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Plagiarism, Copyright Violation, and Other Thefts of Intellectual Property: An Annotated Bibliography with a Lengthy Introduction

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by

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Contents

Preface

Ideas. How has our society come to think we can put a price tag on them and when does using the idea of another become theft?

This work permits the exploration of many facets of plagiarism and the theft of intellectual property. The four-part Introduction summarizes and dissects the many currents of the present situation (late 1997). It includes definitions, cases, the underlying sense of "follow the money" that seems to permeate this ethereal realm, and the means used to prove or disprove the accusations of misconduct.

Defining terms seems to be an appropriate prelude to this bibliography. Briefly stated, intellectual property is the product of one's ideas. It is intangible, but the right of the individual to exclusive control over the ideas as represented in their concrete expression—writings, inventions, trademarks, trade secrets, music—is protected by law in many countries. The creator, and in some cases the beneficiary of the creator, has the right to benefit from the idea to the exclusion of all others. This exclusion continues for a specific period of years and then becomes available for anyone's use as part of the body of knowledge in *public domain*. If the person feels this proprietary right has been violated—stolen, repackaged, misrepresented—they may challenge the perceived misuse in the courts.

Definitions play an integral part in deciding fault or innocence when people accuse others of infringement. This work embraces many interpretations of the definitions. The information presented has been found indexed under the main heading or subheading "plagiarism" or "intellectual property," under such categories as literary ethics, misconduct in science, and journalism, movies, education, music, politics, publishing, copyright laws, trade agreements, trade negotiations, trademarks and trade secrets.

The topics of plagiarism and intellectual property rights have many facets and potential tangents. This bibliography cites sources indexed in common electronic and paper sources (Reader's Guide, Expanded Academic Index, ERIC, etc.) appearing from 1900 through 1995. Books were selected using various books in print publications. Because the expression of valid ideas takes many forms, popular and humorous, as well as scholarly articles and books, are included. The bibliography is limited to works written in English.

The topics forgery, imitation of literature, and instructional effectiveness are not included, nor are patent searching, self help on filing trademarks and

patents. Changes in patent systems, copyright and tax laws are not addressed. Some of the articles and books reviewed may include these issues, but they are not a primary focus of this bibliography. All formats and types of property are covered. The work is organized chronologically to indicate trends. Subject, author (and coauthor) and title indexes are provided.

Considering the emotional, and in many cases financial, impact that plagiarism and other thefts of intellectual property have had on the literary, academic and commercial worlds, I was surprised to find limited compiled research on the subject. There have been a few well-documented texts working with portions of the subject. *Plagiarism and Originality* by Alexander Lindey, 1952 (**#34** in the Annotated Bibliography) includes a 10 page bibliography. *An Intellectual Property Law Primer*, 1975 (**#55**), by Earl W. Kintner and Jack L. Lahr, offers extensive case notes. Sections of larger bibliographies, such as "Recent Literature on Government Information" by Patrick Ragains, *Government Publications Review* 20(1993):183-205, also have some information. None of these predecessor texts constituted an organized, annotated reference tool, a starting point, for those needing a wide range of information on plagiarism and intellectual property rights.

The introductory matter is not intended as a legal discourse on the subject, but aspects of the law will be covered as points of discussion or outcomes of specific cases.

It is my goal with both the Introduction and the Annotated Bibliography sections to provide a reliable resource for writers, business persons, paralegals, librarians, students, scholars, journalists, and others wanting to educate themselves in one or many facets of plagiarism and intellectual property. This is a starting point for information gathering and organizing.

I wish I could say my interest in the topic came from the inner reaches of an ethical self. In truth, it was Ellen Altman's interest in *Fraud in Science* and Robert Hauptman's interest and subsequent publication of two issues of *Journal of Information Ethics* devoted to plagiarism that began this work. I am most grateful for his insight and encouragement. A special thanks also to McFarland for allowing me to include abstracts originally printed in my bibliography, "Fraud in Research: An Annotated Bibliography" which appeared in *Journal of Information Ethics,* fall 1994. As a librarian, I find annotated resources to be most helpful when researching a topic, and, much to my surprise, I enjoy the delving, reading, compiling and synthesizing needed to create such works. My gratitude also extends to my husband, Curt, for his amazing organizational skills and willingness to tackle the "tote 'n' carry" which of necessity goes with this type of adventure.

Judy Anderson
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Introduction

1. Trends in Definition

Most articles, books or stories on plagiarism start with some type of definition. The most common is the dictionary's derivative view. It seems so simple. Plagiarism is the act of using the words of another without giving the originator credit. But just like trying to define *race* as it refers to groups of people, defining plagiarism becomes murky and foggy if one tries to put exact boundaries on it. Instead, it seems to fall under the same category as defining art. "I don't know what it is, but I know it when I see it."

Intellectual property protection is about money and the freedom to develop ideas into works and products for the benefit of society. To promote discovery and creative development, the law gives an originator a prescribed amount of time to control the content and disbursement of any products which result from their idea. This control of property may vary from a few years to indefinitely depending on the type of product and current laws governing intellectual property rights. Infringement, i.e., theft of intellectual property, occurs when someone uses the written word, pictures, inventions, marketing strategies, formulas, anything that is a concrete example of a person's ideas, without their consent. Infringements are classified under copyright, patents, trademarks and trade secrets, depending on the type of property being protected. Each area carries its own set of definitions, regulation and law. The rules may vary from state to state and country to country.

Plagiarism has its roots in Western civilization's concept of property and ownership. During the Greco-Roman era, authors and orators borrowed from one another. The discovery of such theft was met with sarcasm and sometimes public ridicule. There was no financial recovery for such behavior. The reputation of the plagiarist was the only issue at stake.

In British and European feudal states, any invention, any concrete representation of an idea, belonged to the landowner, be he king, lord or bishop. Charles I in Milton's *Eikonoklastes* exemplified this practice. In it, the king was portrayed as stealing the ideas and thoughts of his subjects and using those ideas to claim authority and power [Magnus, 1991; **#269**]. In exchange for food, shelter and security, the subject gave all rights of ownership to the landowner.

The breakdown in the feudal system brought the need for many to earn an income to support their families. The arrival of moveable type in the mid-1400s made publishing, i.e., making duplicates of written works at a less costly price, a viable way to secure that income. Publishing houses sprang up as the demand for written material blossomed. In this new industry, authors wanting to have works published had to sign all rights of reproduction over to the publisher. To protect their interests and insure profits, publishers' guilds petitioned government to secure a monopoly. In England during the late 15th and early 16th centuries, this resulted in the Stationers' Company, a house of approximately a hundred publishers and booksellers. These hundred controlled the print and distribution of all materials in England during that time.

Calvinism with its stress on thrift, sobriety, responsibility and industry gave a foundation for the emerging capitalist philosophy. In this reasoned doctrine, the originators, not the church, the monarch, or the guilds, had a right to benefit from their labors. Milton and Locke were two who spoke out about this new freedom and responsibility. Milton in his *Areopagitica* supported the ideals rising from the working middle class, stressing personal value based on original thought and the lifelong challenging of one's beliefs [Magnus, 1991; **#269**]. John Locke, although he did not believe it possible for man to have original thought, supported the right of each man to benefit from the products of his labors [Scollon, 1995; **#533**]. The discussions on such freedoms brought about adjustments in the law.

In England in 1709, the Statute of Queen Anne moved the right to duplicate works from the publisher to the author. An author had sole right to duplicate his work for 21 years. Now writing plays and novels could generate personal income. The practice of "borrowing" became especially popular after its passing. It took very little time for writers and poets to realize more efficient ways for making money on writings without actually creating original works. Passing off their translations of works from authors in other countries came into vogue. Charles Reade, a strong supporter of international copyright protection, lined his pockets by using works from numerous European authors [Mallon, 1989; **#149**]. A German political economist, A. von Schwarzkopf, was acclaimed for his analysis of an Italian economist's collection of works. N. G. Pierson had actually done the work and translation. Ironically, the work remains known through the fame of von Schwarzkopf, not the skill of Pierson [Hennipman, 1990; **#205**].

Plagiarism was not limited to Britain and Europe. Copying was an especially popular pastime in the Americas. United States citizens enjoyed protection under the Articles of the Constitution, but were less generous in their protection of works written abroad. Publishers and writers such as Izaac Walton, Captain John Smith, Daniel Defoe and Edgar Allan Poe duplicated works from Britain and Europe without compensating the originators. One possible source for the tale of Pocahontas was traced to a Spanish explorer, "The Gentleman of Elvas." The Elvas story of Juan Ortiz closely parallels that of John Smith's

rescue by Pocahontas and would have been available for Smith to read in translation [*The New York Times*, 12 July 1995; **#583**]. Walton copied *The Compleat Angler* from the British work *The Arte of Angling* ["G. E. Bentley," 1994; **#477**]. Defoe used *Britannia* by Camden in describing the countryside in his *A Tour Thro' the Whole Island of Great Britain* [Rogers, 1973; **#52**]. Poe, an avid crusader against plagiarism, may have been "protesting too much." *The Raven,* for example, shares commonality with the raven in Charles Dickens' *Barnaby Rudge* [Stewart, 1958; **#40**]. This type of thievery eventually caused changes in agreements among nations. Agreements made at Paris, Berne, Nice, Strasbourg and Budapest recognized the rights of intellectual property and paved the way for greater cooperation among nations. They protected the works of their residents and extended that protection to members of foreign literary and artistic communities.

In the present day, the numerous cultures, disciplines and professions vary in their acceptance of copying the works of another without acknowledging the source. These differing views are based on how the individual is defined in a society or group and the accepted means by which that society or group transfers information. In the European-American culture, the self is a separate and distinct entity which redefines itself through communication of ideas. Through language we objectify ourselves and our ideas [Scollon, 1995; **#533**]. Its frequent redefinition makes each self unique. Persons expect reward and recognition when giving contributions to the whole. Individual contributions are the measure of a person's worth. When viewed this way, taking the product of another's work diminishes the worth of the originator. When discovered, amends must be made to rectify the loss. Simple acknowledgment of the source, or financial restitution, provides the compensation.

There are exceptions to this concept within the Anglo-European culture. These exceptions derive from an agreement between the author or inventor and the one receiving recognition. Institutions and corporations, for example, may put emphasis on a product rather than the individuals who created it. Committees frequently build on information gathered and compiled by former employees. Managers may give speeches written by a subordinate. A celebrity might hire a ghostwriter to write an "autobiography." Politicians have speechwriters on staff to write persuasive words for various audiences. "Thomas Jefferson penned George Washington's Farewell Address.... Theodore Sorenson wrote John F. Kennedy's Pulitzer Prize–winning book, *Profiles in Courage*" [Posner, 1988; **#134**]. In these situations, the self has relinquished personal identity. Such an agreement between the author and the presenter subordinates the originator's need for recognition to the needs of the requester.

The concept of *self* in many philosophies of the Asian and Indian communities differs from that of the West. In the East, the body is metaphor for *self.* The self is not redefined through communication, but is used to strengthen the pre-existing norms of society [Scollon, 1995; **#533**]. In this setting, copying

indicates respect for a member of that society by showing a knowledge of the originator's work. Persons are recognized for their reinforcement of the existing body of knowledge. Their contribution ensures the continuation of that society. For those raised in this culture, the concept of plagiarism may be difficult to grasp. What one society condemns, another praises.

Psychologists have reported that incorporating the ideas and words of another may not be the result of a deliberate act to deceive. The study of cryptomnesia (memory which appears to the conscious mind as an original thought—or, inadvertent plagiarism) shows that the reuse of others' thoughts is a normal function of the mind's processing and storing information. Research in human learning and expression has shown that it is quite normal for persons to confuse ideas they have heard with original thoughts. Persons may, after a relatively short period of time, forget who originated an idea and conclude that it is one of their own. This is particularly common among songwriters. The song *My Sweet Lord* by the former Beatles member George Harrison parroted *He's So Fine* by the Chiffons, yet he claims no recollection of having based his work on the older piece. Like Harrison, many songwriters experience a common occurrence of "waking up with a tune in their head" and working with it. The songwriters have no memory of hearing the tune at a performance they attended and consider their work unique. Yet the same song they consider their original design was played during a session or performance they had attended [Brown and Murphy, 1989; **#154**].

Authors also experience this type of selective memory [Peer, 1980; **#71**]. When psychoanalyst Bruno Bettleheim was accused of taking from the works of Julius E. Heuscher, Heuscher simply assumed that Bettleheim had internalized his work and used it without realizing its origin [*Newsweek*, 18 February 1991; **#224**]. When Auberon Waugh brought up the similarity of Nobel Prize–winner William Golding's *Lord of the Flies* and W. L. George's *Children of the Morning* there was no suggestion of impropriety, only of possible subliminal influence from the earlier novel. Golding reinforced this explanation. He has no memory of reading the work [Trewin, 1984; **#86**].

Studies by Brown and Murphy [1989; **#154**], showed subjects most readily adopt the ideas expressed by the person speaking just before them. Additional studies strengthen the possibility of unconscious plagiarism. Marsh and Bower [1993; **#347**] took the social aspect out of research by using computers for interaction when conducting experiments similar to those done by Brown and Murphy. They found that inadvertent plagiarism might be more prevalent than shown in the Brown and Murphy studies. Their findings indicated that the subject used words plagiarized from another more often than the subject used new words. When questioned, the subjects expressed, with a high degree of certainty, the opinion that the plagiarized words were their own, not those of a fellow participant. A follow-up study by Linna and Gulgöz [1994; **#453**] screened out tension as a possible reason for the unconscious plagiarism.

Those who study language and communication also express doubt about the ability of writers to be truly individual in the concrete expression of their ideas. Social positions and roles taken during normal communications when creating the work influence the final product. The ongoing process of communicating implies that the person presenting the idea initially may not be the same person who puts the reworked idea into the final form. Ideologically, plagiarism cannot exist. Works that may be seen as plagiarism actually result from the normal processes of communicating [Scollon, 1995; **#533**].

Most writers and artists concede they build on the works of those before them. To prove this point, occasionally authors will research the origins of works. By doing so, they show that any work can be reduced to plagiarism if enough research is done. As mentioned in *Steal This Plot* [Noble, 1985; **#94**], all stories derive from only 13 plots and 13 "spices."

> *The Plots*: Vengeance; Persecution; Catastrophe; Self-sacrifice; Love and hate; Survival; The chase; Rivalry; Grief and loss; Discovery (quest); Rebellion; Ambition; Betrayal.
>
> *The "Spices"*: Deception; Mistaken identity; Material well-being (increase or loss of); Unnatural affection; Authority; Criminal action (including murder); Making amends; Suspicion; Conspiracy; Suicide; Rescue; Searching; Honor and dishonor.

Originality, i.e., the value, comes in how the parts are presented and reworked. Tales may parallel the times. In *The Deliverance* by Ellen Glasgow, the news of her soldier husband's death blinds a woman of the Southern aristocracy. To spare her, her family creates the illusion of a South winning the war and her estates remaining intact. Along similar lines, in *The Siege of Berlin* by Allophones Daunted, apoplexy strikes a French aristocrat when he sees Napoleon's name appended to a bulletin announcing defeat in a Franco-Prussian battle. The family shields the invalid, through deception, into believing that France is leading in battle [Maurice, 1916; **#4**]. The plots follow a similar course. The skilled reworking by the writer adds the beauty [Richardson, 1931; **#11**].

In Arno Schmidt's [1990; **#206**] comparison of *The Fall of the House of Usher* by Edgar Allan Poe and an earlier work, *The Robber's Castle*, by Heinrich Clauren, Schmidt praises Poe for his writing skill in taking a mediocre story and turning it into a thriller, instead of condemning him for stealing the story line. Stephen J. Gould [1993; **#373**] is also quite charitable in his acceptance of Poe's plagiarism. He defends Poe's role in thieving *The Conchologist's First Book*, a work Poe and Thomas Wyatt took from writings by the British Captain Thomas Brown and the French anatomist George Cuvier. He states that the final work was an improvement on the original and made the purchase price something a citizen could afford. The artistry, not the source, adds value to the piece.

Children's books and popular novels frequently have similar story lines. The publisher Simon & Schuster dismisses charges that *Budgie at Bendick's Point,* written by the Duchess of York, plagiarized *Hector the Helicopter*, by Arthur W. Baldwin because there are a limited number of plots [*People Weekly,* 11 June 1990; **#199**]. Carolina Nabuco lost her case against Du Maurier because the judges stated that *Rebecca* had simply followed the familiar "second-wife" concept [Smith, 1948; **#30**]. It is the skill of the author that makes them unique.

The movie industry is well aware of the limited number of plots. It frequently uses this reason as a defense when faced with the many lawsuits that are filed against it. Lawsuits such as Edward Sheldon v. MGM (*Letty Lynton* from *The Dishonored Lady)* [*Publishers Weekly*, 15 April 1939; **#20**] and Robert Sheets v. Warner Bros. (*The Road to Glory*) [Tigrett and Dawson, 1943; **#24**] fall into this category. In movies as well, it becomes apparent that the value lies in the ability of the writer, director or cinematographer to rework the storyline.

Journalists are also plagued with accusations of plagiarism. Stating that the plot is not original is a common defense here as well. The battle of the Joe and Mary Christmas Story follows this pattern. When Mike Royko, a columnist on the *Chicago Tribune*, accused his long time rival Mike Barnicle of the *Boston Globe* of lifting his theme from Royko's annual Christmas story, Barnicle responded that putting the travels of Joseph and Mary to Bethlehem into modern times was hardly original with Royko [Fitzgerald, 1992, **#281**].

Academic policies tend toward black and white interpretations of citing resources versus lack of acknowledgment. The emphasis is on the product, not on the reason behind the infraction. Reasons for the plagiarism are rarely considered when punishment is being decided. Yet, in our teaching methods, the young writer learns concepts of flow and style by copying the works of others. Students learn the trade through a series of steps that range from copying "great" works of others, to paraphrasing, to true research and the reflecting of one's own ideas. Young writers learn to plagiarize in our process of educating them. Peter Berek used this progression in his interpretation of Greene's *Upstart Crow.* In it he points out that Shakespeare's plagiarism of Greene was an example of a young writer learning to write by copying [Berek, 1984; **#89**]. Rebecca Moore Howard [1995; **#606**] believes that we place too much emphasis on plagiarism. Our emphasis should be on moving students through the legitimate process of "patchwriting" (copying and paraphrasing) for school work to the more sophisticated stylized writing used in their chosen disciplines. During the initial stages, plagiarism should be seen as part of the normal process. We must pair our realization that stories come from a limited number of plots with the willingness to teach others to move beyond the copying and take pleasure in their own creativity. It is the responsibility of the academic community to prepare students for working in the "real" world, a world in which unethical practices and theft of intellectual property may result in lawsuits [Mawdsley, 1985; **#93**].

Some of the best known writers, researchers and artists in the United States have resorted to copying or stealing the ideas of others. The discovery of such improper conduct has been met with varying degrees of condemnation, explanation and justification. Artists view copying differently from advertisers, and lawyers from doctors. Corporate America's standards differ from academia, disciplines within academia disagree and ethnic groups have different perceptions. These differing views make for a colorful debate in the literature.

Those who accept the occurrence of plagiarism show a willingness to believe the theft as an honest mistake resulting from poor note taking or the unconscious use of a concept. Often the originator is flattered. This is frequently the reaction of academics and journalists [Shepard, 1994; **#485**]. Musicians and artists accept that the creative process is fed by the works of others. Theft of art is a tradition. It is "the first-law of creativity" [Cosgrove, 1989; **#170**]. Copyright does not have a place in the world of fine art; it belongs in the world of commercial artists and illustrators [Feliciano, 1995; **#590**]. Even translators might also be classed as plagiarists, says at least one writer. They manipulate text to make the foreign sound native. Yet others praise their works based on how closely the copy resembles the original [Venuti, 1992; **#311**].

Disciplines have different rules for citation. Colleagues in the field of historical biography may expect only a short list of references. They assume peers will recognize information from commonly used sources; it is unnecessary to cite the obvious. A research paper in English literature may require more complete documentation. It may require notes on every source. In some areas, footnotes are considered laborious. Only the most controversial or recent references require citation. Doctors reading a medical journal for content are more interested in the information; extensive footnotes interrupt the flow of reading. Others unite to support a style of rhetoric. When Carson's team discovered that Martin Luther King, Jr., had "borrowed" extensively for his dissertation and speeches, supporters rallied to explain by showing the ethnic differences. His style, they stated, simply followed the black tradition of southern preachers, an oral tradition that relies on repetition. For that ethnic group, the delivery of the message sets the standards, not the words used. In a similar way, the public tolerates politicians and celebrities who rely on the work of others. Speechwriters are on staff to supply legislators with persuasive words; ghostwriters assemble "autobiographies" and memoirs. In business it is likely that a team produced the project report, not one person. Policies are built on the work of previous employees. Everyone accepts adjustments in procedures as acknowledgments of the desirability of meeting the needs of the group.

Those who voice less tolerance when discussing the borrowing of another's work, point out that the process is not just a little mistake or an oversight. To take the work of another without authorization or acknowledgment robs the

originator of recognition. It is the theft of self image [Freedman, 1994; **#467**]. For poet Neal Bowers [1994; **#486**], discovery of another person's publishing his work under the other's name was tantamount to robbing him of his life. He hired a private detective to bring the robber to justice. Using the material of another also robs the reader by limiting their exposure to original ideas, taking up publishing space that could have been assigned to a more creative work, and denying legitimate contributors access to resources.

Beyond the more traditional gamut of acceptance to condemnation of plagiarism, there is a small fringe that sees political possibilities in its use. Plagiarism has on occasion been used to promote a point of view, a cause. Alessa Johns [1994; **#465**] suggests Mary Hamilton's borrowing extensively from Daniel Defoe was a commentary on the role of women in the 18th century. To Lawrence Venuti [1992; **#311**], the plagiarism of Tarchetti may have been an attempt to scoff at the bourgeoisie. In more current times, Jeffery Hart [1990; **#197**] has raised questions about accusations of plagiarism on the Dartmouth campus. Is plagiarism being used to place sanctions against student Andrew Baker for his conservative political views in Dartmouth's efforts to promote "sensitivity"?

Plagiarism is a part of writing and oratory. By some it is viewed as a normal part of the creative process, by others the theft of the very essence of one's being. It may be used for quick profit and political gain, or done inadvertently. Because of these varying degrees of acceptance and condemnation, it remains a topic of discussion without resolve. Each case is handled individually by those most closely involved.

Intellectual property rights seem to come to the forefront when change and economic potential are injected into the system. The current phase involves the Internet. What types of protection can and should be offered the originator whose works appear in electronic format? Should there be controls for the transmissions and display of text and images? Discussions involve balancing the rights of the originator against promoting the interests of society.

As with other formats, views expressed about electronic storage and transmission show support along a continuum. Some find the current system of laws and regulations adequate, others think a new category should be established. Attitudes are influenced by the sheer volume of information and access afforded by computer networks. Data are easily captured and modified. The user is protected by anonymity. Fear of discovery and reprisal are minimal.

Issues along the continuum reflect views from all areas of society. Those in business see the possibility of lost profits from stolen or altered data. Artists and writers fear improper use of their materials and lost royalties in electronic access [*Publisher's Weekly*, 22 May 1995; **#567**]. Publishers want tighter restrictions to protect their investments. Librarians and educators are our watchdogs for open access to information. They fear that higher costs will result in loss of *fair use* with society being the loser. Distance learning through the Internet

brings issues of *fair use* versus performance royalties, as transmission of the data falls under broadcasting guidelines. Every group voices concerns important to its members.

As was evident in the past, copyright laws evolve slowly. Informal agreements on standards resolve many issues. The late 1990s are a witness to this process, resolving how electronic media fit current copyright practices. Publishers are working with agencies who agree to collect royalties, writer's groups are negotiating with publishers, librarians and teachers are moving in the bureaucracy to balance the profit concerns of industry. Each believes its way is the best way to preserve an atmosphere free of censorship while promoting creativity and research.

In the past, few considered the possibility of stealing from others on the networks (primarily the Internet). It was a relatively small community of users, mostly academics, who were sharing ideas and information. The participants rarely questioned each other's integrity. Trust in the ethics of the user provided the protection needed. To Arthur Tisi [Sipe, 1995; **#612**] and many others, expanding the networks to allow commercial access does not necessarily mean the ethical standards have been lowered. The honesty we relied on when the Internet was a closed community should prevail in this more open market. We must not let the changes in how business is conducted evolve into a police mentality for this form of communication. It is up to individuals and organizations to find fair and equitable ways of working in the electronic environment.

The question of protection for the computer programs that make access possible is also under discussion. Using copyright laws to protect products which use the new electronic medium is only one side. Should the computer programs which make electronic access possible be put into the same category for protection? Initially, since the programs began as written statements, it seemed reasonable. As the industry grew, conflicts began on whether copyright protection is appropriate in an industry that changes so rapidly and relies on the ability to produce compatible functionality across various product lines. The question of whether certain algorithms should come under patent and copyright protection has been and is still being questioned. Small producers of software rely on being able to "break down" programs created by the larger manufacturers in order to create software that will work smoothly with the products of greater market share. If access to certain information through reverse engineering and use of standard algorithms is considered copyright infringement, the cost of development will become too great. Smaller companies looking for a niche in the market share will not be able to compete and innovation will be stifled. The public's needs might not be served [Weisband, 1992; **#322**].

Some of these discussions are being settled in the courts, but the Internet-users community is becoming a very powerful forum for these problems. The legal process is slow and deliberate; the electronic realm promotes open discussion and swift resolution. The battle between Leland Wilkinson of SYSTAT

and Pawel Lewicki of StatSoft is a prime example of the power of Internet users. Wilkinson claimed Lewicki had used his software statistical calculations without permission. Before the issue could be brought to the courts, users of the products began discussions on the Internet listservs. Users pointed out flaws in both programs and both products were improved [Marshall, 1992; **#280**]. All benefited from the on-line discourse.

On a more bureaucratic front, the discussion on electronic format showed enough diversity of opinion to warrant a White House task force (White House Information Infrastructure Task Force's Working Group on Intellectual Property Rights) to evaluate current laws and make recommendations. After two years of study (1993–1995) and countless hearings in which persons from business, law, libraries and other interested groups gave opinions, the task force recommended that the current laws were sufficient as stated. Parties on both sides were skeptical since free access and ownership status were still not addressed.

Views on protection of intellectual property in academia are also undergoing a subtle change. Universities, in search of financial resources, move away from pure research as they sign more agreements with industry for research that has the potential for product development. In the past, these institutions did research without regard for profits and controls. Research built on research [Goodman, 1993; **#393**]. World War II brought with it the request from the U.S. government that universities work closely with industry to provide innovations for the war effort. This request brought government funding. The universities expanded their research departments to accommodate the changes. In the 1950s and 1960s, faculty were free to pursue outside research on their own time without restrictions or obligations to the university. Many worked in cooperative ventures with business and industry. Faculty in the 1970s and 1980s were expected to bring in grant money to support research. Both faculty and institution benefited from these ventures, and faculty were still free to pursue personal contracts with outside sources without oversight by the campus hierarchy. In the 1990s, looking for additional sources of revenue, the universities are finding patents and copyright ownership a potential gold mine. This change does come with some negatives attached. The trend at many universities is away from faculty controlled research. University administrations and industry negotiate contracts. It is becoming more common to see patent rights being retained by the university with copyright going to the inventor. The distinction between researchers in industry and those in academia is becoming blurred.

Academics less enchanted with the trend are raising concerns that the confidentiality frequently needed to protect trade secrets and product development may overshadow the pursuit of pure science. The concept of research spawning new research relies on an open flow of information. Contracts with the government and with industry frequently hamper this flow. For industry, the confidentiality of information is a necessary step in bringing a beneficial

product to the public [Palmieri, 1989; **#182**]. Lack of secrecy threatens the possibility of recouping research and development costs. Competitors may bring a product to market for less cost if the information is made public too soon. If funding has come from federal sources, academics may be caught between concerns for national security and the public's "right to know" [Nelkin, 1982; **#75**]. Information is no longer free flowing. Contracts regulate to whom and when information is released for public consumption. Opposers, NIH and Harvard, for example, claim that such constraining contracts hamper the free exchange of information and detract from pursuit of scientific knowledge. Supporters, Martin Kenny being one, see the collaboration as a source of funding for additional research [Grassmuck, 1991; **#229**]. It is not easy to find the balance between funding and freedom.

Nations have seen the advantages in respecting intellectual property rights among their citizens. To this end there have been a number of international agreements drawn by participating nations and agreed to by others. For copyright, piracy and plagiarism, many nations subscribe to decisions proposed by the Berne Convention for the Protection of Literary and Artistic Works of 1886 and revised in 1971. Under this pact, nations agree to give the same protection to foreign works as they give to their own citizens. This agreement includes protection of moral rights as well as financial. That is, the originator may object if the work is used in a manner the originator considers unfitting. The World Intellectual Property Organization (WIPO) administers the conditions of the Berne Convention. Until 1989 and a realization that belonging might be of benefit in upcoming trade negotiations [Stanberry, 1991; **#227**], the United States did not participate in that organization. Along similar lines, the Universal Copyright Convention of 1952, sponsored by United Nations Educational, Scientific and Cultural Organization, also provides protection across national boundaries. Countries who comply grant the same protection to foreigners who want to distribute products in their country as they give their own citizens. Other less quoted agreements followed by many of the former Soviet states include the Nice Agreement, the Strasbourg Agreement and the Budapest Treaty. Under these, the signatories agree to offer a system of patent, copyright, trademark and unfair competition laws [Maggs, 1991; **#263**].

The United States patent system is different from other nations in its filing procedures. It supports a "first to invent" policy. This policy allows originators to publish without fear of having others usurp their invention because they were swifter to the patent office. It also assures potential partners of exclusive rights for any products developed [Burd, 1992; **#320**]. Other nations have the "first to file" rule. The "first to file" has the advantage of less processing time, with greater potential for bringing a product to market more quickly. Investors reap profits on a faster time line. The possibility of the United States' moving to the "first to file" process to be more competitive in the world market is being examined.

Trademarks have a long history of international protection under the 1891 Madrid Agreement Concerning the International Registration of Trademarks. This is also administered under the auspices of WIPO.

Each of the aforementioned agreements has two basic flaws. They rely on the existing laws of each nation and there are no provisions for settling disputes should contentions arise. Enter GATT, the General Agreement on Tariffs and Trade. Piracy of both written word and electronic formats in software, music and video by less technologically developed nations brought the issue of protection of intellectual property to the international scene in the late 1980s. Some observers estimate lost revenue to be over $6 billion annually from United States corporations alone. The GATT with its "most preferred nation" trade status and means for handling disputes began discussion on inclusion of intellectual property protection under its trade policy.

Promoters of the protection recall that trade and research flourish when all parties strictly enforce protection of intellectual property. Denunciation comes from advocates for the less technologically developed nations. In their view, nations must have this information and equipment in order to advance but do not have the resources to pay for licensing fees and royalties. There is fear that protection is just another guise to keep less prosperous cultures from developing the potential to compete effectively in the international marketplace.

Machine and intellectual technology is not the only concern. Biotechnology is another major area of disagreement. How should cultures and countries be compensated for their knowledge of plants and plant life, a knowledge needed to bring new information and material to the agricultural, botanical and medical communities. The problems are being addressed in the establishment of gene pools, in licensing with local peoples and in negotiating with governments. Each way being used to provide compensation to the native population addresses some of the issues but has strong dissenters. For those recommending negotiations with local governments, there are questions about whether the benefit will reach the persons directly involved [Brush, 1993; **#392**]. Those advocating direct reimbursement and royalties must contend with communities who do not recognize individual property or who will demolish precious resources in their zeal for the immediate benefits of dollars. This clear-cut rape of nature may result in destroying species that could be useful for future research. Problems even confront those who want to comply on ethical grounds. Anthropologist Carol Jenkins requested a patent on cells found in the blood of a member of the Hagahai in New Guinea. Properties in his blood held the potential for cures for a number of diseases. Outcry was heard across the Internet from members of the Rural Advancement Foundation International even though all proceeds from the patent would be paid to the contributor's family [Taubes, 1995; **#613**].

Definitions of plagiarism and intellectual property are both simple and

complex. The views of various cultures and different countries are projectionist or expansive. The philosophical epistemology is varied; the greatest influential factor is and will continue to be the reputations and financial concerns of the participants.

2. *Follow the Money*

Ideology and ethical behavior give philosophical bases to reasons for being truthful and giving credit where it is due, but money moves the process. Personal recognition for a work benefits the ego, and community recognition does bring feelings of satisfaction, but both greed and legitimate profit provide strong motivations in the struggle of protecting intellectual property rights.

Moving new products to market can be an expensive, time consuming proposition. Publishers, inventors and promoters realize the importance of making the public aware of the new merchandise. Scandal is an effective, inexpensive way to bring a topic to public attention. For writers, publishers and researchers, an accusation of plagiarism tends to get the media's attention and can be used as an inexpensive marketing tool. Mark Twain, when he needed to draw the public's attention to his next work, *The Connecticut Yankee in King Arthur's Court*, used the accusation that he plagiarized from works by Max Adeler [Kruse, 1990; **#266**]. Publisher Simon & Schuster used the controversy between William Manchester and Joe McGinniss. Manchester accused McGinniss of using research material Manchester gathered for his biography of Ted Kennedy. McGinniss claimed the Kennedy family used plagiarism charges to keep his piece from being published [Taylor, 1993; **#380**]. The publishers moved the merchandise to the bookstores two months ahead of schedule just to take advantage of the media coverage [Podolsky, 1993; **#387**]. Scandal and controversy over property rights sell books.

In a slightly convoluted version of the same theme, academic T. W. Graham Solomons claimed authors Morrison and Boyd brought plagiarism charges against his *Organic Chemistry* to discredit his work so their new edition of a similar text would reap the market share [Stinson, 1979; **#68**].

A prime example of plagiarism for publicity came from the son of the editorial director of Random House and the coeditor of *New York Review of Books* [Peer, 1980; **#71**]. Jacob Epstein (*Wild Oats*) in his discourse with Martin Amis (*The Rachel Papers*) was so skillful in selling his work using the publicity from the articles exposing his, Epstein's, plagiarism, that other writers who try similar tactics are tagged with "epping" [Rosen, 1980; **#72**].

Once the product is out in the marketplace, profits are generated and the flow of money to the originator begins. Writers, artists, composers and inventors are paid royalty fees when a copy of their product is sold. This seems like