

FINAL REPORT: PLAGIARISM IN THE DIGITAL AGE

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PUDM 4045 B Business Regulations and Practices

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05 November 2020

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Introduction

In the last eight decades, plagiarism has been a topic of contention due to its laborious task in finding copied work. This paper discusses the nuances of the definition of plagiarism and the similarities to copyright infringement and imitation. The history of plagiarism from its conception was considered very differently to the complexities of navigating the issue in the world we live in today. Digitization has both made it easier to steal someone's work but there are detection systems only available due to the same use of technology. There is also case law that protects people and their work, but nothing is foolproof. Plagiarism spans all areas of industry and is not limited to literary work. It will be applied to the area of art and design through the issues that have arisen in case studies. This report will end with my own recommendations to combat plagiarism and future expectations of the issue.

History of Plagiarism

Plagiarism is an expansive concept because it can span across every discipline. Plagiarism, according to Oxford Dictionary is a noun defined as, "the practice of taking someone else's work or ideas and passing them off as one's own." Its origin stems from the Greek word *plagion* to the Latin word *plagium* meaning "a kidnapping" and *plagiarus* meaning "kidnapper". The English language changed the suffix to -ism in the early 17th century.¹

Plagiarism is most commonly used when describing the theft of a literary work. The first instance of this can be found around 80 AD. The Roman poet Martial responded when he found out that another poet, Fidentinus, was reciting and taking credit for his work. He wrote, "If you're willing that they be called mine, I'll send you the poems for free. If you want them to be

¹ Oxford English Dictionary, s.v. "Plagiarism, n.," accessed October 24, 2020, <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100329803>.

called yours, buy this one, so that they won't be mine." During this time period, it was common practice and expected that poets recite important pieces of poetry from others.² In fact, ghostwriting was a way of making a living as a poet because of the skill level necessary.³ Martial did not have the option of taking this issue to court, and nor did he care; but rather, he was more concerned about the lack of payment for his writing. It was only when the word was used in the English language that the focus "turned to authorship and originality."

Up until the early 17th century, plagiarism was not formally recognized as a serious offense. There was no mass media until the printing press was invented in 1440 and literacy rates were as low as 40% in 1533, so works were not as easily accessible as they are today to be copied. In addition, they were also not considered the property of their creator. Then, in the 1600s, the situation around plagiarism started to change with literacy, technology, and philosophy on the rise.⁴

It is believed that in 1601, the word plagiarist was introduced into the English language by the playwright Ben Jonson to describe stealing someone's words in literature. The radical shift towards the importance in individual creativity and authorship started in the Enlightenment era.⁵

Types of Plagiarism

According to *12 Different Types of Plagiarism to Avoid*, a person who does the following behaviors would be considered a plagiarist:

1. Direct plagiarism: using word-for-word work by someone else, claiming it as your own.

² Jonathan Bailey, "5 Historical Moments That Shaped Plagiarism," Turnitin (Plagiarism Today, January 29, 2019), <https://www.turnitin.com/blog/5-historical-moments-that-shaped-plagiarism>.

³ William T Avery, *The Classical Journal* 54, no. 4 (1959): pp. 167-169, <http://www.jstor.org/stable/3294054>.

⁴ Bailey, "5 Historical Moments That Shaped Plagiarism," Turnitin.

⁵ David Isaacs, "Plagiarism Is Not OK," Wiley Online Library (John Wiley & Sons, Ltd, April 18, 2011), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1440-1754.2011.02050.x>.

2. Hired plagiarism: if someone pays another person to write their assignment for them.
3. Borrowed plagiarism: using essays from friends.
4. Self-plagiarism: using an assignment that you have already submitted for another class or directly copying it.
5. Mosaic plagiarism: adding parts of your work and someone else's in one assignment.
6. Collaboration Plagiarism: if you work with others on a project but claim it was done alone.
7. Contributing Author Plagiarism: if someone contributes to an essay and you do not credit them.
8. Aggregated Plagiarism: using someone else's idea and sources as another paper.
9. Outline Plagiarism: using the same basic points of another paper with new information.
10. Bibliography Plagiarism: directly copying someone else's bibliography in your own work.
11. Secondary Source Plagiarism: citing primary sources correctly but not secondary sources.
12. Accidental Plagiarism: if you read research or language that influences your writing and inadvertently use similar phrases in your work.⁶

In order to understand the complexity of this topic, there needs to be an understanding of the ways that confusion may occur. What is the difference between plagiarism, imitation, and

⁶ Kate Miller-Wilson, "12 Different Types of Plagiarism to Avoid," Yourdictionary.com (Disqus), accessed October 25, 2020, <https://examples.yourdictionary.com/12-different-types-of-plagiarism-to-avoid.html>.

copyright infringement? According to Oxford Dictionary, copyright infringement is “the unauthorized or unlicensed copying of a work subject to copyright,” unlike plagiarism which is violation of moral, ethical, or organization norms not laws. Imitation is also a noun defined as, “a thing intended to simulate or copy something else.”⁷ Imitation has more of a positive connotation than plagiarism and copyright infringement. It was the playwright George Bernard Shaw who said, “imitation is not just the sincerest form of flattery—it’s the sincerest form of learning.”⁸ These nuances make laws around plagiarism very difficult to pinpoint and navigate.

Case Law

Plagiarism is an issue all over the world, and each country has its own laws and regulations. For the purposes of this paper, the focus will be on the United States. There are many smaller implications in the law that were passed. However, this section will cover the brief highlights of copyright history.

The first modern copyright law was the Statute of Anne, or the Copyright Act of 1710, and stated that the control of the literary work was to be given to the original author and not the publishers.⁹ The invention of the printing press allowed the works to be reprinted and published without the consent of the author. The implication of this law was the copyright could be gained by the publication with the Stationer’s Company, to prevent infringement, or deposit copies to the royal library and various universities. Patterson and Joyce of the Emory Law Journal write that “penalties for infringing this right were severe, with all infringing copies to be destroyed and

⁷ Oxford English Dictionary, s.v. “Imitation, n.,” accessed October 24, 2020, <https://www.oxfordlearnersdictionaries.com/us/definition/english/imitation>.

⁸ Christine Nishiyama, “Inspiration vs. Imitation: How to Copy as an Artist,” Might Could Studios (Might Could Studios LLC, April 7, 2020), <https://might-could.com/essays/inspiration-vs-imitation-how-to-copy-as-an-artist/>.

⁹ “The Statute of Anne; April 10, 1710,” The Avalon Project : The Statute of Anne; April 10, 1710 (Lillian Goldman Yale Law Library, 2008), https://avalon.law.yale.edu/18th_century/anne_1710.asp.

large fines to be paid to both the copyright holder and the government.”¹⁰ Once that was completed, the author was granted the right to the copying of the literary work. While this law was passed in England, it paved the way for the United States to follow suit.

It was eighty years later, in 1790, that the United States modeled their first law off of the Statute of Anne. Congress passed the law stating that “works had to be registered in the U.S. District Court where the author or proprietor lived [because] there was no Library of Congress or Copyright Office at the time.” It was amended many times to take the form that is written today.¹¹

The Copyright Office considers *Wheaton v. Peters* (1834) the first copyright case, which is forty years after the 1790 act was established. Wheaton was a court reporter who claimed that his successor, Richard Peters Jr., published reports without his consent. The court rejected Wheaton’s claim, “[establishing] that copyright is not a natural right, but derived from statute and subject to the condition it imposes.”¹² This sets the precedent for ruling on laws and setting the standard for what is and is not a right, with specific conditions.

Congress passed the first comprehensive copyright law in 1909. It protected works that were published with valid notice and copies that had copyright written on them. However, works that did not give proper notice fell into the public domain. The copyright term was twenty-eight years after which it would need to be renewed. The author was granted the right to transfer or terminate the copyright at any time.¹³

The first major revision since 1909 was the Copyright Act of 1976. The law “extended federal copyright protection to all works, both published and unpublished, once they are fixed in

¹⁰ Ray L Patterson and Craig Joyce, *Emory Law Journal* 52, no. 1 (2003), ISSN 0094-4076.

¹¹ “Timeline: U.S. Copyright Office,” copyright.gov (Library of Congress), accessed October 29, 2020, <https://www.copyright.gov/timeline/>.

¹² *Ibid.*

¹³ *Ibid.*

a tangible form.” The renewal term also changed to the life of the author with an additional fifty years. In accordance with this, the right to transfer or terminate the copyright after thirty-five years.¹⁴

The Copyright Office released the first comprehensive revision of the *Compendium of U.S. Copyright Office Practices* in 2014 serving as the “governing administrative manual for registrations and recordations, [...] more than 1,200 pages of practices and sets the stage for a number of long-term improvements.”¹⁵

Changes Throughout the Digital Age

The challenge and issue of plagiarism was intensified with the invention of copy and paste in the mid-70s.¹⁶ As more and more people had home internet services and personal computers in the 90s, “potential plagiarists suddenly had access to a virtually unlimited amount of content [...] growing from 23,500 websites in 1995 to over [1.5 billion today]. This became an especially large problem in academia, where students quickly learned that they could avoid writing papers if they simply copied what they needed off the internet.”¹⁷ While open-access publication in research is important for advancement in fields such as science, technology has had to evolve along with mass media to avoid plagiarism.

Current Solutions

Plagiarism has long been a part of schools’ and universities’ zero-tolerance policy. However, detecting plagiarism was difficult until 2000, when Turnitin.com was developed. It

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Tristan A Horrom, *The Perils of Copy and Paste: Plagiarism in Scientific Publishing* 49, no. 8 (2012): VII.

¹⁷ “Total Number of Websites” Internet Live Stats. Accessed October 24, 2020.
<https://www.internetlivestats.com/total-number-of-websites/#trend>.

allowed the ability to compare students' work to stored essays and sources on the internet.

Turnitin author, Bailey, explains that “in this way, online use became something of a double-edged sword for plagiarism: While technology made plagiarism easier, it also made plagiarism detection easier. The same tools that help students plagiarize help their instructors spot it.”¹⁸

Beyond the space of education, there are tools to help detect plagiarism. Two examples of this are polar opposites in the way that they regard plagiarism — one being an open-access publication and the other being a division to monitor ethical infractions.

If work is published on arXiv, an open-access publication focused on physics, one can use the TrackBacks protocol. First, the blogger's website notifies the platform arXiv and provides a link to the abstract of the paper. Then, a maximum of fifty qualified to post can comment but anyone can read what others write about the paper. Anyone using an anonymous site is not allowed and would be removed. However, some well-known journals currently refuse to publish a paper if it is first published on an open-access platform.¹⁹

In 1974, the American Historical Association established a committee of representatives, elected by the members, in charge of addressing concerns of ethical misconduct in academia. In 1987, they published new guidelines that enforced a confidential procedure where: an individual could bring up charges against another person, the division would notify the accused of the charge, there would be an investigation into the accusation, and come to a conclusion. However, this process raised concerns about lawsuits and whether the division was effective and legitimate. Ultimately, the “process had ‘proven to be ineffective for responding to misconduct in the

¹⁸ Bailey, “5 Historical Moments That Shaped Plagiarism,” Turnitin.

¹⁹ Gordon Kane, “Internet and Open-Access Publishing in Physics Research,” in *Originality, Imitation, and Plagiarism: Teaching Writing in the Digital Age*, ed. Caroline Eisner and Martha Vicinus (Ann Arbor, MI: University of Michigan Press, 2008), pp. 48-52.

historical profession.’ In its place they proposed that the association should take the lead in educating the public and historians about “plagiarism, falsification of evidence, and other violations of scholarly integrity.”²⁰

Both examples show the difficulty in devising effective ways of maintaining regulation over plagiarism.

Plagiarism in Design

With technology fast growing in an ever-changing landscape, the use of plagiarism can be extended to more than literary work. In fact, the word is used in every industry amongst all sorts of work. Mastering detection in writing is one aspect, but there are many more challenges in other types of plagiarism.

At first, when an artist creates a piece, they attempt to draw accurate copies to learn the rules and principles. Nishiyama believes that “art is: taking an idea, combining it with other ideas in your head, and making a new idea. [...] Everything we create is a mashup of everything we’ve seen, heard, felt, and experienced.” The creative process is about ideation through influences and inspirations. There are those that argue that nothing is original. So how do you know where the line is? It is a matter of if “a person copies with the intention of taking advantage of another artist.” To skip the hard work and profit off someone else is unethical, but they would be “short-changing themselves of true creativity and not creating art authentic to themselves.”²¹ It is difficult to articulate how the rules and consequences are determined, but it is important to teach because students must move forward in their career. They are taught practices to conceptualize,

²⁰ Michael Grossberg, “History and the Disciplining of Plagiarism,” in *Originality, Imitation, and Plagiarism: Teaching Writing in the Digital Age*, ed. Caroline Eisner and Martha Vicinus (Ann Arbor, MI: University of Michigan Press, 2008), pp. 159-172.

²¹ Christine Nishiyama, “Inspiration vs. Imitation: How to Copy as an Artist,” *Might Could Studios*.

prototype, and test their designs. Professors often must push students to consider multiple ways of thinking and versions to create. In a university setting, the goal is to make original art and they cannot do that without choosing the rules they want to follow and those they do not. Ultimately it must be the designer's decision, each crafting their own perspective and style.

University Rules and Regulations

For the purposes of this class, plagiarism in design is what is most applicable and appropriate to understand for context and is uniquely different from what plagiarism is considered. Parsons School of Design has its own academic honesty and integrity policy and procedures.

They honor the original literary use of plagiarism and expand on it. Their policy states that “through syllabi, or in assignments, faculty members are responsible for informing students of policies with respect to the limits within which they may collaborate with, or seek help from, others. [...] The New School recognizes that the different nature of work across the schools of the University may require different procedures for citing sources and referring to the work of others. [...] This policy is not intended to interfere with the exercise of academic freedom and artistic expression.”²² The university also states specific definitions and examples of academic dishonesty, outlining the procedure that would be taken. A full and detailed account of this and the consequences that the university follows can be found at the pdf cited below.

Current Solutions

There are four current solutions to combat plagiarism in design, each with pros and cons. Rather than copyright, these are more conducive to protecting physical design and branding.

²² “The New School Academic Honesty and Integrity Policy” (New York, n.d.).

In *Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets*, Bouchoux defines a trademark as “a word, name, symbol, or device used to indicate the source, quality, and ownership of a product or service.”²³ It is a defining characteristic from one person or brand to another. Valid registration lasts for ten years and must be renewed to be in continued use. A patent is defined as “a grant from the U.S. government that permits its owner to prevent others from making, using, and importing, or selling an invention.”²⁴ There are three types: utility, design, and plant patents. Oftentimes, patents are considered trade secrets and proprietary information must be protected with Non-Disclosure Agreements.

Non-Disclosure Agreements, or NDAs, are an extremely common document not limited to the area of design. The PRINDA conference considers them legally binding contracts that are “typically used whenever there is transfer of private or confidential information from one organization to another.”²⁵ The advantages of using an NDA include the protection of the invasion of privacy in a company, and the responsibility of violating the agreement.

The Creative Commons License is the most recent development in intellectual property and its infringement. It was initially released in 2002, with its most current version in 2013. The mission of the company is to “give everyone from individual creators to large companies and institutions a simple, standardized way to grant copyright permissions to their creative work. The combination of our tools and our users is a vast and growing digital commons, a pool of content that can be copied, distributed, edited, remixed, and built upon, all within the boundaries of copyright law.”²⁶

²³ Deborah E Bouchoux, *Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets* (2012).

²⁴ Ibid.

²⁵ Vikram Goyal, Shyam K Gupta, Indira Meshram, and Anand Gupta, *PRINDA: Architecture and Design of Non-Disclosure Agreements in Privacy Policy Framework* (Atlanta, GA: IEEE, 2006).

²⁶ “About The Licenses,” Creative Commons (Creative Commons), accessed October 28, 2020, <https://creativecommons.org/licenses/>.

Unresolved Issues

These solutions have created a legal precedent for protecting both a companies' and individuals' work. However, they do not go without scrutiny. One issue is rooted in the fact that “copyright law creates relatively high information costs, due to the nature of copyright subject matters: non-tangible assets. [...] Rights in creative works are not intuitive. Copyright law has been around for almost 300 hundred years, but has yet to become a familiar concept. Creative works are abstract assets, and often lack physical boundaries.”²⁷ This poses a problem for creating solutions to plagiarism in areas such as design — work can still be plagiarized and people can be taken advantage of.

Specifically, Creative Commons has been the subject of debate, because it “perceives the current copyright regime as the major obstacle for creative activity. [...] While their] concern with copyright [is valid,] the lack of a core perception of freedom in information, may lead to ideological fuzziness. This could interfere with the goal of offering a workable and sustainable alternative to copyright. The lack of standardization may further increase the cost to end users in determining the duties and privileges related to any specific work. Thus, the proliferation of contractual terms could increase uncertainty among end users and create new barriers to access.”²⁸

There are a number of examples that epitomize the issues that still arise with plagiarism in design.

²⁷ Niva Elkin-Koren, *Creative Commons: A skeptical view of a worthy pursuit* (2006).

²⁸ *Ibid.*



Fig. A. Side-by-side comparison of Garcia’s photograph and Fairey’s poster. [c2008].

One example of this is in the 2009 lawsuit that involved well-known artist Shepard Fairey. Fairey created the campaign poster, for now former president Barack Obama, that became iconic. However, it was based on a photo taken by AP photographer, Mannie Garcia. It was later discovered that Fairey misled the court about what photo the poster was based on by submitting false evidence which prompted his attorneys to withdraw. Ultimately, there was no decisive decision made because there were questions around the photograph being fair use and if Fairey’s work was derivative or transformative.²⁹ Both the work and the photograph are shown in Figure A above.

²⁹ Jonathan Bailey, “Artist Luc Tuymans Loses Plagiarism Case, Raises Questions,” *Plagiarism Today* (Plagiarism Today, January 21, 2015), <https://www.plagiarismtoday.com/2015/01/21/artist-luc-tuymans-loses-plagiarism-case/>.



Fig. B. Side-by-side comparison of Warren's t-shirt and Porostocky's tote bag. [c2010, c2004].

Another example is between the political party No Labels and Fly Communications.

Dave Warren, the Creative Director of Fly Communications, claims that he created the concept and the graphic was based on royalty free clip art in 2010. Thomas Porostocky disputed this, by saying that it was blatant plagiarism from his 2004 artwork on a tote bag.³⁰ Both the t-shirt and tote bag are shown in Figure B above.

³⁰ Eileen MacAvery Kane, "Plagiarism Archives: Ethics in Graphic Design," Plagiarism Archives: Ethics in Graphic Design (blog) (Ethics in Graphic Design, 2010), <http://www.ethicsingraphicdesign.org/tag/plagiarism/>.

Conclusion

Summary of Highlights

Plagiarism is considered to be a nuanced subject, dealing with passing someone else's work off as your own. It is more of an ethical violation because on its own, action cannot be taken, especially in comparison to copyright infringement which is a legal pursuit. The concept was first introduced in the Enlightenment era, the start of individualism. When the United States was founded, they modeled their copyright laws after those in Britain. However, through decisions made by courts, the concept became narrow. There were specifications and consequences to each case and revision, including updates adapted to the digital age.

Plagiarism can not only be related to literary works, but also to design. Through the cases with Shephard Fairey and the Obama poster as well as the Fly Communications claim to royalty free artwork, the unresolved issues are established. Creating paperwork and enforcing the law is not enough to combat plagiarism and copyright infringement.

My Recommendations

I would like to see a better understanding for some of the intermediary steps that someone takes in the design process. If a project is incomplete, a designer cannot file for any formal documentation and the best option is a Non-Disclosure Agreement. However, in both university education and the workplace, design is considered a collaborative effort whether it be in multiple people working on a project together or in critiquing each other. An NDA is not conducive to this and much better suited to industries that do not depend on this feedback.

My recommendations come from a personal perspective of being a design student, completing my senior capstone and moving into the workforce. While I am not pursuing my

original idea with a business proposal, my first thought when conceptualizing was that I needed to be worried about sharing details with the capstone class because someone could potentially plagiarize my work. Another issue is that capstone can also be a project that acts as a consultation that solves an issue for a real company. The company would ultimately receive the work that the students do with no agreement for compensation, a situation in which many feel is a form of plagiarism. I was not alone in this concern and heard other situations where students could not do anything about the issue.

Capstone projects are integrated into university education systems, and are largely considered to be a great learning experience and source for inspiration, information, and innovation. According to Alexander, Beyerlein, and Metlen, projects such as these “lead to better learning, increased interaction with industry, student interaction with potential employers, and the opportunity to advance and apply new technologies for greater economic prosperity for the region and state.”³¹ However, challenges such as plagiarism should not overshadow and detract from the process of creating projects. A number of issues can arise after the fact of plagiarism. Therefore, it is important to communicate the desire to combat plagiarism in projects before it becomes a problem. There should be a solution that allows a student to protect their work if they wish while understanding that critique and classroom engagement is a part of this process. Most likely it would come in the form of an agreement in the capstone classes. An emphasis can be placed on “the administrative paperwork associated with pursuing external projects [to] be as transparent and effective as possible.”³² It should be in the university’s best interest to be involved, as the work reflects upon them and is carried through in the students’ future careers.

³¹ David Alexander, Steven Beyerlein, and Scott Metlen, *Processes to Formalize Sponsored Educational Activity Agreements Between Industry and Universities Related to Capstone Design Projects* (Columbus, OH: In Capstone Design Conference, 2014).

³² Ibid.

A design agency would be able to work within parameters of an NDA due to the nature of contracting and hiring a team where neither party could disclose any information outside of those working on the specific project. However, even this situation has its limits. Design agencies thrive on being able to have a portfolio of work. If a team wins the project and is hired for the first round of consultation but the company decides to bring the work in-house, the agency is no longer able to use what they pitched in their portfolio. In an interview with Cindy Rosenshein, the Managing Director of Creative Operations at Revlon, she explains that it is becoming increasingly common for brands to do this because it costs less to bring the research and strategy in-house. This is the most important part of the design process, and it is damaging to the agency because they are paid much less and they cannot advertise working on the project, which would bring in new clients. She would like to see a solution where a combined effort and collaboration between the agency and brand is legally viable.

Future Expectations

There needs to be more development and ethics taught in combating plagiarism, a worry that many individuals have. When plagiarism was first an issue, it was very much thought about in one way. Now, there is more information available and in niche industries. This growing concern will develop into various methods that will be more specific to different types of work. This will progress into having to understand the nuances of the subject, which will ultimately fall onto the universities. We have better technology everyday at our disposal. Technology to combat plagiarism will have to evolve alongside the innovation that warrants it.

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