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# Academic plagiarism from the perspective of copyright

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ABSTRACT

In the academic world, there is increasingly a proliferation of literary cases of plagiarisms of intellectual creations that are of a scientific, humanistic, technical, or educational nature, at all levels, on the part of professors and researchers as well as students pursuing their doctoral degrees. There is no doubt that this type of unethical conduct is reprehensible, but within the legal field an analysis from the perspective of Copyright Law is required in order to learn about the consequences or legal sanctions. It is necessary to know what type of right is affected, both of a personal and patrimonial character; how to establish standing for a legal action; what kind of tests are required to verify the materialization of plagiarism; what are the consequences of the usurpation of authorship, and also what mechanisms or actions can be implemented by universities or educational institutions to discourage such practices that affect the entire community.

***Keywords:*** Plagiarism, copyright, moral right of atributtion, usurpation, reproduction right, transformation right, original work, derivative work.

*«(...) Plagiarism, in my view, is an easier concept to feel than to express: we all perceive easily that a work ... is inspired by another work, but when they determine if that copy is a punishable crime, the problem is exacerbated (...)».*

—Antonio Castán

Over the recent five years several news articles of plagiarism within the academic community have been published, both by renowned researchers, teachers, and education officials as postgraduate students of doctoral programs. The cases of Sealtiel Alatriste, Boris Berenzon, Juan Antonio Pascual Gay, Rodrigo Nuñez Arancibia, and Frank Walter Steinmeier [1] , among others, have been outrageous and without disdaining the unethical aspect that the dishonesty and discrediting this represents, invites us to reflect on the subject. Such cases have been classified as theft, fraud or misappropriation, so we must take into account the figure of copyright to respond to this kind of behavior which are certainly common but much more prevalent within the fields of teaching and research.

There is no doubt that every person must be guaranteed the exercise of their cultural and educational rights, both to learn and to express themselves, but with full respect for creative freedom so that universities and research centers and teachers must provide certain mechanisms that inhibit the presentation, publication or distribution of third party texts as their own works, since they are acts adversely affecting the work of others lacking any intellectual value whose readings generate a false reality as to its origin, content and authorship , with significance in the community and with profound social impact.

In this sense, the plagiarized material constitutes a text without scientific rigor and without contribution to science, creates uncertainty on

1Case of Sealtiel Alatriste, Coordinator of Cultural Diffusion of the UNAM, published by the magazine Proceso on February 10th,2012,http://www.proceso.com.mx/?p=298453.
Case of Boris Berenzon from the Faculty of Philosophy of the UNAM, published in the Jornada on August 16th, 2013 http://www.jornada.unam.mx/2013/08/16/sociedad/034n1soc
Case of Juan Pascual Gay, investigator from San Luis College, published in the Universal http://www.eluniversal.com.mx/tag/juan-antonio-pascual-gay
Case of Rodrigo Nuñez Arancibia of the Faculty of History of the University of Michoacan, published by the Universal on August 4th, 2015 http://www.eluniversal.com.mx/articulo/cultura/letras/2015/08/4/academico-nunez-arancibia-confiesa-sus-plagios
Case of Frank Walter Steinmeier published by ABC on September 30th, 2013 http://www.abc.es/internacional/20130930/abci-aleman-plagio-201309292002.html

the accuracy of what is indicated by its content and mistrust of those who says it is true, causes deception and hides information, functions as an instrument for counterfeiting of certifications and the undermining of professions, and promotes an unfair allocation of grants and scholarships and is a dishonest diversion of public funds for the encouragement of scientific research. Therefore, as recently published in an offhand way:

> *"In the mind come questions like... Do you consider a plagiarist the researcher or writer who takes up an idea put forward by another author? An author or compiler who is retakes what is expressed by several writers or researchers? Is one considered to be an author of a thesis or scientific text if one copies the brief texts from their tutors? There are plenty of concerns about this issue , and although it is not new, in the world of science there is an increase in the cases which occur in academic sectors, which work is disqualifying or accused of being plagiarized, without being able to determine clearly whether there really was an encroachment on the ownership of the work protected by copyright, or if someone did not care to make a correct citation of work from texts or sources of compiled works which simply is an unauthorized publication of a version or derivative work "(Morales, 2015: 12)*

Moreover, undoubtedly the digital environment has facilitated the dissemination of contents, the access to various sources of queries, data transmission, dematerialization of works, and the handling of more information for quick and simple texts without any restrictions, which is why you should be much more careful with the review and analysis of the work as well as the implementation of the guidelines, protocols and research methodologies, to avoid prejudicing the scientific work with malpractices within academia, since even a bad date or an inadequate word citation pattern can give a reprehensible mistake.

Thus, the behavior to be tested is the false attribution of the work of others or posing as one's own work the writing of someone else performed by processing the transcription of texts, the removal of fragments, the summary of ideas with simple paraphrases, the modification or replacement of words or formal changes in expression, or hiding the authors credits or omission of the sources. How many times have we heard the phrase "the work of the companion was shot" or "this work is a gun."

The notion that we now have of plagiarism originated in light of a different concept and was related to theft, as Antonio Agúndez illustrates noting that:

> *"[...] Marco Valerio Marcial accusing Fidentino of being a plagiarist poet for having copied verses masquerading as his own, and he is accused by the commission of a manifest theft, of being a thief. [...] Because a plagiarist was, in ancient times, the*

*person who appropriated another's slave and also which made his slave a free man; thus incurring the crime of theft, described as serious as the Flavian Act contained in the Digest "(Agúndez, 2005: 1).*

Whatever the proof of this historical fact of the copying of verses and an accusation such as a plagiarist poet, at that time there was no such regulations for the protection of authors against the use or exploitation of their creations, or penalties for the involvement of personal interests in his capacity as literary artist by false attribution or editorial changes; and any case, the usurpation of the creative attribute is equated to the simple theft of a something by misappropriation ,without consent of the owner of the parchment or paper which contained his work.

Without focusing on the international legislative evolution ,nor in the doctrinal influences on the copyright, the personal interests of a writer such as the recognition of his authorship and respect for the integrity of the work created by him , are contemplated internationally, [2] and the protection of authors and in our country under the first rules for writers which retain the copyright on their work starting in the early nineteenth century, had its genesis with the Decree of 1846 and the Civil Codes of 1870, 1884 and 1928, up until to the federal copyright law of 1948 and subsequently in 1956 with substantial reforms in 1963,which were repealed by the current law, which considers punishment for the usurpation of other people 's property and counterfeiting by publication of all or most of the work without their permission.

The sanctions are historically for two different behaviors: one against false attribution of authorship and the other by the unauthorized publication of a work.

On many occasions it has been commented that the concept of plagiarism is not provided within the Mexican legal system, which is incorrect because there is an isolated thesis concerning the penal injunction under review , number 6218/47 dated on October 27th, 1948, Fifth Period, Tome XCVIII, page 797, of the Judicial Weekly of the Federation, which states:

***FORGERY OF LITERARY PROPERTY, CRIME OF (PLAGIARISM).*** *The denouncement of plagiarism does not exist, if it refers to different arguments, although the subject is the same. What the law prohibits is the reproduction of a work that is*

2 The Inter American Convention on Copyright in Literary, Scientific and Artistic works ( Article XI) published in the Official Register of the Federation on October 24th, 1947 and the Bern Convention for the Protection of Literary and Artistic Works ( Article 6) published on January 24th, 1975.

*properly registered, but not on the same topic of other works. And if the issue has entered the public domain, the concept of reproduction, to which reference has been made, should refer to the nuances, fundamentally, since it is in them where you will find if an argument either has been individualized, or has been reproduced so that the other may exist. If the subject gives a common inspiration, its development must differentiate, and should be individualized to each work, because the issue is not devised by the authors, because it existed prior as a common heritage, so, when you register your argument to one of them, and to grant the State that record, the subject is not covered, but rather how to develop the same argument, of which he is the owner. If now there is a common inspiration, for being the same theme, there is no crime if the respective development, the nuances that exist in each of the works or films concerned, and between them and the argument of the complainants, are in such different ways that it is not asserted that there is a denouncement of plagiarism, because there was no reproduction of the development of these complainants, the determination of the Public Ministry to refrain from criminal action is correct.*

The above transcription confirms the difference between simple ideas with the expression of the arguments that is really the object of protection and thus, for the determination of plagiarism, it is required to prove that the behavior consists of the reproduction of the original expression (arguments) and not on the ideas contained in the work itself. In other words, there is no plagiarism in the thematic coincidences or similar ideas, which causes many more complications in order to recognize what you can and can't take, paraphrasing or quoting of another person's work based on their reading, or whether it will inspire one mind to express our own ideas.

In order to prove plagiarism it is necessary to practice a comparative trial, with the confrontation of the two works in conflict, which happens to be the original, pre - existing or primal, and the second is merely a copy devoid of originality or intellectual input, with the support of a specialist or professional related to the nature of the plagiarized work.

The current Federal Copyright Law (*Ley Federal del Derecho de Autor* -LFDA) [3] does not provide any definition of plagiarism, with not one reference to this concept, much less a catalog of cases or ways to check.

The Act is recognized as a personal prerogative of the copyright to a moral right, with the characteristic of being non-renounceable, inalienable, indefeasible, imprescriptible and fixed perpetually to author; within that right is the right to determine whether his work is to be disclosed and how, as

3 Published in the DOF on December 24th, 1996. The most recent modification was published on June 14th, 2014.

well as to demand the recognition of his authorship at all times and respect for the integrity of the work created by him. For such purposes Articles 3, 11, 18, 19 and Sections I, II and III of 21 states:

> *Article 3. - The works protected by this Act are those of original creation capable of being disclosed or reproduced in any form or medium.*
>
> *Article 11. Copyright is the recognition by the State for all creators of literary and artistic works under Article 13 of this Law, under which grants its protection to the author 's enjoyment of prerogatives and privileges exclusively personal and patrimonial. The former constitute moral rights and the latter economic rights.*
>
> *Article 18. The author is the sole, original and perpetual owner of the moral rights over the works of creation.*
>
> *Article 19. - The moral law is considered united with the author and is inalienable, imprescriptible, non-renounceable and indefeasible.*
>
> *Article 21.- The holders of moral rights may at any time:*
>
> > *I. Determine if their work is to be disclosed and in what form, or to remain unpublished;*
> > *II. Demand recognition of their authorship regarding the work created by them and provide that disclosure is made as an anonymous or pseudonymous work;*
> > *III. Demand respect for the work and object to any distortion, mutilation or other modification of it, as well as any action or attempt to cause the same demerit of it or prejudice to the reputation of its author (...)*

In accordance with moral right of the author, the appropriation of another 's work to pass as his own results in the usurpation of parenthood or false attribution of authorship (transgression of the recognition of his authorship) and, where appropriate, the involvement of the integrity of the work by possible modifications, alterations or mutilations made by simulated or substantial reproduction of the plagiarized work, which provokes and legitimizes the legal action by the author himself against violators of the law.

This type of conduct is legally punished with greater possibilities in civil matters than in the criminal court as discussed below, regardless of labor, academic and institutional implications for the action of plagiarism, as it constitutes a wrongful act or damage to the moral right of ownership, but their origin or competent authority is conditional upon the existence of other elements, from seeking to gain or profit with the publication of foreign

material, to act or not in bad faith by the partial reproduction of a work without strict adherence to the editorial rules, for example a citation of text.

In this regard, It has been noted that " plagiarism regarding authorship can be intentional, by accident or through ignorance, by a simulated or substantial reproduction of a work, whether full or partial, or by the lack of authorial credit of the compiled work " (Morales, 2015: 12), but all of this is considered elemental and it is very pertinent to ask when are we in the presence of plagiarism?

We can recall that The Royal Spanish Academy (Real Academia Española) defines plagiarism as "the action and effect of plagiarizing (II copy the works of others)" and to plagiarize, among other definitions , is to "copy in essence the works of others, taking them as their own ", which is why it is basic to identify the existence of an act of copying to determine the possible legal sanction to which the plagiarist can be subject, since the types of copying made in academia are vast and the consequences are totally different, being those of a criminal nature as those most serious , of course.

In Mexico, and the Federal Penal Code provides for an offense which in accordance with its elements is linked to one of the many behaviors that could be defined as plagiarism. For such purposes we can see what Article 427 states: "Imprisonment shall be imposed from six months to six years and fines of three hundred to three thousand days of the minimum wage to those who knowingly publish a work replacing the author's name by another name."

As seen from the above, we can see observe that a penal type conduct is punishable by imprisonment and a fine of between $ 21,912 to $ 219, 102 pesos [4] for who holds the publication of a work (For example an essay, investigation or a simple descriptive technical or practical text) with a different name to that of the author on full knowledge of the fact. However, the reading of that offense must make some clarification of its elements, such as:

*a) The one who publishes refers to an individual, but also a moral person, such as a department or agency of government, civil association or corporation, or in other words, among the subjects responsible may be a public or private university, a research or teaching institution, or a publishing house*

*b) Publication is one of the various ways in which a work is disclosed, so that in terms of Article 16, Section II, of the Copyright Law, we will refer to how to make public a*

4 http://www.conasami.gob.mx/bol_salario_minimo_2016_11122015.html (Consulted on March 22nd, 2016) The new minimum wage that went into effect as of January 1st 2016 is 73.04 pesos a day.

*work by the act of reproducing it in a tangible form and make it available to the public through copies, or permanent or temporary electronic storage media that allow the public to read or understand it in a visual, tactile or auditory way, so it is not required that there is a commercial speculation or profit or other acts such as the distribution or sale of copies.*

*c) Knowingly, the subject that publishes the work knew they had substituted a name.*

*d) By substituting the author's name by another name, the subject performs the change of names, whether the "new" name is his own, for the other real or fictitious or pseudonym, so in the cases of omission of authorial credit we would not be talking about a replacement, since there is a change or replacement of the name of the author.*

According to these elements, the criminal behavior is punished for the usurpation of ownership, which is for a very specific case, but at the same time it is ambiguous, since when considering the publication of a work is not defined whether is it integrated, in full or partial, or a simulated, substantial reproduction of the work object of plagiarism, or if it is a version that is not recognized as a derivative work as might happen with translations.

In addition, it is striking that the offense is contemplated as a subject responsible to the publisher and not one who performs the business process of usurpation (those who copy in essence the work of others), since not all cases that substantially copies or reproduces the work is who distributes the work. This act can be carried out by another person such as a publisher or a broadcast group.

On the other hand, the element of "knowingly" is subjective and very difficult to prove, since those who act fraudulently, in a premeditated, illegal or knowing manner is the plagiarist and not necessarily those who publish the work, in any case. It is common that this person only turns in the material for its publication, even including a signed letter under which they respond to the alleged authorship and originality of the work- a motive for which any person whose purpose is the periodic publication or editing on of literary works , or the employment relationship, does not only perform functions aimed at the publishing process but also is responsible for dissemination within the institution, should take the necessary precautions to prevent an act that may be subject to criminal proceedings, as can be seen below when the

*"Mexican State considers that the publication of a plagiarized work as conduct so severe to the author that it is considered (sic) a crime, which constitutes unlawful conduct, reproach and is socially criticized. The fraudulent appropriation of which is*

*object by a person who wrongfully appropriates it as its author, which leads to the deprivation of liberty and a financial penalty, independently of the fine imposed, the moral damage can be repaired by applying an amount which shall not be less than 40% of the price sold to the public of the original product, in terms of Article 428 of the same Penal Code "(Morales, 2015: 13).*

Finally, it should be noted that such crime is persecuted at the request of injured party in accordance with Article 429 of that Code and therefore it is the affected author who is entitled to lodge the complaint with the federal Attorney General and in the case of plagiarism of a posthumous work only their heirs, regardless of nationality or the place where this the first publication of the work occurred.

Regardless of the analysis of the crime, there are other acts of theft or misuse of the works of others within the much more common academic practice, where the injury is not so serious to constitute a crime, but is no longer considered plagiarism.

Such acts are likely to be sanctioned in a civil court by a judge based on Article 213 and 216a [5] of the Federal Copyright Law, after a lawsuit for moral damage, with the requirement of the publicity of the claimed ownership, the withdrawal of the apocryphal copies and a claim for compensation for damages, or possibly as administrative offense before the National Institute of Copyrights through a request for an infringement on copyright, within the resolution of which may be imposed a fine between $ 73.040 and $ 365.200 pesos in accordance with articles 229, 230 and Section XIV, section II of that order.

The origin of these convictions and sanctions, once credited to the legitimation by the subject affected by plagiarism and who demonstrated the type of act plagiarism with the support of an expert, will be based on the violation of the moral right of ownership and integrity of the work as we have already mentioned, and in a complementary manner constitute an infringement to the economic rights of reproduction and transformation by the poor habits of the study, wrong academic practices and inadequate application of research methodology.

5 "Article 216 bis.- The reparation of the material and / or moral damage as well as compensation for damages for violation of their rights under this Act in no case will be less than forty percent of the retail price of the original product or the original provision of any services involving the violation of one or more of the rights protected by this Law. The judge, with an audience of experts, shall fix the amount of compensation for damage or compensation for damages in cases when it is not possible to determine under the above paragraph. For the purpose of this article, moral damage is that which causes the violation of any of the rights referred to in Sections I, II, III, IV and VI of Article 21 of this Law." (Underline is author's emphasis).

Without going into a civil and administrative analysis, I would make a stop along the way to clarify property rights violations which are likely to occur within the academic community.

When speaking about the infringement of the economic rights of reproduction (arts. 16, section VI and 21, section I of the Copyright Law) we could imagine the moment when a work, along with many others , are selected for publication in anthologies, complete or in part, without the prior permission of their authors, regardless whether the compilation represents an original work or is part of a reproduction for scientific analysis or under the criterion of a citation, and as in the case of the economic right of transformation (art. 27, section VI of the Copyright Law) in the case of compendiums, summaries, translations, extensions, paraphrasing or updates, the so called derivative works which although have protection as original works, their authors could omit the indications that they are these types of works and because authorization was lacking (for works that have not yet entered the public domain) to exploit these types of versions.

In this vein, when are we speaking of a derivative work? And when is a work derivative? For this we need these definitions (WIPO Glossary, 1980):

> *"A preexisting work: is an existing creation that is used to make a derivative work, either transforming (e.g., put in the form of drama a novel) or applying it to a new work (e.g., a story that becomes part of an anthology). Sometimes preexisting works are also referred to original works as opposed to derivative works. The authors and users of derivative works must respect the rights of the author of a preexisting work".*

> *"A derivative work: is a work based on an existing one; its originality lies either in performing an adaptation of the original work or in the creative elements of its translation into a different language. The derivative work is protected, without prejudice to the copyright in the preexisting work."*

In accordance with the transcribed definitions, it is important to take into account the nature of the original work in order to distinguish it from the second work which is the result of a creative work: the derivative work in its different forms, either for purposes of conversion or adaptation carried out for other than the existing forms, or for the reproduction of the work to integrate it into a compilation or collection .

In this regard, the Federal Copyright Law, in Article 78, confirms that the derivatives in its various forms such as arrangements, compendia, extensions, translations, adaptations, paraphrases, compilations, collections and transformations of literary works shall enjoy the same protection as an

original work, without the author or owner of the economic rights to prevent third parties from developing other versions of the existing work.

It should be noted that the exploitation of the derivative work, including its publication, requires the authorization of the respective author or owner of the preexisting works unless property rights are no longer in force [6] , i.e., that the work has entered the public domain without prejudice and with the consent of the holder of the moral law, in cases where the transformation impacts on a distortion, mutilation or other modification of the preexisting work, as well as any action or acts that cause the same demerit of it or prejudice to the reputation of its author.

Moreover, the same Federal Copyright Law provides an exception to the economic rights of reproduction the case of citing texts or copying short excerpts in educational or research areas, as long as they comply strictly and together with the following [7] :

- The appointment of texts or fragments are of works which are already disclosed or published;
- The author (authorship) is recognized;
- That the source is acknowledged and the work (integrity of the work) is not altered;
- That the quotation is not a simulated and substantial reproduction of the content of the work, and
- That the fragments of works are for critical and scientific, literary or artistic research.

6 With the amendments to the Copyright Law of July 23rd, 2003 which entered into force the following day, Article 29 of the Copyright Law establishes the term of the economic rights in literary and artistic works in the author's life and one hundred years after the death of the same: "Article 29. – The economic rights are valid for: I . The author's life , and a hundred years. When the work belongs to several coauthors the hundred year period is counted starting from the death of the last author, and II. One hundred years after reported: a) Posthumous works, as long as the disclosure is made within the period of protection of works to which section I refer, and b) The works made in the official service of the Federation, the states or municipalities. If the holder of the other economic rights of the author dies without heirs, the right to exploit or authorize the exploitation of the work belongs to the author and, failing that, for the State through the Institute, which shall respect the rights acquired by third parties prior. When the terms provided in the sections of this article come to pass, the work will pass into the public domain. ". All terms established to determine the protection afforded by the Copyright Law shall be calculated from January 1st of the year following the respective in which it had made the initial fact used for the calculation in accordance with Article 9,

7 See Article 148 of the Copyright Law, as well as theories on exceptions and limitations to property rights identified as fair dealing, honorable use, loyal use or fair use , legal licenses and compulsory licenses.

The compliance of these requirements or conditions for reproduction of parts and of existing works for the creation of another original work, constitute an authoritative conduct, and, and is guaranteed under the fair use of a real source of knowledge and the generation of science with the integral expression and identification of authorship if we are interested in knowing more about the work, since it is fair and correct to give everyone his due according to Ulpiano ( "Justice is the habit of giving to each his own"), so that in addition to being careful that the citations of the texts are done correctly, we must also applaud the people who are interested in studying, researching and writing who have the initiative and ability to transcend, give credit to "knowledge, ingenuity, talent, preparation and methodical effort of teachers and researchers" (Morales, 2007: 110), in the full exercise of creative freedom for new research and academic work, since no one owns the idea of a certain subject or simple facts or events.

So, regarding what we should concentrate on doing to prevent or punish academic plagiarism, gathering all our efforts and every institutional instance, is that the quotations of texts are really for illustrative purposes, affirming or supporting our own conclusions or have prior permission for publication of derivative works , because Nettel Diaz has said (2013): "So, if we admit that creation does not come from nowhere, but relies on previous works, it is very delicate to negatively characterize these loans. The tricky thing is, then, is to distinguish between legitimate and illegitimate "(p.146), in order to not generate fear, suspicion, and distrust in the development of mere ideas or thematic study but prevent manipulation, repetition of texts or deformation of knowledge, or in some cases even the perfidious and shameless action of thesis tutors to post as his part of the revised work [8] .

Under this situation, we should be aware of the damage done to the same academic community, regardless of the legal means for punishment, but above all, know how to identify the possible variants of copies or reproductions of works of others in acts of usurpation to proceed institutionally and rigorously with the appropriate sanctions, including where it dispenses information of the author or year of publication of a bibliographic reference, whether or not in a blatant or deliberate way.

The universities and centers of research and teaching must dedicate more time to prevention to counteract cases of plagiarism or discourage bad practices within the academic community. It therefore is considered convenient, among others reasons, to take the following measures:

8 See more at http://www.jornada.unam.mx/2015/11/21/opinion/024a2pol (Accessed March 31, 2016)

- Clearly describe the behavior of plagiarism that should be considered as an academic-disciplinary fault.
- Issue specific regulations to contemplate the instance, the procedures, the evidence and sanctions for the fully described various behaviors of plagiarism ;
- Contemplate between sanctions, private reprimand, public reprimand, suspension from classes, compensation for the withdrawal of apocryphal copies, the expulsion from the institution, the withdrawal of academic degrees , cancellation of economic supports , and notification of research groups;
- Design and implement programs, courses and seminars to increase knowledge about research methodology as well as to raise awareness and sensitize the academic community for both the students , teachers and researchers on the conduct of plagiarism and its consequences ;
- Create a Board or University Tribunal composed of officials of proven moral quality , whose function is to review the texts accused of plagiarism ;
- The definition of a list of competent specialists or experts for technical analysis of the accused works of alleged plagiarism, and
- The establishment of clear and transparent methods and instruments for the detection or identification of plagiarized works .

The task is daunting but vital to creating a culture of respect for copyrights, and requires extensive informative, preventive and regulative work to get rid of the proliferation of apocryphal copies , illicit appropriation , and usurpation of authorship of the work of the same academic community , without having the need to qualify the degree or the variant of plagiarism for legal action- The damage is already done!

The improper conduct of students, teachers and researchers will be removed from everyday practice when acting with severity and justice, without circumventing the responsibility with the simple argument academic plagiarism is not a crime.

Within the concept of plagiarism, as we have discussed, is included any form of that simulates or substantially reproduces a work without the correct authorial credit, but we should also be very clear that the ideas themselves, their concepts, principles, schemes or methods, are not object of copyright law, and they can be resumed without any restriction within research for your original expression.

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