

# **Plagiarism, Intellectual Property and the Teaching of L2 Writing**

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# **Plagiarism, Intellectual Property and the Teaching of L2 Writing**

**Joel Bloch**

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# Contents

Acknowledgements . . . . .	vii
1 The Problem of Plagiarism . . . . .	1
The Debate over Plagiarism . . . . .	3
Why Do Students Cheat? . . . . .	10
Cultural Perspectives on Plagiarism . . . . .	13
Plagiarism and Technology . . . . .	20
2 Intellectual Property Issues and Plagiarism: What the Debate over Both Means for First- and Second-Language Writing Teachers . . . . .	24
The Historical Development of Intellectual Property . . . . .	24
The Evolution of Authorship and Intellectual Property . . . . .	28
The Impact of the Internet . . . . .	36
The Legal Cases Shaping the Metaphors of Intellectual Property in Cyberspace . . . . .	38
Fair Use, Intellectual Property Law and Plagiarism . . . . .	50
Differences between Intellectual Property Law and Plagiarism . . . . .	56
3 Connecting Intellectual Property Law and Plagiarism in the Writing Classroom: The Impact of Intellectual Property Law on Teaching Writing . . . . .	60
Intellectual Property Law in an Educational Context . . . . .	62
The Impact of Technology on the Pedagogical Use of Intellectual Property . . . . .	63
The Use of Intellectual Property Outside the Classroom . . . . .	66
The Role of Writing Teachers in the Debate . . . . .	68

	Rethinking the Relationship between Intellectual Property and Plagiarism. . . . .	69
	Conclusion . . . . .	71
4	A Pedagogical Approach toward Plagiarism . . . . .	73
	The Development of Attitudes toward Plagiarism in the Academy. . . . .	73
	The Pedagogical Problem Today . . . . .	79
	The Impact on Classroom Teaching. . . . .	84
5	Searching for a Metaphor for Thinking about Plagiarism . . . . .	87
	The Battle of Metaphors for Framing the Discussion of Plagiarism. . . . .	87
	Traditional Metaphors and Traditional Approaches. . . . .	88
	Copy Detection Programs and the 'Stealing' Metaphor. . . . .	90
	Multimedia Approaches to Teaching about Plagiarism . . . . .	92
	Finding New Metaphors for Framing Plagiarism. . . . .	94
	The Use of the Game Metaphor . . . . .	98
	Students as Game Players . . . . .	102
	The 'Game Theory' Metaphor and Genre Variation . . . . .	104
6	Rethinking Pedagogical Strategies for Teaching about Plagiarism . . .	109
	Developing a Pedagogical Framework Using the 'Game' Metaphor . . . . .	109
	The 'Game' Metaphor and Teaching about Writing . . . . .	113
	Student, Teacher and Administrative Attitudes toward Plagiarism and Intellectual Property. . . . .	117
	Creating a Course for Discussing Plagiarism and Intellectual Property . . . . .	135
	Conclusion . . . . .	165
7	Conclusion. . . . .	167
	References . . . . .	174

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# 1 The Problem of Plagiarism

*Art comes not out of the void, but chaos*  
Mary Shelley

The great French filmmaker René Clair was once asked whether Charlie Chaplin had plagiarized one of his films, *A Nous la Liberté*, in the making of *Modern Times*. Clair responded that if Chaplin had plagiarized him, he would have been honored. As Clair's response indicates, the definition of what is considered plagiarism and its effect on the creative process can be vague, inconsistent, confusing and highly contested. For writing teachers, the problem of plagiarism has emerged as one of the central pedagogical issues while, at the same time, presenting a unique opportunity for instruction.

Plagiarism refers to the inappropriate use of what is called intellectual property. In the United States, intellectual property is defined as creative acts that have been placed in a fixed medium. Intellectual property differs from physical property in that, with often complex restrictions, it can be borrowed, distributed and utilized without seeking the permission of the owner, something that would be a clear violation of the law in regard to physical property. Intellectual property is often given a fixed limit of protection, which is rarely true for physical property. Ideas, on the other hand, are not considered intellectual property unless they are placed in a fixed medium. Boyle (1996) argues that this concern for separating the idea and its expression is deeply rooted in concepts related to free speech: that the ability to express an idea should not be hampered by claims of ownership.

The use of intellectual property, both inside and outside the classroom, is governed by a myriad of often highly contested legal and ethical rules. Today, there has been much concern about violations of these rules, what are sometimes termed as the 'plagiarism epidemic' or the 'piracy' epidemic (Lessing, 2004, 2006). As will be discussed in more detail later, there is no general agreement as to whether such epidemics exist and, if they do, how they should be dealt with. Nevertheless, a variety of high-profile plagiarism scandals have permeated the news throughout the world. A study at an American university estimated that 18% of students plagiarize at some time, which increases to 31% for students scoring in the lower 25th

percentile of the Student Aptitude Test (SAT), which many students need to take in order to enter university (Dee & Jacob, 2010). A poll at Cambridge University in Britain found that 49% of students admitted to cheating while only 5% admitted to having been caught (Sugden, 2008).

Surveys across universities often report similar estimates of presence of plagiarism; however, these estimates are not always matched by the number of students formally accused of plagiarism. In a survey of undergraduates in online courses in the United Kingdom, Selwyn (2008) found that more than 60% reported some instances of plagiarism. In the 2009–2010 school year, the Ohio State University, which has about 60,000 students, received 174 complaints of plagiarism (Coleman & Curry, 2010). The relatively low number may have resulted from the difficulty in identifying plagiarism or from the reluctance of instructors to involve themselves in the consequences of sending students to the academic misconduct committee (Curry, personal communication). The internet has often been cited as one of the key causes of this upsurge (see Howard, 2007). In a recent survey of teenagers in the United States, 36% reported using the internet for plagiarizing ('The Ethics', 2008).

This concern has not been limited to the West. Reports of cheating at Chinese college entrance exams have been widespread (Wong, 2009). A UNESCO publication entitled 'Corrupt Schools, Corrupt Universities: What Can Be Done?' (Hallak & Poisson, 2007) argues that plagiarism, as well as similar forms of academic corruption, is a worldwide phenomenon that involves people from a wide variety of backgrounds, including students, academics, journalists and politicians.

The growth of such reports has coincided with the growing Westernization of academic life throughout the world, particularly in areas such as publishing (Lillis & Curry, 2010), which has sometimes led to an importation of Western-style rhetoric regarding plagiarism. Often the rhetoric attached to plagiarism in non-Western cultures is also attached to the discussion of intellectual property. In many developing countries, there has been a pragmatic dimension to the concern over plagiarism, often viewing plagiarism as a threat to the credibility of the research rather than as a threat to academic integrity. A survey of the Higher Education Commission in Pakistan, for example, found that the fear of plagiarism has greatly hampered research at universities across Pakistan (Lodhi, 2010).

How plagiarism should be defined and dealt with has long been a controversial matter in L2 writing pedagogy (see Abasi *et al.*, 2006; Abasi & Graves, 2008; Bloch, 2001, 2008b; Deckert, 1993; Fox, 1994; Matalene, 1985; Ouelette, 2008; Pecorari, 2001, 2003, 2008; Pennycook, 1996; Sapp, 2004; Scollon, 1995, 1999; Shi, 2004, 2006; Stanley, 2002; Sunderland-Smith,

2008). The problems that L2 writers have with plagiarism have often been ascribed to a variety of possible reasons, some of them highly contradictory: a lack of understanding of the use of intellectual property (Deckert, 1993), a lack of knowledge about plagiarism (Pecorari, 2008), cultural differences in concepts of authorship (Fox, 1994; Scollon, 1995) and the consequences of particular cultural and historical developments (Bloch, 2001, 2008a; Pennycook, 1996; Scollon, 1995).

## The Debate over Plagiarism

The lack of a consensus has led to highly charged, and often emotional, debates over the nature of plagiarism and the appropriate responses to it. Despite attempts by many institutions throughout the world, defining and codifying a universal definition of plagiarism has remained a highly contentious topic in discussions of almost every form of writing.

The debate has touched some of the most prestigious institutions and individuals in the world. Well-respected newspapers like the *New York Times* and the *Washington Post* have been shaken by controversies over plagiarism by its reporters. One of the most famous cases of plagiarism is that of US Vice-President Joe Biden, who copied from the British politician Neil Kinnock, a charge that Biden attributes to a 'lapse' (Greenberg, 2008). Recent cases have ensnared politicians in Germany (Weber-Wulff, 2011), the United States, Great Britain and Korea, where the Minister of Education was accused of plagiarizing a former student's paper and a famous pop singer was accused of copying a hit song. In Iran, a group of researchers responded to the charges, pointing out that much of the fraud has been perpetrated by politicians, who rely on academic credentials for professional advancement (Ardalan *et al.*, 2009).

Extensive publicity has been given to the plagiarized dissertation of Karl-Theodor zu Guttenberg, Germany's defense minister (Schuetze, 2011), which led to an online search for other instances in plagiarism among leading German individuals, which were then published on the *VroniPlag Wiki* (<http://de.vroniplag.wikia.com>). New technologies have created new forms of plagiarism and new kinds of excuses. Technology writer Chris Anderson was found to have copied a number of passages from Wikipedia without attribution, a charge he attributed to a 'screw-up' that could have resulted from the ease of cutting and pasting (Jaquith, 2009), a problem often seen in the work of the most inexperienced writers.

University faculty are often accused of plagiarism since they have many opportunities to indulge in plagiarism through their work with graduate

students or as peer reviewers for journals and grant agencies since often there is little fear of punitive action. Senior faculty can plagiarize junior faculty. Grant or journal readers can plagiarize submitters. The number of graduate students plagiarized by their professors has been identified as a major problem in research work internationally (Haas, 2009). More and more academic journals are employing some form of plagiarism detection software, such as CrossCheck, to deal with plagiarism as the pressures to publish grow (Rampell, 2007), although such use may involve a different set of relationships than those found in a classroom.

Historians, for example, have had to reexamine their standards of what constitutes plagiarism after the accusations of plagiarism leveled against highly regarded historians such as Stephen Ambrose and Doris Kearns Godwin, who were both accused of not appropriately citing their sources. The field of medicine, in particular, has had a number of cases that have raised concerns about plagiarism. Scientific journals such as *The International Journal of Cardiology*, *Foot and Ankle Surgery* and the publications of the Royal School of Nursing have published articles about plagiarism and ethical guidelines in their field. Here again, the problem is worldwide.

Accusations of plagiarism in many fields have shown the inconsistency in how plagiarism is viewed. Some journalists have had their careers ruined by such accusation while others have received only a symbolic slap on the wrist. Many of our greatest artists – Woody Guthrie, Bertolt Brecht, Vladimir Nabokov and Bob Dylan – have all been accused of plagiarism at one time, yet their reputation as artists has never diminished. Such accusations are not new. As LaFollette (1992) pointed out, even Leonardo Da Vinci was accused of plagiarism. While plagiarism often arouses a great amount of anger, it has its humorous side as well. The humor website Cracked.com published an article called ‘5 Great Men Who Built Their Careers on Plagiarism’ that spread widely on the internet.

The possibility of large financial settlements has led to a number of well-known authors being taken to court because of accusations of plagiarism, sometimes for specious reasons. Stephanie Myers, the author of a popular series of novels about vampires, was sued for plagiarizing plot devices, but the case was dismissed and the plaintive was admonished for bringing a frivolous suit. Authors, too, have sued those they feel have plagiarized their works. Before his death, J.D. Salinger sued another author for appropriating his most famous character, Holden Caulfield, for a sequel to *Catcher in the Rye*. J.K. Rowling sued one of her biggest fans for

publishing a compendium of events in her Harry Potter series. She, in turn, was sued by the publisher of a little known book called *Willy the Wizard*, who claimed that:

[b]oth Willy and Harry, the featured wizards in the respective works, are required to deduce the exact nature of the central task in the competition, . . . Both Willy and Harry uncover the nature of this central task covertly in a bathroom. (Sloan, 2010: para 6)

There is, in fact, no one more immersed in the world of copying and remixing than Rowling, with her work surrounded by large numbers of fan fiction on the one side and numerous derivative versions in various foreign languages (e.g. *Harry Potter and the Chinese Porcelain Doll*) on the other (Boon, 2010). The intense emotions surrounding plagiarism have often made it an ideal motive for murder plots in novels and television mysteries. The true case of the controversy over who owned the concept for Facebook was a major plotline in a highly popular movie called *The Social Network*. Facebook and other 'cloud' services, such as Dropbox where information can be stored, are themselves centers of controversy over their rights to use materials that have been uploaded in their sites.

In all these cases, the definition of plagiarism was not readily apparent even to serious scholars since what appears to be plagiarism to one person may be an act of creativity to another. One of the most controversial areas has been found in memoirs, where a number of writers have been accused of falsifying events (Bawarshi & Reiff, 2008). There are also situations where plagiarism may be acceptable. Business managers may want their team members to plagiarize each other's goals to show they are on the same page. Lawyers may want their briefs plagiarized by judges as a vindication of their arguments (see Volokh, 2011). A law student may need to be concerned with plagiarism because he or she is being judged on his or her ability to think, but, for a lawyer, plagiarizing may be a more efficient and cheaper way to serve a client than starting from the scratch (Peterson & Gregor, 2011). Employers who own the intellectual property created by their employees under the principle of 'work for hire' can then 'plagiarize' their work.

Questions have similarly arisen over whether syllabi or online course materials should be treated as a form of intellectual property and are, therefore, controlled under work for hire. If so, can the employer use them in any way they want to? In scientific journals, the various ways in which different researchers may contribute to a project has sometimes

resulted in confusion regarding the levels of responsibility each author has (LaFollette, 1992), which led some journals to create guidelines for determining who is an author ('Uniform Requirements', 2010). In one case, a university was accused of plagiarizing its honor code from the Center for Academic Integrity, the director of the center defended the action, responding:

Perhaps the key point is that originality is not a desideratum of an honor code. That honor codes on various campuses are the same – even word for word – is a good thing. (Wueste, 2008: para 6)

Inherent in all these cases is the question of who is the author and what rights does the author have. However, as the response from Rene Clair illustrates, much of the complexity in all these cases results from the inherent intertextuality of the writing process, that is, how the texts are weaved together with new ideas. In his essay, 'The Ecstasy of Influence', Jonathan Lethem (2007), echoing the words of Rene Clair, celebrates this complexity:

Any text that has infiltrated the common mind to the extent of *Gone with the Wind* or *Lolita* or *Ulysses* inexorably joins the language of culture. A map-turned-to-landscape, it has moved to a place beyond enclosure or control. The authors and their heirs should consider the subsequent parodies, refractions, quotations, and revisions an honor, or at least the price of a rare success. (para 52)

Not everyone recognizes parody as an honor, as illustrated by the lawsuits by the heirs of Margaret Mitchell, the author of *Gone with the Wind*, against an African-American writer, Alice Randall, who parodied the novel by retelling it from the point of view of the slaves. As Mary Shelley's quote suggests, *chaos* is a useful word for describing the present state of the controversy over plagiarism.

All of these various forms of authorship problematize the question of what is the appropriate form of textual borrowing and, consequently, what should be considered plagiarism and what should be considered a creative act. On one side of this debate are those who see plagiarism as a threat to the moral structure of academic integrity. On the other side, there are those who see plagiarism as part of the learning process and even a new form of textuality (Howard, 1999; Pecorari, 2008). The controversy has been intensified by the growth of new forms of digital literacy on the world wide web, some of which have been developed through the integration or

'remixing' of existing internet materials and, in turn, greatly exacerbating the problem.

According to Lessing, one of the most often cited examples of the transformative power of remixing texts can be seen in 'The Grey Album', which was created by the rap artist Danger Mouse. In this remix, music from the Beatles 'White Album' is mixed with music from Jay-Z's 'Black Album'. Johnson-Eilola and Selber (2007) have argued that these remixes can be considered a new form of textuality, which requires new concepts of plagiarism that incorporates the unique characteristics of the genre. Patch-writing (e.g. Howard, 1999; Hull & Rose, 1989) itself can be seen as a form of remixing or as a form of what has been called 'mosiac plagiarism'. The migration of terms like 'patchwriting', which originated in the field of college writing, to discussions in scientific journals describing the problem with the replication of articles (e.g. Couzin-Frankel & Grom, 2009) also illustrates how far this debate has spread.

Despite the concern for these various forms of textual borrowing, the concept of plagiarism has not been well understood either by students or even experienced faculty (Roig, 2001; Roy, 1999). Pecorari (2001) found in a study of the official policies toward plagiarism in the United States, the United Kingdom and Australia that even when there was a universal agreement that plagiarism was wrong, there were many variations and omissions in views about exactly what constitutes plagiarism. Sunderland-Smith (2008) similarly found wide disagreements within her department in Australia.

At the institutional level, it is often difficult to implement a consistent definition. In an interview, which will be discussed in more detail later, the head of the Committee on Academic Misconduct at our university expressed dismay over the variety of definitions professors had used in their accusations of plagiarism since this inconsistency had made it difficult to find appropriate and consistent penalties. Understanding the boundaries between the appropriate and inappropriate use of texts may not be clear even to experienced writers. As the American author Kevin Kopelson (2008) wrote:

Is there—for me—a difference between... [the] 'creative process' and 'simple larceny'? Or rather, between creative process and not so simple larceny. Between process and, oh—just 'write it!' (to quote Elizabeth Bishop)—plagiarism. (para 5)

The task of translating this dilemma into a clear policy that students understand can be daunting.