# LEGAL POLICY WHEN WORKING WITH DETECTION SYSTEMS OF BORROWINGS IN RUSSIAN FEDERATION

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**Abstract**

*The article deals with modern legal and regulatory aspects in the field of copyright protection with the help of borrowing detection systems.*

**Keywords:** *regulatory and legal aspects, copyright, Antiplagiat system*

In classical interpretation the law in the Russian Federation is a set of official legal acts of an established sample and objectively expressed form, which can be presented in the form of bases, decree, code, charter, instruction, etc. It is adopted in a special order by the legislative authority and expresses the state will on the most important issues of social development, has the highest juridical power, i.e. the supremacy over other normative legal acts (decrees, court judgments, regulations, etc.) and contains legal norms on crucial aspects of public life.

The source of the law is a normative legal act – an official document, created by the authorized state body and adopted in an established order, which contains obligatory rules of conduct. Normative legal acts differ in their content, by the body that issued them and by the procedure of adoption. The principle provision among normative legal acts belongs to the law.

All other regulatory legal acts should be based on laws and should not contradict them. The purpose of the law is the establishment and distinct determination of relationships among individuals, as well as human relations with society. The law creator aims to give a man as much freedom as not to limit other's freedom.

Thus, the basic technology of detection of borrowings must comply with the legal framework adopted in the Russian Federation and must not violate the author's rights of community members.

**The technology of detecting of borrowings is the integration of forms, ways and methods and processes of work with databases of electronic platforms and systems which contain the most complete collection of author's works in electronic form selected with the help of the software "Antiplagiat" on the subject of following the rules of correct citing.**

The criteria of correctness of citing are correct borrowings and correct matches – both terms are acceptable today which are used during expert rating and complement each other.

**By correct borrowing we understand today borrowing of text fragments according to the rules of citation [1].**

To the correct matches we refer the works of the author of the analyzed text, names of publications, conferences, private and juridical persons, terminology and fixed expressions that are accepted in this sphere of science, etc.

The next important aspect according to which the work of the system "Antiplagiat" is built is the recognition of the author's rights who has been cited. Let's consider this issue from the point of legislative components in more details.

**The term "white citation" is met nowadays. The citation of so-called "white sources" is meant by it.** Laws, regulations, document templates, sayings, definitions, historical documents, etc. can be related to them. All this significantly increases the percentage of the originality of the text.

**The next important legislative component is the copyright law which implies an individual and collective intellectual property.** It is certificated by patents, contracts, certificates and other normative and legal documents of the established form, protected by legislative acts of Russian and international law which brings the author a definite income, in case of using the product of intellectual property by other physical or legal persons. The system "Antiplagiat" is aimed to legalize and regulate the process of market intellectualization of the Russian educational segment. The analyses of the work which has been carried out since 2005 allows to make a conclusion that such approach lets bring education in the country into much more higher and objectively legislative level in the question of copyright protection.

**The normative legal set of documents is given to educational institutions by the Ministry of education and science of the Russian Federation.** However, in the process of law-making of different territorial subjects of RF including regions, urban districts, participation of the regional and city council deputies, educational institutions, local acts are adopted, obligatory for fulfillment, both by educational structures and their staff members.

At universities the Scientific Council has the right to accept a number of documents only in accordance with basic requirements of the Law of the Russian Federation "On Education". But concerning the protection of the intellectual property of the product of student's mental activity, here, unfortunately each university is trying to work out its own technology independently.

One of the most important moments of innovative activity of each scientific community including educational organizations is the protection of intellectual property. That's why it is the priority for each self-respecting educational organization to obtain patents and certificates for worked out and time-tested scientific research. The absence of rights on discovery today means the loss of intellectual product itself. So it is essential to cover the whole process of intellectual labour at high school by the patent system, beginning with the first initial stage and ending with the last one, final. Consequently, intersection of unfair competition is the primary task for the owners of the intellectual property: states, schools, higher educational institutions, scientific communities, etc. Today there is a state patent protection of intellectual property in industry, business practices, scientific discoveries, but it's worse with the protection of creative works in educational organizations. [2]

**According to the legal framework of the Russian Federation legal liability of subjects of education in the detection of incorrect borrowings can be of three types:**

1. **Article 1251 of the Civil Code of RF** says that in case of violation of personal non-property rights of the author, their protection is carried out, in particular, by recognition of the right, restoration of the situation, which existed before the violation of the right, suppression of actions that violate the right or create the threat of its violation, compensation of moral damage, publication of the court decision about the violation.
2. **Article 7.12 of the Administrative Code** says that violation of copyright for the purpose of getting income entails the imposition of administrative fine for individuals from 1500 to 2000 rubles with confiscation of pirate copies of works and phonograms.
3. **Part 1 of the article 146 of the Criminal Code** states that if the assignment of the authorship (plagiarism) caused major damage to the author or other right holder, then it is punishable by the fine of 200 thousand rubles or in the amount of salary of a convicted person for the period up to 18 month, or mandatory work for a period of 180 up to 240, or arrest from 3 to 6 months.

Based on the mentioned above, it is appropriate to draw the following conclusion. Illegal acts of constituents of high school entail administrative responsibility only in case when the purpose of plagiarism is getting income. **Criminal liability is incurred if the established evidence base is the fact of causing major damage.** In modern judicial practice, in our opinion, there is not completely justified practice to recognize that the plagiarism in scientific works (such as dissertations) is not connected with the purpose of getting income and does not cause moral or material damage, consequently, appropriation of authorship on scientific or educational work can only entail civil responsibility. However, if to trace the consequences of this act in practice, it becomes clear that the

consequences of plagiarism bring not only destructive morally-ethical aspect for the victim but also significant material and work-related losses which become the reasons of administrative mobbing and bulling that can have very harmful consequences for the author's personality in general. That's why, the legislative framework must be constantly improving in this area and finding actual and practice-oriented solutions in judicial practice, which are based on the analyses of real consequences**,** committed by an intellectual pirate.

Today, if to follow the rules of legislation of RF, the most effective way to protect copyright is moral damage compensation. **The algorithm of work in case of detection of plagiarism** on somebody's work can be the following:

1. **The statement of claim for moral damage is written into relevant organs (court). But it is important to know such fact which is considered one more gap in our legislation. The tax code of RF does not remit from paying the state fee, so administrative and criminal liability for the plagiarism in scientific and educational works does not occur. But in its turn to go to court for the protection of the copyright in civil order you must pay a state fee (for filing the statement of claim). Indicated problems significantly reduce the chances of applicants for success and the desire to defend your moral rights in court.**
2. **We may bring the literary pirate to disciplinary responsibility and moral condemnation. However, as practice shows, such measures do not stop intellectual pirates, and disciplinary liability occurs very seldom and doesn't entail serious consequences.**

The way out of this situation, in our opinion, is in the following. At first stage it is necessary to strengthen the administrative liability for the intellectual piracy. The control for the content of scientific works must be tightened at the state level. For this reason it is appropriate to carry out inspections on the subject of borrowings in the systems like "Antiplagiat", then by the experts of dissertation committee and expert board of State Commission for Academic Degrees.

Negative attitude towards plagiarism should be educated from the school bench. The students who already have the skills of work with such systems, basic knowledge of legal and regulatory part of the legislative framework of RF on this issue should come to the universities. Such approach will allow to create a legal vision of criminal liability in our society in cases of necessity. Secondly, it is important to stiffen the disciplinary responsibility for plagiarism in course papers, final graduating works, articles, which can be done in the form of reprimand or severe reprimand, or the expulsion from high educational institution, including postgraduate or doctoral studies. Detection of incorrect borrowings in the text of the dissertation in the amount exceeding more than half of the author's text, in our opinion, must serve as a compelling reason for the deprivation a person of the academic degree of a candidate or doctor.

Such approach will allow significantly raise the prestige of education and scientific research in general, will serve the ideal for the development of progress and harmonization of society.

**Plagiarism which is discovered in the text of dissertation must also be a sufficient condition for the deprivation a person of the academic degree of a candidate or doctor. The offense which is stipulated by the article146 of the Criminal Code of RF "Violation of copyright and related rights",** despite the relevance, hardly can be called an ideal criminal-law norm. It was noted in juridical literature that from the moment of the establishment of this norm, authorities of preliminary investigation and inquires turned out not to be ready to investigate crimes, related to the violation of author's rights. They were not ready to investigate such crimes even during the period of the previous legislation. One of the reasons of such practice was the fact that investigators had a weak theoretical training and could not study properly the regulatory acts, related to regulation of relations, arising in connection of creating and using of copyright objects.

Recent statistics show the increase in the level of crime, related to the violation of copyright and related rights. However, experts note that in spite of the significant increase in number of crimes of this category, the effectiveness of fight against them continues to remain at a low level. **The courts hear only 2 % of the total amount of cases and almost 98 % are terminated at a preliminary**

**stage of the investigation.** The quality of application of criminal law norms in cases of violation of the author's rights remains very low.

**The problem of the law.**

In our opinion, the reason of such situation remains the same. In qualification of crimes, related to the violation of author's and related rights, not enough attention is paid to the civil theory (the science of the civil law). Despite the fact that the article 146 of the Criminal Code of RF directly implies what is, for example, the assignment of authorship or who should be considered the copyright holder, application of civil law norms without their deep understanding leads to the wrong conclusions. It is referred both to the qualification of the act from the side of the law-enforcement agent and to the construction of the offense from the side of the legislator.

**Norms of the Criminal and Civil Codes of RF.** As the justification of such conclusion, let us address to the analysis of the criminal norm and then to its legal and doctrinal interpretation. According to part 1 of the article 146 of the Criminal Code the appropriation of the authorship (plagiarism) – if the act caused a major damage to the author or other right holder, it is a criminal offense. In this regard it requires correct understanding of what is the appropriation of the authorship, how to determine a major damage, who is considered the author or the right holder.

Let us pay our attention firstly to the attribution of the authorship. The authorship may arise only in case when there is the object of copyright – a piece of work or the object of related rights. At the same time we should take into consideration that these objects are referred to the results of intellectual activity, concerning which different by its nature subjective rights appear. In particular, we can speak about the exclusive right which is the property right and also personal moral and other rights (art. 1226 the Civil Code RF). **The authorship should be regarded as the subjective right – a legally enforceable opportunity to be recognized as the author or creator of work.** The peculiarity of such right is manifested in the fact that the author's refusal is insignificant and the subjective right itself is inseparably linked with the author's personality and it cannot be alienated or transferred. Only exclusive rights can be transferred (p.1 art. 1265 Civil Code RF). In fact it means, when it comes to the right holder, the succession in the form of transfer from one person (legal predecessor) to the other (successor) appears. In this case the legal predecessor is the author and the successor is the right holder, the transfer of the subjective rights is allowed either on the basis of inheritance or on the basis of the contract of alienation of exclusive rights or a license contract (art. Art. 1234-1235 Civil Code RF). It is important that in the order of succession the right holder assumes only property (exclusive) rights. Personal moral rights, including copyright, do not come to the right holder as the successor. Then we need to admit that p.1 art. 146 the Criminal Code of RF is formed incorrectly as it focuses the law enforcement agent on detection of damage not only to the author but to another right holder. It is obvious that provisions of this norm must be corrected in one of the two directions: either by exclusion from the disposition of norms of reference to another right holder, or by excluding the reference to the appropriation of the authorship (plagiarism) as the basis of the liability and introduction instead of this indication on the violation of exclusive rights.

**What is considered plagiarism? In evaluating of the offense it is necessary to come not only from the fact that a guilty person proclaims himself the author of someone else's creative work, publishing it completely or partly under his name, as it follows from the explanations of the higher indicial bodies and criminal law doctrine.** It is also necessary to connect the attribution of the authorship as an illegal socially dangerous act with the establishment of the fact of illegal borrowing of legally significant elements of another piece of work, published or released earlier.

Understanding of what is considered plagiarism needs to be clarified. For example, it is noted in literature that plagiarism should also be recognized as the publication by the guilty person of someone else's work anonymously. It is hard to agree with it from the perspective of the civil law theory. In determining the fact of publication of someone else's work anonymously without the author's consent, we don no speak about attribution of the authorship (plagiarism).Here absolutely another by its nature subjective right of the author is violated, which is different from the authorship right – the right of the

author to the name, that is the right of the author to use or allow to use his work under his name, pseudonym or without inclusion of the name.

**The definition of damage.**

Insufficient evaluation of civil law theory and norms of civil law make the approach of the legislator controversial to the question of determining the size of damage. So the supplement to the article 146 of the Criminal Code of the Russian Federation states that the act is recognized as committed in a major size if the cost of copies of works and phonograms or the cost of rights on the usage of objects of copyright and related rights exceed 100 thousand rubles, but at a larger size is 1 million rubles.

**Concerning world agreements related to the protection of an intellectual property, the most significant today are:**

1. **Paris convention for the protection of industrial property**, adopted in 1883 and came into force on the 7th of July 1884, the last edition was adopted in Stockholm in 1967 (Russia is a participant of this convention)
2. **Bern convention on the protection of literary and fictional works,** adopted in 1886, the last edition was in 1971 (Russia joined it in 1995)
3. **International (Rome) convention for the protection of performers, producers of phonograms and broadcasting organizations,** adopted in Rome in 1961 and came into force on the 18th of May in 1964 (Russia joined it on the 20th of December 2002)
4. **Treaty on intellectual property in respect of integral microchips (Treaty WIPO),** adopted in Washington on the 26th of May in 1989 (Russia didn't join this treaty)
5. **Trade related aspects of intellectual property rights – TRIPS.** They are the documents protecting intellectual property in condition of globalization of the world trade, the developers of which are the World Trade Organization (WTO), World Intellectual Property Organization (WIPO) and other international organizations.

   The treaties we are considering are the basis of the world trade system. The article 7 states that "the protection and enforcement of intellectual property rights should contribute to the technological progress, the transfer and sharing of technologies, to the mutual benefit of producers and users of technological knowledge, contributing to social and economical well-being and to the achievement of balance of rights and obligations".

   Based on TRIPS all international legal regulation in the field of intellectual property is built nowadays. Countries, included in WTO, are recommended to implement more extensive protection of intellectual property in their national laws if it doesn't contradict the provisions of the treaty. It should be noted that this recommendation is of not obligatory character.

   The term "intellectual property" covers copyright, related rights, trademarks, geographical indications (in Russian juridical practice the term "the name of the places of origin" is used), industrial samples, patents, topologies (topographies) of integral microchips, confident information.

   The treaty is based on the existing international conventions and other agreements among countries –WTO members, that's why TRIPS contain norms of reference to Paris convention for the protection of industrial property, Bern convention on the protection of literary and fictional works, International (Rome) convention for the protection of performers, producers of phonograms and broadcasting organizations, Treaty on intellectual property in respect of integral microchips. The significant fact is that according to TRIPS it is necessary to provide foreign citizens from WTO members with the national regime in the sphere of intellectual property rights and also with the most favourable regime not to admit discrimination towards them.

   Paragraph 2 of the article 9 TRIPS states the following: "the protection of the authors' rights must be spread to specific expressions, but not to ideas, procedures and methods of work or

mathematical concepts". The particular article is devoted to computer programs and the data compilation.

6. **Computer programs** (both the original text and the objective code) are protected as literary works according to Bern convention.

Data compilation and other information in machine-readable or another form which on the reason of selection or classification of its content comprise the result of creative work which must be protected in their own right. Such protection is not applied to the data or information, doesn't refer to the copyright, existing in the data themselves or the information.

It should be noted that the article 25 TRIPS sets the rules for granting and use of patents, which are given for any inventions regardless of whether they are the product or the method in all field of technology provided they possess novelty, involve an inventive level and are capable of industrial application. The exclusive rights which the patent owner possesses are clarified in the treaty. If the object of the patent is a product, the owner has the right to prevent third parties without the owner's consent from creating, using, offering on sale, selling and importing the product for these purposes. If the object of the patent is a method, the owner has the right to prevent third parties without the owner's consent from using this method as well as implementing the actions on usage, offering on sale, selling or importing the products which were directly obtained by this method. The patent owners have the right to transfer the right to the patent, bequeath through inheritance and conclude licensing contracts.

It should be noted that the establishment of the rules and conditions of licensing practice still remains the privilege of the national law. Exceptions are some kinds of licensing practice or conditions, referred to the rights of intellectual property that restrict competition and can have an adverse effect on trade and hamper the transfer and spread of technology. The treaty doesn't impede the members of WTO to accept appropriate legislative measures on prevention of such practice. The advantage of TRIPS is that the country-members of WTO are obliged to provide in their national legislation mechanisms for the protection of national and foreign owners' rights up to the criminal penalty for intentional actions, related to trademark forgery and infringement of copyright in commercial scale. The punishment can include an imprisonment, a fine, as well as arrest, confiscation and the destruction of the infringing goods and tools that were used in the committing of this offense.

**It should be mentioned that the International Treaty on the protection of intellectual property in Russia has become widely used only after joining WTO.**

**Speaking of such notion as "the author's right" when using the system "Antiplagiat" we cannot but say about the Federal law "On personal data" 27.07.2007 N 152- FL,** without which the very concept we are considering loses its relevance.

A modern legal framework concerning the technology of detecting of borrowings is now at the stage of evolution and sometimes contains contradictory documents that are opposed to each other. So, according to the recommendations of the Ministry of education of the Russian Federation a comprehensive assessment of the texts of dissertations should be conducted. In this case not only a computer verification (with the help of the system "Antiplagiat" and any other system) is carried out, but also the expert analysis of the presented work is held.

However, there are some aspects:

1. Creation of the system of verification of the borrowed material usage without reference to the author and (or) the source of borrowing is related to the authority of the educational (scientific) organization, on the basis of which the dissertation council functions and is implemented in an initiative order.

   The system of detection of illegal borrowings (so-called "Antiplagiat") has neither any relation to the Ministry of education and science of the Russian Federation nor to the Highest Attestation Commission: it has been worked out in the initiative order and didn't come through any certification or accreditation under the Ministry or the Highest Attestation Commission. The usage

of such programs is realized by citizens and organizations independently and the question of payment for the usage is established by the right holders – private persons. [3]

It is impossible and illegal to make conclusions about the quality of a scientific research only by the results of computer verification. The recognition of the "fact of plagiarism" can be done only in court.

2. The Ministry of education and science of the Russian Federation and the Highest Attestation Commission work with appeals of citizens and organizations concerning the questions of possible illegal borrowings in established by the legislation procedure. Received appeals are directed to the dissertation counsel, where the defense took place, for the evaluation of the facts of illegal borrowings, indicated in the appeal.

The conclusion of the dissertation counsel is considered by the relevant Expert committee of the Highest Attestation Commission, also by the Presidium of the Highest Attestation Commission and only after passing these stages it is possible to make a decision from the side of the Ministry.

3. The question of the groundless grating of academic degree of a candidate or a doctorate degree can be considered exclusively on the basis of a complex analysis of a dissertation, including the checking of keeping the formal procedures of defense and evaluation of the actual results of the research.

People who were unduly awarded by degrees or without the observing the procedures of discussion and making a decision, could be deprived of their degrees by the decision of the dissertation counsel at the meeting the defense took place or by the decision of the Ministry of education and science of the Russian Federation.

The legislative contradictions are also observed in the following. The provision on the award of degrees states that the dissertation applicant must refer to the author and (or) the source of borrowing of materials or selected results. [4]

Using the results of scientific works in dissertations, made by the dissertation applicant individually and (or) in co-authorship, he must mention this fact in his dissertation.

Consequently, if the dissertation counsel or the Highest Attestation Commission established that someone else's material was used by the dissertation applicant without references to the author or the source of the borrowing, this applicant is deprived of the right of the defense.

The verification in such system for schoolchildren is not obligatory, but of a recommendatory character.

As for the training students in Bachelor's or Master's programs, in programs which prepare specialists, the situation here is more specific. There is **an order of the Ministry of education and science of the Russian Federation from 29.06.2015 N 636 "On establishment of the order of the procedure of state final attestation on educational programs of higher education – Bachelor's or Master's programs, specialists' programs"** which says that the texts of final qualifying works, except the ones which contain the state secret, are placed in electronic library system of the organization and checked on the amount of borrowings.

The procedure of the text placement in electronic library system of the organization, checking on the amount of borrowings, including complete identification of unauthorized borrowings, is established by the organization itself. The access to the texts of final qualifying works must be provided according to the legislation of the Russian Federation, taking into account the seizure of industrial, technical, economic, organizational and other data, including the results of the intellectual activity in scientifically- technical sphere and measures of implementation of professional activity, which have actual and potential commercial value due to uncertainty to third parties according to the decision of the right holder.

Set forth above is a clear confirmation of the necessity, the relevance and importance of the usage of the system "Antiplagiat" in education. In addition, analyzing the provisions of academic counsel's

work in RF, in the list of documents which are required for the procedure of defense, a certificate of the final originality of the text is a prerequisite for admission, which as a rule has a similar to an expert opinion form and is approved in the form of a local act of an educational institution.

**Higher educational institutions nowadays establish the threshold values of permissible limits of the originality of the text (minimum and maximum) in percentage independently.** However, a unified analysis of organizations which work with programs "Antiplagiat.ru", "Antiplagiat.vuz", etc., revealed that the threshold value over 70% is an optimal for confirmation of the authorship of the work, and according to the recommendations of the Russian state library the sufficient percentage is 70 %.

However, educational institutions independently increase the percentage in relation to Master's dissertation or final qualifying work of a specialist up to 85 %, 90 % for articles and more than 91 % for candidate and doctorate works.

That's why we propose a universal formula for calculating the percentage of the originality of the text, which then can be compared with the originality, given by the system, which works on the antiplagiat platform.

The maximum percentage of final evaluation of originality of the texts that were analyzed by us is:

1) 95,75% - for candidate dissertation
2) 96,06% - for doctoral dissertation

The minimal percentage of originality of dissertation (which has been defended successfully not so long ago) we have fixed was 12,86%.

Based on the above given materials, it is appropriate to offer a logical question, which every author, who wrote a piece of work, poses to himself: "What percentage of originality must be in the work and how to calculate it independently before checking up in the system "Antiplagiat"?"

Having analyzed the testing systems of checking originality in percentage presented on the educational market today, we have come to conclusion that we can do it with a help of the following algorithm:

1. There are certain requirements, volume standards for writing essays, abstracts, articles, final and course works, master's and candidate's, doctoral dissertations or other works, which are contained in recommendations to them. That's why the author can easily define the amount of printed sheets of work by the number of the last page of his publication, including the list of literature and bibliography. So, the first variable of our formula is chosen, which we call – **the total amount of pages in the work**.
2. According to the main feature of proportion the total amount of pages in work equals **100% of the originality of the text**.
3. As such notion as "white" or "correct" (that is allowed) citation is introduced into terminology of the originality of text, to which we refer publicly available documents (laws and other regulatory acts, the names of organizations, historical documents, supplements, etc.). Consequently, the author himself with a slight error can calculate the volume of allowed citation summarizing the amount of pages of bibliography, amount of pages from his own earlier published articles, monographs and other publications, cited in the new work and other components of this notion. Let's call this variable – **the total amount of pages of correct citation in the work.**
4. As we need to find the total amount of pages with correct citation in the work in percentage, we will define the required variable – **x%.**
5. Then we make a proportion and calculate **the percentage of correct citation in the work:**

$$x\,\%\,(\quad the\ total\ number\ of\ pages\ of\ correct\ citation\ in\ \%) = \frac{\text{the } total\ number\ of\ pages\ of\ correct\ citation}{the\ total\ number\ of\ pages\ of\ the\ work} X\ 100\%$$

**Then the percentage of correct citation, obtained in the result of calculation according to our formula, is subtracted from 100%.**

**The maximum percent of the originality of the analyzed work is set in a such way.**

6. After this the work is processed by the system "Antiplagiat", which automatically gives the results of checking.
7. The last stage is to compare the results obtained by the author himself and the result which was given by the system.
8. Such approach allows to increase the objectivity of the analysis of testing the originality both by the author himself and by the experts.

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