Note on United States Law, Policy, and Norms in Plagiarism in Brief

Christian Moriarty

Christian Moriarty is a professor of ethics and law and a licensed attorney in the United States. He serves on the International Center for Academic Integrity (ICAI) executive board, specializing in policy in anti-cheating and anti-plagiarism. None of the following is legal advice or an offer to engage in an attorney-client relationship.

The below is a brief note on the general state of United States law, policy, and university norms and practices in relation to plagiarism. U.S. law is an assortment of federal statutes, federal court decisions, state, and local law; as such, the below may not apply to every situation and an individual issue can be fact dependent. This discussion would not particularly apply to any other country or jurisdiction, and as the law and policies are always changing, may not be up to date with current practices.

First, it will be useful for this discussion to define plagiarism, as generally, US law does not have an official, legal definition. Colloquially, to plagiarize is defined as "to steal and pass off (the ideas or words of another) as one's own." (Merriam-Webster) This will be the operating definition for this note. Plagiarism often, but not always, is considered to have occurred even without the intent to plagiarize. This can be referred to as "accidental plagiarism." Some policy regimes take intent into consideration while others do not. Plagiarism, therefore, can occur when citations are missing (designating the idea is from someone else) or quotation marks are missing (designating that the exact words is from someone else), or both. Plagiarism can occur even when the original text is paraphrased.

Generally, plagiarism is not a crime, or "illegal," in the United States. Further, there is no direct tort (civil suit brought by a non-governmental person) recognized in U.S. law for plagiarism. Any possible legal (or pseudo-legal) action related to plagiarism would be done by the means discussed below.

There is a relatively robust legal regime in the United States regarding intellectual property. Intellectual property is protected by several legal mechanisms, such as copyright, trademarks, patents, and trade secret protections. The most relevant protection here is ***copyright,*** whereby the law grants a number of protections to a variety of kinds works, including academic writing. It is important to note, however, that copyright does not cover the *idea* itself, but the *manner* in which the idea is expressed (such as a specific written passage). Depending on many factors, the copyright holder can bring a civil action against the tortfeasor (here, the plagiarist) for damages. How damages are calculated are beyond the scope of this note; see 17 US Code § 504 (https://www.law.cornell.edu/uscode/text/17/504). Of course, a copyright violation is not inherently plagiarism, and plagiarism is not inherently a copyright violation.

While rare, it is possible for plagiarism (or contract cheating) to be charged under ***fraud statutes***. Too show fraud, generally, in the US requires demonstration of:

1) Purposeful misrepresentation of a material fact;

2) With knowledge of its falsity;

3) To someone who relies on that misrepresentation;

4) And who suffers loss from that misrepresentation.

While fraud cases related to plagiarism are rarely brought forward, one such example can be found here: https://www.nature.com/news/duplicate-grant-case-puts-funders-under-pressure-1.9984.

Specifically, the academic in this example tried to use the same research to apply for two grants. While this may be more accurately described as "self-plagiarism," it is technically possible to plagiarize and be held criminally responsible under this theory.

Another legal theory under ***fraud*** statutes being discussed by those working in this area pertains to enforcing fraud provisions through federal student loans. When a student takes a loan and signs a promissory note, it can be argued they are promising to use the loaned money, provided by the federal government, towards their own genuinely earned education. Under this theory, the student who plagiarizes is defrauding the federal government by plagiarizing. While this is not entirely different than plagiarizing to earn a federal grant, discussants of this idea are uncomfortable with the idea of criminalizing this behavior and rather acknowledge that students who commit plagiarism should learn from the mistake through educational functions provided by the university or college.

Other civil actions can be other varieties of torts. One such example is ***breach of contract,*** where the plagiarist promised original material (for example, to a publisher) and delivered copied material purported to be the author's own work. The publisher can claim that the contract was breached and make a civil claim for realized damages.

Separately, in several states, there are state statutes (laws passed by state legislators, not court-decided law) where "***contract cheating***" (paying someone to write a paper or take a test for another) is a crime. However, these statutes are rarely enforced for a few reasons:

1) As discussed above, both academia and prosecutors often see people that purchase papers more as victims with the real criminal being the one providing the paper or taking the test;2.) The person or organization is either difficult to track down or outside of the country, outside of a U.S. prosecutor's jurisdiction, or claims to be an "educational service" that is being misused.

More on this phenomenon can be seen in these articles:

https://www.nytimes.com/2019/09/07/us/college-cheating-papers.html

https://www.pri.org/stories/2020-01-24/doing-western-students-homework-big-business-kenya

From the above, one can conclude that plagiarism is generally not a matter where the U.S. government gets involved. The U.S. Supreme Court (in *Goss v. Lopez*, 419 US 565 (1975) and other related cases) noted that publicly provided education in the United States carries a property interest, and therefore can only be taken away or students punished when given appropriate due

process provided by the 14th Amendment of the U.S. Constitution. It would be important to note, however, that the *government* is not the one providing this process, but requiring the *educational institution* to do so. In general, *if* an institution has a written policy to provide a hearing and notice was provided for when the hearing will meet and how it will be conducted, the government will not otherwise intervene.

For cases of accused plagiarism under U.S. law, the institution generally needs to provide notice and a hearing. The more serious the repercussions (such as suspending or expelling a student), the more serious the hearing and process need be. Beyond this process stipulation, the institution can write policy for their own evidentiary standards, whether a student can have an advocate arguing on their behalf (generally, most institutions say no), and even the definition of plagiarism. For more discussion on academic integrity and developing policy, see the blog series from ICAI: https://www.academicintegrity.org/author/cmoriarty/. While a student can sue the institution under a number of theories (such as ***defamation*** and constitutional protections of ***due process***), traditionally courts do not second-guess the institution's decision as long as they have a stated policy and abided by it through the proceedings.

More serious cases of plagiarism, such as copying passages in a dissertation, are obviously more weighty, especially if the transgression is not found until after the degree is awarded. The institution would then look into an internal process of revoking the degree, guided by stated institutional procedures. Again, U.S. law would necessitate a process provided by the institution for the accused plagiarist, primarily a hearing. The accused can bring a number of lawsuit theories to defend themselves in court, but most institutional decisions are not overturned as long as the institution followed and abided by their stated process. See one high-profile example of this here: https://www.nytimes.com/2019/12/20/us/politics/monica-crowley-treasury-plagiarism-investigation.html. A scholarly look at these lawsuits and related legal issues can be found here: https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1259&context=elj Ralph D. Mawdsley, The Tangled Web of Plagiarism Litigation: Sorting Out the Legal Issues, 2009 BYU Educ. & L.J. 245 (2009)

Finally, we examine accused plagiarism by faculty or other academic staff. Again, U.S. law generally does not make academic plagiarism a crime, so any legal issues would be in relation to ***labor law***, ***contracts,*** or ***defamation***. The contract of the accused employee (if any) would need to be evaluated and state labor law consulted on what punishments would be acceptable. This may include as little as a reprimand or as much as being termination from the position.

Christian Moriarty can be contacted at cmoriarty@academicintegrity.org.