

COPYRIGHT INFRINGEMENT, PLAGIARISM, AN UNSEEMLY SPAT OR A CASE OF ACADEMIC BAD MANNERS

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SUMMARY

Plagiarism and copyright infringement are terms that are often used interchangeably in an academic environment. However, plagiarism is a broader concept than copyright infringement because it extends to the protection of ideas. Copyright protects ideas in their material form, and when reduced to material form, it does not protect the ideas themselves. This suggests then that academics are free to use the ideas of others provided they express them in their own way. However, such conduct would constitute plagiarism if the originator of those ideas was not acknowledged. An academic who has shared some thoughts or even his work with fellow academics may be justly peeved if no mention is made of his ideas when one of his colleagues publishes a paper on that exact (or a similar) topic. This article explores the question of acknowledging the contribution made by fellow academics to one's work and whether a failure to do so is a case of copyright infringement (a criminal offence), plagiarism (a serious academic offence), or simply a case of academic bad manners.

1 INTRODUCTION

A few years ago I wrote an article which dealt with the vexing question of self-plagiarism.¹ My interest in the topic was sparked by queries which were raised when my university brought disciplinary charges against an academic who had been accused of this misconduct. Researching this topic I discovered that this was a well-documented academic offence and since the advent of the Internet the problem has surfaced as quite a serious issue in academic circles.² Senior academics at well-respected institutions who had impressive publication lists were being shown up as having recycled the

¹ Woker "Oops I Said it Again ... Self-plagiarism or Text Re-use, When or is it Acceptable?" 2011 2 *Obiter* 233.

² Powerful software is now available to enable editors to compare texts. See Weyer "How Should Editors Respond to Plagiarism" Cope Discussion Paper (2011) http://publication.ethics.org/files/COPE_plagiarism_discussion_%20doc_26%20Apr%2011.pdf (accessed 2014-10-16). Cope (Committee on Publication Ethics) is an organisation in the United Kingdom which aims to assist editors and publishers with ethical issues. It has a Code of Conduct which states that editors should "maintain the integrity of the academic record" and "should take all reasonable steps to ensure the quality of the material they publish".

same material over and over again with only minor alterations, passing it off as new research, hence the term “self-plagiarism”.³

Now my interest in the topic of plagiarism has been aroused again. Recently in a conversation with a senior colleague, she expressed her dismay at the conduct of a younger academic whom she had assisted on a number of occasions with research. They were both interested in the same area of the law. He had recently published an article in that area, but no mention was made of her fairly substantial research into the topic nor was any reference made to the assistance which she had given him over the years. This got me thinking. Was this perhaps a case of copyright infringement or plagiarism? Was my colleague making a fuss over nothing or was this a case of academic bad manners? Certainly, when it comes to using ideas which have been picked up through conversations, at conferences or even through general reading there are some serious grey areas. In my previous article I dealt with both copyright infringement and plagiarism and so do not intend to examine the entire topic again, even if it is just to avoid an accusation of self-plagiarism. However it is necessary to set out certain basic principles to avoid readers having to research these topics for themselves.

As was pointed out in the introduction to the previous article, as well as most articles which discuss the problem of plagiarism, academics are under enormous pressure to publish.⁴ The old adage “publish or perish” certainly applies in South Africa, and I am sure this probably applies in other relatively small countries. There is often a small pool of academics who specialise in a

³ Eg, in 2011 a former professor and deputy dean of the Royal Melbourne Institute of Technology in Australia had his PhD revoked because of plagiarism. See Trouson “Former RMIT Deputy Dean Julian Bondy Stripped of PhD” <http://www.theaustralian.com.au/higher-education/former-rmit-deputy-dean-julian-bondy-stripped-of-phd/story-e6frgcjx-1226038125266?nk=efc83bcfe36854e0d32d9ec00c1dadd5> (accessed 2014-10-27). Such allegations continue to surface. See, eg, Gelman “Illinois Chancellor Who Fired Salaita Accused of Serial Self-plagiarism” <http://andrewgelman.com/2014/10/11/larry-phyllis-sonia-steven/#comment-195521> (accessed 2014-10-15.); and also iThenticate Report “True Costs of Research Misconduct” (2012) <http://cdn2.hubspot.net/hub/92785/file-5415630-pdf/docs/ithenticate-misconduct-report-2012.pdf> (accessed 2014-10-15). This report states that in recent times the number of articles withdrawn from publication has increased “ten-fold”. Research misconduct includes “falsified research, fraudulent data, paraphrasing, duplication and blatant plagiarism”. See also Karabag and Berggren “Retraction, Dishonesty and Plagiarism: Analysis of a Crucial Issue for Academic Publishing, and the Inadequate Responses from Leading Journals in Economics and Management Disciplines” 2012 2 *Journal of Applied Economics and Business Research* 172 <http://www.diva-portal.org/smash/get/diva2:582178/FULLTEXT01.pdf> (accessed 2014-10-15). On 17 August 2014 the *Sunday Times* carried a report which focused on plagiarism and South African universities. It seems that the problem is on the increase, especially since the introduction of the internet because it is so easy to copy and paste. However, the report also stated that it is so much easier to get caught, and plagiarists probably will be caught because all that has to be done is that a small portion is entered into google and the chances are this will reveal the plagiarised article. In the past it was only possible to detect plagiarism when large parts of texts were copied but now it is possible to identify when a few sentences or even words or phrases are copied.

⁴ This is an international problem. See iThenticate Report “Pressure to Publish: How Globalisation and Technology are Increasing Misconduct in Scholarly Research” (2014) <http://cdn2.hubspot.net/hub/92785/file-5414706-pdf/media/pressure-publish-free-white-paper.pdf> (accessed 2014-10-16).

particular area and who regularly meet each other at conferences, who peer review one another's articles and who assist younger academics with similar interests by reading, and commenting on their work and making suggestions for further research. So the opportunity to comment on, share ideas and correct where someone may be losing the plot is part and parcel of an active and committed academic's life. Sometimes it may be just a case of "great article, I enjoyed reading it and think you should go ahead and publish it". In one instance from my own experience, I enjoyed reading an article written by a colleague so much that I suggested he was wasting his talents on an article and should expand it into a book. This he did. I was very pleased and perhaps a little embarrassed to read his acknowledgments where he credited me with the idea for his book. So where do we draw the line? It does seem a bit much to expect academics to acknowledge every person they may have spoken to whilst formulating their ideas, but certainly there comes a point in time when we should acknowledge the contribution made by others to our work, even if it is just good manners to do so.

An important point to bear in mind, is that whilst it is important to publish, it is also important that research should be useful and should be used. Therefore an important question for academics is: how many times do other researchers refer to your work? There is increasing pressure on academics to become rated by the National Research Foundation (NRF). One of the sections which an academic must complete is a section which requires the academic to state how many times their work has been being cited by other academics. So this is not only important from a self-esteem perspective – credit for ideas is vital when it comes to advancing an academic career.⁵

From all of this it can be seen that an academic who has been generous with her time may at the very least be justly peeved when another fails to acknowledge the contribution which she has made to a work.

The problem of plagiarism is not only of concern to those who conduct and publish research, it should also be of concern to editors. Editors who fail to exercise proper care may be accused of incompetence and could be forced to retract articles or publications.⁶ This will have serious financial implications and could damage the reputation of the journal with reputable researchers then declining to publish in that journal.⁷ *The Times Live* recently carried a report about a journal which published an article which was 98 per cent plagiarised. It appears from the article that an academic had done this deliberately to test the journal as it was suspected that the journal would publish any article provided a fee was paid.⁸ Such journals are

⁵ Martin "Plagiarism: A Misplaced Emphasis" 1994 3 *Journal of Information Ethic* 36 <https://www.uow.edu.au/~bmartin/pubs/94jie.html> (accessed 2014-10-16).

⁶ Samuelson "Self-plagiarism or Fair Use" 1994 34 *Communications of the ACM* 22 <http://portal.acm.org/citation.cfm?id=179731> (accessed 2010-10-11).

⁷ See iThenticate Report "The True Costs of Research Misconduct".

⁸ See Smilie "Journal 'Fails the Test'" 14 October 2013 <http://www.timeslive.co.za/thetimes/2014/10/13/journal-fails-the-test> (accessed 2014-10-16). South African academics have been warned to take care when publishing in such journals as this may also have serious implications for their professional reputations. See also Mason "Plagiarism in Scientific Journals" 2009 3 *J Infect Developing Countries* 1, where the author points out that editors have a responsibility to discourage plagiarism and to be aware that this may affect the

referred to as predatory journals.⁹ The reputation of a journal is frequently dependent on the status of those who publish in that journal, and if a journal is discovered to have been publishing plagiarised material, serious scholars will avoid that journal for fear of being tarred with the same brush. Universities are equally concerned about the impact on their reputations should an academic be accused of plagiarism. In the past, universities have often kept quiet about such issues, such as when a lecturer passes off a student's essay as their own,¹⁰ because of reputational concerns, but because of the internet it is becoming more difficult to keep such issues quiet.

2 COPYRIGHT INFRINGEMENT VS PLAGIARISM

Copyright infringement and plagiarism are terms which are sometimes confused or used interchangeably, probably because copyright law is the law which is resorted to when someone is distributing material which has been plagiarised.¹¹ However, there are important differences between these two concepts. Copyright is a legal concept and infringing copyright is a criminal offence. It is regulated in South Africa by the Copyright Act¹² and in order to establish important issues such as whether or not a work is protected by copyright, who is the owner of copyright in a work and whether or not a particular act constitutes copyright infringement, it is necessary to consult the Act.¹³ For the purposes of this discussion, generally speaking it is the creator of an original work who has the right to reproduce a work and create another work based on that work, subject to the rights of others to make fair use of that work. The two main requirements for copyright to subsist are that the work must be original and it must be reduced to material form. So books, articles, conference papers and even examination papers produced by academics, through their own skill and labour, are protected by copyright.¹⁴ Copyright infringement occurs when another person, without the

validity of the articles they publish <http://www.jidc.org/index.php/journalarticleviewfile/19749442/46> (accessed 2011-09-02).

⁹ For a list of predatory publishers see Bealle "List of Predatory Publishers 2014" <http://scholarlyoa.com/2014/01/02/list-of-predatory-publishers-2014/> (accessed 2104-10-15). This list which only contained 11 names in 2011 now contains 477 names.

¹⁰ iThenticate Report "The True Costs of Research Misconduct". This report lists the following as costs of research misconduct, costs to the academic, costs to the university (or brand), capital costs to the publication or the university, including costs of funding the fraudulent research, costs of the investigation, costs of repairing the damage and human costs where innocent third parties have relied on fraudulent research. This is particularly problematic in medical and scientific fields where misconduct involving fabricated research can lead to useless or even harmful treatments.

¹¹ Bailey "Copyright Infringement, Plagiarism and Fair Use" 6 October 2005 *Plagiarism Today* <https://www.plagiarismtoday.com/2005/10/06/copyright-infringement-plagiarism-and-fair-use/> (accessed 2014-10-17).

¹² 98 of 1978.

¹³ See generally Dean *Handbook of South African Copyright Law* (as updated from 1987); and Pistorius "Part 3 – Copyright Law" in Van der Merwe (ed) *Law of Intellectual Property in South Africa* (2011) 143.

¹⁴ Important concepts such as ownership of copyright and originality have particular definitions within the context of copyright law. Therefore it is always important to refer to the Copyright Act when debates surrounding who owns copyright and whether a work is even entitled to

permission of the copyright owner, does something which is usually the prerogative of the copyright owner, such as making a copy of the work or a portion of the work,¹⁵ translating the work or a portion of the work¹⁶ or including sections of that work in another work.

An important point to note is that copyright does not protect ideas. It only protects the material expression of those ideas.¹⁷ Plagiarism on the other hand, occurs when one person uses the ideas, thoughts, writings or inventions of another and presents them as his/her own without acknowledging that someone else was the originator of those ideas, thoughts, writings or inventions.¹⁸ From this it can be seen that plagiarism is a broader concept than copyright infringement. Generally a person who is accused of copyright infringement after producing a written document such as a conference paper, an article or a book, is also guilty of plagiarism.¹⁹ But sometimes a person may plagiarise without being guilty of copyright infringement. Copyright protects the actual words that an author uses but, as stated above, it does not protect the ideas behind those words. This means that another person can take those ideas and express them in his own words without being guilty of copyright infringement. However, he will be guilty of plagiarism if he does not credit the original author of those ideas. It is interesting to note that in this modern age when making copies is so easy, many people do not regard copyright infringement as a serious issue but they will still see plagiarism, that is, claiming credit for something one did not create, as being ethically or morally wrong.²⁰ On the internet, for example, there is a strong movement to release works from copyright and to allow people to share ideas and to communicate freely. Examples are free and open-sourced software movements and creative commons licences. But very importantly, most people who participate in these movements expect those who make use of their works to acknowledge the authors. So whilst a

copyright protection arise. However, as this article is focusing on a particular aspect of plagiarism, it is not necessary to deal with these issues in detail. See, eg, *Klep Valves (Pty) Ltd v Saunders Valve Co Ltd* 1987 (2) SA 1; and *Haupt t/a Softcopy v Brewers Marketing Intelligence (Pty) Ltd* 2006 (4) SA 458 (SCA).

¹⁵ Such as photocopying a book or chapter of a book or downloading content from the internet.

¹⁶ Eg, translates an English textbook into isiZulu or Afrikaans.

¹⁷ Pistorius "Part 3 – Infringement of Copyright" in Van der Merwe (ed) *Law of Intellectual Property in South Africa* (2011) 200.

¹⁸ See American Association of University Professors (September/October 1989) quoted by Roig "Avoiding Plagiarism, Self-plagiarism, and Other Questionable Writing Practices: A Guide to Ethical Writing" (2006) <http://facpub.stjohns.edu/~roigm/plagiarism/Index.html> (accessed 2014-10-16); Martin "Plagiarism and Responsibility" 1984 6 *Journal of Tertiary Educational Administration* 83 <https://www.uow.edu.au/~bmartin/pubs/84jtea.html> (accessed 2014-10-16).

¹⁹ It is, however, possible to be guilty of copyright infringement without plagiarising, eg, a person who makes a copy of a work and distributes it to others is not plagiarising because they are not passing off the work as their own.

²⁰ Doctorow "Here's the Biggest Difference Between Plagiarism and Copyright Infringement" 1 February 2013 *The Guardian* <http://www.businessinsider.com/internet-copyright-law-needs-support-2013-2> (accessed 2014-10-17). South Africa is ranked as no 14 in the world when it comes to illegal downloads from the internet. This is costing the economy hundreds of millions of rands and is cheating artists of their revenue. But few South Africans see this as a problem, "Think before you cheat" 17 October 2014 *Daily News* 12.

work may no longer be subject to the stringent restrictions that copyright imposes, users are not given free reign to plagiarise.²¹ It is suggested that the failure to understand the distinction between copyright and plagiarism lay at the heart of the dispute in *Peter Ross v Ramesar*,²² discussed below, a dispute referred to by the Court as an “unseemly wrangle between two academics”.

Plagiarism is an ethical, as opposed to a legal issue, which arises most often in an academic environment. It is regarded as academic misconduct of the “worst kind”.²³ Plagiarism has been described as “academic high treason” which “undermines the entire scholarly enterprise”.²⁴ The penalties for plagiarism are of an academic nature including, for example, loss of prestige or status, embarrassment, the retraction of an article or academic qualification or disciplinary proceedings.²⁵ From a career perspective, the penalties which may be imposed for plagiarism are far more serious than those that will be imposed for copyright infringement, even though copyright infringement constitutes a criminal offence. In South Africa there have been very few criminal prosecutions for copyright infringement.

3 FORMS OF PLAGIARISM

As pointed out above, it is not always easy to establish exactly when someone crosses the line from simply being inspired to full-blown plagiarism. The most serious (and obvious) form of plagiarism is when a scholar or academic passes off an entire article, report or conference paper, written by someone else, as his own. However, there are some less obvious forms of copying, which are sometimes difficult to detect or constitute grey areas, but which may none the less constitute plagiarism with its serious consequences, if detected. Understanding these different forms is vital

²¹ See, eg, Babauta “The Culture of Sharing and Why Releasing Copyright Will Be The Smartest Thing You Do” <http://writetodone.com/the-culture-of-sharing-why-releasing-copyright-will-be-the-smartest-thing-you-do/> (accessed 2014-10-27); and Hill “Towards a Standard of Freedom: Creative Commons and the Free Software Movement” (2005) http://mako.cc/writing/toward_a_standard_of_freedom.html (accessed 2014-10-27).

²² 2008 (4) SA 158 (C).

²³ Bouville “Plagiarism: Words and Ideas” 2008 14 *Science and Engineering Ethics* 311. See also Wilkinson “Staff and Student Perceptions of Plagiarism and Cheating” 2009 20 *International Journal of Teaching and Learning in Higher Education* 98 [http://www.isetl.org/ijthe/pdf/IJTLHE20\(2\).pdf](http://www.isetl.org/ijthe/pdf/IJTLHE20(2).pdf) (accessed 2014-10-29).

²⁴ Hexham “The Plague of Plagiarism: Academic Plagiarism Defined” 2005 <http://people.ucalgary.ca/~hexham/content/articles/plague-of-plagiarism.html> (accessed 2014-10-17).

²⁵ In October 2014 the *New York Times* reported that the Army War College had rescinded a American Senator’s master’s degree because he had plagiarised his final paper in 2007. The senator then also declined to seek re-election. See Merkin “Plagiarism Costs Degree for Senator John Walsh” 14 October 2014 *New York Times* http://www.nytimes.com/2014/10/11/us/politics/plagiarism-costs-degree-for-senator-john-walsh.html?_r=0 (accessed 2014-10-17). In 2013 plagiarism charges resulted in the revocation of the German Minister of Education’s doctorate which she obtained in 1980 (Himmelrath “Plagiarism Charges Cost German Minister PhD” 2013-06-02 <http://www.dw.de/plagiarism-charges-cost-german-minister-phd/a-16544422> (accessed 2014-10-17).

because even an allegation of plagiarism can be the kiss of death for an academic.²⁶

Martin in his writings identifies a number of different forms of plagiarism.²⁷ He calls it word-for-word plagiarism when “someone copies phrases or passages out of a published work without using quotation marks, without acknowledging the source, or both”. Other than when an entire paper is copied, this is usually the easiest to prove. An author may take entire paragraphs from different sources and then weave these into a coherent paper which may even read well. However, when passed through text-matching software, it will be established fairly quickly that the words are not those of the author but has been copied in chunks from other authors. Sometimes these may even be referenced, but direct copying word for word should be indicated through the use of quotation marks to avoid a charge of plagiarism.

A person whose work consists mainly of direct quotes will be regarded as academically lazy and so an author may paraphrase. Paraphrasing plagiarism occurs when only some of the words are changed. So the essential structure of the paragraph remains the same with a few words changed here and there. Even if the original source is cited this would still constitute plagiarism, but the plagiarism is considered to be more serious when the original source is not cited.²⁸ Howard refers to this as “patch writing”. She defines this as “copying from a source text and then deleting some words, altering grammatical structures, or plugging in one synonym for another”.²⁹

Research does consist of considering a number of different points of view and then reaching a conclusion – hopefully containing the author’s original contribution. However, in the meantime, it may be that the author uses the same words as one of the authors which he has considered during his research. Using a similar sentence is not plagiarism unless it contains an original idea.³⁰ Authors who are publishing in a language not their own, most

²⁶ Martin “Plagiarism Struggles” <http://www.bmartin.cc/pubs/08plagiary.html> (accessed 2014-10-15).

²⁷ Martin 1994 3 *Journal of Information Ethic* 36; “Plagiarism Struggles” <http://www.bmartin.cc/pubs/08plagiary.html> (accessed 2014-10-15); and 1984 6 *Journal of Tertiary Educational Administration* 83. Martin is Professor of Social Sciences at the University of Wollongong, Australia. He is at present the Vice Chairperson of Whistleblowers Inc in Australia and has been its president. On its website it is stated that the goal of Whistleblowers Australia is “to help promote a society in which it is possible to speak out without reprisal about corruption, dangers to the public and other vital social issues, and to help those who speak out in this way to help themselves”. See http://www.bmartin.cc/dissent/contacts/au_wba/info.html (accessed 2014-10-17)

²⁸ Martin 1984 6 *Journal of Tertiary Educational Administration* 83.

²⁹ Quoted by Martin “Plagiarism Struggles” <http://www.bmartin.cc/pubs/08plagiary.html> (accessed 2014-10-15).

³⁰ See Geyer “Plagiarism and Copyright Infringement: Defining the Common Ground” 2006 69 *THRHR* 573. This point strikes at the practice of relying on a number of similar words to identify plagiarism which some editors resort to. Instead of using the number of words used, it is preferable to focus on the conduct of the author. Is he trying to mislead his audience into thinking that he was the originator of the idea behind the words? See Bouville 2008 14 *Science and Engineering Ethics* 311. In her article Geyer discusses three promising Afrikaans writers whose careers were cut short in their infancy because they were accused

usually English, may rely on the words of other authors because they are not confident. A Turkish scientist, who was accused of plagiarism, explained that he had used “beautiful sentences” from other studies on the same subject in his introduction because English was not his mother tongue.³¹ He pointed out that non-English speaking scientists needed to write proper introductions to their research in order to get their research noticed. He argued that even though they had used similar introductions, their findings were original.

Habibzadeh from the World Association of Medical Editors (WAME) points out that non-English speaking authors, who do not have strong language skills, may use words or sentences from previously published work because they may not want to sacrifice quality and accuracy.³² However, it is not acceptable for authors to follow the same structure and argument of another author with or without acknowledgement. This is plagiarism especially if the author is trying to create the impression that he is developing his own argument, well knowing that he is not.

Another form of plagiarism occurs when an author provides references but he has obtained these references from another source and he never goes to the trouble of following up those references for himself. This is a common student error although many students will argue that they are unaware that this constitutes plagiarism. The sources are often quoted directly from the textbook. Martin calls this “plagiarism of secondary sources”. Such conduct is quite difficult to detect but, if an author has simply copied and pasted from another text then the layout of the footnotes will be exactly the same as the original source or the original source may contain some errors which are also copied. Sometimes the plagiarizer will look up the original source but fail to acknowledge the primary source from which he obtained those references. This, according to Martin is called “plagiarism of the form of a source”.

The last form of plagiarism occurs when the original thought or idea of another is used but this is expressed differently. This is the form of plagiarism which causes the most difficulty.

4 PLAGIARISM OF IDEAS

Plagiarism is a broader concept than copyright infringement because it does protect ideas. In addition, the definition does not require that those ideas be written down (or reduced to material form), which is a requirement for copyright infringement. Therefore if an author uses the ideas of another, even ideas which are suggested to him at a conference or through informal discussions, without acknowledging the source, he may be accused of plagiarism. This may be difficult to prove, although as discussed above, even an allegation of plagiarism can be harmful to a career. But if the source

of plagiarism. A later analysis demonstrated that although there were similarities the works were quite different and could therefore be regarded as different works.

³¹ Yilmaz “Plagiarism? No We’re just Borrowing better English” 2007 *Nature* 444 <http://www.nature/449/n7163/full/449658a.html> (accessed 2011-2-16).

³² Habibzadeh “On Stealing Words and Ideas” 2008 1 *Hepatitis Monthly* 171 <http://www.researchgate.net/publication/26541945> (accessed 2014-10-22).

of the idea has published his own work in which those ideas have been incorporated, he may more easily be able to prove where those ideas originated.

The case of *Peter-Ross v Ramesar*³³ is not directly on point because it involved more than just providing an idea, but it does serve as a useful illustration of the problems which can arise in an academic environment. One academic (the applicant) was a senior lecturer and the other was a professor. They had been working on a project together and together they developed a hypothesis. They both wanted to publish the results in a reputable journal and the lecturer was tasked with the responsibility of producing the first draft. This draft was scrutinised and the professor's comments were recorded on the draft. In the first draft the professor was cited as a co-author. The lecturer wanted to publish this draft but the professor felt that further research was required. The lecturer then produced a second draft in which she was cited as the sole author. This second draft was accepted for publication. When the professor discovered this, he put a stop to publication by contacting the publisher. The lecturer then launched an application in court for an order that she be cited as the sole author of the article. The case deals with principles of copyright and issues relating to authorship and co-authorship. On behalf of the lecturer, it was argued that the professor could not identify a single sentence in the first draft which he could claim as his own nor could he say that "he formulated any significant portion of the draft".³⁴ As he had not contributed to the writing, he could not be regarded as a co-author. The court ultimately found that the professor had done enough to actually qualify as a co-author of the article and therefore the lecturer's application to be cited as a sole author was dismissed.

In most instances of plagiarism and certainly where the source of an idea is at stake the aggrieved academic will not expect to be recognised as a co-author, however, other issues may be at stake. Although *Peter-Ross v Ramesar* does not discuss plagiarism, it is implicit in the arguments of the professor. It was pointed out that the publishers were requesting that the University clear the article for publication and that, even if the lecturer was the owner of copyright in the article, it was "inconceivable that any reputable academic journal would publish the article in such circumstances".³⁵ In addition to the court case, the University set up its own committee of inquiry. The committee concluded that although the lecturer was not guilty of scientific misconduct, her conduct in relation to the professor was "ethical misbehaviour in the research context".³⁶ It was argued on behalf of the lecturer that copyright does not protect ideas or suggestions and therefore a person who merely makes suggestions and criticisms cannot qualify as a joint-author for copyright purposes. However, this is precisely what plagiarism is all about and so even if the court had found that the lecturer was the author of the final article, her conduct would probably have meant

³³ 2008 (4) SA 168 (CPD).

³⁴ 173H-I.

³⁵ 171C-D.

³⁶ 171E.

that the University would not have cleared the article for publication and the journal would not have published it. It seems that the lecturer and her representatives had misunderstood the distinction between copyright infringement and plagiarism and that in an academic context, one can be guilty of plagiarism even when one may be regarded as the legitimate author of an article.

5 CONCLUDING REMARKS

There are different forms of plagiarism and some forms are more serious than others. Sometimes, especially when dealing with students or even junior academics, there is simply a need to warn the person and provide the necessary remedial advice. This would be appropriate in circumstances where a person has been sloppy when it comes to providing sufficient and proper references. Cancelling a degree or failing a module may be overkill. However, more severe action is required when there appears to be a deliberate attempt to mislead. Intention to deceive lies at the core of plagiarism in its more severe forms. Was there a deliberate intention to pass off, as one's own, the work of the other scholars? Whilst this may not always be easy to prove the more severe the plagiarism the more likelihood that the plagiarist will be caught out.

There are a number of reasons why one should not plagiarise but, looking at it from the plagiarist's perspective the most obvious one is that in today's modern age with available technology the chances are that a plagiarist will get caught. There are even people who are referred to as "plagiarist hunters", who spend their spare time trawling through the internet in search of academics who have plagiarised their doctoral theses and as a result of their investigations certain prominent academics and politicians have had their degrees cancelled.³⁷ This seems to be the case where the competition for tenure at universities is particularly tight, and there is a great deal of resentment against those who obtain tenure through dishonest means.

Plagiarism may be inadvertent or relatively trivial in that it involves a breach of etiquette, however, it could still be plagiarism which is an emotionally charged word and being labelled a plagiarist or cheat can have enormous consequences. Not least is that journalists have a field day even where there is just a hint of wrongdoing. So it is important to learn proper behaviour. Many authors have pointed out that it is not easy to write properly, especially if you are writing in a second or even third language. Tompkins, in an entertaining treatise aimed at educating students regarding appropriate classroom and academic behaviour, explains that whilst skilful writing is a painful and time-consuming process, it is a worthwhile process which cannot be mastered by stealing other people's ideas. He urges young authors to work hard at their writing and ensure that they cite properly any

³⁷ This was how the German Minister of Education was identified. See Binder "Plagiarist Hunters defend academic standards" 2012-10-20 <http://www.dw.de/plagiarist-hunters-defend-academic-standards/a-16318549> (accessed 2014-10-17).

information taken from a source other than their own head. He warns that plagiarism will destroy potential and the level of trust amongst academics.³⁸

The issue of trust amongst academics brings me back to the original reason which sparked this research. There is more to the issue of avoiding plagiarism than simply protecting one's own career. What about the person who inspired you, gave you a brilliant idea or stopped you from making a complete fool of yourself? In preparing this article, I researched topics such as academic etiquette and how to be a proper professor and came across an interesting article by Johnson and Woodroffe which was actually dealing with the issue of why senior academics should become involved in university administration.³⁹ Their arguments can be adapted to the whole debate regarding sharing research, and so I conclude this article by summarising what they had to say. I think their words are particularly apt for South Africa at this point in time.

We want a situation where we share common burdens and where colleagues have a commitment to quality in academic life so that we can raise our standards and improve our morale. We want academics who are "large in generosity and vision" as well as technical skill and intellect. In other words, we want academics whom Johnson and Woodroffe refer to as "generous academics". They argue that life should not be a "tedious matter of keeping score", but rather a "subtle process of gift-giving by which all participants, grow through the generosity of each". Research universities are large and complex and are driven by financial pressures. So individual academics can easily become competitors instead of collaborators and find themselves in a world that encourages a look-out-for-yourself entrepreneurial attitude and discourages a spirit of co-operation. Johnson and Woodroffe point out that if we fail to develop collegiality about small things, including in my view, acknowledging an even minor contribution which someone else has made to our research, we will not be able to work together to build something big. We need to maintain and develop a respect for scholarly values and ensure that we have a sense of responsibility that goes beyond our own individual needs. In other words, we need to develop a sense of responsibility to the world, because ultimately that is the true aim of research.

In the South African context this is ubuntu.⁴⁰

³⁸ Tompkins "Academic Etiquette or, The World's Best Guide to Wit, Charm, and Sophistication in the Classroom or, How Not to Annoy Your Professors So They Won't Silently Curse You in Their Hearts or, Let's Play 'Whose Cellphone is Going Off Now?'" <https://web.cn.edu/kwheeler/documents/Academic%20Etiquette.pdf> (accessed 2014-10-22).

³⁹ Johnson and Woodroffe "Shaping a Citizen Faculty: Cultivating Collegiality in the Research University" http://www.emory.edu/ACAD_EXCHANGE/1999/decjan00/citizen.html (accessed 2014-10-17).

⁴⁰ Chaplin in "The Ubuntu Spirit in African Communities" <http://www.coe.int/t/dg4/culture/heritage/culture/Cities/Publication/BookCoE20-Chaplin.pdf> explains that "(u)buntu is an African word for a universal concept. Ubuntu is the potential for being human, to value the good of the community above self-interest. Ubuntu is to strive to help people in the spirit of service, to show respect to others and to be honest and trustworthy".