



WHAT YOU NEED TO KNOW ABOUT

PLAGIARISM

Steven M. Richman, a commercial lawyer who specializes in intellectual property and international law, provided the legal information contained in this brochure. The New Jersey State Bar Foundation thanks Mr. Richman for his time and diligence in the production of *What You Need to Know About Plagiarism*.

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WHAT YOU NEED TO KNOW ABOUT PLAGIARISM

What is plagiarism?

Plagiarism is the taking of someone else's ideas or means of expression and passing them off as your own work.

Is plagiarism a crime?

There is a fair amount of misunderstanding about this. For an act to be criminal and punishable by law, legislation would need to be passed by either a state legislature or the U.S. Congress. Some sources refer to plagiarism as an "academic crime," but that should not be confused with state or federal law. If a state were to pass a criminal law that described behavior understood to be plagiarism, that behavior would be a crime under that particular state's statute. As a matter of federal law, while there is no national crime of plagiarism, there is criminal liability for certain copyright infringement. (See "What You Need to Know About Copyright" on page 10)

Is plagiarism fraud?

Plagiarism could be considered a form of "fraud" because you are misrepresenting as your own someone else's ideas or work product. Whether or not it is actionable and can subject you to liability would depend upon the rules and regulations of your academic institution or the laws of the state in which the act occurs.

Is plagiarism cheating?

The American Heritage® Dictionary of the English Language, Fourth Edition (Houghton Mifflin Company 2006) lists one definition of cheating as "to act dishonestly; practice fraud." Since you are acting dishonestly or fraudulently when you plagiarize, it could be considered cheating. Whether it subjects you to punishment in an academic context would depend on your school's rules and regulations. Some academic institutions may deem it a "breach of contract" based on an expressed or implied contract between student and school.

Is it considered plagiarism if someone takes parts of an old research paper turned in last year and uses it for a current assignment?

Some teachers will look upon plagiarism in its broad sense as representing that you have done work that you really have not done, and may view you as plagiarizing yourself to the extent you try to pass off a paper in one class as new and original, when you previously submitted it in another class. Some may not view this technically as plagiarism since you are not taking someone else's work product. However, if you do not reference that it is a prior paper, then some may consider it a different form of cheating. Even if you are expanding on a prior paper, it is better to cite your own prior work rather than simply recycle it as a "new" paper. If you are using certain information from your prior paper in an entirely new way it may not need to be referenced, but it is probably better to err on the side of caution and cite it.

How can someone avoid plagiarism when doing research? How can information be rewritten without using some of the original writer's words?

Many academic institutions offer advice on their websites on how to avoid plagiarism. Your teachers may have their own ideas as well. In general terms, you should: (1) take careful notes and citations; (2) put quotation marks around any direct quotations; (3) identify specific citation information when you paraphrase; (4) indicate in your notes where you have injected original thoughts or comments.

Because plagiarism can occur even when it is not intentional, you need to be thorough not only in your note taking but in how you reference your sources. Direct quotations, paraphrases, reference to another's ideas or theories, and use of another's charts or graphs, for example, must be acknowledged. Common facts do not have to be cited, such as the fact that Abraham Lincoln was assassinated on April 14, 1865. There is probably no one definitive statement as to what is common knowledge; if in doubt, consult your teacher.

What is the distinction between summarizing and paraphrasing?

When you summarize, you are condensing the main points or ideas from someone else. When you paraphrase, you are restating the way someone else expressed something in your own words.

If information is summarized or paraphrased, must the source still be cited?

Yes, unless you are summarizing common facts.

Is an author's permission needed to use long passages from his or her book or article in a report?

The Copyright Act permits you to use appropriately cited material from someone else's work as "fair use," if the use is for "purposes such as criticism, comment, news reporting, teaching...scholarship, or research..." However, whether you need permission from an author is not simply a function of the length of a particular passage; it would depend upon the "purpose and character of the use," the "nature" of the other work, the amount and substantiality of the passages used in relation to the other work as a whole, and the effect of the use on the market or value of the other work. Different journals and academic institutions themselves may have rules of thumb as to how substantial the passage must be in order to require permission. When in doubt, consult your teacher.

What source material needs to be cited in a report to avoid a charge of plagiarism?

Different teachers will have different requirements. There are certain reference works, such as *The MLA Handbook for Writers of Research Papers*, (MLA), *The Chicago Manual of Style*, (CMS), or *A Manual for Writers of Term Papers, Theses, and Dissertations*, (Turabian). These books will tell you what information you'll need for your bibliography and your footnotes or endnotes, and how citations are used internally and in bibliographies, and in different subject areas. For example, you will generally need to cite in a bibliography the author, title of the work, publisher, city of publication and year of publication.

If parents help to write a paper, is that cheating?

Your paper must be your own work product. Most would probably agree that if you write a 20-page paper and ask your father or mother to read it and they say, "It was interesting, but I suggest you rewrite these paragraphs since they are not clear, and you have some spelling errors," this would not be cheating. However, to the extent your parents actually write part of the paper for you, or give more than the kind of suggestion a teacher might, you are probably crossing the line. Because of the vagueness of the term "help," there is no hard and fast rule, other than the work must be your own.

What does it mean when someone says to "use your own voice?"

You should try to interpret things in your own words and bring your own independent thinking to the subject.

Does writing about personal experiences or thoughts ever require citations?

Generally not, unless you are referring to an earlier published or submitted work of your own.

Can you plagiarize facts?

Generally you cannot plagiarize commonly known facts or items of common knowledge, but if the fact itself is someone else's work product, then failure to cite it appropriately could be considered plagiarism.

What if something is considered common knowledge and is found in several sources? Must each source be cited to avoid a plagiarism charge?

You should have a bibliography that refers to all the books you consulted. One school of thought is that if identical information is found in five different sources then it is common knowledge and does not need to be cited. If the common fact or knowledge, however, is expressed in a particularly different way and you express it that way, you should cite the source of that expression. Again, if in doubt, consult your teacher.

What is the public domain?

The public domain refers to works that are no longer copyrighted as a matter of law and that are open to use by anyone. For example, all works published before 1923 are in the public domain.

A CASE OF PLAGIARISM AT PRINCETON UNIVERSITY

Princeton University's Faculty-Student Committee on Discipline defines plagiarism as "the deliberate use of any outside source without proper acknowledgment. 'Outside source' means any work, published or unpublished, by any person other than the student."

In January 1982, a Princeton University senior handed in a term paper for her course on the Spanish American novel. In the 12-page paper, written in Spanish, the student wrote about family relationships in a book by Gabriel Garcia Marquez. The professor for the course had recommended that the student read a book by Josefina Ludmer, which also addressed this topic. The student used the Ludmer book as her main source for the paper. As was required at Princeton University, according to its student handbook, the student wrote at the end of her paper, "This paper represents my own work in accordance with University regulations," and signed her name.

After reading the first page, the professor knew immediately that the student had not written the material. The Committee on Discipline set a hearing date on charges of plagiarism and the student was given an "incomplete" for the course. The committee found that she had plagiarized and decided to withhold her college degree

Is citing material in the public domain necessary?

Yes. While you are not subject to copyright infringement issues, if you do not appropriately cite the source, you would be plagiarizing. Consider, in an extreme example, if you are given a creative writing assignment and you turn in Charles Dickens' *A Tale of Two Cities*, passing it off as your own. You would not be liable for copyright infringement in that instance, but you would be plagiarizing, because you have passed off someone else's book as your own.

How do you know if you have "substantially rewritten" information you obtained through research?

This is very fact sensitive. There has to be some level of common sense and good judgment. One way to approach this is to ask yourself whether the average, objective reader would think that you have simply copied the passage. If, for some reason, the issue reached the courts, various technical tests would be used to determine if there was any type of infringement. If you have any doubts you should probably try to rework your writing and/or consult your teacher.

Is copying material from the Internet considered plagiarism?

Copying material from the Internet and passing it off as your own and not appropriately explaining it is plagiarism. The same rules apply in determining whether you have engaged in copyright infringement. The words appearing on a website

for one year. The student then sued in New Jersey Superior Court, Chancery Division, where the penalty was upheld. She appealed the decision to the New Jersey Superior Court, Appellate Division, which affirmed the lower court's decision. According to court documents, the plaintiff (in this case the student) maintained a grade point average of 3.7 in her years at Princeton University and was "regarded...as a somewhat gifted if not an unusual student of high achievement" by professors and students who knew her. Yet she wrote a paper that "consisted almost exclusively of a literal or slightly paraphrased rendering of various portions of the one secondary source she used without proper attribution, except in occasional instances." The committee and court agreed that she deliberately intended to pass the work off as her own.

The opinion delivered by Presiding Judge Robert A. Matthews also concluded that as a private educational institution, Princeton University had the independence and authority to impose a penalty for violating its rules and regulations. Judge Matthews wrote in his opinion, "We believe that the infraction for which plaintiff was penalized constituted an academic offense under University regulations and therefore must be considered...an academic disciplinary action on the part of the University authorities."

—Phyllis Raybin Emert

are someone else's product and should be treated the same as a hard copy source. **There is no difference between copying from the Internet and copying out of a book.** The only thing that matters is whether or not you are passing off someone else's work as your own, and the same tests will apply. The fact that it is easier because you can cut-and-paste does not change the principle.

What is the appropriate use of Internet material?

The same rules apply as for hard copy sources. It's another published source. Consult the style manuals noted above for the particular format of such a citation.

Is it illegal to purchase an entire term paper from the Internet?

If you purchase a term paper and pass it off as your own product, then it is plagiarism. If you wish, however, to purchase the legitimate work product of another for your own reference, you may do so, assuming that work itself is not infringing and the website or company selling the paper is legitimate. For example, you may be able to purchase a student's unpublished thesis that is in the library of a university and use it as another source. *Note: In some states it is illegal to sell term papers to students.*

Can a teacher tell if a term paper came from the Internet? If so, how?

In many cases, teachers can tell. (See "A Company that Detects Plagiarism" on

PROMINENT PLAGIARISTS

Joseph Biden, a six-time senator from Delaware, is currently running for the 2008 democratic presidential nomination. Back in 1987, Biden also ran for president, but his campaign fell apart when it was discovered that he had plagiarized a paragraph from British politician Neil Kinnock during an Iowa primary debate.

Here's what Kinnock said:

"Why am I the first Kinnock in a thousand generations to be able to get to university?...Was it because our predecessors were thick?...Was it because they were weak, those people who could work eight hours underground and then come up and play football, weak? It was because there was no platform upon which they could stand."

Here's what Biden said:

"Why is it that Joe Biden is the first in his family ever to go to a university?... Is it because our fathers and mothers were not bright?...Is it because they didn't work hard, my ancestors who worked in the coal mines in Northeast Pennsylvania and would come up after 12 hours and play football for four hours?...It's because they didn't have a platform upon which to stand."

page 8.) First, there are software programs that teachers may use to analyze your paper. Another way the teacher can tell is if the writing or quality of work is uncharacteristic of the particular student; for example, if the vocabulary reflects words that the teacher has never heard the student use or the writing style is inconsistent with prior work. In other instances, the teacher may be familiar with the idea or theory being passed off as the student's own.

Can someone be suspended or expelled for purchasing a term paper off the Internet and passing it off as their own?

If your school's disciplinary code indicates that one of the penalties for plagiarism could be suspension, then it doesn't matter from what source you got the paper. What matters is whether you have plagiarized and violated the school's rules. Plagiarizing someone else's work and passing it off as your own can be a suspendable offense, depending upon your school's rules. Other penalties may apply depending upon the teacher's rules or policies, particularly in a high school setting.

Is copying information out of the encyclopedia considered plagiarism?

Encyclopedias are treated no differently than any other source. While a fact is a fact and you are entitled to use that fact, you cannot simply copy word for word an entry in an encyclopedia and pass it off as your own.

It was later found that Biden had also used the words of Robert Kennedy and President John F. Kennedy in several other speeches without proper credit. His speechwriters received the blame, but Biden lost the trust of the people and abandoned his presidential campaign. The problem was that Biden didn't attribute the words to Kinnock or to the Kennedys. He gave the impression that they were his own. Author Richard A. Posner wrote in his book *The Little Book of Plagiarism*, "The reaction to Biden's plagiarism was probably as strong as it was because he had introduced the plagiarized passage by saying he'd just thought of it on the way to give the speech..."

In 2002, it was found that presidential historian and Pulitzer Prize winner, Doris Kearns Goodwin plagiarized paragraphs from another author for her book, *The Fitzgeralds and the Kennedys*. According to Barbara Francis, in her book *Other People's Words*, "Goodwin claimed this 'borrowing' was due to her own disorganized research procedures, including sloppy note taking. However, borrowing without citing sources is plagiarism, even if it is due to disorganized note taking." Goodwin paid the author an undisclosed settlement. She continues to write best-selling books today, and is probably much more careful in doing her research.—*Phyllis Raybin Emert*

Is copying information from a sourcebook considered plagiarism?

There are two different issues here. If someone has prepared a table or chart of data, you should cite the source of that chart or data. On the other hand, if you are citing a particular fact that is a common fact, it would probably not be plagiarism. For example, if the sourcebook contains the annual rainfall over 10 years in the Brazilian rainforest, you should not just copy that chart and pass it off as your own. If you wanted to refer to the rainfall in one year, that, too, may not be a commonly known fact, and you probably should cite the source—not only for protection against plagiarism, but to identify the source for other interested persons. If the sourcebook places information in a particular or creative form, that, too, should be acknowledged. On the other hand, if the sourcebook lists the presidents of the United States and their terms of office, that information in and of itself is commonly known and should be able to be utilized without concern. Again, when in doubt consult your teacher or your school's website and plagiarism policies.

How can it be proven that someone did not plagiarize?

The proof is going to be a comparison of the source or sources to what you

A COMPANY THAT DETECTS PLAGIARISM

The vast amount of information on the Internet and its easy accessibility may make it simpler to plagiarize, but advanced technology is allowing teachers and faculty to uncover and expose plagiarists. One company, Turnitin.com, part of iParadigms, LLC was formed in 1996, and according to its website, "serves millions" of people in more than 80 countries.

Turnitin checks student research papers against a vast database that includes "both current and archived internet content...[a] database of millions of previously submitted student papers" and "millions of ...pages from books, newspapers, and journals." Turnitin matches phrases from student papers against the database. They can then discover passages that have been copied word for word from a particular source and a detailed report is then sent to teachers.

In his book *The Little Book of Plagiarism*, Richard Posner notes, "Turnitin does not 'alert' to possible plagiarism unless the match is of strings [of words] long enough to be unlikely to have been hit on independently by two or more writers. Once such an identical passage is found, however, the program will search for shorter strings in the vicinity of the trigger passage. So the plagiarist can't thwart the program merely by changing a few words." The question is, if students know in advance that a teacher uses this type of detection software, will they be deterred from plagiarism? Turnitin's website claims "institutions using our system on a large scale see measurable rates of plagiarism drop to almost zero." —Phyllis Raybin Emert

wrote. You would seek to prove that either you documented the source and that you've given credit, or that you did not need to because you were referring to common facts, or that you have appropriately utilized your own language and thoughts. In essence, you would need to prove that you did not do any of the things that have been discussed in this brochure.

What are the consequences of plagiarism?

It depends on an individual school's policies. Apart from personal embarrassment, you may be subject to discipline that could include suspension, expulsion or delay in obtaining your degree; or receive a failing or reduced grade on the paper or in the course.

What does "ignorance of the law is not a defense" mean?

What this means is that even if you have inadvertently plagiarized, you may still have a problem. Schools have made clear in their rules and regulations, and on their websites, what is and is not permitted, so it is probably not going to help you to say you did not know, particularly if you have had the opportunity to find out. While it is an oversimplification to say in all instances that ignorance of the law is not a defense, it generally means that you cannot rely on ignorance when you have a responsibility to find out what your obligations are.

What if you accidentally plagiarized a passage because you couldn't remember if you copied it from somewhere or rewrote it in your own words? Are you still liable for plagiarism?

Yes, you can be liable for accidental or inadvertent plagiarism. While it might be a mitigating factor, in other words the school may take into account the fact that your plagiarism was accidental, depending upon the school's rules, you might still be subject to disciplinary procedures.

Who is hurt by plagiarism?

You are hurt by plagiarism because you are not learning proper research habits or disciplining yourself in proper research and writing techniques, and you are not fully thinking through your arguments. The integrity of the academic institution is hurt if this kind of behavior is tolerated. Other students are hurt because they are competing against someone who is taking unfair advantage and otherwise cheating.

WHAT YOU NEED TO KNOW ABOUT COPYRIGHT

WHAT IS COPYRIGHT?

Copyright is a federal law. There is no state copyright law. A copyright protects expression in some tangible form (i.e., literary works such as novels and short stories, dramatic works such as plays or musicals, music lyrics, etc.). It is important to understand that copyright does not protect an idea, but the expression. Copyright also does not protect titles of works. A copyright affords the owner what is called a “bundle of rights,” which means that you have the exclusive right to reproduce the work or prepare derivative works, distribute the work and perform it publicly. For example, if somebody wants to take your short story and develop it into a play, that play would be a derivative work of your short story. You have the right to license your work and permit others to use it. As another example, you have the right to be paid if your work is used in a compilation. If you are interested in learning more about copyright, go to www.copyright.gov.

HOW DOES ONE OBTAIN A COPYRIGHT?

You have copyright protection as soon as you make the expression in a tangible format. While use of the copyright notice is not required, it is recommended to use it as it affords certain other legal benefits in the event you need to sue someone for infringement. And while registration is not necessary to obtain copyright protection, it is necessary if you want to sue based on a work of American origin. The registration provides certain other legal benefits as well. You can obtain the necessary forms online, and should consult www.copyright.gov for specific information as to what needs to be sent as part of your package and what fees are involved.

WHAT IS COPYRIGHT INFRINGEMENT?

Generally speaking, copyright infringement occurs when someone copies a copyrighted work without permission and either passes it off as his or her own, or uses substantial portions of the work without permission and without fair use. In order to prove copyright infringement, you need to prove you are the owner of the work and that the work is entitled to copyright protection. This means that your work has the requisite level of originality. If you register and obtain your certificate of copyright within five years of creating the work, then that is “prima facie” or “at first appearance” evidence of the validity of the copyright and what is in the certificate. The second thing you need to prove is that there has been copying. Courts try to determine whether there was access to your work and whether there is “substantial similarity.” In other words, there has to be enough similarity that it is clear that this was copied. It’s important to understand that in order to find copyright infringement you have to prove the person had access to your work and copied it. It is not infringement if someone completely on his or her own came up with the same expression, although obviously the chances of two people writing nearly identical papers, using the same words, is unlikely—and courts will note that. Even if you did not mean to infringe, if you had access and your material is substantially similar, infringement may be made out.

IS COPYRIGHT INFRINGEMENT A CIVIL OR A CRIMINAL ISSUE?

Infringement of copyright may be remedied by a civil lawsuit for money damages (which may be due to loss of stature or lost profits), attorneys fees, injunctive relief, impoundment or seizure of the infringing goods, and, in some cases, even involving the same acts, by criminal prosecution. There are also criminal penalties for fraudulent acts regarding placement or removal of a copyright notice, and making false representations of material facts in the copyright application. "Piracy" is not so much a legal definition as a colloquial way of referring to activities that include copyright infringement.

WHAT IS FAIR USE?

The fair use of copyright is provided by statute and allows you, in various circumstances, to use certain limited and appropriately acknowledged portions of people's copyrighted work under certain specified circumstances. This was discussed to some extent above. As an example, if you're doing a book review and you want to quote a certain limited passage of the book to make a point in the context of your book review, that would generally be fair use, since it is being used in a critical and scholarly way.

If someone is accused of plagiarism, must the accuser prove that he or she plagiarized, or must the accused prove that he or she didn't plagiarize?

In an academic context, the institution needs to show that you plagiarized. If someone accuses you of copyright infringement, they have the burden of proof. However, once they prove ownership and substantial copying, you have the burden of proving your defense, such as fair use.

Is it better to try to turn a paper in on time even if you have to plagiarize, rather than get an "F" on an assignment?

No, because there is no guarantee you will get the "F" if you discuss the situation with your teacher. And, you could receive an "F" anyway for plagiarizing. If it is a true emergency, most teachers will probably work with you. If you have simply waited until the last minute, however, then you have brought the problem on yourself. You cannot justify plagiarism to cure your own lack of planning.

If caught, should the plagiarist be publicly identified, or should the matter be handled privately?

An honor code may provide for a type of private intervention by one student to another as a means of ensuring compliance, and the school's disciplinary proceedings may have confidentiality requirements. Sometimes dealing with a situation privately does more good than publicly embarrassing someone. On the other hand, the particular institution may have different policies on how public

or private a particular incident becomes. Certainly, in a civil lawsuit for copyright infringement, the allegations are generally public.

What is an honor code?

An honor code is a set of commitments you make to honor certain principles, whether you're at a company or in an academic environment. In some circumstances it might take on contractual status, which if breached can trigger consequences in accordance with a school's rules and regulations.

Is plagiarism a violation of the honor code?

Most honor codes would make plagiarism a violation, but each school's code would have to be consulted for the particulars. The penalty for plagiarism under an honor code would be for an individual school to decide. An honor code may provide for sequential and increased penalties for subsequent offenses. Offenses can include getting a zero or the equivalent of receiving a failing grade on the particular assignment, withdrawal of school privileges, and suspension or delay in receiving a degree, and may depend upon whether the institution is a public or private school.

FOR MORE INFORMATION

Check out the following websites for more information about plagiarism, copyright, fair use, and public domain:

www.plagiarism.org

www.indiana.edu/~wts/pamphlets/plagiarism.shtml

www.copyright.gov

www.umuc.edu/library/copy.shtml

www.unc.edu/depts/wcweb/handouts/plagiarism.html

fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter0/0-a.html



ABOUT THE NEW JERSEY STATE BAR FOUNDATION

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