

Students Plagiarism and Copyright Infringement: A Malaysian Legal Perspective

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Abstract. Plagiarism and copyright infringement are two important ethical issues in research. Although plagiarism has been given substantial attention, little attempt has been done to discuss the issue of copyright infringement. Given the challenges of the modern era, copyright infringement becomes an equally important issue as plagiarism. In this paper, we extend previous studies on the issues of plagiarism and copyright infringement by including a discussion of these two issues from a Malaysian legal perspective. Specifically, we examine the legal provisions that apply to the students of a large public university in Malaysia with regard to the issues of plagiarism and copyright infringement. We also examine possible legal hurdles of contractual existence and fair dealing concept in cyberspace. Statutory provisions and legal cases were referred to in supporting our argument. From the discussion, we found that there are several implications for students who have been found to plagiarize or infringe a copyright.

Keywords: Plagiarism, Copyright Infringement, Legal Protection, University

1. Introduction

Plagiarism and copyright infringement are two important ethical issues in research. Plagiarism, which is a form of cheating, unethical misconduct, and academic dishonesty, has been widely examined in previous studies (e.g., East, 2010; Hansen, Stith, & Tesdell, 2011; Gullifer & Tyson, 2010). This is evidence from a quick search in Scopus that shows there are 2,272 published articles dealing with the issue of plagiarism. Hence, students may be familiar with and understand well the issue of plagiarism. However, there are other equally important ethical issues that a student should be aware of. For example, knowledge in plagiarism alone will not be able to address the following questions: Is copying everything from a text an act of plagiarism? What is the consequence if one does not produce the work but distribute the work to others for the sake of knowledge sharing? What will happen if one charges a small sum of money for the cost of a CD in which others' works are downloaded into? Hence, we believe that the issue of copyright infringement is as an important issue as plagiarism when discussing research ethics.

Given the importance of both plagiarism and copyright infringement in regulating ethical behaviors, this paper discusses the difference between plagiarism and copyright infringement from a legal perspective. Specifically, we discuss the legal provisions on the issues of plagiarism and copyright infringement that apply to a Malaysian public university, namely, Universiti Teknologi MARA (i.e., UiTM). Unlike other universities in Malaysia, UiTM has an interesting historical root. UiTM was first established in Malaysia as Institut Teknologi MARA (i.e., ITM). By virtue of an amendment made in 1996 to the Institut Teknologi MARA Act 1976, this institute was put at par with all other universities in Malaysia. Eventually, ITM was renamed as UiTM in 1999. However, the Educational Institutions (Discipline) Act 1976 (i.e., EIDA 1976), which once governed ITM, is still applicable to UiTM. As EIDA 1976 deals with student disciplines including plagiarism, the scope of our discussion applies only to UiTM students only.

2. Legal Provisions on Plagiarism and Copyright Infringement

In Malaysia, there are three Acts that govern the institution of higher learning—EIDA 1976, Universities & University Colleges Act 1971 (i.e., UUCA 1971), and Private Higher Learning Educational Institutions Act 1996 (i.e., PHLEIA 1996). Within UiTM, issues pertaining to disciplinary actions against students for

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committing disciplinary offences are governed by EIDA 1976. This Act specifies that, among others, an act of plagiarism by a student is a disciplinary offence. For instance, Order 8 Rule (1) of the EIDA 1976 states that: “*a student shall not make use of the text of any lecture or instruction imparted to him in the institution except for the purpose of pursuing his course of study; in particular he shall not reproduce in a any manner the whole or any part of such text for the purpose of publication, distribution or circulation, whether for payment or not.*” The prohibition against plagiarism is further provided under Order 8A of the same Act, which states that plagiarism includes the act of taking an idea, writing, data or invention of another person and claiming that the idea, writing, data or invention is the result of one’s own findings or creation [Order 8A(2)(a)]; or an attempt to make out or the act of making out, in such a way that one is the original source or the creator of an idea, writing, data or invention which has actually been taken from some other source [Order 8A(2)(b)]. The provisions in Order 8A(3)(b),(c), and (g) specify that plagiarism also includes incorporating oneself or allows oneself to be incorporated as a co-author of an abstract, article, scientific or academic paper, or book, when one has not at all made any written contribution to the works; forcing another person to include one’s name in the list of co-researchers for a particular research project or in the list of co-authors for a publication when one has not made any contribution which may qualify him as a co-researcher or co-author; and translating the writing or creation of another person from one language to another, whether or not wholly or partly, and subsequently presenting the translation in whatever form or manner as one’s own writing or creation. Thus, it can be concluded from these legal provisions that if a student does not play a part or give any contribution in any research project, assignment, or any written submission as required by the university, and yet his name appears as one of the co-authors, he may be perceived as a plagiarist.

Copyright in contrast does not involve the question of acknowledgment or giving accreditation to the original author. Because copyright allows a person who writes, produces or publishes original work to hold on to the work as his tangible property for a specific period of time (Green, 2002; MyIPO, 2012), copyright law is violated when one produces a work without copyright permission. This means that one is in breach of copyright law when he fails to obtain consent from the copyright holder although he has given proper accreditation to the original owner. As such, one’s act is an act of copyright infringement.

In Malaysia, issues pertaining to copyright, including copyright infringement, are dealt under Copyright Act 1987 (i.e., CA 1987). Section 3 of CA 1987 defines copyright infringement as reproducing of any work eligible for copyright without consent from the copyright holder. It occurs when one copies the original text substantially (Saunders, 2007). The case of *Ladbroke (Football) Ltd v William Hill (Football) Ltd [1964] 1 WLR 273* further emphasizes this principle where the court held that the question of substantiality is a matter of quality rather than quantity. Thus, there must be a sufficient resemblance between the copyright work and the alleged infringement. However, there are certain exemptions to the exclusive rights of the author. Under the concept of fair dealing others may have a right to use the work without obtaining consent from the copyright holder, notably, for the purposes of non-profit research, private study, criticism, review, or the reporting of current events. On the other hand, if such uses are for public benefit, the work must be accompanied by an acknowledgment of the title of the work and its authorship (Section 13(2)(a) of CA 1987).

3. Legal Protection against Copyright Infringement in Cyberspace

Copyright should primarily serve the instrumentalist function to cater educational goal and its values by creating, sharing, and spreading information for public use and access (Zainatul Asyikin Zainul, 2011). The said instrumentalist function must have a protective aspect to authors to prevent reproduction of work without permission. It becomes more complex in this cyberspace era to a greater extent. The usage of internet connectivity worldwide without jurisdictional boundaries allows any document or article to be shared without any limitation. For example, the growth of internet connectivity in Malaysia allows information and knowledge, including academic writing, to flow freely in cyberspace (Zainatul Asyikin Zainul, 2011). Although most academic documents are kept in legally protective databases, these documents can be physically reproduced. For this reason, the enforcement of copyright protection faces new challenges that require more technical and legal measures in this cyberspace era.

Further, digital libraries allow database administrator to create, store, manipulate, communicate and disseminate materials without time and space constraint. This instantaneous advantage allows academic information to be spread to the public. Therefore, the database administrator maintains its roles as an information and knowledge provider. Such privileges enjoyed by the database administrator should not be hindered by the statutory provision in respect of copyright infringement (Zainatul Asyikin Zainul, 2011). However, Section 13(2) of the CA 1987 allows a database administrator to enjoy certain exceptions such as to reproduce, to perform and to communicate without original author consent so long as it is for public interest and fair practice. The term public interest and fair practice tend to be broad in nature. However, it depends on the extent to which it can be proved that there is no profit deprived from the usage of the said materials (Tee, 2011).

3.1. Copyright liability

The rationale of understanding copyright protection is to facilitate the need to protect academic writing. The protection of copyright can be done effectively through technological means. In UiTM, the medium of digital interaction and storage is Intranet. This Intranet is maintained by the university and it is accessible locally. Because the standard of liability under the legal perspective can be as vast as multinational Internet Service Providers (i.e., ISPs), and because CA 1987 does not protect the ISPs liabilities as much as American Digital Millennium Copyright Act (1998) (i.e., DMCA 1998), the due care and protective measure must be in place. Problems may occur when the literary work is not registered for copyright and is exposed to the Internet. In this situation, the university information technology administrator and ISPs will not be liable. It is because the said literary work is not within their digital confinement. As liability is concern, ISPs may attempt to avoid liability by demanding indemnification from their clients. A contract assuming all responsibility for any copyright infringement engaged in by the clients is then signed. Even though this measure reduces ISPs liability, it will not eliminate the liability entirely (Teran, 1999).

In *Religious Technology Center v. Netcom 907 F. Supp. 1361 (N.D. Cal. 1995)* the court ruled that the ISPs would be liable for contributory infringement if the ISPs know about the infringement. The greater amount of liabilities may be imposed against the ISPs if they fail to remove the said materials from the databases. It becomes a pre-requisite requirement for the copyright holder to serve a notice to the infringer and to the database administrator before any legal action can be taken. The alleged infringer must respond to the notice to avoid presumption of fault. This presumption of fault extends to the American statutory provision, that is, American Online Infringement Limitation Act (i.e., AOILA). The area of infringement can be found in (1) infringement of content hosting services provided by ISPs, (2) infringement by the provision of information location tools and (3) the provision of transitory communication facilities for infringing words (Kumar, 2006). This broad interpretation of infringement creates a legal presumption of liabilities of ISPs to copyright holder instead providing them immunity against such liabilities (Kumar, 2006).

In Malaysia, CA 1987 provides remedies for the aggrieved party to obtain legal redress. When there is a copyright infringement, the aggrieved party has a right either to sue for damages and account for a profit; or obtain an injunction to discontinue the publication or to surrender the infringing copies to be destroyed by the copyright holder (Saunders, 2007). Furthermore, CA 1987 provides provisions for criminal action against the person who committed a copyright offence. A person who is found guilty of committing copyright's offence under section 41(1)(a)-(f) of CA 1987 can be penalized with (i) a fine of not less than two thousand ringgit and not more than twenty thousand ringgit for each infringing copy, or imprisonment for a term not exceeding five years or both and (ii) for any subsequent offence, a fine of not less than four thousand ringgit and not more than forty thousand ringgit for each infringing copy or imprisonment for a term not exceeding ten years or both. On the other hand, for an offence under section 41(1)(g) CA 1987, a person can be penalized with (i) a fine of not less than four thousand ringgit and not more than forty thousand ringgit for each contrivance in respect of which the offence was committed or imprisonment for a term not exceeding ten years or both and (ii) for any subsequent offence, a fine of not less than eight thousand ringgit and not more than eighty thousand ringgit for each contrivance in respect of which the offence was committed or imprisonment for a term not exceeding twenty years or both. Section 41(1)(h)-(j) provide that a person can be penalized with (i) a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term

not exceeding five years or both and (ii) for any subsequent offence, a fine not exceeding five hundred thousand ringgit or imprisonment for a term not exceeding ten years or both.

3.2. Legal protection against illegitimate use of database contents

Section 36(3) of CA 1987 allows information to be used for legitimate purposes (Shafee Abdullah, 1965). This provision also specifies that technological means such as password should not prevent such uses. Therefore, UiTM students may use online information that are obtained from external databases such as Scopus, Emerald, and Lexis-Nexis for academic writing, research, private study, and preparing lecture notes. However, any act that contravenes this principle of fair dealing is deemed as using information for illegitimate purpose. As the contents of these databases are accessed via passwords, to which a user must agree on the contractual terms specifies by the database administrator before being able to use it, the protection against illegitimate use of the contents is based on the contractual agreements between users and database administrators rather than the legal provisions of the copyright law. As such, actions against illegitimate use of online contents are dealt by law of contract.

Risk management plan for copyright is a reliable method to protect academic writing. The risk of copyright infringement can be reduced by implementing a comprehensive copyrights policy so that it may provide guidance about fair dealing and the frequently used license for permission purposes. Once permission has been granted either through payment or free access to a certain academic writing, no copyright infringement occurs against the original authors. The development of this technology must not be complicated in its usage but must be made easy to obtain the permission when it is necessary to do so by law (Harris, 2012).

4. Implications of Plagiarism and Copyright Infringement on UiTM Students

There are several implications following the above discussion. First, a student is deemed to have infringed a copyright although he has given accreditation to the original source. In this case, he will be liable to litigation even though he may not be penalized as a plagiarist when the work he produces has substantial resemblance to the original work. Second, there is no copyright infringement if one uses a copyright work under the concept of fair dealing. However, such act still falls under the ambit of plagiarism, even if it is used for non-profit research, when one fails to give any accreditation to the original author. Hence, he will be held liable for plagiarizing other's work (Tabrez & Ghosh, 2011). Third, although no civil action can be taken against the plagiarist, a disciplinary action can be taken against him by the university. For instance, under Order 48 of EIDA 1976, a student who is found guilty of a disciplinary offence shall be liable to any appropriate combination of two or more of the following punishments—(1) reprimand, (2) a fine not exceeding five hundred ringgit, (3) suspension from all of the facilities of the institution for a specified period, (4) suspension from following course of study at the institution for a specified period, (5) barred from sitting for a part or all of the examinations at the institutions, (6) exclusion from any part of the institution for a specified period, and/or (7) expulsion from the institution by the disciplinary authority.

Fourth, when a student taking an ideas from a text but he has substantially changing its content, no action of copyright infringement can be taken against him; yet, he may be liable for plagiarism if he failed to give any acknowledgement to the original source. Fifth, as noted under CA 1987, copyright shall subsist during the lifetime of the author plus fifty years after his death. Thus, no copyright infringement is committed if the student copy the original author's work after the term end. However, even though the copyright's term is ended, the student still committed an act of plagiarism if he failed to give proper accreditation to the original source. Sixth, even though consent has been obtained by the student from the original author to produce the work as his own, but still the act is considered to be plagiarism as the student has the intention to pass off the original author's work as his own (Green, 2002). Seventh, student who used his fellow's student's work for instance assignment which is not copyrighted can be perceived as plagiarist even though he cannot be charged under copyright law (Green, 2002). Finally, if the student copying the work of others to be distributed to his fellow students without any intent to pass the work off as his own cannot be charged as plagiarist but he may be held liable for infringing the copyright if it is substantially done (Green, 2002).

5. Conclusion

The objective of this paper is to examine the issues of plagiarism and copyright infringement from Malaysian legal perspective. We scope our discussion to legal provisions that apply to UiTM students. Our discussion shows that there are at least two statutes that govern the ethical behaviors of UiTM students. EIDA 1976 and CA 1987 provide legal prohibition and protection against plagiarism and copyright infringement. In addition to these statutes, we also found that actions against UiTM students who use online contents for illegitimate purposes may be taken on the basis of contractual agreement made between the student-users and the database administrators. As our discussion only focuses on UiTM students, we encourage future studies to extend our study by examining the legal protection against other unethical behaviors and including students from other universities too. Another interesting avenue for future studies is to conduct a comparative legal study to examine how the issue of copyright infringement is dealt by the signatories of Berne Convention

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