

Plagiarism: Legal and Ethical Issues

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“What was will be again; what has been done will be done again; and there is nothing new under the sun” says Qoheleth...
(Ecclesiastes 1: 9)

Alex Oliver, a philosopher, pointed out “how confused or rough definitions of plagiarism tend to be”.

(Address at University of London Philosophy and Intellectual Property Conference: What's Wrong with Plagiarism? (May 30, 2009), cited in Gordon, 2010)

Definitions of “Plagiarism”

- the taking and using “of ideas, passages, etc. from another's work, representing them as one's own” (Webster's, 1998)
- “the uncredited use (intentional or unintentional) of somebody else's words or ideas” (OWL at Purdue, 2008)
- “the act of claiming authorship for another's words or ideas” (Carrie Russell, 2004)

IDEAS CAN BE PLAGIARIZED!

but that is more difficult to prove...

“The inescapable overlap in general ideas that many works share, coupled with a writer's desire to be credited and compensated for his or her work, creates an environment ripe for accusations of idea theft.”
(Brehm, 2010).

Nature of Plagiarism as Offense

- No law directly makes plagiarism a crime. Instead, it is usually incorporated in rules of discipline of schools and academic institutions as intellectual dishonesty.
- It is closely associated with, but not the same as, copyright violation.
- The closest legal basis is section 193.1 of the IP Code on the Author's Moral Rights.

Proposed UP Code on Student Discipline

Article IV. Definitions

15. Intellectual dishonesty

– any fraudulent act performed by a student to achieve academic advantage or gain for oneself or others, including but not limited to:

Proposed UP Code on Student Discipline

e. Plagiarism, which shall be defined as the taking and use of another person's ideas, writings, inventions and similar intellectual products as one's own without knowledge, consent and/or accreditation;

f. Submission of the same work to two or more courses for academic credit without the knowledge and/or consent of the teachers concerned (self-plagiarism)

Existing Code on Student Discipline

- Does not define Plagiarism
- But understood to be included in Sec.2(a)
 - Any form of cheating in examinations or any act of dishonesty in relation to his studies (emphasis supplied).

UPD Guidelines on Intellectual Dishonesty Cases (approved by the UC in 1995)

- Defines “intellectual dishonesty” as “any form of deception committed by any individual with the intent of making his/her academic credentials, accomplishments and/or abilities appear better than they really are

UPD Guidelines on Intellectual Dishonesty Cases (approved by the UC in 1995)

- Adopts *The Oxford Companion to the English Language* (1992) definition of Plagiarism, to wit:
 - “the flagrant lifting of material in an unchanged or only slightly changed form and its dissemination as the plagiarist's own work.”

UP Faculty Code of Ethics (not adopted in UPD but approved by other CUs)

- Art.5, Sec.1.- Faculty members shall pursue scholarly research and engage in extension work with excellence, honesty and integrity.
- Sec.2.- Faculty members engaged in research shall present findings based on complete and actual results. Faculty members shall ... disseminate research results with openness and commitment to truth. They shall not plagiarize nor distort results.

Plagiarism and Copyright Violation

- Author's moral rights under Sec.193.1 of the IP Code:
 - To require that the authorship of the works be attributed to him, in particular, the right that his name, as far as practicable, be indicated in a prominent way on the copies, and in connection with the public use of his work.

Plagiarism distinguished from copyright (Carrie Russell, 2004, p.131):

1) Using even a small amount of a work written by someone else without attribution is plagiarism, but to be guilty of copyright infringement, the amount copied must be in some sense substantial

Plagiarism distinguished from copyright (Carrie Russell, 2004, p.131):

2) One can plagiarize any work that has ever been written, no matter how old and no matter who the author, but copying even an entire book that is in the public domain... is not a violation of copyright.

Plagiarism distinguished from copyright (Carrie Russell, 2004, p.131):

3) It is possible to plagiarize ideas, even facts (if they are presented in the same order and context as another work) but copyright law does not protect facts or ideas, only the way in which they are expressed within a particular work.

Plagiarism distinguished from copyright:

Moreover, defenses available to those accused of copyright violation (e.g., fair use, public domain, non-copyrightable works, etc.) are not available in cases of plagiarism.

How Plagiarism Is Committed

(plagiarism.org/learning_center)

- submitting someone else's work as your own;
- copying words or ideas from someone without giving credit;
- failing to put quotation marks for phrases or sentences copied verbatim from another's work;
- giving incorrect information about the source of a quotation;

How Plagiarism Is Committed

(plagiarism.org/learning_center)

- changing words but copying the sentence structure of a source without giving credit; and
- copying so many words or ideas from another so that the work which you claim is yours is made up almost entirely with another persons words or ideas, whether you give credit or not .

How Plagiarism Is Committed

Self-plagiarism - “when authors reuse their own previously written work or data in a 'new' written product without letting the reader know that this material has appeared elsewhere” (Roig, n.d., facpub.stjohns.edu, retrieved Nov. 3, 2008).

Plagiarism can be unintentional...

- When it is a matter of not knowing when and how to cite
- Thus making of plagiarism more a question of literacy practice than of ethics (Lyon, 2009, citing Kathryn Valentine, Rebecca Moore Howard and Lise Buranen)

“plagiarism allegations can be much more damaging to a person's professional reputation than allegations of copyright infringement”

Dames (2007).

“This modern version of the scarlet letter points to one of the biggest problems with plagiarism: Without any clear standard, no burden of proof, and virtually no defenses, mere accusations of plagiarism can crush reputations faster than any allegation of copyright infringement.”

(Dames, 2007)

BUT...

Plagiarism & Literature

“She disdained to set forward otherwise, but to take her barge in the river of Cydnus; the poope whereof was of gold, the sailes of purple, and the owers [oars] of silver, which kept stroke in rowing after the sounde of the musick of flutes, howboyes, citherns, violls, and such other instruments as they played upon in the barge”

“The barge she sat in, like a burnished throne, Burnt on water. The poop was beaten gold; Purple the sails, and so perfumed that The winds were lovesick with them. The oars were silver, Which to the tune of flutes kept stroke, and made The water which they beat to follow faster”

Plagiarism & Literature

The first comes from
Thomas North

(Plutarch's "Life of Marcus
Antonius and Cleopatra",
trans. by Thomas North)

The second from William
Shakespeare

(Antony and Cleopatra, in
Richard A. Posner's *The
Little Book of Plagiarism*,
2007, cited in Frankel,
2010)

“Rogue Writers” and “Celebrated Thieves” (Roh, 2010)

- Shakespeare, Wilde, Elliot and Coleridge.
- “lifted not only plots but entire blocks of text from others, yet their respective expositions did little to diminish their achievements”.

Plagiarism Across Time and Cultures

- Pre-20th century cultures
 - plagiarism was more a matter of "bad manners" than an actionable violation (Siva Vaidhynathan, 2001, cited in Roh, 2010)

Plagiarism Across Time and Cultures

- Pre-20th century cultures
 - Mark Twain admits “stealing from Oliver Wendell Holmes, albeit “unconsciously”.
 - His defense: that he had read and re-read Holme's poems “till [his] mental reservoir was filled up with them to the brim.” Roh, 2010)

Plagiarism Across Time and Cultures

- The opening up of markets have increased Chinese understanding of rights,
- However, traditional Confucianist ideology is still strong in Chinese society and one of Confucius' analects is: “I transmit rather than create”, thus the proverb “all writings in the world are copies” (Li Yufeng, 2010).

Busting Plagiarism... (from Bauman, 2009)

David's shoulder-length hair, trimmed beard and mustache, soft eyes, and mild manner were reminiscent of Jesus. His writing was cliched and immature. Then he handed in a scintillating paper containing words like "winsome," "beguiling," and "Krishna." I called him to my office. "This is quite a paper, David."

"Thank you." He blinked his Jesus eyes and stroked his long, soft hair.

"I do have a few tiny questions. Here on Page 2, you used the word 'charlatan.' What does that mean?"

Busting Plagiarism... (from Bauman, 2009)

"Don't you know?"

"Enlighten me."

"Uh, well, it's like an idol that people worship. I think he was a king."

"Kind of like Charlemagne?"

"Right."

"I see. How about 'salutary' here on Page 3?"

He shrugged. "That's being alone."

"I think that's 'solitary.' This is 'salutary.' See?"

"I guess I typed it wrong. I meant 'solitary.'"

Busting Plagiarism... (from Bauman, 2009)

"'Solitary' makes no sense. 'Salutary' fits perfectly."

"It does?"

"Yes. Actually, it's quite professional." I tapped the paper, leaned closer, and whispered confidentially: "How is it that you use such words and don't know their meaning?" Delightful little beads formed on David's forehead.

He blinked several times. "Uh, I guess the right word just comes to me."

"Like, you're inspired?"

"Exactly!" He hugged the word "inspired."

Busting Plagiarism... (from Bauman, 2009)

"Amazing. You must have been catatonic when you wrote it."

"Well--" He smiled, hoping I had complimented him.

"I'm sure the dean would love to chat with you about this--um--ability."

"Aw, no, he wouldn't." David glanced at the door.

"Oh, he would. You wrote this with no help whatsoever." I shook my head. "Amazing."

David snapped his fingers. "You know what? I just remembered that I used the computer thesaurus a few times. You know, to build up my vocabulary."

Busting Plagiarism... (from Bauman, 2009)

"Ah! But isn't it odd you forgot the definitions?"

"I wrote the paper a while ago." He shrugged off his weak memory.

"Strange, I read something on this topic recently." I pulled the download from my drawer. "The author uses many vocabulary words you do. Whole passages, in fact. Look here. See? And here." His head bent pretending to read, but his eyes were squeezed shut, awaiting the ax. I couldn't resist one last little twist.

"David, do you think some unscrupulous author saw your paper somewhere and copied it?"

His head shot up. "Really?"

References:

Badke, W. (2007). Training Plagiarism Detectives: the Law and Order Approach. *Online*, 31(6).

Bauman, M.G. (2009). CSI: Plagiarism. *The Chronicle of Higher Education*. Retrieved 9/16/2010 from <http://proquest.umi.com>

Brehm, A. S. (2010). Defendants in Idea Submission Claims Are Increasingly Winning Summary Judgment by Demonstrating Independent Creation. *Los Angeles Lawyer*, 33, 28.

Dames, K. M. (2007). Understanding Plagiarism and How It Differs from Copyright Infringement. *Computers in Libraries*, 27(6).

Dye, J. (2007). To Catch a Thief. *E Content*, 30(7)

Embleton, K. & Helfer, D. S. (2007). The Plague of Plagiarism and Academic Dishonesty. *Searcher*, 15(6)

Frankel, S. (2010). From Barbie to Renoir: Intellectual Property and Culture. *Victoria University of Wellington Law Review*, 41, 1.

References (cont.):

Li Yufeng (2010). Copyright Reform in China. *Intellectual Property Journal*, 22, 203.

Lyon, A. (2009). "You Fail": Plagiarism, the Ownership of Writing, and Transnational Conflicts. *College Composition and Communication*, 61(2), W222

OWL at Purdue. Avoiding Plagiarism. Retrieved from <http://owl.english.purdue.edu/owl/resource/>

Plagiarism.Org/Learning_Center

Roh, D. (2010). Two Copyright Case Studies from a Literary Perspective. *Law & Literature*, 22, 110.

Russell, C. (2004). *Complete Copyright: an Everyday Guide for Librarians*. Chicago: American Library Association.

Smith, L. (2008). Plagiarism Rampant Among World's Students. *Information World Review*. Retrieved from www.igi-global.com; www.iwr.co.uk