

The copyright fair use in scientific and publication activities

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Introduction. The use of research results, scientific statements, illustrations that come from other authors' publications is a common research practice. It is part of the scientific discourse supporting the reuse and dissemination of knowledge and scientific findings. It should, however, respect the copyrights of other authors' publications and the rules of permitted use within the framework of the so-called permitted use.

Material and methods. The analysis of the principles and limits of the use of material from other people's publications in publishing and scientific activities includes national and international standards in the field of copyright, protection of personal rights and ethics in science.

Results and discussion. In order for individual authors and research centers to legally use previous publications and their elements in their own scientific activities, they should apply the rules on permitted use. These include the so-called right of quotation, the statutory license for scientific and research institutions and the so-called reprinting right. The enrichment of one's own publications with excerpts from previous scientific studies and their graphical elements is permitted as long as it serves the purpose of research, clarification, scientific and critical analysis and respects the authorship of the source material. The marking of the source and the author is a required practice also with regard to content that is not protected by copyright but is the result of scientific creation.

Summary. The use of other people's fragments of publications and illustrations within the framework of permitted use does not require the consent of the copyright owner and payment of remuneration for the use, but must take place under the terms and within the limits set by copyright law and take into account the standards of reliable recognition of other authors research and scientific findings. Failure to comply or misapplication of this obligation may result in an allegation of infringement of copyright or personal interest in the form of scientific creation and may interfere with recognized standards of integrity in science.

Key words: fair use, permitted use of others' works, right of quotation, Creative Commons licenses

Introduction

The use of someone else's work is an essential part of scientific research and publication activities of individual scientists and scientific centres. The freedom of research, access to information and expression should be exercised with the respect of the author's economic and personal rights of other authors, standards of reliability in science and publication standards. Copyright law, ensuring exclusivity in the use of works and respect for authorship, provides for

a special mechanism that takes into account the indicated interests and limits the copyright monopoly in the form of the institution of so-called fair use. At the same time, regulations on the protection of personal rights, codes of scientific ethics and guidelines of publishers limit the free multiplication of results, data and scientific findings in their own scientific and publishing activities, which are not covered by copyright protection, but are valuable results of research of other scientists.

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In the case of medical publications, the issue of using fragments of graphic content presenting the results in the form of illustrations (figures, tables, diagrams, photographs) is particularly important. The specificity of such publications, which contain not only scientific content but also, to a significant extent, numerical data, results of tests, trials, statistical data, results of pictorial diagnostics, etc., determines the practice of presenting them in a graphic format which ensures a collective, comprehensive and legible presentation of results. This allows readers to familiarize themselves with the commented issues in a way that facilitates better understanding and verification of research assumptions, research methodology and conclusions.

Material and methods

The principle is that the reproduction of intellectual products protected as works requires, in the light of the Act on Copyright and Related Rights of 4 February 1994 on (hereinafter: the Copyright Act) [1], the consent of the entitled entity and respect for moral rights to the authorship and integrity of the work (Articles 16 and 17 of the Copyright Act).

Consent to use the works is usually granted in the form of a licence. As regards the use in publications of elements available in foreign journals and scientific studies, including illustrations (photographs, graphics, drawings), the liberal Creative Commons ("CC") licenses are becoming increasingly common, especially when making Internet sources available. Individual types of CC licenses are based on the following conditions: acknowledgement of authorship, non-commercial use, use under the same conditions [2]. Often under a CC license, resources are made available in Open Access scheme. Scientific repositories and journals operating in this mode may also determine their own conditions of reproduction (including free of charge). The use of protected content based on the authorized person's consent and on the rules set by him/her does not require an additional (alternative) statutory basis.

An exceptional form of the legal use of works, but of key importance for legal exploitation of works without the holder's consent and without remuneration is the institution of fair use provided for in foreign and domestic regulations (Article 23-35 of the Copyright Act). Some of the forms of a legal use (also called statutory licences) may constitute the basis for the reproduction by individual authors, scientific centres and publishers of content from other national and foreign scientific studies (journals, monographs, reports, databases), including in particular illustrations (figures, tables, charts) what ensures a collective, comprehensive and legible presentation of results. This allows readers to familiarize themselves with the commented issues in a way that facilitates better understanding and verification of research assumptions, research methodology and conclusions.

The key legal tool for fair use which constitutes an international standard and is widely used in scientific and publishing

activities is the so-called "the right of quotation", regulated in Article 29 of the Copyright Act.

According to this provision, "excerpts of distributed works and distributed plastic, photographic or small works may be quoted in works constituting an intrinsic whole to the extent justified by the purposes of quotation, such as explanation, polemics, critical or scientific analysis, teaching or the or the rights governing a given kind of creative activity".

Copyright law also provides for a specific form of fair use intended for scientific and research institutions (Article 27 of the Copyright Act). For the purposes of illustrating the content transmitted for teaching purposes or carrying out scientific activities, they may use distributed works in the original and in translation and multiply for this purpose distributed small works or fragments of larger works. In the case of making available to the public works which use illustrated content on the Internet, use is permitted only for a limited circle of persons (learners, teachers or researchers) identified by such institutions.

Medical journals having registered press titles and carrying out publishing activities under the Press Law of 26 January 1984 [4], are beneficiaries of "the reprint right" (Article. 25 the Copyright Act).

On this basis, they can make available for information purposes previously distributed reviews of publications and works and short summaries of previously disseminated domestic and foreign scientific articles.

The results of research and experiments presented in publications in text or graphic form – not protected as works (and therefore not covered by the indicated rules), but having scientific value – may constitute a protected personal good of an individual and be subject to codes of scientific ethics, and sometimes be regulated by publishers' guidelines. This implies an obligation to identify the source and author in order to avoid misleading the reader into believing that certain scientific content and findings come from the author of the text.

Results and discussion

For the proper determination of the limits of fair use of others' publications of scientific and publishing activities, it is of particular importance to clarify more precisely the statutory conditions for the use of the right of quotation, since it constitutes the basic legal tool for the use of works in one's publishing activities. The subject of a quotation may include not only text excerpts from other author's scientific papers, but also plastic, graphic and photographic works, which may include illustrations (drawings, tables, photographs), provided that they meet the requirements of the copyright law.

In the context of the analysis of the requirements of the legitimate quotation, the above-mentioned characteristics of publications in the field of medicine, applicable only to copyrighted works, are important.

As should be noted, diagnostic images (X-ray, ultrasound, images showing symptoms of diseases, intraoperative image, etc.), simple charts made with the use of standard IT tools, standard tables showing statistical data, test results, etc., will usually not meet this condition. Although they may constitute a key element of publications of scientific value, they are not subject to copyright protection, which means that there are no formal restrictions on their reproduction and no obligation to mark authorship. However, this does not amount to freedom to copy such elements, including not only in the finished graphic version, but also the results and data themselves. The obligation to mark the authorship and source in such a case may result from the protection of the personal rights of the original author in the form of scientific creation. Failure to do so may expose the author to a claim of unreliability in science due to appropriation of someone else's research results and scientific achievements.

The author's protection and the right of quotation may, however, apply to graphically developed tables, charts, in which the results, data and statistics are graphically presented, not in a standard and template manner, but individually in terms of selection, arrangement, layout. They may also constitute the protected data base. In rather exceptional cases, this include photographs containing additional descriptions, markers, elements of the individual technique used by the author showing diagnostic methods, treatment results, etc. This type of illustrations and text elements from original sources, protected by the copyright, may be reproduced in own publications and other scientific materials (e.g. conference speeches, lectures) under the following conditions of permitted quotation.

Firstly, the works which includes the illustrations contained or illustrations themselves should have been previously disseminated, which is a characteristic requirement for all forms of authorised use. A work is disseminated if it has been made available to the public in any way with the consent of the author (Article 6 (3) of the Copyright Act). The condition of dissemination is fulfilled by previous publications in magazines, in the form of monographs at home and abroad, placed on publicly accessible websites and on-line repositories, in conference materials, presentations from public speeches. Source texts that are made available only as manuscripts, draft versions, publications only accessible to a closed circle (e.g. by logging in, after payment of a fee, etc.) do not have the status of disseminated works and consequently cannot be quoted, unless with the author's consent. Sometimes electronic scientific texts are formally disseminated, but in practice they are available only in paid databases. Although they could constitute a source of quotation, in practice it is not possible in fact to exercise the right of quotation in the context of free use, due to the limitation of access to such publication against payment.

Secondly, the exercise of the right of quotation requires a literal quotation, i.e. the incorporation of an unaltered fragment of a work or a minor work, and therefore respect for

the right to the integrity of the work. Modification of a text or illustration to eliminate the impression of identity with someone else's publication goes beyond the scope of fair use and may give rise to an allegation of infringement of the integrity and dependent rights of the work. Literal quotations are also important from the point of view of precision in this respect, which is particularly important when quoting results from figures, tables, graphs containing data and numerical and quantitative parameters, etc. As indicated by research carried out in medical journals, almost a quarter of references contain citation errors, including erroneous or problematic data compared to the cited source [5].

Thirdly, the acquisitions made must be easily recognisable, i.e. marked in such a way that the reader can easily see which part of the text of a given author does not originate from him, but is an excerpt quoted from another publication (originating from another author or authors). This is related to the general condition for all forms of fair use in the form of a requirement for authorship marking (Article 34 of the Copyright Act). In the case of a parts of the text being taken over, it is customary to indicate it with a citation mark. It is difficult in the case of illustrations, where the lack of such an explicit mark may, however, be justified by the lack of "existing possibilities" in this respect. Although this does not result directly from the wording of Article 28 of the Copyright Act this condition can be realized by clear, unambiguous and direct marking of the source and the author. Fair use limiting author's economic rights does not exempt from the obligation to respect personal copyrights to authorship, which results from the general rules of using all its forms (Article 35 of the Copyright Act). In this respect, general reference to the sources used at the end of a book or article is not sufficient. The correct form is to place appropriate references in footnotes (in brackets or lower footnotes) or in the form of numbering of quoted fragments or illustrations (figures, tables) with a precise reference in the bibliography to the sources they come from. Maintaining the obligation to indicate cited publications of other authors is additionally important from the point of view of the number of citations, which are important for the assessment of the scientific value of the publication and scientific output.

Fourthly, as long as authors usually respect the three conditions indicated above in the form of the use of the source and the author, they are not aware of another important restriction in the exercise of the right of quotation. It concerns the statutory purposes of using someone else's work, which are: explaining, polemic, critical or scientific analysis, teaching. These objectives are achieved in particular when the reference to a fragment or protected illustration is part of a scientific discussion, review, supports one's own research or views serve to illustrate the text as a reference point for discussion, polemic or criticism, etc. The need to use tables, diagrams, diagnostic and documentary photographs in their original form may be justified, among others, by the need to indicate errors in them,

use them as comparative material, as a basis for continuing or updating data, etc. The permitted reproduction of another person's text or illustrations does not include situations where it serves only to make the work more attractive or to save efforts in collecting, selecting, describing and graphically presenting data and arguments. Although there are no binding guidelines as to the size of the content to be quoted, the permissible scope and nature of the takeovers in each individual case will be justified by the very purpose of the quote. Due to the need to balance the interests of the author of the publication from which the quote comes and the absence of collisions with the normal use of the source material, the scope of the content and illustrations used should not be such that the text in which they are found competes with it and eliminates the need for the reader to familiarise himself with the original source [6].

Summary

When preparing your own publications, which use excerpts and illustrations from other authors publications, should remember the following rules:

1. The basis for the legal use of someone else's publications protected by copyright is the author's or publisher's consent (if he has acquired the copyright from the author) to their reproduction. Such use may take place according to certain rules (on payable basis or free of charge). The basis for the use of other authors's publications may also be the regulations concerning the permitted use of works, allowing for free use of works without the consent of the copyright owner and without remuneration.
2. Permitted use is a statutory restriction of author's economic rights. This means that it cannot be excluded (e.g. in a contract), prohibited or restricted in situations where it is permitted by copyright law. It may also not accuse a person who, within the statutory limits and under the terms of copyright law, reproduces parts or elements of someone else's publications.
3. The basic form of permitted use commonly used in publishing activities is the right of quotation. On the basis of this right, excerpts from domestic and foreign scientific articles and studies may be quoted in one's own publication without permission and without remuneration, regardless of whether such publication will be made available on free or commercial terms. The conditions for permitted quotation are:
 - prior public dissemination of the source publication,
 - literally quoting over and precisely marking the quoted text or illustration and indicating the source and authorship,
 - the specific allowed of permitted acquisitions (explaining, better illustrating one's own views and/or research results, critical analysis of others' scientific findings).
4. Although in many cases illustrations in the form of simple tables or diagrams used solely for the template presen-

tation of research results and/or data are not protected by copyright (the above quotation rules do not apply to them), the requirement to mark the source and authorship should also be respected when using them. Such an obligation comes from the regulations on the protection of scientific creation as an individual's personal rights. According to the current codes of ethics in science, the appropriation of someone else's ideas, research results or content without correctly mentioning the source is treated as a violation of the standards of reliability in science [8].

5. The copyright law also provides for a special form of permitted use for scientific centers, which may use someone else's publications free of charge for research and teaching purposes. Registered scientific journals may use the right of reprinting, limited to reviews of publications and short summaries of distributed domestic and foreign scientific articles (i.e. they do not include reprinting of original articles published in other journals).

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