

# Plagiarism, Intertextuality and Copyright on Literary Works

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*There are many different voice and languages; but there is but one voice of the peoples when you are declared to be the true "Father of your country." [Lat., Vox diversa sonat: populorum est vox tamen una, Cum verus Patriae diceris esse Pater.]*

*Martialis*

## Introduction

The issues of authorship and postmodernism lead to debates in the Hungarian literary and copyright community. The dispute based on the question whether „borrowing” ideas or even passages from other books is mere plagiarism or some form of intertextuality. In 2010 March, after the discussion whether the debut novel by German writer Helene Hegemann (*'Axolotl Roadkill'*) was plagiarism or intertextual mixing, Sigfrid Gauch, another German writer, accused Péter Esterházy, one of the best-known contemporary Hungarian writers of theft saying that the novel *'Harmonia Caelestis'* (2000) [*Celestial Harmonies*] contained entire paragraphs taken from his novel *'Vaterspuren'* [*Traces of my Father*].<sup>1</sup>

“300. My father’s fathering was limited to Sundays. He promised he’d be there by three. Promptly at three, my father’s sons looked at the window. The VW was standing in front of the house. He was in hurry. He was impatient. But he never argued, never even said, Well, well what’s keeping you? After four minutes he just started up the car and rolled ten meters. Another four minutes, another ten meters. Another four minutes, another ten meters. Finally his children caught up, Good day, sir. My father gave a nod, Good day. Where to? To the castle of Spornheim, my father said. The Counts of Spornheim were your ancestors, part of the family tree; John the Second, Count Spornheim-Kreuznach, was the father of Walrab von Koppenstein whose mother way the wife of a ministerial officer, whose sons, since she had no rank, could only be barons; this is the castle we’re visiting today. He also mentioned a bunch of dates, and spun the threads of family relationships all the way to the present. My father’s sons on the other hand, had something entirely different on their minds, namely who would get to sit next to my father and who in the back. The fight for the front seat, which included the application of brute force, quick thinking and lack of character, was until my father roared, That’s enough of that!; this roar was the tip of the iceberg and afterward, there was silence. Anyone, who’d heard that silence will never forget it, ever; memories of a father.”<sup>2</sup>

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<sup>1</sup> Gauch's memoir from 1979 of his relationship with his Nazi father was the first of many post-World War II accounts by the children of war criminals. [http://www.sigfrid-gauch.de/buecher/vaterspuren/Vaterspuren100\\_englisch.htm](http://www.sigfrid-gauch.de/buecher/vaterspuren/Vaterspuren100_englisch.htm)

<sup>2</sup> Excerpt from *Celestial Harmonies*, translated by Judit Szollosy, Harper perennial, 2005

Péter Esterházy comes from one of the wealthiest and most powerful Hungarian aristocratic families, a fact known to everyone in Hungary, even those who have never read a single line written by him.<sup>3</sup> He responded in a German talk show, pointing out that the borrowed texts are placed in a new, individual context. His method is controversial among the Hungarian literary peers, according some opinions Esterházy has introduced and institutionalized a form of postmodernist citation in contemporary Hungarian literature that is in complete disregard to the work, creativity, authorship and emotions of others.<sup>4</sup>

Having a different opinion from the critics, the aim of my further research is twofold: firstly addresses issues of authorship and text creation. I agree with a reviewer of my abstract, this is a fascinating line of inquiry in part because authorship is still quite important within Free Culture and Free Software realms, while it seems like authorship is under some friction and questioning.

Secondly, it focuses to the demarcation between the notion of the "work" and the "text" examining the dichotomy of both terms.

### **Changing nature of authorship**

Authorship has been consistently shaped and formed by the physical world around it. As a rule, copyright legislation in both civil law and common law countries identifies a work's author and its original owner as the flesh-and-blood, natural person who conceived and executed the work. At international level, Article 15(1) of the Berne Convention, the most important international copyright instrument based on the nineteenth century principles, establishes a general presumption of authorship, and consequently initial ownership, for purposes of legal standing:

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<sup>3</sup> Miklós Gyórfy, Everything and Nothing, The Hungarian Quarterly Volume Li, No. 197  
<http://www.hungarianquarterly.com/no159/112.html>

<sup>4</sup> [http://hetivalasz.hu/english\\_arts/who-will-protect-a-text-from-plagiarism-29189/](http://hetivalasz.hu/english_arts/who-will-protect-a-text-from-plagiarism-29189/)

In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner.”<sup>5</sup>

Authorship is more complex than it seems to be. According to Foucault, the “author-function” is not formed spontaneously through the simple attribution of a discourse to an individual. It results from a complex operation whose purpose is to construct the rational entity we call author.<sup>6</sup> There is nothing new under the sun. The thirteenth century Franciscan St Bonaventura had already noted:

„A man might write the works of others, adding and changing nothing, in which case he is simply called a ‘scribe’(scriptor). Another writes the work of others with additions which are not his own; and he is called a ‘compiler’ (compilator). Another writes both others’ work and his own, but with others work in principal place, adding his own for purposes of explanation; and he called a ‘commentator’ (commentator). Another writes both his own work and others’ but with his own work in principal place adding others – for purposes of confirmation; and such a man should be called an ‘author’ (auctor)”.

In the age of the user-generated content, the authorship concept may become more fluid: the distinction between authorship and authority may become more common and the author, by necessity, becomes less of an individual and more of an element of a larger collective entity. Access to works may become the favoured form of transaction, as opposed to the present property-based transactions. There is now intertextuality; nonlinearity; blurring of the writer/reader distinction; multimediality; globalness, ephemerality.

Both the new forms of technology and the extended possibilities to access to work can alter what we understand by the term „author”. It can expand the term to new forms of authorship.

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<sup>5</sup> Paul Goldstein, *International copyright: principles, law and practice*, Oxford University Press, 2001, §5.2.1.1.

<sup>6</sup> Michel Foucault, What is an Author?, translation Donald F. Bouchard and Sherry Simon, In *Language, Counter-Memory, Practice*, Cornell University Press, 1977, pp.124-127, available at <http://foucault.info/documents/foucault.authorFunction.en.html>

## Work/text – originality/copy

It is clear that authorship is increasingly embracing originality. The above-mentioned Berne Convention describes protectable “literary and artistic works” in the most encompassing terms as “every production in the literary, scientific and artistic domain, whatever may be the mode or form its expression. Although the Convention nowhere defines “author” or “work”, the normal standard for protection of literary and artistic works, applied across both common law and civil law systems, is that the work distinctively be the product of its author’s efforts and not copied from some other work or works.<sup>7</sup>

In the both legal systems allow judges and juries to determine originality, scope of protection, etc., however, in the contemporary literary since mid 60s Julia Kristeva began to use the term “text”, parallel meaning with the “work”. According to Kristeva,

“the text is [...] productivity, and this means: first, that its relationship to the language in which it is situated is redistributive [...] second that it is a permutation of texts, an intertextuality: in the space of given text, several utterances, taken from other texts, intersect and neutralize one another”.<sup>8</sup>

My further research suggests the re-evaluation of copyright approach on “work”. Should recognize the “text” as a subject matter of copyright?<sup>9</sup>

## Conclusion

The most fundamental as well as historically the oldest way of infringing copyright is to make copies without the copyright holder’s consent: to make unauthorized copies. However, it is not applicable in case of the challenges of the “text”. According to Sándor Radnóti, the type of the literary motive should be (possibly fraudulent) reworking of the literary influence, the variation, the paraphrase or pastiche of another writer’s work, presented as original.<sup>10</sup> Péter

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<sup>7</sup> Paul Goldstein, op.cit. § 5.1.1.1. A

<sup>8</sup> Julia Kristeva, The Bounded Text, in *Desire in Language: A Semiotic Approach to Literature and Art*, ed by Leon S. Roudiez, New York, Columbia University Press 1980, p.36.

<sup>9</sup> See in details Robert H. Rotstein, *Beyond Metaphor: Copyright Infringement and the Fiction of the Work*, 68 Chi.-Kent L. Rev. 725.

<sup>10</sup> Sándor Radnóti, *The Fake. Forgery and its Place in Art*. Rowman & Littlefield, Lanham MD, 1999. p. 181

Esterházy's *'Harmonia Caelestis'* even introduces, as a literary manifestation of and a literary response, a new era in cultural conditions, reaching beyond postmodernism. One of the main characteristics of Esterházy's art is his devotion to implicit quoting. Intertextuality in historical writing always implies the question of authenticity. In this case the enormous intertextual network mediates between history and fiction without reducing the one to the other. Though the interweaving of intertextual chains makes it no longer so much a question of the validity of documentary sources as of different worlds brought about by different languages. Regarding the relation of imagination and the materiality of history, the novel, on the one hand, inserts historical elements into fictional worlds and vice versa, on the other, in its vast intertextual apparatus it effaces the difference between original and "lent" texts, verifiable and forged historical writings.<sup>11</sup>

Esterházy's writing method just like a kind of play with the sentences. Let me bearing in mind another "sentence-player", Jorge Luis Borges, and his fictional short story Pierre Menard, the author of *Quixote*. Since Menard is not credited as a translator, but as an author, this establishes the possibility of equating translation to a creative process that results in a unique text, an original, ultimately eliminating the hierarchical divide that exists between author and translator, original and translation. This concept of translation provides the theoretical basis for linking translation to text analysis since both involve the re-creation of a text, and also presents an opportunity to develop a heightened understanding of what is the role of readers and writers as co-creators of literature. In accordance with Borges' conclusion:

"Menard (perhaps without wanting to) has enriched, by means of a new technique, the halting and rudimentary art of reading: this new technique is that of the deliberate anachronism and the erroneous attribution. This technique, whose applications are infinite, prompts us to go through the *Odyssey* as if it were posterior to the *Aeneid* and the book *Le jardin du Centaure* of Madame Henri Bachelier as if it were by Madame Henri Bachelier. This technique fills the most placid works with adventure. To attribute the *Imitatio Christi* to

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<sup>11</sup> Sandor Hites, *Reluctant Supplements: Historical Novel, Historiography, and Historiographical metafiction*, *Hungarian Studies* 15. No. 2, 2001, 225-226pp.

Louis Ferdinand Céline or to James Joyce, is this not a sufficient renovation of its tenuous spiritual indications?"<sup>12</sup>

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<sup>12</sup> Available at <http://www.coldbacon.com/writing/borges-quixote.html>