

Plagiarism, research publications and law*

R. Saha

Plagiarism in scientific research has, in recent times, become a topic of discussion and concern in India. The core level of discussion has largely been driven by ethical considerations rather than by the relevant laws existing in the country such as the Copyright Act. Ethics can mean different things to different people and therefore issues related to legitimacy of one point of view as against another will always remain debatable. Punitive actions purely based on ethics may not be acceptable to all and may be difficult to implement, unless supported by law. Plagiarism is stealing someone's intellectual property, which is legally and morally untenable. In addition, it can cause economic disadvantage to the original author. The issue of plagiarism needs to be handled at a much higher level of academic, legal, political and social debate for enhancing the image of Indian research.

Keywords: Copyright, intellectual property, law and ethics, plagiarism, scientific research.

Intellectual property rights and plagiarism

PLAGIARISM is violation/infringement of the intellectual property rights (IPR) of the original author in the form of authorship rights, sometimes also known as the paternity right. A plagiarist attempts to pass off the copied work as his own. The right of authorship in India is derived from the Indian Copyright Act. Copyright, an important form of IPR, protects original literary, dramatic, musical and artistic works. The Copyright Act gives the following rights to an author: to reproduce the work in any material form, issue copies of work to the public not being copies already in circulation, perform the work in public or communicate the work to the public, translate the work, make adaptation of the work and make cinematographic films or sound recordings of the work. Infringement of copyright is a cognizable offence leading to a fine and/or imprisonment. In terms of civil remedies, infringement can lead to injunction and damages. The term of copyright is equal to the author's life (remaining on the date of creating the work) plus 60 years. Copying of a work after expiry of the term of copyright is not an infringement of copyright of the original author, but it could be a case of violation of authorship right of the original author, hence a case of plagiarism. It signifies that the authorship of an original work cannot be misappropriated at any time even after the expiry of the copyright term.

The Copyright Act provides protection to an expression or presentation of an idea, and not to the idea itself; the presentation may be textual, visual or audio, or a

combination of these three forms of presentation. The authorship rights are derived from the author's special rights under Section 57 of the Indian Copyright Act. The Section stipulates 'Independently of the author's copyright and even after assignment either wholly or partially of the said copyright, the author of a work shall have the right (a) to claim authorship of the work; and (b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour and reputation'. In the context of plagiarism, point (a) is relevant. This right stipulates that an author's original work cannot be reproduced in someone else's name according to the Copyright Act. In other words, replacing the original author's name by some other name is violation of authorship right of the original author and the law may take its own course in ensuring that the original authorship is retained. Plagiarism is also an act of copyright infringement if undertaken within the term of the copyright. In other words, plagiarism = infringement of copyright + infringement of authorship right. As stated, beyond the term of copyright, no copyright infringement would take place; therefore, plagiarism will then be the same as infringement of authorship right.

Definition of plagiarism

The *Oxford Dictionary* defines plagiarize as 'take and use (the thoughts, writings, inventions etc. of another person) as one's own; pass off the thoughts etc. of (another person) as one's own'. There are several other definitions of plagiarism. To keep the discussion simple, we accept the definition given in the *Oxford Dictionary* and examine

*The views expressed here are those of the author and not of the organization he is affiliated with.

The author lives at T-5/103, Paesvnat Prestige II, Sector 93A, Noida 201 304, India.

e-mail: raghav.saha@gmail.com

how plagiarism is different from infringement of copyrights at the conceptual level. First, thoughts and ideas cannot be copyrighted under the law and therefore, plagiarism has something more than the legal connotation of copyright. Secondly, raw data do not get protection in copyrights, but the organization of data in the form of a database is protectable. Therefore, copying of an idea or a thought or data may not be copyright infringement, but it may be a case of plagiarism. Again there is no law which would punish this kind of plagiarism. For example, making and selling of a pirated/copied book is a copyright infringement, but not a case of plagiarism. The infringer will also become a plagiarist if he sells the copied or pirated work as an original created by him. The point being made is that plagiarism needs to be viewed both from legal and non-legal angles simultaneously, which is a little more difficult. The non-legal angle could be linked to ethics, morality, consideration towards the original author, honesty and appropriation of credit not due, etc. The Delhi High Court while adjudicating the case between Mannu Bhandari and Kala Vikas Pvt Ltd on 8 August 1986, observed that Section 57 provides special status to the author of a literary work and puts the authorship right on a higher pedestal than the normal objects of copyright.

Some examples and analysis

Can I copy from my own original writings already published somewhere or reproduce the writings or adapt them in some other form? The common-sense answer would be that there is nothing wrong in doing so as I am the original author or creator of the work. This answer would be correct if I had not assigned the copyrights in my writing to a journal or a magazine for getting this published. Once I assign my copyright to a journal (assignment can be considered like selling a house, thus losing all rights in the house), then that journal becomes the new copyright owner and can prohibit me from copying my own work for another journal, or even for a different article or paper in the same journal, unless there is an agreement with it to do so. Therefore, copying my own work, for publishing it in another journal, may become a straight case of copyright violation. It may, however, be noted that assignment of copyright does not snatch away the authorship right from an author.

Consider another situation. Two authors *A* and *B* jointly write an article and get it published in a journal *X*, by assigning their copyrights in the work to the publisher of *X*. An article later written by *A* is published in another journal *Y*. The subsequent article written by *A* is found to contain some portion of the article earlier written by *A* and *B* for the journal *X* for which permission of the publisher of *X* was not taken. *A* may feel that no plagiarism or copyright violation has taken place while publishing the article in *Y*. First, the original joint authorship of *A*

and *B* has been misappropriated by *A* and secondly, it is a straight case of copyright infringement. This point is often missed by the authors. It can be seen that the complexity of rights will increase with multiplicity of authors.

It should be pointed that in the area of publishing research papers and books, the authors generally assign their copyrights to the publisher of the journal or the book. Most academicians and researchers in India (and perhaps in many other countries) sign the assignment forms without carefully reading the terms and conditions, especially those written in fine print, because of the overwhelming desire to get their work published and share it with peers.

Extent of copying

There are some other dimensions to be kept in view. Copying has not been considered unethical in many cultures. Copying religious songs or texts was never and is still not considered an act of copyright infringement (although it may be illegal). Similarly, quoting proverbs such as 'An apple a day keeps the doctor away', without acknowledging the author, is also not considered infringement of copyright or authorship right. Consider another situation relating to common expressions used by many to describe a situation or an activity or a thought. Would repeating such common expressions be treated as plagiarism or violation of copyrights? Take, for example, an expression 'I go to drop my son at his school every morning at 7 a.m. I come back home and get ready for the office. I leave from my house at 9 a.m. and reach my office at 10 a.m.'. It would be difficult to describe it as a case of plagiarism or copyright violation since such expressions (even if identical) are used by many persons. However, if the above description is accompanied by some original thoughts or emotions or description of nature or the route followed while going to the school, then the chances of plagiarism and/or copyright violations having taken place are high, if you find another description identical to the one mentioned above. Now consider yet another situation where the original description does not consist of only 2–5 sentences, but say 15–20 of them. If someone is found to publish 15–20 sentences identical to the earlier sentences, then the chances of a copyright infringement or plagiarism are higher. It is reported that in the publishing business copying and publishing of 300 words of text in continuation is considered copyright infringement.

Economic dimension of plagiarism

IPR play a central role in the present-day knowledge economy. Plagiarism in this context has become a point of concern and is no longer purely driven by ethics. Does

plagiarism have any associated benefits for the plagiarist, other than the authorship? An act of plagiarism should not be considered as a trivial happening. A plagiarist's scholarly article may give him/her recognition in many ways, especially in the eyes of those who have not read the original work. This may also undermine the reputation of the original writer whose work may sometimes be considered by new readers as plagiarized. Benefits, including pecuniary, may not accrue immediately to the plagiarist, but in the long run, the possibility of benefits due to his enhanced reputation cannot be ruled out. The enhanced reputation may lead to pecuniary benefits such as getting further writing assignments. It would therefore appear that plagiarism may also be linked with economic benefits, and hence is not an ethical issue alone. The negative effects of plagiarism are well known and are described in the rule books of many universities and institutions such as disqualification of students from further studies, non-acceptance of papers by journals and magazines, and in some cases facing pecuniary penalties/other legal actions.

Ease of copying and plagiarizing

Prima facie, it may appear that plagiarism is not a new phenomenon but used to take place in the past as well; but detection of plagiarized work in earlier days was difficult. However, now many computer programs (software) are available to check if a work claimed to be original is a case of copyright violation or plagiarism, or not. It has now become much simpler to find out instances of plagiarism and copyright violations with the help of such software. The underlying concept is that the original writing should be available in digital form. The current debate in the country is both about copyright violation and plagiarism, indicating that some published research papers contain already published work at least in part and these are also instances of appropriating authorship. Sometimes authors are careless while copying that they copy commas, semi-colon and full stops, even grammatically wrong sentences and wrongly spelled words. Such incidents would be more common when one relies on 'cut and paste'.

Larger negative dimension of plagiarizing

A copied work certainly points towards lack of originality in the same. It would follow that questioning the originality of several research papers may not be illogical and unreasonable. Researchers interested majorly in increasing the count of their publications may ignore originality in content and expression while submitting their papers to journals. However, it has become exceedingly difficult to get such works published in reputed journals to start with. If we were to apply the strict criterion to past publica-

tions, our perception and understanding about the quality of research may undergo a change. The situation may not apply to academic institutions only, but also to government research laboratories, R&D institutions, and so on. In this backdrop it is urgently required to examine the robustness of the system in providing right exposure to young students and researchers, including faculty members and senior scientists. This argument is applicable to all areas of knowledge, not necessarily in physical, chemical and medical sciences or engineering, but also to research in social sciences.

Plagiarism certainly points towards lack of originality and novelty in any writing, whether scientific or otherwise. Plagiarism in scientific research papers is a serious matter because it creates doubts about the quality of research in terms of novelty. In the Indian context we have more reasons to be concerned, as most of the research papers emanate from publicly funded institutions and copying of others' work is a more serious matter as it points towards inefficient use of public funds.

Possible remedies

We need to create extensive awareness about plagiarism among Indian students, researchers, academicians, policy makers and research managers. Most academic and research institutions do not have policies for protecting their IPR and hence there is lack of awareness about this subject. This decade has been declared as the 'Decade of Innovation' and the systems, both governmental and non-governmental, have shown their noble intention of creating an ecosystem for innovations. Therefore, the setting up of institutional IPR policy/guidelines is the need of the hour to establish a healthy ecosystem for innovations in order to ensure that creators of works and innovations honour the IPR of others, such as copyrights. Talking about innovations without strengthening the important pillar of IPR, has little meaning.

There are suggestions that a separate body may be set up for checking plagiarism in Indian research. The idea of setting up a central agency may be examined carefully as such a body may become a hurdle in the creation and publication of original work and hence prove counter-productive. The system for checking plagiarism should be decentralized to the level of each institution and be self-regulating as far as possible.

It is possible for each institution to determine whether a research paper published by its faculty/students violates copyright of someone or is a case of plagiarism. Let us remember that a plagiarized work brings disrepute to an institution, if a member of the faculty/student engages in the act of plagiarism. While creating awareness is the primary need and challenge, it is essential to create in parallel enabling systems for stakeholders to check IPR violations. Measures such as installing suitable software

for this purpose in the college library or individual's computer would go a long way in creating a culture of anti-plagiarism. Some software are also available free of cost, which can be used without any financial burden.

In schools and junior colleges, where increasingly students are required to write term papers or reports to train them in independent thinking and expression, cases of 'cut and paste' must be minimized or totally removed. A brief and concise course on plagiarism and copyright violations in all universities and academic institutions may be introduced. The best and never failing step would be to exercise self-discipline, and stop copying and plagiarizing. This initiative would pay rich dividends in future. There is a law already in place, what is required is educating researchers, especially the young ones such as Ph D scholars, research associates and assistants, in the basics of copyright principles, and in the 'dos and donts' in this regard. Even senior researchers will benefit greatly by learning about such principles and laws. Teachers who have the prime role in strengthening the anti-plagiarism culture may be trained in Academic Staff Colleges under the University Grants Commission.

In several universities abroad, strict punishments are prescribed for students engaging in plagiarism. Some institutions in India too have come out with their policy on plagiarism. However, it is considered essential that the universities should establish facilities to check copying before extending punishment to students.

There has been a call for a new law to curb plagiarism. First of all, must we make new laws when the existing laws can take care of it in a majority of cases? Taking plagiarism as a moral or unethical offence may demand a different type of censorship or punishment. Can you im-

prison or fine a person purely on the charge of plagiarism? The answer is perhaps 'no', unless it is covered in the copyright law. One has to identify the elements which are not covered by the Copyright Act, such as raw data and ideas, and plagiarizing a work after the term of the copyright has expired.

Conclusion

Although the present article focuses on research publications, it should be appreciated that plagiarism can also take place in visual and audio manifestations. The issue of plagiarism needs to be handled at a much higher level of academic, legal, political and social debate. India has earned global prestige because of its efforts and achievements in science and technology, especially in the areas of space and atomic energy. Let us not allow the country to be belittled by not exercising adequate care and indulging in plagiarism, consciously or unconsciously. Science and technology in the country needs to be nurtured and therefore some amount of hand-holding of researchers and research institutions is called for. While adopting a new paradigm driven by both legal and non-legal principles and practices, we should clearly understand the existing IPR laws of the country, including the Copyright Act.

Received 20 July 2016; accepted 8 March 2017

doi: 10.18520/cs/v112/i12/2375-2378