

What's mine is mine and what's yours is....mine: plagiarism in law and practice

The prevalence of technology in our lives, and the veritable library of information that sits at our fingertips all day, means that students can be easily tempted to 'borrow' a little work when writing their own assessments and research papers.

Students and teachers alike often have no clear understanding of the boundary as to what is acceptable practice, what is unethical practice and what constitutes illegal activity. We hope to clear up some of those misconceptions.

The general position under law

The UAE Copyright Law sets out, quite clearly, that an author has the exclusive rights to use their creative works: anyone wishing to use such works needs to request permission and, likely, pay a fee.

However, as with many other jurisdictions, there is some scope for use under the law that means that consent does not need to be obtained. For example, under UK law, the use of the copyright works of another party for certain limited, educational purposes, will not constitute an infringement of their copyright. The same applies in the US.

In the UAE, we have section 22 of the Copyright Law. This article broadly sets out the acts that are not prohibited in relation to a copyright work: in other words, these do not need to be permitted by the author.

Under Article 22 (1), making "a sole copy from the work for merely personal and non-commercial or professional but personal use of the copier" is acceptable. However, the wording of the Article would not extend beyond the true personal use - "I am printing this to read for my personal enjoyment" - and would not extend to use within a school or university project (no matter how tempting it might be to consider this to be personal use).

Perhaps more pertinently, under Article 22 (5), "quotation of short paragraphs, derivation or reasonable analysis of the work for the purpose of criticism, discussion, or information provided mentioning the source and the author's name" is also acceptable. This specifically allows for any person to use short excerpts for discussion. In some instances, discussion could include research papers and dissertations.

Importantly, the author's name and the source must be included for any use under this Article to be valid. In other words, arguing for the use as valid for discussion of the original work will not assist your case if you do not provide the appropriate credit.

Finally, and more importantly, Article 22 (8) allows for the "*reproduction of written, sound or audio-visual short excerpts for ... educational or vocational training purposes, provided that copying be in the reasonable limits of its purpose and that the name of the author and the title of the work be mentioned wherever is possible*".

As with sub Article 5, there is again a reference to the credit for the author but in this case, "wherever is possible". We take this to mean that in some mediums, a credit may not be possible. Naturally, where it is possible, it must be provided - spurious claims as to an inability to provide a credit (such as lack of space) will not be acceptable as a defence.

How long is too long?

Articles 22 (5) and 22 (8) both refer to the length of the excerpt, albeit without much guidance.

In considering Article 22 (5), the length must be considered to be “short” under the law. In Article 22 (8), we see the limitation as to length, and a direct reference to “the reasonable limit of its purpose”.

In many jurisdictions, the benchmark is that the use does not exceed the length that would be considered reasonable and which can be justified by the purpose for which it is being used. An analysis like this can only be subjectively applied to the work at hand, and such an analysis would in all likelihood form the basis of any analysis of a claim by the UAE courts.

So what, in law and in practice, is too much?

People tend to consider plagiarism as the use of the entire work from another person and passing it off under your own name. Whilst this is undoubtedly the worst of the plagiarism scenarios and will undoubtedly result in a claim for breach of copyright along with severe reputational damage, plagiarism can take many forms.

Often, students simply take a slab of words from another’s work, including it without using quotation marks or providing a credit, and use it in a manner that makes it appear as if it is their own work. In a university, this will usually attract disciplinary action and may also attract such action in secondary schools. If the original author becomes aware of the use, they would have the right to claim copyright infringement.

As we move down the various forms of plagiarism, we come to two that are extremely difficult to detect. One is where a work is used and simply paraphrased. This is a common type of plagiarism. From a copyright perspective this ‘copying’ is hard to prove but professionally, given that the ideas are the same and are generally presented in the same manner, perhaps in the same order, a professional tutor or colleague will usually pick up the matter reasonably quickly. Changing around some words in several places along with using synonyms for some words will be readily detected. Again, professional disciplinary action is certain to follow.

Students often think that using parts of other people’s work within their own work, in a piecemeal fashion, may be legal or ethically acceptable. This is not the case. Using the words of another person without accreditation is plagiarism, even if you do include it within other sentences that were written by you. Looking at the laws above, we can see that, even if the extract is short, the failure to credit will be problematic legally, and most definitely give rise to claims of professional misconduct and potentially a legal claim.

Of course, when students are buried in the many reference works that they are required to undertake for research, it can be easy to accidentally take someone else’s work and include it within your own work. The most common issue is a failure to provide the reference to the source material, which gives rise to the perception that the work was copied.

Inspiration

Naturally, students at all levels of their education are constantly immersed in works that will, ultimately, be reflected in some way within their own works. Inspiration is to be encouraged but a student must be

guided as to what takes inspiration into the realm of inappropriate or unethical copying and, worse, what makes it into plagiarism. Their respect for the work of others can only be enhanced by the reiteration of such principles of law and ethics.

For further information, please contact [Fiona Robertson \(f.robertson@tamimi.com\)](mailto:f.robertson@tamimi.com).