

Imitation: the insincerest form of flattery

By Bruce A. Love

*W*e have all been taught that copying text directly from encyclopedias and other reference materials is wrong. As children, this was a hard concept to swallow, especially when all the good stuff was right there in black and white, and perfectly worded by someone else! But after following our teacher's directions not to plagiarize, we soon discovered a new sense of pride in knowing that we could put together term papers and reports in our own words!

*A*dvances in technology have created new challenges in the war against plagiarism. We now have tools that make it very easy to copy and paste the words and works of others into works we call our own. Plagiarism is not limited to classrooms and students. Recent scandals involving Pulitzer-prize winning plagiarizers have drawn attention to this epidemic. Between the personal computer, the Internet, and the lack of self-respect on the part of violators, the practice of plagiarism, and other related activities, has reached new levels.

*M*any teachers and professionals also mistakenly believe that they have the right to copy and use complete works of others for educational purposes, or if they do not profit directly from copying the original works. But these are examples of copyright infringement, as is the copying of software, music, or original artistic works. All of these activities potentially devalue an author's works and denies them opportunities for compensation!

*C*opyright law guarantees the creator of works the exclusive right to control who can make copies. For copyright law to apply, works must exist in some tangible form, such as on paper, a hard drive, or another "permanent" media (not just an idea). There are some exemptions to protection under copyright law. The law of "fair use" allows critics, commentators, and educators, to use portions of copyrighted works to make

some point about those works. For example, commentators are allowed to denounce assertions made in "Fahrenheit 911" without getting the approval of Michael Moore to show those portions of the movie.

*C*reative works are considered copyrighted the moment they are fixed in tangible form. Copyrights expire 70 years after the death of the author, or 95 years after publication. Copyright symbols and dates are no longer required, but they still serve to strengthen legal cases of copyright infringement. Also, while registration at the United States Copyright Office is not necessary, it is required (prior to the violation) if the owner wants to be able to sue for damages (see www.copyright.gov).

*T*rademarks are often confused with copyrights. A trademark is any word, name, symbol, slogan, or package design that serves to identify and distinguish a specific product from others in the market place. Trademarks are always associated with an organization, product, or service (hence the term "trade"). Examples of trademarks include the word Xerox, the Nike "swoosh," and even the purple dinosaur (Barney aggressively sues violators of his trademark!). One of our clients has even managed to get a Federal trademark for the use of two dots for eyes (used on dolls and other goods sold by Lizzie High Dolls). Trademarks must be registered with the United States Patent and Trademark Office (<http://www.uspto.gov>), and renewed periodically, to remain adequately protected. Legal ownership protections are weakened if the owner of the trademark fails to act against violators.

*C*harles Caleb Colton once said, "Imitation is the sincerest flattery." However, when we copy the works of others, without obtaining permission to do so, we deny them their right to control its use and receive all the benefits to which they are entitled. For legal reprints of this and other articles, visit: www.loveconsulting.com/articles.htm.

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