it were to compose a new Keats's Ode on a Grecian Urn, he would be an 'author,' and others might not copy the poem, though they might of course copy Keats's" (Goldstein, 2001).

The Court of Justice of the European Union (CJEU) recently ruled on the use of musical phrases from another musical work (Pelham, 2019). The German band "Kraftwerk" produced a phonogram in 1977 that included the song "Metall auf Metall."[2] Two composers, Moses Pelham and Martin Haas, composed "Nurmir"[3], and included it in the 1997 phonogram. On behalf of the Kraftwerk group, Ralf Hütter initiated a claim against both composers that they had copied a sample of an approximately 2-second rhythm sequence from Metall auf Metall, and included this sample, repeating it in sequence in the music composition "Nurmir." The plaintiff alleges infringement of the rights of both the phonogram producer and the performers. The judgment was awaited with great impatience, as "borrowing" of such musical phrases is a popular phenomenon among musicians. The case emphasises the need to clarify and harmonize the ambiguous legal position of sampling at a supranational level. The most important task for the CJEU was to provide clear guidelines for national courts on how to interpret the applicable rights and exceptions to digital sampling and, in particular, the best approach to strike a balance between the fundamental freedom of artistic expression and the copyright interests of the relevant right holders (Perkal, 2018). It was a question whether copyright protection in the phonogram might be trumped by the need to safeguard the freedom of (artistic) expression of the person who samples under Article 13 of the EU Charter of Fundamental Rights. The Advocate General Szpunar noted that freedom of artistic expression is not limitless and should be understood in its appropriate context: freedom of the arts cannot guarantee the possibility of a free use of whatever is wanted for creative purposes (Rosati, 2018). Court ruled that musicians cannot "sample" other artists' records without permission. But if the use of a modified sample that was unrecognisable from the original, then it could be used without permission. The CJEU decision could have huge implications for the music industry. Phonogram producers have exclusive right to reproduce and distribute phonograms, which allows them to prevent another person from taking a sound sample, even if very short, of their phonogram for the purposes of including that sample in another phonogram, unless that sample is included in the phonogram in a modified form unrecognisable to the ear. But that provision does not extend to a situation in which it is not possible to identify the work concerned by the quotation in question.

A certain "borrowing" from the works of other authors is inevitable, permissible, and even desirable. It is considered that one should not come to such a paradoxical picture that authors look at the texts of other authors in search of coincidences, and drag each other to court, which,

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1 YouTube. "*4 Chords. Music Videos*. The Axis Of Awesome" (July 2011). https://www.youtube.com/watch?v=oOlDewpCfZQ
2 YouTube. "*Kraftwerk – Metall auf Metall*"(1977). https://www.youtube.com/watch?v=JlatOPOMlyA
3 YouTube. "*Sabrina Setlur – Nurmir (Official 3pTV)*" (2008). https://www.youtube.com/watch?v=_KQLxP-UX_Y

on the basis of precedent, successfully passes judgements right and left. "If influence is considered an infringement, then for example, Homer should chase Joyce for cruelly condemning him to Ulysses, Christopher Marshall should accuse Goethe of Faust etc." (Berelis, 2004, pp. 141–142). All literary development is based on recounting different stories, using both Biblical characters and ideas from the classics. While creative freedom is important, artists' copyright must also be protected. It is difficult to strike a balance between allowing creative freedom and protecting artists' copyright. Whether such a balance will be possible in the future is unclear, but it does not seem to have happened yet (Lacey–Smith, 2019).

A work need not be novel in the sense that it did not exist before it was created by the author. It is possible to have two identical protected works, so long as they were independently created (Goldstein, 2001, pp. 161–163). Does the repetition of certain notes, phrases or accents in several works indicate a lack of creativity or plagiarism? Or is it just a coincidence that arises from the same or similar emotional perceptions, which is a completely natural phenomenon among like-minded authors living in similar circumstances?

Appropriation or Copyright Infringement

A different situation is when a person deliberately copies a work created by another author and does not indicate their name, but appropriates the creativity, name, and merit of that author. In the context of artistic rights, the "*art of appropriation*" is a term which refers to the use of a previously created object or image with only slight modification (Žīgurs, 2017). Appropriation is the "act of taking something, which belongs to somebody else, especially without permission" (Wehmeier et al., 2005, p. 64). Unlawful appropriation or misappropriation of another author's work is copyright infringement or plagiarism. The word *plagiarism* is not mentioned in the Copyright Law or any other Latvian or international normative enactment. However, this concept has been well known in European culture for over two thousand years, since the time of the Roman Empire, where *plagiare* meant kidnapping. The concept of plagiarism is not limited to cases of formal similarity; publishing a work that is an adaptation of another person's work and passing it as your original work is also plagiarism (Paklone, 2014). Plagiarism, unlike influence, can be proved; for example, a plagiarist has used an unpublished manuscript or an unpublished idea (Svece, 2004).

The Oxford Glossary defines the verb "plagiarize" to mean "*to copy another person's ideas, words or work and pretend that they are your own*" (Wehmeier et al., 2005, p. 1149). Literature sources further expand on the concept as "passing another author's original work, or parts of it as one's own," or "work that has undergone minor changes in content or form (for example, renaming characters in a novel) or one placed in a different context" (Paklone, 997, p. 41). The CJEU has repeatedly analyzed the nature of creativity in its judgments. The table below describes the three judgments of the court and shows the main arguments the court has made in assessing creativity.

***Table 1*. Comparison of CJEU rulings**

CJEU Case	1st author/work	2nd author/work	Claim	Creativity requirements
C-5/08 *Infopaq*	Infopaq International A/S	Danske Dagblades Forening	Storing and extract of a protected work comprising 11 words without permission	Regarding the elements of works covered by the protection, it should be observed that they consist of words which, considered in isolation, are not as such an intellectual creation of the author who employs them. It is only through the choice, sequence, and combination of those words that the author may express their creativity in an original manner and achieve a result, which is an intellectual creation.
C-476/17 *Pelham*	The German band "Kraftwerk", song "Metall auf Metall"	Composers Moses Pelham and Martin Haas, song "Nurmir"	2-second rhythm sequence from song was included in the new song without permission	Musicians cannot "sample" other artists' records without permission. But use of a modified sample that was unrecognizable from the original could be used without permission.
C-683/17 *Cofemel*	G-Star Raw CV	Cofemel — Sociedade de Vestuário SA Cofemel	Designs of jeans, sweatshirts and t-shirts were used without permission	For an object to be considered original, it must reflect the author's personality and must be the author's free and creative choice. However, if the creation of an object is determined by technical considerations, regulations or other restrictions, which do not leave room for creative freedom, that object cannot be qualified as work.

Several cases of litigation have occurred in Latvia, analyzing the boundary between influence and appropriation. For example, in December 2003, the Latvian court declared Raimonds Stapran's play "Postītājs" ("Destroyer"), published in 2002 in issues 229 and 230 of the "Jaunā Gaita" ("*The New Course*") magazine, as plagiarism. It was based on a 1998 documentary written by Skaidrite Anna Gailite "...un tad ienāca postītājs" ("…*and then Destroyer Came*"). Without going into many of the incidences of similarity that proved the existence of plagiarism in court and were mentioned in the judgement, let's take a brief look at a report compiled by writer Lucia Kuzane: "Undoubtedly, this play is plagiarism – literary theft, because dramatization is based on Skaidrite Gailite's part of autobiographical novel, pages 100 to 192 of "...un tad ienāca postītājs" ("…*and then Destroyer Came*") (Paklone, 2014, p. 88).

In Latvia, copyright and related rights are adequately protected by the law when imposing penalties for copyright infringement. If the violation has caused substantial harm to the rights and interests of person, then the penalty under section 148 of the Criminal Law (1998, 148) is applicable – starting from a fine or community service following with deprivation of liberty for a period of up to six years. A number of cases of criminal liability for appropriation by passing a work as one's own and not giving the author's name were heard in Latvian courts from 2008 to 2014. A student of Rezekne University appropriated a bachelor's thesis written and defended by a student of another university (Vidzeme University College). Everything would have gone well if the university

had not decided to publish a book, in which the above-mentioned bachelor thesis was also published. It was noticed by the author of the bachelor thesis who initiated legal proceedings in court. However, at the time of the trial, Section 148 of the Criminal Law, on the basis of which the action was brought, was amended, and the proceedings were terminated (Supreme Court, 2014). Consequently, the dishonest student avoided penalty and the author of the real work did not receive any moral or pecuniary compensation for the violation of their personal rights.

In 2020, the new Administrative Violation Law came into force in Latvia, eliminating the previous procedure when all administrative violations were included in the Latvian Administrative Violations Code. All penalties for copyright infringement are now covered by the Copyright Law. The Copyright Law also provides for the possibility of taking legal action against the infringer. Plagiarism must be combated in all possible ways – by civil, administrative and criminal procedures.

DISCUSSION

The results obtained were discussed, analyzing the meaning of unintentional influence from the works of other authors and how it differs from the deliberate use of works without permission or plagiarism.

Social perception of creativity

Before embarking on an analysis of the relationship between creativity and law, it is necessary to take a brief look at the theoretical framework and knowledge about creativity. Creativity means having the skill and ability to produce something new, especially a work of art (Wehmeier et al., 2005, p. 360). The history of human society is, in many regards, a history of creativity. Despite its central role in our society, very little has been known about how this creative process operates in the human brain (Greenberg, 2014, p. 7). The notion of originality is fiendishly difficult to define. Originality in most jurisdictions presumes some level or input of authorial personality, if it can only be shown that the work was not copied, but 'originated' from the author. There is, however, no accepted standard as to what constitutes this authorial personality (Dutfield & Suthersanen, 2008, pp. 79–80). The standard definition of creativity is bipartite: Creativity requires both originality and effectiveness. If something is not unusual, novel, or unique, it is commonplace, mundane, or conventional. It is not original, and therefore not creative. Originality is vital for creativity, but is not sufficient. Ideas and products that are merely original might very well be useless. Original things must be effective to be creative. Like originality, effectiveness takes various forms. It may take the form of (and be labelled as) usefulness, fit, or appropriateness (Runco & Jaeger, 2012, p. 92).

People everywhere seek creative self-actualization, in ridiculous as well as sublime forms. And psychologists have taken significant strides toward making creativity a semi-respectable subject of inquiry, with a research literature that has burgeoned – if not exactly blossomed – at an accelerating rate, particularly over the last twenty years (Kozbelt, 2020). Creativity is studied primarily

by personality and cognitive psychologists searching for characteristics of "creative people" and paying comparatively little attention to external influences on creativity. However, dispositional attributions of creative behavior affect the future production, evaluation, and attribution of original creations, and attributional principles can be used to enhance creativity (Kasof, 1995, p. 311).

Distinguishing between product and person may also open a discussion of the dark side of creativity, which is well-known in the literature. In everyday usage as well as scholarly discussions, it is almost axiomatic that creativity is good. Indeed, it cannot be denied that it often leads to beneficial advances in art and literature, science, medicine, engineering, manufacturing, business, and other areas (the bright side). Unfortunately, enchantment with creativity is so intense that people, including researchers, ignore the fact that a great deal of creative effort is done in service of negative ends. The processes associated with creativity can also be associated with dark or criminal behavior. Many eminent scholars turn out to have held a fascination with this topic. However, particularly exciting is the idea that creativity can be used to combat terrorism. (Cropley, 2010, p. 15) What is the relationship between personality, law-braking, and creativity? While being creative is often equated with being morally good and psychologically healthy, it seems to also have a morally disconcerting side. Indeed, the association between creativity and the tendency towards socially undesirable behaviors was repeatedly observed. Studies have shown the relationship between creative achievement and lawbreaking. This link was discovered in a study of architects, with the more eminent respondent scoring higher on aggression and emotional instability, lower on tolerance, and with being more likely to lie and control others compared to the less eminent architects. Similar results were obtained in a study of scientists, showing that those who were highly achieving and productive displayed higher hostility and a more arrogant style of working than their less creative peers. Such links were also observed among artists who scored higher in psychoticism than did representatives of other professions (Lebuda et al., 2019).

As can be seen from the discussion of creativity researchers – creativity is a set of specific skills and an ability to produce something new. Creativity requires both originality and effectiveness. If something is not unusual, novel, or unique, it is not original and therefore not creative. However, it must be remembered that the axiom of creativity as something good is not always valid – it is also possible that creative effort is done in the service of negative ends.

Creativity and law

Berne Convention (1886) does not explicitly define "a minimum" of creativity, but article 2(3) refers to "original works." One may infer a standard of originality from article 2(5), which brings compilations of prior works such as encyclopaedias and anthologies within mandatory Berne subject matter so long as they "constitute intellectual creations". Under E.U. law, a work is original if it is "the author's own intellectual creation" (Ginsburg & Treppoz, 2015, p. 278). In the *Infopaq* case (2008) on extracting 11 words from a protected work text file, the CJEU's broad definition of originality was based on an interpretation of the Berne Convention.

British, American, French, and German copyright laws have historically employed a very low threshold of originality in order to extend the umbrella of copyright protection to works of cumulative creativity and low authorship values. The history of the Anglo-American copyright system clearly indicates that works of little creativity or personality could and still do obtain protection easily (Dutfield & Suthersanen, 2008). French jurisprudence decrees that a work must be original before copyright protection can be granted. It is protected irrespective of its genre, form of expression, merit, or purpose, but taking into account the level of freedom the author has to exercise their creative choices. In Germany historically, the high threshold of creativity has never been applied equally to all protectable categories of works but instead it varies according to the nature of the subject matter under review. Therefore, the creativity level can be quite low for literary, musical, and fine art works, but a high level is applied to works of applied art (or industrial designs; see Dutfield & Suthersanen, 2008). Originality is the quality of being new and interesting in a way that is different from anything that has existed before (Wehmeier et al., 2005).

The Latvian Constitution (*Satversme*) stipulates that the State approves scientific, artistic, and other creative freedom and protects copyright and patent rights (Art. 113), and generally warranted right for freedom of expression, which includes the right to freely acquire, keep, and distribute information to express one's views (Art. 110). According to the *Latvian Copyright Law* (2000), a work is the result of an author's creative activities in the literary, scientific or artistic domain, irrespective of the mode or form of its expression and its value. The author has economic rights (among others): directly or indirectly, temporarily or permanently, to reproduce the work (Art. 15). The law provides copyright holders with the right to request civil law sanctions for infringements of their personal or economic rights as violations of copyright and related rights: not to threaten their creative work (Art. 69.1). The person whose name or generally recognised pseudonym appears on a work shall be considered to be the author of the work, if it is not proven otherwise (Art 8). There are three main conditions of the protection of works – originality, protection under national law, and materialization. Related to the concept of originality is the important distinction between ideas and expressions. Ideas are not protected by copyright (Art. 6). In order to obtain legal protection, the idea must be materialized – expressed, embodied, disclosed, etc.

Directive 2001/29/EC (EU, 2001) does not explain what authorship is. From the copyright aspect, though, authorship is understood as a person's participation in and creative intellectual contribution to the creation of a work sufficient enough for this person to be recognized as the author of the work (Ventspils Court, 2014), and the existence of the work already confirms the creative activity of producing the work, granting the author personal and economic rights (Supreme Court, 2006). Disputes regarding authorship and creativity can also be found in the CJEU *Painer* case (2010), whereby the creative requirement for photography was formulated – a work is the intellectual creation of its author if it reflects their personality, if the author while creating the work can realise their creative abilities, freely and creatively choose – the background, the subject's pose or lighting, the framing, the angle of view, or the atmosphere created, etc. Thus, through these various choices, the author of a photograph may give the work they created a "personal character."

As can be seen from the interpretation of legal norms, the author's right to their creative work has been protected since the Berne Convention (1886). As the Berne Convention lays down minimum standards of protection and all the countries of the civilized world have acceded to it, it can be argued that the minimum standards are observed throughout the world. Some national laws provide for a higher level of protection, but reduced requirements are not possible.

Restrictions of rights

If plagiarism is a copyright infringement, it should be noted that not every copyright infringement is plagiarism. Copyright is a monopolistic control for a limited period of time that national laws grant to the creator of any artistic, intellectual, or scientific entity. However, the rights granted to the copyright owner are not absolute, because they include a condition for the fair use of the work for the advancement of knowledge and legitimate use, which is neither copyright infringement, nor plagiarism (Satija & Martínez-Ávila, 2019). Not all aspects of copyright relate to the commercial exploitation of works. Copyright (to use the work) is also the right of the author (as a creative personality; see Torremans & Holyoak, 1998).

If the author has exercised their right not to name the published or publicised work, then under the presumption set forth in the Copyright Law of Latvia (2000), the editor or the publisher must be designated instead of the author (Art. 8). When quoting a work that is (accessible) on the Internet, the full Internet address (link or hyperlink) of the title, publisher, and year of publication of the book must be indicated. According to the ruling of the CJEU in the *Sanoma* case (2015), in such cases of non-commercial use it is not necessary to make sure whether the work to which the link leads to has been lawfully posted on the Internet – uploaded with the consent of the copyright holder. However, this would certainly be the case if it were for commercial use.

Passing a work as your own (without reference) violates the author's copyright (the right to be recognized as an author) as well as the right to title (right to demand that their name be duly stated in all copies and in any public event). By not respecting the author's moral rights and copying their work into one's work, the author's economic right to reproduce the work is also infringed. In order to avoid plagiarism, each quote or inclusion of another author's work should be explicitly referred to, with the title and author of the work in question, as well as citing other relevant information (Kalnāja-Zelča, 2014). It is important to explicitly teach the principles of non-text-based attribution and plagiarism to students during class time if they are to develop the skills necessary to be successful as a student and practitioner. This may help to bridge the different modes of attribution practices present in academic and private industry areas (Hare & Choi, 2019). Some students avoid plagiarism detection as if they were playing a game with the law; it can be only avoided by educating them in ethics (Imran, 2010). When making a reference, the author's name and work title, as well as the publication (book, magazine) containing the work, its publisher, place of publication, year, and page must be mentioned.

CONCLUSIONS

The study concluded that the difference between influence and misappropriation is definable, at least from the perspective of law. If the influence is unintentional, the copyright of the original work is not infringed. In contrast – if repetition is intentional, when it goes beyond originality, the new work is considered to be an appropriation of authorship or plagiarism. Analyzing the basic concepts of originality and creativity, the answer to the research question was indeed obtained. There is a clear-cut border line between the unconscious influence from the works of other authors and the conscious use of the work of another author in the creation of one's own work. The main result of this study is the understanding that the main criteria is a factor of consciousness or subconscious.

Repetition of certain notes, phrases, or accents does not necessarily indicate a lack of creativity or plagiarism. It can be just a coincidence that arises from the same or similar emotional perceptions, which is a completely natural phenomenon among like-minded authors living in similar circumstances. Originality is the quality of being new and interesting in a way that is different from anything that has existed before. Creativity is an ability and skill to create a new work of art that did not exist before. However, it is not easy to assess whether or not a work is created solely by the author's own creative expression or whether it has a perceptible impact on the work of another author. If two authors come up with the same or similar idea and each of them has materialized it in their own work, then both works are considered to be original and creative. Conversely, if one deliberately used another author's work to create their own work, there is no doubt that their work is plagiarism. Plagiarism must be combated in all possible ways – by civil, administrative, and criminal procedures.

In order to ensure uniform application of the law in Latvia, it would be advisable to include a definition of originality in the Copyright Law, as well as to establish the basic principles for assessing the scope of creativity. This issue is relevant in the modern age of technology, when computer systems, the so-called "artificial intelligence," are becoming more independent from human influence as they evolve. When data on works of different authors are entered into a computer system, the computer analyzes, synthesizes, and generates a new work, if such a task or algorithm has been given to it. This process is very similar to the process of creating a new (original) work, influenced by the "information" received (seen, heard, felt) from other authors. If computer-generated work is likely to receive copyright protection in the nearest future, how will it respond to work created by the human author under the influence of others? Will this not necessitate a revision of the concept of moral rights? This would be the basis for future studies in the field of originality and creativity.

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