

The GWU Code of Academic Integrity and U.S. Copyright Law

by

Benjamin Tomhave

September 27, 2004

Prepared for:

Professor Daniel J. Ryan
EMSE 315
The George Washington University

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Abstract

This paper compares and contrasts the “plagiarism” section of The George Washington University’s *Code of Academic Integrity* with U.S. Copyright Law, as detailed in 17 U.S.C. Specific focus is placed on 17 U.S.C. § 107 in which the concept of “fair use” is defined and explained. An approach of applying “fair use” to the plagiarism clause is leveraged in order to perform a high-level gap analysis. Analysis occurs under each prong of the “fair use” test. In the end, the analysis is rolled into a general summary of points discovered during the application of “fair use.” The primary conclusions of this paper include that the plagiarism clause is necessary in the context of nonprofit educational institutions because of protections provided under “fair use” in the first prong. The plagiarism clause proactively seeks to prevent copyright violations while promoting creativity and attribution. Finally, whereas the plagiarism clause serves these functional purposes, it maintains a narrower scope than copyright law does, precisely because of the existence of copyright law and the nature of the academic environment.

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I. INTRODUCTION

Rules are written to govern the behaviours of a populace. These rules are often based on higher principles. In the case of U.S. Copyright Law, it descends from the highest law in the land – the Constitution. In the case of the plagiarism clause of the *GWU Code of Academic Integrity*, these rules are applied to fill a potential gap as well as clearly communicate the expectations for performance held in common and with high regard by all member of the GWU community.

Before launching into a discourse on and analysis of the similarities and differences between copyright law and the plagiarism clause, it is important to clearly reference those sections that are most relevant. As such, the applicable sections of the *Code of Academic Integrity* and U.S. Copyright Law are quoted below.

A. Code of Academic Integrity¹

The following is a direct quote from the *Code of Academic Integrity*:

Article II: Basic Considerations

Section 1: Definition of Academic Dishonesty

(a) Academic dishonesty is defined as cheating of any kind, including misrepresenting one's own work, taking credit for the work of others without crediting them and without appropriate authorization, and the fabrication of information.

(b) Common examples of academically dishonest behavior include, but are not limited to, the following:

3) Plagiarism - intentionally representing the words, ideas, or sequence of ideas of another as one's own in any academic exercise; failure to attribute any of the following: quotations, paraphrases, or borrowed information.

¹ The George Washington University, *Code of Academic Integrity* (Washington: Academic Integrity Council, 2001), accessed 26 September 2004; available from <http://www.gwu.edu/~ntegrity/code.html>. Article II, § 1(a) and 1(b)(3) are referenced here from the online source.

B.17 U.S.C. Copyright Law²

The following is a direct quote from Circular 92:

§ 107 · Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

II. APPLYING “FAIR USE” TO THE PLAGIARISM CLAUSE

The root problem that is addressed by the plagiarism clause is that of “fair use” within the academic environment. A 4-pronged test has been prescribed by Congress for evaluating fair use of copyrighted materials. It is therefore logical to analyze the plagiarism clause under these four prongs in order to determine where the law and the clause are similar and different. Additionally, this analysis will allow for a determination of whether or not the clause is truly needed, or if it in any way buttresses or detracts from copyright law. Aside from setting forth expectations for conduct within the academic environment, what does the plagiarism clause add that copyright law would not?

A. “The Purpose and Character of the Use”

A key provision within this, the first prong of the fair use test, specifically stipulates that use of copyrighted material “for nonprofit educational purposes” is exempted from copyright protections. While this prong is not intended to be used independently, it does provide an early indication of why the plagiarism clause may be necessary. At the same

² United States Government, *Circular 92 “Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code”* (Washington: United States Congress, 2003). Copy provided in Portable Document Format (PDF) with the course materials for EMSE 315. Section 107 of this document was the source of the quote used here.

time, it does not indicate carte blanche permission for academia to use all copyrighted materials. This prong does, however, set the stage for an argument from academia that use of copyrighted materials may be permissible.

In contrast to this prong, the plagiarism clause very clearly indicates that all uses of copyrighted works not belonging to an individual must be given proper attribution, regardless of any exemption potentially granted under fair use. This principle is based on maintaining fairness, propping up copyright law, and motivating individuals to give credit where credit is due while focusing on generating original work.

B. "The Nature of the Copyrighted Work"

In the case of the second prong, the primary concern is the quality of the copyrighted work. Quality, in this sense, has to do with whether or not misappropriations of a copyrighted work are directly from the original copyrighted work or from some derivation thereof. Whereas copyright law might have to take into consideration this sense of the nature of the work, the plagiarism clause very clearly stops any such defense. In fact, it could be argued that in this case the plagiarism clause is stricter than copyright law by requiring that all non-original "words, ideas, or sequence of ideas"³ must be attributed to the original author.

C. "The Amount and Substantiality of the Portion Used"

The third prong of fair use looks at the entirety of the new work and determines what portion is a direct copy from the original. This prong is important within copyright law because it determines whether a work is simply making use of the materials as evidence toward a larger demonstration, or if the copyrighted materials are, in fact, the larger demonstration. Logically, this prong falls very much inline with the concept of plagiarism, speaking toward the spirit of the rule. Interestingly, the plagiarism clause itself makes not mention of this concept.

From this standpoint, the plagiarism clause is apparently less strict than copyright law. The danger represented by this gap is that someone could theoretically make heavy and unfair use of a copyrighted work, attribute it properly, and not be in violation of the plagiarism clause. This example does not keep with the spirit of the clause, however, and is really quite ridiculous. Additionally, it should be noted that the EMSE Department supplements the plagiarism clause by making it very clear in their classes that the amount of unoriginal work used within a paper will be evaluated and the student will be graded down for excessive exercise of fair use.

In the end, despite the appearance that the plagiarism clause creates a real and viable hole that could be exploited by someone of questionable standards, these concerns are

³ The George Washington University, *Code of Academic Integrity* (Washington: Academic Integrity Council, 2001), accessed 26 September 2004; available from <http://www.gwu.edu/~ntegrity/code.html>. Article II, § 1(a) and 1(b)(3) are referenced here from the online source.

primarily based on the hypothetical. In reality, it would be reasonably difficult to exploit this perceived weakness to one's benefit.

D. "The Effect of the Use"

The final prong of the 4-prong test assesses the potential market effect that might result from a copyright infringement. In a nutshell, this prong attempts to assess potential damages for a violation. The plagiarism clause does not address the problem of the market, given its existence within a nonprofit educational institution. However, this prong is potentially applicable to a research environment such as is contained within the University.

A simple example would be of one researcher publishing the work of another researcher as her own, even though the original author's work was unpublished. The infringing researcher could then potentially profit directly from this violation and cause a loss for the infringed researcher. This example is clearly a violation of both the fourth prong and the plagiarism clause (assuming no attribution existed). This example also borders on the laws governing protection of trade secrets, etc.

The primary point here is that while the plagiarism clause does not specifically speak to the effect of the use, it indirectly limits the effect of the use by prohibiting the use outright without proper attribution. This attribution would likely have the effect of directing the market benefits to the copyright holder.

III. POINTS OF SUMMARY

As demonstrated by the analysis above, a few quick points can be extracted to describe the differences and similarities in the plagiarism clause and copyright law.

A. Plagiarism Is a Restatement of Fair Use

Analysis of the 4-prong fair use test in comparison to and contrast of the plagiarism clause demonstrates that the clause is in essence an abbreviated form of § 107. Given that fair use is the basis of exemption within copyright law that allows authors to make use of existing copyrighted work, it is only logical to expect this sort of use to occur within an academic environment. At the same time, whereas special provisions have been made within § 107 to allow fair use, this use must be limited in such a manner as to not allow or promote questionable behaviour. Therefore, the plagiarism clause provides specific guidance to prospective authors to help them make good decisions that will keep them from violating copyright law through fair use.

B. Copyright Law Defines, Plagiarism Clause Prevents

One conclusion that is fairly clear from a comparison between copyright law and the plagiarism clause is that the audience and scope addressed by copyright law is much broader than that addressed by the clause. This conclusion is quite logical in that copyright law is addressed to more than just an academic environment and seeks to protect the vast majority of creative works. In contrast, the plagiarism clause is aimed specifically at the University and seeks to resolve any gaps or questions an author might have when creating their own works. While the plagiarism clause serves the purpose of broadly protecting creative works, and probably does so in a much broader manner than copyright law, the scope within which the rule applies essentially limits the degree of its effectiveness.

The real importance of the plagiarism clause is in making authors aware of the expectations levied upon them by their colleagues without wielding copyright law over the author's head so as to bludgeon them into compliance. Instead, the plagiarism clause simply stipulates that all non-original work must be properly attributed. In essence, where copyright law defines fair use of copyrighted materials and seeks to define the full context therein, the plagiarism clause simply attempts to prevent copyright infringement through plain directions. Thus, while copyright law defines what copyright means and the context in which the copyright is protected or exempted, plagiarism cuts right to the chase and attempts to proactively preempt any violations of copyright law regardless of any exceptions that might be made.

C. The Plagiarism Clause Is Necessary

As a direct result of the previous conclusions, it seems quite clear that the plagiarism clause is a necessary component of the overall *Code of Academic Integrity*. While copyright law is fairly clear in defining the expected treatment of copyrighted materials, the plagiarism clause attempts to prevent copyright violations at the source. Furthermore, because of the potential gaps created by the first prong of fair use and the protections or lack of protections for unpublished works, the plagiarism clause gains in importance as a tool for ensuring legal and moral behaviour.

REFERENCES

1. The George Washington University, *Code of Academic Integrity*. Washington: Academic Integrity Council, 2001, accessed 26 September 2004; available from <http://www.gwu.edu/~ntegrity/code.html>.
2. The United States Government, *Circular 92 "Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code"*. Washington: United States Congress, 2003.