



Ethics Bites

Copyright

David Edmonds

This is *Ethics Bites*, with me David Edmonds.

Nigel Warburton

And me Nigel Warburton.

David

Ethics Bites is a series of interviews on applied ethics, produced in association with The Open University.

Nigel

For more information about *Ethics Bites*, and about the Open University, go to open2.net.

David

Aged seventeen Kaavya Viswanathan signed a two-year book contract with the publisher Little Brown. The publisher agreed an advance of \$500,000 and she sold the movie rights. By the time the first book, *How Opal Mehta Got Kissed, Got Wild, and Got a Life*, was published in April 2006, she was nineteen and a sophomore at Harvard. Within weeks the Harvard Crimson magazine discovered that her book reproduced almost verbatim, many passages from similar so-called 'chick-lit' novels. It seemed to be a blatant case of plagiarism. Indeed, so is this – because I've just reproduced, close to word-for-word, the opening passage of Richard Posner's *A Little Book of Plagiarism*. So what exactly is plagiarism, how does it differ from copyright, and what's wrong with it? Richard Posner is a judge and - he spoke to *Ethics Bites* down a somewhat crackly line from his home town of Chicago. Extracts are from his book.

Nigel

Richard Posner, welcome to *Ethics Bites*.

Richard Posner

Thank you, happy to be here.

Nigel

Now the topic I want to focus on today is plagiarism. I wonder if you can give an example, a typical example of plagiarism.

Richard

Yes, a typical most common example is when a student copies passages from a book or article without quotation marks indicating the source.

Nigel

Now in that kind of example people discourage the student by saying things like, 'you're stealing somebody else's words'. But it's not a typical example of stealing because when you steal a book you actually prevent somebody else from reading a book, but when you copy somebody's words other people can still get access to them.

Richard

That's true. But the concern with the student plagiarism is nothing to do with theft or anything of that sort. It's that he or she's getting unfair advantage over the other students.

Nigel

Does that mean that if a student copied a bad piece of writing that they wouldn't have done anything wrong because they wouldn't have got unfair advantage that way?

Richard

No, because that bad book they copied is probably better than their own work. And even if not of course they're saving time which they might allocate to some other course that they're really interested in and that would give them an advantage over other students.

Nigel

One key aspect of plagiarism is the concealment. The student is concealing the source - so if you acknowledge the source then it clearly isn't plagiarism at all?

Richard

Well it depends how it's acknowledged. If it's outright quotation it has to be quotation marks; it's not enough just to footnote it, because usually when you footnote a source you indicate a source of the idea - you're not indicating the source of the actual language. The close case is where you paraphrase, you put it in your own words, but it may be such a close paraphrase that it's only trivially different from the original, and that's plagiarism.

Nigel

But if I got permission from a novelist to put certain chunks of that novelist's novel into my own work and I conceal that from the reader - would that be plagiarism?

Richard

Sure because you would not be harming the novelist - because he's agreed to it. But you're harming the readers - they think you're better than you are, they go and buy your other books. And they're disappointed unless you had the same deal there. I would only classify copying as plagiarism when there's some harm of some sort. Could be a harm to the person you've plagiarized, could be a harm to your readers. So, for example, Margaret Truman. Margaret Truman is widely believed to have sold her name to a couple of mystery writers who then wrote mysteries that were published under her name. Now clearly there was no harm to the people who wrote the books to which she attached her name. But on the other hand what about other mystery writers.

David

(added later): There were victims of the deception... They were neither readers nor the writers of her books. They were other mystery writers, who lost sales to readers attracted to the Truman books by the celebrity of the supposed author.

Richard

Suppose that people read the so called Margaret Truman mysteries because they thought as the president's daughter she would have some special insights that would be reflected in the book, well that would be a harm to her competitors, that is the other writers of mystery novels. But if there's no harm at all, not harm to other students, no harm to the reader, no harm to the person you've copied, then don't call it plagiarism.

Nigel

That case sounds to me a bit like the case of ghost-writing, where a celebrity like David Beckham purports to write an autobiography which is actually written by a professional writer or with the heavy assistance of a professional writer.

Richard

Yes, well you can distinguish two cases. Very often the celebrity acknowledges the ghost writer and then there's no conceivable harm. But I think that even if the ghost writer is not acknowledged there is no harm. Because first I don't think anybody really thinks that celebrities write their own books. But I don't think they care either. So no one thinks, it may be different in England, but no one in America thinks politicians write their own speeches; so there's no harm done if a politician has a speech writer, he's expected to.

Nigel

I guess going the other way it would harm the politician if he or she did actually write the speech and didn't get the credit for it.

Richard

Yes, but there aren't any such cases any more in our country. A politician who didn't have a speechwriter would be regarded as a flop. He couldn't even afford a speech writer. It would be like going round without his clothing.

Nigel

What about the 18th century British author Lawrence Sterne who copied love letters which he'd originally written for his wife and sent them to his mistress?

Richard

Well that's unquestionably self-plagiarism. Well I shouldn't call it self-plagiarism. I like to reserve the word plagiarism for examples of copying for which it is proper to attach a pejorative label. Plagiarism is pejorative; it's not a synonym for copying, it's bad concealed copying. So self-copying, which is extremely common, I wouldn't call it plagiarism unless there was some harm. So in Lawrence Sterne's case, maybe the letters to his wife were his very most considered and finest love sentiments. So maybe when he came to write letters to his girlfriend he just couldn't think of a better way of expressing his feelings. So I would think that pretty harmless.

David

(added later): Sterne may have felt that his letters to his wife contained his most heart-felt and eloquent declarations of love; that he couldn't improve on them and if nevertheless he composed new letters to his mistress they would be inferior and thus fail to convey his ardour. Of course wife and mistress would have been furious if they'd found out. They would have thought Sterne lazy, exploitative and insincere. Yet it would not have been the copying that bothered them but what the copying revealed about his character.

Richard

When self copying becomes plagiarism would be a situation where a writer who's run out of ideas: say he republishes a work with a new title, and people buy the book and they think it's new and they read it and gradually they remember they've read it before; that would be plagiarism. So plagiarism is a form of fraud. And so what you want to ask in each case is, "is this fraudulent copying?"

Nigel

Fraudulence implies intention and a frequent defence given by novelists who just happen to have copied out passages from somebody else's book is "oh, I must have read the book some time ago and somehow it unconsciously came out. I didn't intend to copy the passage, it must have been that I memorized it."

Richard

You're quite right. Fraud ordinarily connotes a deliberate effort in this case to conceal copying. We do have in law the concept of negligent misrepresentation. So you could say well even if the person is not deliberately trying to mislead he should keep his notes more carefully in a way he doesn't accidentally copy. But I don't believe these people who say that. It's one thing to remember a line of poetry, but it's not just that most people can't remember whole paragraphs. The more important point is, how is it you would not recognize the fact that this paragraph was in a different style from your own? So I don't understand how these professional writers can lift large chunks from other peoples' works and then say "oh, I didn't know it was someone else".

Nigel

I suppose also there's a suggestion that unintentional plagiarism is less culpable than intentional plagiarism.

Richard

Well that's why people say it. And I think it's true. And also you don't have to acknowledge copying which your readership will recognize. Take something like TS Elliot's *Wasteland*. It's a great poem. A tissue of quotations without quotation marks. But nobody would accuse him of being a plagiarist because they would recognize these snatches of poetry from other sources.

Nigel

Now many of the sources that Elliot quoted like Andrew Marvell were well out of copyright anyway. But some people confuse infringement of copyright with plagiarism and I wonder if you could draw out the distinction between the two because they do overlap to some extent.

Richard

If you copy something and you acknowledge that you're copying then it's not plagiarism, but it could be copyright infringement. On the other hand, if you copy something that isn't copyrighted, but you don't acknowledge it and that fools people, that is likely to be plagiarism. So where they overlap analytically, copyright is designed to protect the creativity of an author, painter, composer what have you. Similarly, the type of plagiarism which does hurt the person copied, that's very similar. So I discuss at the beginning of my book this interesting case involving this sophomore at Harvard college, Kaavya Viswanathan, who wrote a chick lit book that contained very close paraphrases of 13 passages from another established chick lit author. That was a copyright infringement, but it was also plagiarism which like copyright infringement harms the author. Because Viswanathan made her book better by the passage she took from this other person – they were competitors and this other person would have lost sales.

David

(added later): Here are extracts from one passage from Viswanathan's novel, and an almost identical passage she apparently plagiarized from writer Megan McCafferty:

A: Priscilla was my age and lived two blocks away

B: Bridget is my age and lives across the Street

A: For the first 15 years of my life, those were the only qualifications I needed in a best friend.

B: For the first 12 years of my life, these qualifications were all I needed in a best friend

A: But that was before freshman year, when Priscilla's glasses came off, and the first in a long series of boyfriends got on.

B: But that was before Bridget's braces came off, and her boyfriend Burke got on....

Nigel

It seems to me that there are at least two reasons why controversies about plagiarism are becoming more frequent. One of them is the ease of copying using digital technology. We've all got the means on our computers to copy large passages of text that appear on the internet. The second is that there is a real cult of being original in our society. I wonder if you can say a little bit about each of those two.

Richard

Ease of copying, the ability to copy off the web, yes, sure that lowers the cost of plagiarism. And yes, the greater emphasis placed on originality, sure, the greater the concern with copying. There's a third factor though which is the ease of detecting plagiarism. The same things that make it easier to plagiarize, namely the web, make it easy to detect plagiarism. You suspect plagiarism you send a student paper, you send it to these services and they will scan their databases and try to pick up the plagiarized source.

Nigel

Many of our greatest writers have actually been plagiarists – I'm thinking of people like Shakespeare, they would have been quite vulnerable in the age of the internet with this

plagiarism detection. Has something changed radically; because we can detect these people we come down much harder on plagiarists?

Richard

No I wouldn't call Shakespeare a plagiarist. Certainly he was a copier. Plagiarism is the pejorative form of copying, the fraudulent form. And Shakespeare was once criticised as a plagiarist by a fellow named Green. But the charge didn't stick. Everybody knew that he was copying a lot from Plutarch and Holinshed and so on, but they didn't care because the concept of creativity stressed originality much less than we do today. The idea was, copying was fine, but you had to add something and Shakespeare obviously added a lot to what he copied.

And there's another point there. In Shakespeare's time books were very expensive and a lot of people didn't have access to them, and a lot of illiterates who would nevertheless go to his plays, so the more difficult of access the original sources are the more of a service a copier is performing. But now it's so easy to access anything that somebody who copies a work is not making that work available, it was available already.

Nigel

Richard Posner, thank you very much.

Richard

You're very welcome.

David

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