

## I. INTRODUCTION

Copyright infringement and plagiarism are two concepts that involve the unauthorized use of someone else's work. They are two distinct concepts that are often incorrectly used interchangeably. This paper attempts to briefly define the overlapping and separate spheres of the two concepts.

## II. COPYRIGHT v. PLAGIARISM

### A. *Legal Basis*

Copyright is a legal concept. The Constitution endowed Congress with the right "to Promote the Progress of Science and the Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Const., art. I, § 8. The purpose of the 1976 Copyright Act was to establish the boundaries of intellectual property. The Copyright Act endows a creator of a work the exclusive right of the use and distribution of her ideas once those ideas are expressed in a fixed form. This has become known as a "copyright." When someone else violates the creator's exclusive rights, it is called "copyright infringement."

Plagiarism is not a legal concept. It's an ethical concept and one that is defined as the taking of someone else's ideas and expression of those ideas and passing it off as original. The Merriam-Webster Dictionary includes as one of the definitions of plagiarize "to commit literary theft". Each community of individuals decides for itself the breadth and scope of plagiarism. For the academic community, the definition of plagiarism is quite stringent and includes no unauthorized copying of any kind, including ideas. RWA contains this provision in the Romance Writers of America Code of Ethics.

Intentional copying of the written works of others (including but not limited to books, articles and/or manuscripts) with an intention to claim such work(s) as the member's own.

Because plagiarism is an ethical concept, there is no rigid standard as to how much copying of someone else's expression and passing it off as one's own is considered improper. A good rule of thumb, however, is if the words are important enough to copy, they are probably important enough to attribute.

### B. *Separate Spheres*

As stated in the introduction, there are spheres in which copyright infringement exists and plagiarism does not and vice versa. The following is an example of each:

#### *Example of Copyright Infringement but not Plagiarism.*

Piracy is the best example of a violation of a copyright that is not plagiarism. When someone copies a written work and then resells it under the original author's name

without permission, the seller is infringing on the creator's exclusive right to the use and distribution of her work. Because the work is not being passed off as the seller's own, this would not be plagiarism.

*Example of Plagiarism but not Copyright Infringement*

The copying of a public domain work, such as Jane Austen's *Pride and Prejudice*, and passing it off as one's own work would constitute plagiarism, but it is not copyright infringement because there is no copyright that exists for *Pride and Prejudice*. The book has passed into what is known as "public domain" whereby the public can freely use and distribute the work without permission. All copyrights are limited in time. For works created after 1978, the period of protection is the life of the author plus seventy years. Any works published prior to 1923 are considered to be in the public domain.

*C. Overlapping Spheres*

There are few ways to punish plagiarism in a court of law and one of them is the use of copyright law. Few copyright + plagiarism cases have made it into the casebooks. Most of the copyright infringement cases involve the boundaries of fair use. However, there is a somewhat famous case brought against Alex Haley by author Harold Courlander. Courlander wrote a book called *The African* which was published in 1967. Alexander Haley had his famous book, *Roots*, published in 1976. In 1978, Courlander sued Haley in the United States District Court for the Southern District of New York for plagiarism and copyright infringement. The lawsuit alleged that Haley's *Roots* incorporated over 80 passages from Courlander's *The African*. After a five week trial, Haley and Courlander settled for \$650,000 and a public apology. "Alex Haley acknowledges and regrets that various materials from *The African* by Harold Courlander found their way into his book *Roots*."

In court documents Courlander argued, "Without *The African*, *Roots* would have been a very different and less successful novel, and indeed it is doubtful that Mr. Haley could have written *Roots* without *The African*." Courlander hired Professor Michael Wood of Columbia University as an expert witness. In his report to the court, Wood opined that *Roots* used *The African* "as a model: as something to be copied at some times, and at other times to be modified; but always, it seems, to be consulted. . . . *Roots* takes from *The African* phrases, situations, ideas, aspects of style and of plot." In an interview after the trial and the settlement took place, "presiding US District Court Judge Robert J. Ward . . . stated, "Alex Haley perpetrated a hoax on the public."

In modern times, the most prominent example of plagiarism is the Opal Mehta case. A reader of Megan McCafferty's books found similarities between McCafferty's series and the Opal Mehta book. It was determined there were about 40 passages that "contain

identical language and/or common scene or dialogue structure.” Crown Publishing Group, Megan McCafferty’s publisher, demanded the removal of the Opal Mehta books from the shelves. Originally Little Brown planned to pull the offending passages but eventually scrapped the whole deal and also refused to publish the second book in the book deal.

There was controversy about a year ago involving Ian McEwan’s novel *Atonement* and Lucilla Andrews’s memoir *No Time For Romance*. An Oxford student noticed some similarities and contacted Andrews about them. Somehow, almost a year afterward, the story made the international press, and suddenly McEwan was under scrutiny of plagiarism. McEwan had acknowledged Lucilla Andrews in the Author's Note at the end of *Atonement* but many readers felt that was not enough given the number of similarities.

### III. CONCLUSION

The Copyright Act is all about balance. It is intended, on the one hand to promote creativity and incentivize the advancement of the arts. On the other, the Copyright gives individuals other than the creator an opportunity to advance the arts through the legitimate borrowing of ideas. There are the pastiches, or homages, that are being written today particularly all the Jane Austen inspired fiction. Comic books are familiar sources of inspiration for urban fantasy and paranormal authors. Few romance authors seem to have escaped the pull of Joss Whedon. Georgette Heyer is an oft referenced example for Regency historical writers and even some modern authors like Julia Quinn serve to encourage others to emulate her oeuvre. Authors often tell of what other writers or forms of entertainment have inspired them.

All this inspiration building on inspiration is exactly what the Copyright Act is intended to foster. Where authors can go astray is by borrowing too liberally so that it's not a new creation but rather a regurgitated one. Borrowing liberally at all seems to demote creativity and borrowing liberally without attribution depresses creative thought.

1. All information and quotations for the Courlander/Haley case can be found at [http://en.wikipedia.org/wiki/Harold\\_Courlander](http://en.wikipedia.org/wiki/Harold_Courlander)