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COPYRIGHT PROTECTION IN THE ERA OF ARTIFICIAL INTELLIGENCE

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Abstract: *Copyright has been and continues to be regulated by the Romanian legislator to protect the work and its author. In this regard, both national and European legislation have the sole purpose of ensuring a safe environment in which any creator of a work has the right to have the authorship of that work recognized, to make it known to the public and to exploit it from a patrimonial point of view. The problem that authors of works are increasingly facing is to be able to control how their work is used or used by third parties through applications generated by artificial intelligence.*

Key words: *copyright, work, artificial intelligence, patrimonial rights, legislation, damage compensation.*

1. Introduction

Copyright protects the work, and contemporary doctrine (Bodoaşcă et al., 2024, p. 20) define the work as *an intellectual creation in the literary, artistic or scientific field, recognized and legally protected by the simple fact of its realization, even in an unfinished form, regardless of the way it was performed, the concrete form of expression, its* value or destination. In the light of its object, copyright appears to be a civil right recognized to the author of a work or, in the cases expressly provided for by law, to other natural or legal persons, by virtue of which they acquire certain moral and patrimonial prerogatives strictly related to the work, so that they can demand a certain conduct from the other subjects of law, and in certain cases they can even resort to the coercive force of the state to protect this category of rights. Here, in the light of this definition of copyright, we conclude that they can be made up of both moral rights and economic rights, both of which are categories forming copyright.

From their primary, international regulation (we refer here to the first conventions – the Paris Convention of 1883 and the Berne Convention of 1886), and later to the national one – Law no. 8/1996, and until now, the regulation and protection of copyright has begun to prevent various problems in terms of protecting the moral and patrimonial right with regard to the author of a literary, scientific or artistic work. The main reason for this situation is the implementation and widespread use of the internet, social

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platforms, search engines (such as the Google engine), and more recently the recent use of applications that use artificial intelligence.

Basically, at present, we find ourselves in a situation in which certain applications and computer systems use smaller or larger parts of literary or artistic or even musical works, compile and modify them, without recognizing the original source, thus giving rise to new works (works that national legislation defines as related works). Thus, both citizens but also the Romanian legislative system and the courts are faced with the problem of recognizing and guaranteeing copyright in the light of new methods of use, of generating protected works.

2. Applicable Law

If we talk about the current legislative framework applicable at European level, we believe that it is particularly important for the states of the world to align and create a unitary legislative environment given that both social platforms and all the information disseminated worldwide through the *world* wide web have acquired a global magnitude. Therefore, legislation should also be uniform worldwide, in order to bring order between users on different continents.

An additional argument regarding the need for a unitary global legislative framework is also the argument that the originality of a work and its beauty is universal. Moreover, the rapid change that constantly occurs in the field of artificial intelligence can only be regulated by a unitary regulation, which grows and changes together with its regulatory object.

From our point of view, the only one that presents such a concern is the European legislator, which has ensured that within the European Union, all Member States adopt a unitary regulatory framework with the main objective of ensuring the protection of people affected by the use of such technologies that involve the use of artificial intelligence.

As an example, we mention the General Data Protection Regulation (GDPR) – Regulation no. 679/2016 – which aims to protect the fundamental rights of individuals in relation to the processing of their personal data, establishing clear principles that data controllers must respect. This regulation also covers the use of artificial intelligence and the protection that data controllers must achieve when using such procedures in the use and processing of personal data. Since 2016, the European legislator has been constantly concerned about the regulation and protection of copyright in terms of the use of applications and technology involving artificial intelligence.

Another example of the European legislator's constant concern for the regulation of artificial intelligence in various areas, especially in the area of copyright protection, is revealed by the amendment of the Product Liability Directive (85/374/EEC), which was amended in order to acquire adequacy with regard to the specificities of technologies using artificial intelligence. As AI systems become more autonomous, the concept of * ***defect**** becomes more and more nuanced. In this respect, the criteria of the Directive for establishing certain defects such as design errors, manufacturing defects, insufficient instructions, **must be adapted to take into account the inherent unpredictability of technologies using artificial intelligence.** [(Buruiană (Rusu), 2025)]

2.1. Copyright protection in the context of the use of artificial intelligence

Among the recent conflicts regarding copyright infringement through the use of artificial intelligence software, we mention the class action lawsuit filed against Microsoft, namely its subsidiary GitHub and Open AI, through which the 2 subsidiary companies Microsoft were accused of carrying out piracy actions on an unprecedented scale, through the development and use of the GitHub Copilot artificial intelligence assistant.

Another more recent conflict concerns the lawsuit filed by authors Mona Awad and Paul Tremblay against Open AI (the organization behind the ChatGPT application). These authors claim in their lawsuit that the app illegally processed and used their works in violation of their copyright. In essence, the plaintiffs claim that ChatGPT would have made accurate summaries of their novels, which amounts to a direct use of their material (copyrighted work), without their prior consent (Stătescu & Gheldiu, 2023). Although the courts' solution is expected, it is very possible that by the time it appears, after years of trials and evidence administration, it will be obsolete in the context in which the ChatGPT application to which the solution will refer, will also be obsolete in light of the new technological changes that will occur in the meantime.

At the European level, the Court of Justice of the European Union is seated with a case concerning the protection of copyright and generative artificial intelligence in the case of Like Company v Google Ireland. In this case, the Court of Justice of the European Union is preparing to adopt its first decision and will answer 4 fundamental questions:

- whether the reproduction of press content by virtual assistants constitutes communication to the public,
- whether the training of artificial intelligence systems constitutes unauthorized reproduction,
- what are the exceptions for the exploitation of texts and data,
- which is the responsibility of the providers for the content generated at the request of users.

The lawsuit itself was generated by the situation in which Google's Gemini virtual assistant generated a summary of a Hungarian press article without the authorization of the publisher. The Gemini system uses Google's database to collect data, gathers the information from that database, and summarizes that information, subsequently suggesting the user to search for more information in Google's search engine. If, however, the user of the Gemini application asks him to provide certain information concerning the retrieval of data from the address of a protected press publication, he shall carry out, at the request of the user, that order and also create a summary of that information. Given that the provision of the information to the Gemini user was not done with the citation of the source from which this information was taken, the parent company Google is currently accused of copyright infringement by the publisher of the press site from which the application took the information and passed it on to the user (Goga, 2025).

In the light of this information, the Court of Justice of the European Union is called upon to answer the 4 questions referred for a preliminary ruling and thus provide

support to the national court hearing the copyright infringement dispute. Taking into account the number of cases with which the Court is invested at this time, the average time for a case to be solved by this court of law and at the same time the complexity and novelty of the subject matter brought before the court, we also consider the scenario in which, at the time when the Court pronounces a solution to that effect, this solution will no longer be applicable in the light of the fact that the Gemini application will be completely different from the Gemini application from the zero moment when it is claimed that its use would have infringed copyright. Therefore, although long awaited, such a solution could come much too late given the fantastic dynamics with which applications and technology that use artificial intelligence are changing and changing.

My assessment, as previously made, of the fact that international, global, uniform regulation would be absolutely necessary, also takes into account the practical aspects resulting from the far too slow resolution of cases which should be the result of relevant case-law in the field of artificial intelligence.

3. Possible Solutions on Global Copyright Protection in the Context of a Unitary Legislative Framework

Primarily, it must be borne in mind that not every use of a copyright-protected work, without the prior consent of the copyright holder, constitutes an infringement of those rights.

On the one hand, if we are talking about national legislation, Law No 8/1996 in Articles 35 to 39 regulates ***the limits of the exercise of copyright,*** namely those situations in which third parties, without the consent of the author or copyright holder and without payment of remuneration, may use or transform a work. Such cases, from our point of view, refer to real cases of ***restriction of the exercise*** of copyright (Bodoaşcă, T. et al. 2024, p. 81). However, if we talk about the limitation of some rights recognized by law, we must bear in mind that the general limits within which any right can be exercised are public order and good morals (Beleiu, 2001, p. 85).

Therefore, I believe that a distinction must be made between restricting the exercise of some rights and limiting the exercise of certain rights, making it clear that in this article we will discuss the **restriction of the exercise of copyright as regulated by Articles 35-39 of Law no. 8/1996 (although the legislator refers to the entire chapter as *Limits on the exercise of copyright).*** On this aspect, our proposal for a *lege ferenda* would be in the sense of modifying the terminology used by the legislator, replacing the notion of limitation with that of restricting the exercise of copyright.

These restrictions on the exercise of copyright are also closely linked to the institution of plagiarism, plagiarism being understood as the activity of a person to unrightfully appropriate, in whole or in part, the work of another author and to present it as his own intellectual creation. Moreover, this definition results from the regulation of art. 197 of the same Law no. 8/1996, which provides for plagiarism as a crime.

The Romanian legislator provides for the possibility of using without the author's consent and without payment of any remuneration, the following uses of a work

previously brought to public knowledge, **provided that such use is in accordance with good practice and does not contravene the normal exploitation of the work and does not prejudice the author or the holders of the rights of use:**

- reproduction of a work in judicial, parliamentary or administrative proceedings or for public security purposes,
- the use of short quotations from a work for the purpose of analysis, commentary or criticism or by way of example,
- the use of isolated articles or short extracts from works in radio or television programmes intended exclusively for education
- reproduction for information of short extracts from works in the libraries of museums, film libraries, archives of public institutions,
- specific reproductions made by publicly accessible libraries, educational institutions, museums or archives produced without obtaining a commercial or economic advantage,
- the performance or performance of a work in the context of educational activities provided that the performance or performance or access to the public is free of charge,
- use of works during religious celebrations or official ceremonies carried out by public authorities,
- use for advertising purposes of images of works presented at exhibitions with public access or sale as a means of promoting the event,
- the use of short press articles, reports to inform on current issues,
- the use of short excerpts from lectures, pleadings or other works expressed orally in public, provided that these uses are for the sole purpose of informing current affairs,
- use of works for illustration in education or scientific research,
- the use of works for the benefit of persons with disabilities if they are directly related to that disability and within the limit required by that disability (art. 35 of Law no. 8/1996).

If we analyze the legal content reproduced above but also part of the object of the international disputes to which we have referred in this article, we can conclude that, if such situations as an exception or restriction of the exercise of copyright were regulated at international level, part of the current disputes or current misunderstandings would disappear because, A particular work, whether artistic or literary, ***may be used without the prior consent of its author or copyright holder, provided that it does not prejudice the author or cause harm to the work itself.*** Therefore, from our point of view, not every use without the prior consent of the author of the work represents an illegal use capable of causing damage to him.

In addition, European states also have specific exceptions in place to the protection conferred by copyright law in relation to text and data mining (TDM), allowing the free use of copyrighted material for certain purposes or under certain conditions. In this regard, by way of example, I mention Directive no. 2019/790 on copyright in the Digital Single Market, by which the European legislator introduces 2 new mandatory exceptions when it comes to text and data extraction.

The first exception concerns the possibility for research organizations and cultural heritage preservation institutions to extract certain texts and data for scientific research purposes. *The second exception* is much more general in nature and allows any entity to reproduce and use legally accessible works by extracting text or data, provided that such activities have not been expressly prohibited by the copyright holder of that work.

4. Conclusions

If we analyze both the European and national legislation, we come to the conclusion that the Romanian legislator has implemented the European directives by aligning the Romanian legislation with the European one both in the sense of copyright protection and with regard to those exceptional situations aimed at restricting the use of copyright.

We consider such exceptions absolutely necessary, given that the protection conferred by the legislator on copyright cannot be absolute. Moreover, such situations of restriction of the exercise of copyright, regulated unitarily and internationally, could also lead to the restriction of the situations in which certain authors of works consider themselves harmed or prejudiced in their rights.

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