

Red Guides
Paper 54

Beyond text based plagiarism: A paradigm
for tackling academic misconduct in the
creative disciplines

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Red Guides address educational and staff development issues within Higher Education and are aimed at colleagues within the University and at other institutions. Some describe current good practice in Higher education, others evaluate and/or comment on curriculum development and many provide ideas for teaching. All are meant to stimulate discussion, initiate action and implement change.

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Background – the context and scope of the matter

In Universities or professional practice the regulations and guidance concerning plagiarism and other forms of academic misconduct usually focus upon text based material. If, for example, an article is found to contain phrases (or more) that appear to be identical to or the paraphrasing of, material published elsewhere then the possibility of academic misconduct arises. If the material is not adequately referenced or clear acknowledgement given then a case of plagiarism will have been identified.

In the case of patching (aka 'boiler plating') it is a weakness in the essay or a misguided belief that the assignment marker needs to be reminded of the work of others that has resulted in an erratic block of material appearing. In 'cut-and-paste' cases it may be a thoughtless act or a serious attempt to pass off the work of another as their own. In the extreme cases a whole article (commissioned or found) may be presented as the work of the individual responsible for the document behaviour for which there would appear to be no mitigation providing a few basic concepts have been established and clearly explained/taught.

The intent, experience and culture of the *plagiarist* may provide mitigation and the particular case resolved by the giving of critical feedback, guidance and remedial teaching. In other cases the procedures specified in the regulations will be triggered and they may, ultimately, result in formal academic sanctions and *dire* penalties.

In most cases the copied material does not represent a significant part of the original item, distribution is limited to within the University and specialist software (eg turnitin®) can be used to estimate the probability of plagiarism and provide guidance to staff and students. However, it should be noted that the creation and circulation of material in an electronic format might trigger stricter¹ responses as well as increasing

¹ I, for example, sought approval to use two short passages from a play as an illustration of the complexity of visual plagiarism in Fine Art. I was given limited approval that did not extend to the

the possibility of wider, accessible, distribution than would be the case with a hand-written essay or typed paper.

Whenever, when the author or presenter adds images to a document or sound (perhaps music) and images to a presentation acceptable standard may be broken and illegality perpetrated. Not only does technology readily permit such (thoughtless) actions and make possible unimaginably wide circulation but the item incorporated is much more likely to be a significant proportion of the original and thus will clearly carry Intellectual Property Rights (IPR). (When a section of text is copied it will in most cases only be a very small percentage of the whole but exceptions exist. The copying of whole poems (even from within a larger collection) or a registered trademark strap-line, for example, will always be problematic and almost certainly an infringement of IPR legalisation even if the material is correctly referenced. Maps produced by the Ordnance Survey will also always be copyright and, unless fees are paid, are illegal to reproduce).

Simply placing an image found on the Internet into an assignment without due acknowledgement will be plagiarism but even if correctly referenced copyright may be infringed (like a poem it will usually be a significant fraction of the whole). Simple modification, resizing or changing the colours, for example, will do nothing to avoid a copyright infringement; an element of creativity must be shown and even then the creation of derivative images can be restricted; scanned images are no less protected. With the exception of images originated by the author, who has not intended to recreate the work of others, only those images covered by an appropriate Creative Commons² Licence or clearly identified as 'clip-art' may be regarded as usable without the risk of infringing IPR. However, these images must still be referenced to prevent sustainable *allegations* of plagiarism.

use of the material in an electronic medium – including a PowerPoint Slide or in an Academic Journal article that may be offered to some subscribers electronically, as a PDF, for example.

² Details of the Creative Commons Scheme may be found at: <http://creativecommons.org/> [28/02/09] but note that limitations may be applied under these licences. Acknowledgement of originator, no commercial use and the requirement that any derivative work only be circulated with similar conditions are commonly applied constraints.

An infringement academic good practice and probably of copyright will occur when music is added to a PowerPoint presentation even if the source and the copyright holder are acknowledged. Recreating or re-arranging the music and then recording it with friends will not resolve copyright issues unless the original was already free of rights; true Traditional Music, for example. However, even in the case of Traditional Music a concatenation of song and refrain/chorus or a new specific recorded arrangement will establish copyright and, perhaps, performance rights for the people concerned.

In a recent legal case a minute of silence created by Mike Batt was accepted, in so far as an out-of court settlement was reached and payment made to be an infringement of the copyright of John Cage's 1952 work 4'33". Cage's composition contains nothing but the listener will hear the ambient sound present wherever and whenever it is *performed*. Ironically, it was Batt's humorous acknowledgement of the Cage original that established that an infringement had occurred (Anon, 2002) and not the actual notes *not played*.

It may be acceptable to Course teams for images and music to be incorporated in student work provided that the material is correctly identified and that the material will not reach an audience beyond the University. This might happen if the essay/presentation is proposed for an award, used as an exemplar and placed in the library, on a website (e.g. Blackboard eLearning Portal) or forms part of a show to which the general public are invited. In the case of award winning essays the photograph is, invariably, of the student, the cheque and only the front cover. This will not be the case with a winning artefact or painting where the object will be clearly shown, albeit with the student and cheque.

In the creative disciplines the situation is more complex. Not only is a wider range of Intellectual Property potentially involved (Patents, Trademarks, Design Right, Copyright, etc) but custom-and-practice within the discipline may mislead as to the boundaries of acceptability. Historically, High Street Stores have sold their versions of catwalk fashions unchallenged but

recent legislative changes may curb this. In academia unacknowledged material will always constitute academic misconduct and be a clear infringement of the Institution's regulations.

The vocational nature of study in the creative fields makes it important that the standards of the profession are inculcated into the student cohort from the very beginning and occasions where the standards are to be relaxed made explicit. For example, a business sponsoring a project will normally expect their trademarks and style to be applied to the solutions but they may also impose restrictions upon the use of their "trade craft" to, for example, ensure that it is not diluted or brought into disrepute.

Students of creative writing, photography or fine art may be asked to create a parody, pastiche or homage as part of their development of skills while students of fashion and product design may be asked to create items that will fit within an existing product range and make acknowledged reference to the other items. Clearly, such assignments concern derivative works and promote the infringement of IPR but are essential steps for developing creative individuals who seek to establish their own style, *look* or *voice*.

The student creating new work or artefacts will always be involved with copyright and design right and must learn to use, as well as respect, all forms of IPR. Furthermore, students in these innovative disciplines also expect to create portfolios that they will show when seeking placements or employment. They often submit to competitions, and will hold public shows to present their work and images may be placed on websites and adopted by local, national or international media. Thus the work of creative students, potentially, enters the public domain and reaches a far wider audience than the few academics who might view a conventional written assignment; even award winning essays are very rarely reproduced!

A paradigm that offers a route to a solution

A vocational course of study that is designed to equip successful students with the skills, abilities and experiences necessary for a career in a creative discipline will need to confront complex issues of academic misconduct and the infringement of IPR. The boundary between acceptable and unacceptable will need to be established, communicated to the student and then applied. The boundary will vary with the topic, the assignment and the level of studies; the student is to be prepared to join a community where *custom and practice* is uneven and where they will expect that their own intellectual and moral rights are respected by others.

The Course team must first establish a set of principles to be followed by all staff and for all taught elements and any exceptions to the general rules must be clearly agreed. In setting these standards the team will, no doubt, take advice from colleagues, those in professional practice, professional learned bodies and consider this guidance in relation to the needs of the Course, standards set by the University and the law.

It might, for example, be considered appropriate for an early module to require the student to create a work or artefact in the style of another. It will give the student an opportunity to closely study technique/style and may provide an important understanding of the various elements that integrate to form the whole *look and feel*. In these circumstances derivative works will be created but the student must know that this is not normally acceptable and, indeed, may be told of particular sources that are problematic and should be avoided (e.g. banknotes, maps, Disney characters, etc). Students of creative writing may be directed towards long dead authors or to particular genre rather than specific individuals.

The standards and boundaries once set and reviewed (a role that External Examiners should be involved in) must be checked for compatibility with the University's regulations. Inter-operability with the University standards must extend to

ensuring that the penalties for infringement prescribed and the appeals procedures proposed are applicable, reasonable, fair and thus acceptable. Note that unlike text based cases of misconduct the creative disciplines can often create issues that are much less clearly defined. To resolve the question lawyers usually find the “differences” more persuasive than the “similarities” but the question of whether or not decisions should be made by “experts” or the “lay public” is, largely, unresolved.

Accidental infringement, inadvertent re-invention/rediscovery is possible; coincidences do happen but may not be as common as some, when questioned, suggest. This issue is best resolved by viewing the development work and investigating where a particular idea has come from. Unlike the electronic preparation of an essay where the more recent draft often overwrites the previous version students of creative disciplines are much more like to use and retain sketchbooks. When the artist/designer is established the sketchbook may have significant monetary value and the development work it contains is often essential in the establishment and defence of IPR.

Consider, for example, a collection of photographs that appear to closely recreate the style of another, more famous, artist or is it just the style that is common and, perhaps common to many? Does, for example, *solarization* belong to Man Ray, his lover Lee Miller³ or *joiners* to David Hockney⁴ and thus neither technique may be available to the student? Is the similarity commonly noticed or only by an academic who has researched the work of the originating artist? In either case it would be better if the body of student work was distinctive and unique but that is more likely to be the situation at Level 6 than at Level 4. Are defences of homage, pastiche and parody acceptable, mitigation or potentially evidence that the student has successfully understood visual branding?

Once the overall standards have been agreed they must be considered in relation to each module, brief and assignment

³ See, for example, Newhall, 1982 and Calvocoressi, 2002.

⁴ Hockney, 1993.

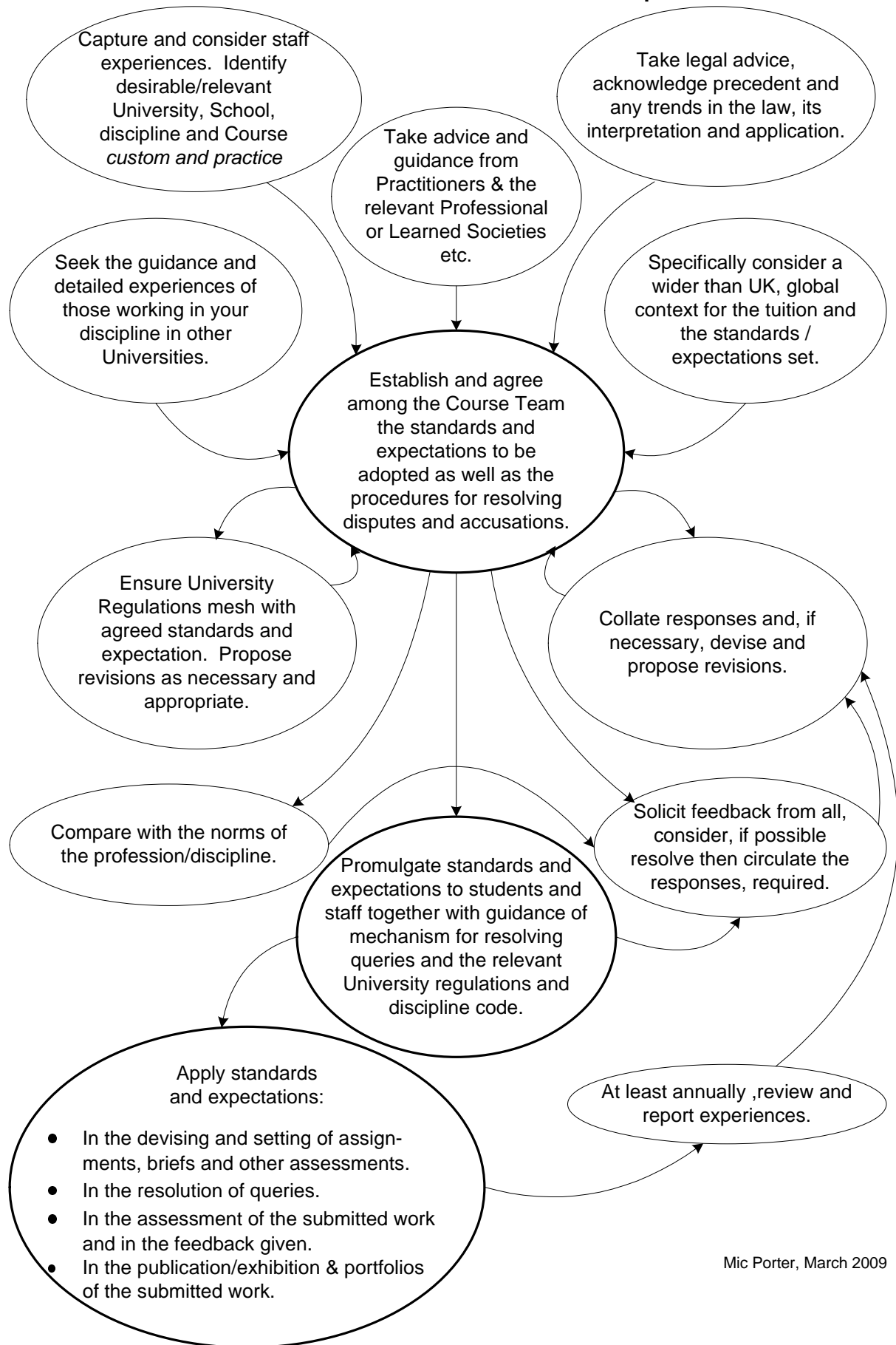
and clear, hopefully unambiguous, guidance prepared. Procedures for dealing with exceptions, and queries must be established and be receptive to all; even apparently obvious questions. The documentation must be circulated to all and it must be established that all understand and can operate within it. Procedures must also be devised for informing all students; never forgetting those who arrive after their cohort has started.

The briefs distributed to students should also contain detail of the boundaries and expectations concerning intellectual property and the form of acknowledgement required. For example, a sponsored brief might require that particular logos and “trade dress” is used but also set constraints. In another case it may be sufficient to fully reference and justify the use of particular patented device knowing that, in all probability, a reasonable price could never be negotiated.

It must be clearly established that the application of Logos and Trademarks to design work will be unacceptable unless they have been specifically authorised in the brief but even this can be problematic. May a student, for example, show his design of a new bus shelter with realistic advertisements? Must the backgrounds used to show a design in context be free of commercial copyrighted material?

The detail must be specified and arrangements for dealing with any question clearly described. In this respect there are similarities with ethical standards and the systems put in place for dealing with those issues; fundamentally *if there is any doubt, raise the matter*. Figure 1 contains a flow chart of the procedures that a Course team should consider when adopting a strategic approach to academic misconduct.

Figure 1.
A proposed process for the setting standards and expectations for the control of academic misconduct in the creative disciplines.



Mic Porter, March 2009

Conclusion

In matters of academic misconduct dealing with text based cases would generally appear to be easier than the issues that arise in the creative disciplines and the associated vocational training. However, this guide outlines a systematic paradigm that if adopted by course teams can result in standards and expectations that are appropriate to the discipline concerned. The approach is flexible, can deal with the different cultures to be expected among creative and innovative practitioners but the boundaries and intended outcomes must be clearly established and communicated to the students concerned. It must also be made clear that these standards and expectations will vary both between and within Courses.

Two other Red Guides, Paper 15 (Bell, 2006) and Paper 18 (Brown et al, 2006) also contain material relevant to the consideration of academic misconduct.

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