AUTHOR'S RIGHTS AND E-LEARNING FROM THE PERSPECTIVE OF THE EUROPEAN INTEGRATION

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Abstract: *Related to reality, law cannot make abstraction of the practical needs to create and enforce the legal norms. Starting from the study of singular cases, the legal theory is verified by means of the strategies of economic-social development. The quantitative methods in the legal scientific research and in the legal practice are used nowadays for theoretic argumentation, based on the experience acquired as a result of the study of casuistry.*

Key words: *author's right, copyright, modern methods, high education, e-learning.*

1. General Notions of Computer Science and Law

Related to reality, law cannot make abstraction of the practical needs to create and enforce the legal norms. Starting from the study of singular cases, the legal theory is verified by means of the strategies of economic-social development. The quantitative methods in the legal scientific research and in the legal practice are used nowadays for theoretic argumentation, based on the experience acquired as a result of the study of casuistry. Jurimetrics is, in the Western countries, the branch which leaves from the particular, singular cases to decipher and explain the legal phenomenon, in order to suggest decisions and to prognosticate.

The legal computer science offers quickness in proving the decision and it thus improves the decisional process. It is undisputable the fact that the computer use

has caused the development of some trends, such as: elaboration and systematization of legislation, legislative record, record of the decisions of legal practice, storage and systematization of legal scientific information, forensic records.

Starting from the view that "any reserve, any preconception concerning the use of quantitative methods in law should be constantly removed", we observe that the legal education cannot be placed outside the technical conditions offered by the information systems.

2. General Presentation of the Author's Right System within the Copyright System

The name of *copyright* is equivalent to the notion of **author's right.** The first act acknowledging the authors' exclusive rights to print their works and to authorize

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their printing is **The copyright act,** promulgated in England in 1709 and known under the name: **Statute of Anne.**

The copyright system is less or more different from the continental system, but its most characteristic form is represented by the US legislation. The main characteristic of the system is given by the registration of the right in the Copyright register, unlike the European system where the work is protected without fulfilling any formality. In 1955, the USA has signed the Universal Copyright Convention of Geneva. Thus, the distinction from the European law lies in the protected interest and the pursued aim. After the adhesion, the importance of registration has diminished, becoming optional, just as the deposit. The conditions that a work should meet in order to benefit from the copyright protection are the same as those required in the continental system:

- the work should be the result of the author's creative activity – originality;
- the work should have a concrete form of expression, which may be perceived by the human senses – expression;
- the work should be liable to be brought to the public attention – publishing.

The continental system establishes the author's rights over the original works of literary creation in the literary, artistic and scientific field, irrespective of the creation method, the concrete way or form of expression and independent of their value or destination. The works may be: original works and derived works, literary works and scientific works, works of plastic or applied arts, musical works, cinematographic works, audio-visual works, computer programs, connected rights, titles, folklore and data banks.

Thus, we conclude that in the field of author's rights there are two great legal systems, the European (continental) one and the copyright one. The European Union has the role to maintain the coexistence of these legal systems. The main difference between them lies on the one side on the emphasis set on the author's interest in the European system and on the one set on the industry interest in the American system, and on the other side on the difference between the material support for the work and the work itself (fixed on this support).

3. Information and Communication Technology – ICT, Applied to Teaching, Learning and Assessment

The information and communication technology – ICT is used in the educational area first of all as an instrument for increasing productivity: data collection, storage, handling, electronic mail, Internet access, word processing, etc. For the legal field, the effort to stay in touch with the legislation in force is one of the main reasons for using computer science.

On the other side, the relation between the so-called "triad" – teaching, learning, assessment, and computer science is undisputable. Therefore, the central elements of the educative process – teaching, learning, and assessment imply some skills for teachers and students which should allow the successful use of technology in the educative process.

A particular aspect appears in the field of law: the legal data archives, used both by teachers and students, with the following components: legal dictionary, library of normative acts, archives of cases (jurisprudence), collections of legal doctrine, etc. These ones make up a database at inner level, and also at European level.

4. New Forms of Distance Learning. E-learning

Teaching and discussing the themes may be done in virtual, sophisticated media, which facilitate all communication forms – synchronous and asynchronous – including the videoconference.

Learning and assessment adapt to this evolution where the electronic computer has a main role.

Here is the presentation of a work which pleads for the new "e-learning" concept, as the most modern form of teaching, learning and assessment. "E-learning is a reality already present in all the forms and at all levels of education: the high schools in Romania use the integrated platform for computer-assisted teaching - AEL, in universities there are used more and more means offered by the information and communication technology, the distance learning is implemented on e-learning platforms. The present learning patterns offer a greater autonomy, encourage the active learning and offer students an important role in creating materials, in communication and in taking part in the teaching-learning process. The book gives us a large view over the concrete ways of using the information tools in order to prepare and teach the lesson in a modern way and in order to learn individually as efficiently as possible. The reader shall find out how he/she can locate the necessary information, how to organize and assembly it with the help of the adequate tools, and then to publish it on web or to use it in class".

An e-learning system (for distance or virtual education) consists of a planned teaching-learning experience, organized by an institution which supplies immediately materials in a sequential and logical order in order to be acquired by students in their own way, without obliging to co-presentation or synchronicity. The mediation is done by various means, from material on disk or CD (eventually by mail), to technologies of sending the contents via Internet.

The task of education and teaching based on the new information technologies is not to prove that it has immediate results in a competition with other types of educational systems, but to substitute a part of the actual structures with a new, superior spectrum of performances, meeting the inherent changes which occur in culture and civilization.

5. Lifelong Learning

The European Union, through the European Commission, has acknowledged the need of some supportive efforts to provide to the society, as a whole, and to the European citizens, an adequate amount of knowledge, skills and attitudes necessary in the new society, which the conventional educational and training systems are not ready to answer to these needs. The typical forms of education – flexible, open and innovating, have the potential to offer contributions and solutions for the increase in the efficiency of investments in education and research in the new social and economic environment. They may bring education closer to the individual, helping him/her to be permanently prepared for life and society. Education, training, human resources and employment are interconnected and more and more related to the reforms of the national educational systems, from the perspective of the permanent education.

The concern of the European politics for the future education is materialized in the eEurope Action Plan 2005 – an information society for everyone. It acknowledges that the introduction of ICT should be accompanied by the reorganization of the educational structures. It is vital for the development of technological innovations which should serve education in multiple contexts,

observing the social, cultural, linguistic differences. The citizens need new skills in order to adapt to the new lifestyles in the context of changes. The followed development directions are the permanent education and the electronic education. They have been initiated at the European Council of Lisbon in 2000, with the purpose to create the most dynamic and competitive economy based on knowledge, to ensure a sustained economic growth, better jobs and increased social cohesion.

The conferences and forums on the themes of virtual education have identified the following aspects which should be solved:

a) at university level – improving the communication structure in the campus, entering the distance learning in the university chart, improving the study programs for distance learning, ensuring the training of teachers who should teach the distance courses and preparing the adequate teaching materials.

b) at faculty level – harmonizing the classic education with the distance one, developing the educational materials and the web sites, improving the assessment methods, promoting research.

6. Author's Rights and Computer Programs

In the field of computer science, therefore in the e-learning field, there have become visible two means of protection which were possible as such – on the one side, appeal to the protection in fact, based on keeping the secret (enforcing the common law in case of disclosure), or to the contractual protection, and on the other side, appeal to acknowledging a temporary private law. According to the law drawn up by WIPO, the term of *software* or *logiciel* (program) contains both a program allowing the execution of an operation by

the computer, and the related documentation.

The forms of legal protection of the program are the following: protection by patent, protection within the author's right, organization of a specific protection.

The Convention of Munich excludes protection of programs by patenting. It is also claimed that the author's right is conceived to protect the form of idea expression and not the ideas. The programs would no be directly perceptible to the human beings, therefore they cannot be thus protected. Finally, the French law of 1 July 1992 mentions expressly the programs as being protected for a period of 25 years within the author's rights.

At European level, the Council of European Communities has adopted the Directive on the legal protection of computer programs, for the author's lifetime and for 50 years after his/her death.

The WIPO-1978 law stipulates that the protection term is 20 years and it is acknowledged for the original programs, which are the result of the creator's personal intellectual activity.

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