

“We know it when we see it” is not good enough: toward a standard definition of plagiarism that transcends theft, fraud, and copyright

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Abstract Many of the assumptions that inform the ways we respond to issues of plagiarism are based in laws and traditions that pertain to stealing or to copyright. Laws about stealing, however, assume key concepts that are at odds with the conceptual realities of plagiarism. The notion of taking something, for instance, carries with it the concomitant idea that the rightful owner is deprived of the use of that thing. Laws about copyright are similarly derived from the notion of a physical text being duplicated to make additional (physical) copies to be sold, implying that if copyright is violated, the rightful owner suffers (financial) harm. Neither set of laws appropriately addresses plagiarism, however, which can occur without depriving the author/owner of the work or the right to profit from it. This paper will differentiate the elements of plagiarism from those of theft and copyright violations, and attempt to define plagiarism in terms that accurately describe its essential elements.

Key Ideas

- Plagiarism does not = theft. It is not the same as "taking."
- Plagiarism does not = copyright violation. It does not necessarily deprive the owner of his/her rights.
- Plagiarism needs its own set of elements (similar to the elements of a crime).

Discussion Question 1 What are the essential elements of plagiarism?

Discussion Question 2 If we define plagiarism strictly, do we also need to come up with a new vocabulary to describe other things that currently seem to fall, by default, under the heading of plagiarism (such as "self plagiarism")?

What is Plagiarism?

Among the many kinds of academic dishonesty, plagiarism garners an unequalled amount of attention. Sometimes it is used quite specifically to refer to a specific kind of academic dishonesty. Often the term plagiarism, however, is inappropriately used, as a “blanket term” to cover a wide variety of scholarly malfeasance. This is somewhat understandable because even among academics, there is no standard or agreed upon definition of plagiarism. In fact, both formal and working definitions vary wildly and there is no consensus even on such central matters as whether, to be guilty of plagiarism, one must have committed the offense knowingly. It should come as no surprise, then, that students are unsure as to what constitutes plagiarism when even their teachers cannot agree.

At academic institutions, the definitions and commentary on plagiarism vary considerably. Consider the following examples:

Oregon State University's student conduct regulations state that, "[a]s plagiarism is considered intellectual theft some commentators have likened it to stealing the brain child of another".¹

At James Cook University, the definition of plagiarism is followed by the statement that "[p]lgiarism is academic fraud"².

The e-learning division of Doncaster College says "plagiarism is passing off someone else work as your own. This not only gives the student an unfair advantage, but it also violates copyright legislation [sic]".³

These three statements are indicative of three of the most common conceptions of plagiarism—as theft, fraud, or copyright violation. The purpose of this paper, however, is to show the ways that these ways of thinking about plagiarism are inadequate and to suggest that, in order to most effectively address plagiarism and combat it, we must first agree on a definition that is accurate and makes sense.

Plagiarism as Theft

Although the word "plagiarism" comes to us from the Latin word for kidnapper, contemporary uses relate it more often to theft. Because the act itself consists of "taking" someone else's words or ideas, this seems to be a logical linkage. The problem with conceptualizing plagiarism as theft, however, is that taking is not the only element of the crime; in order to qualify as theft, the victim of the crime must lose something of value.

Although specific definitions vary by jurisdiction, for legal purposes, theft is generally defined as appropriation of the property of another with intent to deprive the rightful owner of its use. The appropriation can take place by physical taking, or by deception. This (revised) definition in the UK theft act of 1868 is fairly representative of many western theft laws and states that "[a] person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it".⁴ Note that the taking alone is not sufficient there must also be an intention to "permanently depriv[e]."

Non-legal definitions also include the idea of loss within the definition of theft. The Encyclopedia Britannica defines it as, "the physical removal of an object that

¹ <http://oregonstate.edu/admin/stucon/plag.htm> Accessed Wednesday, August 19, 2009.

² http://www.jcu.edu.au/sass/tli/student/JCUPRD_023828.html Accessed Thursday, August 20, 2009

³ http://www.don.ac.uk/mini_sites/e-learning/copyright__plagiarism/plagiarism.aspx Accessed Thursday, August 20, 2009

⁴ http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1968/cukpga_19680060_en_1#pb1-l1g1 accessed Wednesday, August 19, 2009 3:40:58 PM

is capable of being stolen without the consent of the owner and with the intention of depriving the owner of it permanently".⁵ Again, the definition depends not just on taking, but of *keeping* what was taken so that the rightful owner no longer has the stolen thing.

In the case of plagiarism, however, there need be no deprivation or even loss. In fact, several key differences emerge: First, it is often the case, such as with the use of fraternity or sorority files, or papers obtained from a friend or a paper-mill, that the owner/author has consented to the "taking." The appropriation itself is not dishonest, even if the intended use is.

Secondly, it is nearly always the case that the author suffers no loss of use of the words or ideas that were taken. The owner/author may have finished using them or may have created them specifically to give away. Even in cases where the owner/author has no idea that the words have been taken, however, it is extraordinarily rare that any loss of use follows. In fact, I cannot think of any such case. Unlike theft, therefore, the harm comes neither from an unauthorized taking, nor from loss of use.

The difference is perhaps clearest, however, when one considers the remedy. Whereas, in the case of theft, the remedy involves restoration of what was taken to its rightful owner, in the case of plagiarism, all that is necessary to avert or correct the wrong is that the taker acknowledge the taking. By the simple act of identifying the source of the "goods," the act changes from unauthorized taking to standard professional practice. This type of public acknowledgement would not, I suspect, satisfy most victims of theft.

Plagiarism as Fraud

Like theft, definitions of fraud are dependent upon specific jurisdictions, but there are similarly defined elements that must be present to substantiate a charge. Fraud is generally defined as knowingly misrepresenting facts or information in order to obtain something of value. As in the case of theft, in order to move forward with a charge of fraud it necessary to show that damage or injury has befallen the victim of the fraudulent act. Legal sources agree with encyclopedic definitions that the elements include "the deliberate misrepresentation of fact for the purpose of depriving someone of a valuable possession".⁶

In the case of fraud, it has been established that one possible way to misrepresent facts is to omit them. This seems to fit the cases of plagiarism in which credit (something of value) is being sought on the basis of misrepresentation (misattributed authorship) by omission of the names of the true authors. The trouble with categorizing plagiarism as fraud, however, comes when one looks for the harm that has been done to the victim.

⁵ <http://www.britannica.com/EBchecked/topic/590390/theft> Wednesday, August 19, 2009

⁶ <http://www.britannica.com/EBchecked/topic/217591/fraud> accessed August 20, 2009

While it is true that a teacher or institution is wronged when a student commits an act of plagiarism, it is difficult to prove that tangible (monetary) losses occur. Certainly such things as academic integrity matter, and are undermined by cheating of all types, but although there is a misrepresentation, the goal is not to bilk the victim out of money, but instead to secure academic "credit." One could argue that each hour of coursework comes at a set monetary cost, but it would be difficult to show that a monetary loss to the institution was the result a student obtaining credit under false pretenses. While this conception of plagiarism seems to hit closer to the mark, it is still off. Absent material harm, it still does not fit the legal definition of fraud.

Plagiarism as Copyright Infringement

There is a great deal of confusion regarding the differences between copyright infringement and plagiarism. These are compounded each time the media refer to copyright infringement cases as "plagiarism," and it is true that the two have several features in common. Copyright infringement occurs when someone takes work that is subject to copyright law and deprives its lawful owner of (actual or potential) benefits by distributing it. Copyright law was enacted to protect the legal rights of copyright holders to benefit financially from their work. As in the case of fraud, while there are significant overlaps between plagiarism and copyright infringement, there are clear distinctions between the two that differentiate them clearly.

There are many instances where plagiarism occurs but no copyright infringement is committed. For instance, when using a work with permission (a friend's work, a paper from a paper mill) without citation does not constitute copyright infringement but is clearly plagiarism. Using unattributed texts that are not protected by copyright is another way to avoid copyright infringement while plagiarizing. Additionally, paraphrased or summarized information is almost never protected by copyright, but can be used for the purpose of plagiarizing. Additionally, whereas attribution can negate the act of plagiarism, it does not mitigate copyright infringement which can occur whether or not the author of a work has been properly identified. Thus, even without addressing the question of material benefits, it is clear that copyright infringement is not co-identical with plagiarism.

The Elements of Plagiarism

Having identified the ways in which the existing conceptions of theft, fraud, and copyright infringement differ from what we mean when we talk about plagiarism, it becomes necessary to create something to take their place. Although plagiarism is not (usually) a matter for the legal system to adjudicate, the degree to which it is handled in a similar manner to criminal or civil charges suggests, to me at least, that if we are to continue filing charges of plagiarism, we must at least identify its elements in a clear and concise manner so that we are agreed on what we mean when we use the term.

To do this, I suggest that we reduce plagiarism to its constituent elements. In the same way that the elements of theft are defined as taking something of value from its lawful owner with the intent to deprive the owner of its use, we can, I believe, identify the necessary elements of plagiarism. This is the new definition of plagiarism I propose:

Plagiarism occurs when someone

1. Uses words, ideas, or work products
2. Attributable to another identifiable person or source
3. Without attributing the work to the source from which it was obtained
4. In a situation in which there is a legitimate expectation of original authorship
5. In order to obtain some benefit, credit, or gain which need not be monetary

The first three elements identify the *actus reus*—using someone else’s words or ideas without attributing them when they can and should be attributed. The second element also distinguishes between attributable information and common knowledge. The third element differentiates between plagiarism and formatting errors. The fourth element distinguishes plagiarism from things like speech-writing and legitimate re-purposing of words and information. The fifth element establishes *mens rea* for the act of plagiarism—to gain credit that was not legitimately earned.

My intention is to capture what is truly at the heart of why plagiarism is an offense against the academy. It is not because anyone has been deprived or defrauded of tangible goods. Its harm, I believe, does not lie exclusively in the taking, nor in the deception, nor in the distributing of the plagiarized information. What makes plagiarism harmful is that no benefit from doing the work has been gained, yet the student is asking for recognition of having received those benefits that have not, in fact, been earned. Unlike theft, fraud, and copyright infringement, there is no need to show that a third party has been victimized.

This is the first forum in which I have “rolled out” this proposed definition. My hope is that it can be refined and improved upon on the basis of the discussion that takes place in response to this proposal.