

## OPINION

# Transfer of teaching materials between universities

Where is the boundary between legitimate transaction and violation of moral intellectual property rights?

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Intellectual property rights have various facets. The best-known one is copyright, enabling the owner to legally utilise intellectual materials. However, there is a separate set of legal entitlements, termed moral intellectual property rights. The purpose of these is to prevent false attribution, damage to an author's reputation and some forms of plagiarism. In the current example, a teaching curriculum was licensed by one Australian university to several others. While this is consistent with copyright ownership, the moral rights aspect was overlooked. Teaching materials had the names of the original authors removed and were used at the receiving institution either without attribution, or with sole attribution to the other set of staff. This constitutes a breach of authors' moral rights and would also fulfil common definitions of plagiarism.

## Background and introduction

The Flinders University of South Australia's School of Medicine is a well-respected medical school within Australia. The curriculum is that of a four-year postgraduate entry medical course, whereby having a prior degree is an entry requirement. The curriculum is also described as a hybrid course; a major emphasis is placed on problem-based learning (PBL), but there are also more traditional teaching elements, such as lectures, practical classes and electives. The typical intake of Flinders Medical School is 120-130 students per year.

Around 2006/07, it became known to academic staff at Flinders Medical School that the curriculum would be licensed to other medical schools; the names of Deakin University in Victoria, Griffith University in Queensland, and St. George's Medical School in the UK were mentioned. This was generally commented upon and viewed as a sign of recognition and success for the School. It also made sense; the other medical schools were start-up medical schools at universities that previously had only offered other disciplines. A transfer of the Flinders curriculum would allow these other schools to become functional much more quickly than if they had to develop their own curricula *de novo*.

## Situation observed

In late 2008, a Flinders academic staff member happened to see some of the teaching materials at Deakin University, one of the universities that had obtained the Flinders curriculum. The picture was intriguing. The PBL cases in use at Deakin were almost identical – except for very minor adaptations – to the PBL cases that were in use at Flinders University. However, what was missing was the attribution to the Flinders academic staff who had been involved in writing and updating the cases. It is worth noting that the writing of good PBL cases is quite a demanding task, since it requires a combination of good clinical knowledge and teaching skills.

A slightly different picture was seen for the lecture materials. The degree of identity of the Deakin lectures with the Flinders lectures varied, but generally one-half to two-thirds of the Deakin lectures were identical with the corresponding Flinders lectures. The rest were different by way of modification, extension or shortening. There was also variation between different lectures and between different Deakin staff; some lectures had very little similarity to the Flinders originals, and a few were more than 90 per cent identical to the originals. However, what was striking was that none of the Deakin lectures showed any of the names of the Flinders academic staff who were the original authors. Instead, the names of Deakin academic staff not only appeared on the title slides of the lectures (as was the practice at Flinders), but were recorded on every one of the lecture slides. Examples of lectures and PBL cases from Flinders and the corresponding ones from Deakin University are on file.

Some of the features seen in the teaching materials are worth noting. The lectures commonly contained text passages that were either (i) word-for-word copies of the Flinders texts, or (ii) passages that were essentially the same text but with some changed wording. Most of the Deakin lecture slides were not direct digital copies; the text appeared to have been retyped. However, some Deakin lectures also contained images that looked like copied and pasted images from digital files of the Flinders lectures. That means it appears conceivable that Deakin had been in possession of digital file versions of the Flinders lectures. Overall, there was a clear pattern with significant amounts of similarity or identity, but sole attribution to

Deakin academic staff. This pattern was characteristic of systematic usage.

## Raising the issue

In September 2008, a Flinders academic staff member raised the issue in a letter to the Medical School, described the findings and asked for appropriate attribution and acknowledgement of authorship. It was stated that the hard work of Flinders academics should be appropriately acknowledged and recognised. However, in a response in July 2009, the School effectively declined this request. The letter stated that the teaching materials at Deakin were used appropriately and in accordance with the terms of the Licence Agreement (i.e. the one between Flinders and Deakin concerning the transfer of teaching materials). In

addition, the letter stated that only PBL cases but no lectures had been transferred. It was further stated that according to a statement received from Deakin Medical School, the lectures had been independently developed by Deakin academic staff.

However, what was evident from reviewing the materials was that the Deakin lectures were so strikingly similar to the Flinders ones (see description above) that independent development appeared to have been next to impossible.

## Involving the NTEU

In late 2009, the National Tertiary Education Industry Union (NTEU) became formally involved in the matter. First, the NTEU provided an analysis and further information. The legal situation is that there are different requirements for copyright and authorship. While most Australian universities, including Flinders (Flinders University 1998; Reid 2004), assert the copyright to intellectual materials developed by their academic staff, and with it the right to utilise and market the materials, there are separate requirements for authorship. The latter is part of Australian Commonwealth law, regulated in the *Copyright Act 1968* Part IX (Commonwealth of Australia 1968), and is termed Moral Intellectual Property Rights. Under the Act, a creator's moral rights are defined as the rights: (i) to be attributed as the creator of their work; (ii) to take action if their work is falsely attributed; and (iii) to take action if their work is distorted or treated in a way that

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is prejudicial to the creator's honour or reputation. While moral rights cannot be sold or transferred, an author can consent to have his/her moral rights waived (e.g. elect not to be named as author).

Effectively, the *Copyright Act* intends to prohibit some forms of plagiarism: falsely claiming to have authored, invented or created something that someone else has, by omitting appropriate attribution to the appropriate source(s), or by providing false attribution. This is also consistent with the widely known principles of academic integrity that when the work of others is used, appropriate credit and attribution should be given.

## Further developments

In February 2010, the then NTEU President, Dr Carolyn Allport, wrote to the Vice-Chancellor of Flinders University, describing what was happening as a violation of intellectual property moral rights. She asked the University to seek a remedy of the situation. As part of the remedy, the University should: (i) acknowledge that there is a problem, (ii) take steps to rectify the situation, (iii) apologise to any academic staff whose moral rights had been violated, and (iv) undertake a review to ensure that all teaching materials contained appropriate attribution of authorship.

Flinders University responded in June 2010. A path to acknowledge the authors of the PBL cases was agreed to. However, other concerns that had been raised were still not resolved. This included a failure to provide a clear path to appropriate attribution of authorship of lecture materials to their original authors, a failure to address the situation at the recipient universities other than Deakin of Flinders materials (despite the fact that this had been raised and queried in earlier correspondence), and a failure to provide a formal apology to academic staff. The University's response also contained a number of factual inconsistencies, such as a claim that only materials from one teaching block were affected and a claim that the similarity between the lectures only pertained to images and other components that were in the public domain. In fact, materials from other blocks were part of the observed pattern and extensive identical written text passages were present. Subsequent correspondence in which the University's response was criticised ensued.

In January 2011, the University responded again and advised that steps had now been taken by Deakin University to provide, on their internal website for students, a list of original Flinders lectures and their authors, and also, in the lectures, a reference to that list. However, there

was still no path to authorship attribution on the actual lectures. The University also offered a formal apology, but only to the single individual who had originally raised the issue. The situation at the other universities that had been recipients of Flinders materials was not addressed. Further, the University advised that it was now reviewing its own processes and had engaged one of its deputy vice-chancellors to ensure that the issues of copyright and attribution of authorship would be systematically addressed when curriculum materials would be provided to third parties.

At the time of writing, the matter is still under investigation and a full resolution is still pending.

## Further analysis

It was interesting to see that some of the lectures at Deakin University contained material that looked like it had originated from digital file versions of the corresponding lectures at Flinders. A potential source is Flinders Learning Online (FLO), a digital repository of teaching materials at Flinders University. Flinders academic staff regularly deposited their lecture files in FLO, which was meant as a resource for students. Could this have made it possible to transfer digital lecture files to other universities? This is unknown, but none of the Flinders University academics were informed that such a transfer would take place.

There is another interesting aspect to this case. Staff members of the receiving institution would be expected to be familiar with basic academic principles. What triggered anyone to think that it is acceptable to have the names of originators removed from the materials and to replace them with other names as if they were the authors? This is despite the common negative notions surrounding plagiarism, and the fact that Deakin University apparently has a strong anti-plagiarism policy in place towards its students that is also frequently highlighted to them by academic staff. While the actual reasons are again unknown, a potential explanation comes from what has been defined as 'institutionalised plagiarism' (Martin, 1994). According to this definition, there may be a hierarchical or contextual framework at some institutions that suggests that certain ways of dealing with authorship and intellectual property issues are convenient and acceptable.

There is an interesting potential twist to the typical scenario whereby universities can lay claim to copyright ownership of intellectual materials generated by academic staff employed and paid by the university. In most Australian medical schools, including Flinders, there is often a significant number of hospital-employed medical specialists

who have unpaid academic joint appointments and teach at the schools. Whether universities own the copyright to these authors' work appears unclear and is untested in Australian courts. In the Flinders example, materials generated by hospital-employed specialists were clearly also a significant part of what was transferred and in use at Deakin University.

There are a number of other examples of Australian universities that have transferred curriculum materials to other institutions. Some universities have involved their academic staff in legal arrangements concerning these transactions, and in some instances, monetary arrangements were made with the authors (source: unpublished observations coming from casual conversation with academics from other universities). However, the extent to which moral intellectual property rights of academics from other institutions are respected or not respected is unknown. It appears that there are no publicly available data in Australia concerning these kinds of details pertaining to these transfers.

## Conclusions

This report provides an example of a transfer of teaching materials between universities where the way in which the materials were handled constitutes a breach of authors' moral intellectual property rights. The case was raised with Flinders University by the NTEU.

A number of conclusions and interesting viewpoints emerge from this case. First, it needs to be pointed out that academic staff have a legal entitlement to be named as authors or creators of their work, even if the copyright (and with it the right to engage in commercial licence agreements) lies with their employer. Second, the way in which the teaching materials in this case were handled is clearly against the established principles and common notions surrounding academic integrity, even aside from a legal framework. Third, it even meets the common definitions of plagiarism.

This case also has broader implications for Australian academia than just being an incident between Flinders University and Deakin University. Potentially, there are also implications for academics in other parts of the world. Transfer of intellectual property between institutions is increasingly becoming an important part of academic interaction. Entire curricula are being transferred between institutions via licensing arrangements, and there are usually benefits on both sides. However, as the level of commercialisation of intellectual property increases, it is also becoming clear that there is a need to maintain the

principles of academic integrity and to respect the moral intellectual property rights of academics. These issues may ultimately need to be addressed by way of national or international standards or codes of conduct.

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