May 17, 2002

Plagiarism-Detection Tool Creates Legal Quandary

When professors send students' papers to a database, are copyrights violated?

By ANDREA L. FOSTER

When electronic tools to ferret out student plagiarism hit the market a few years ago, colleges saw them as easy-to-use and affordable. But now some college lawyers and professors are warning that one of the most widely used plagiarism-detection services may be trampling on students' copyrights and privacy. And many campus officials are starting to wonder whether some of the high-tech tools they are using to detect dishonesty clash with students' legal rights.

The service creating the stir is Turnitin.com (http://www.turnitin.com), which says it has about 400 colleges in the United States on its client list. A paper submitted to the service is checked against a database of manuscripts -- estimated at more than one million -- and a database of books and journals, as well as more than a billion Web sites. Phrases that seem to be unoriginal are flagged for professors to check.

A campuswide subscription to Turnitin.com costs $1,000 to $10,000 a year, depending on the size of the college. The service also is sold to individual professors and academic departments.

What makes it effective -- but also controversial -- is that it keeps the papers that colleges submit for inspection, in order to enlarge its database. Most other plagiarism-detection services, like Copycatch and Eve2, allow professors to run student papers through a computer program that checks for material copied off the Internet or for collusion among students.

Since those services don't retain the submissions, the pool of manuscripts that papers are compared with is likely to be smaller than Turnitin.com's, says Louis A. Bloomfield, a physics professor at the University of Virginia, who passionately defends both types of plagiarism-detection services. He created a computer program that finds shared passages among submitted papers but does not save them in a database.

Lawyers say the problem with Turnitin.com is that student papers are copied in their entirety to the services' database, which is a potential infringement of students' copyrights. (An author doesn't need to file for a copyright; the law automatically bestows on authors the rights to their written works.) And the copying is sometimes done without students' knowledge or consent, which is a potential invasion of their privacy.

Those concerns contributed to the decision by officials at the University of California at Berkeley not to subscribe to Turnitin.com, says Mike R. Smith, assistant chancellor for legal affairs: "We take student intellectual-property rights seriously, and that became one of the trouble spots for us in moving ahead with this proposal."

Rapid Growth

Berkeley's decision is noteworthy because Turnitin.com had its genesis there. John Barrie founded the service, in 1998, on the basis of software he had begun developing four years earlier while he was a graduate student at Berkeley.

Turnitin.com has grown rapidly, and Mr. Barrie says his company recently won a contract with Britain's Joint Information Systems Committee to serve more than 700 higher-education institutions in Britain, starting in September.

The committee, which declined to confirm his assertion, promotes the use of technology in higher-education institutions. Mr. Barrie won't reveal how much money Turnitin.com will earn from the British contract.

At Indiana University-Purdue University at Indianapolis, officials considering a deal with Turnitin.com are mindful of students' privacy and copyrights, says Kenneth D. Crews, a professor at the Indiana University School of Law, who is director of the IUPUI Copyright Management Center.

The university ought to go ahead with a contract only after impressing upon faculty members the importance of notifying students at the start of the course that their work may be submitted to Turnitin.com, which would retain it, he says.

"Let them know what you're doing and give them a chance to opt out," the professor says. In fact, he adds, some professors may feel more secure using the service only after obtaining a definitive go-ahead from students.

College lawyers say they are unaware of any lawsuits filed by students claiming copyright infringement or invasion of privacy because professors submitted their papers to Turnitin.com. But Rebecca Moore Howard, an associate professor of writing at Syracuse University who is an outspoken critic of all plagiarism-detection services, says it's only a matter of time before a student accused of plagiarism takes such action. "Student work is being contributed to the site for others' use without students' permission, and that's pretty shaky ground," says Ms. Howard.

"I have encouraged our faculty not to use [Turnitin.com] for that reason."

Ms. Howard says students whose papers are submitted to the service could argue that their rights are being violated under the Family Educational Rights and Privacy Act, which bars colleges from releasing personal information about students without their consent.

Indeed, LeRoy S. Rooker, director of the U.S. Department of Education's Family Policy

Compliance Office, says there is no exception to the act that would permit colleges to turn over student papers to an outside vendor without students' written permission. "You can hire a vendor to check for plagiarism," he says. "But once they do that, they can't then keep that personally identifiable document and use it for any other purpose."

Warning Students

Turnitin.com's founder, Mr. Barrie, is aware of colleges' skittishness over violating students' legal rights. As a result, the company encourages professors to warn students that copies of their papers will be checked and kept by the plagiarism-detection service, and to request that students themselves upload their work to the company's database. In that way, students cannot later argue that their papers were submitted to Turnitin.com without their knowledge. About 70 percent of the papers received by the service each day are uploaded by students, he adds.

He calls the privacy allegation "petty criticism" and contends that colleges are not violating FERPA by submitting papers to Turnitin.com because the work is not distributed elsewhere.

The procedure, though, raises questions about whether students feel coerced into submitting their papers to the service, and what would happen if they told their professors that they objected to handing over their work because doing so would undermine their legal rights.

Mr. Barrie responds that professors can explain to students why that assertion is wrong -- as he argues -- or just tell them, "Write as much creative stuff as you want -- just don't do it at this institution."

"It's analogous to football players saying, 'I'm not going to abide by the referee,'" he says.

He also denies that the company is infringing on student copyrights -- even if the students aren't forewarned that their papers will be handed over to Turnitin.com -- arguing that the service is simply making "fair use" of student works.

It's an unusual rationale for commercial activity. Traditionally, the "fair use" exception to copyright law is cited by scholars who copy passages from books for their research, or by instructors who copy magazine articles for classroom use.

"In no way do we diminish students' ability to market their work," says Mr. Barrie.

"Since we vet for originality, it increases the marketability of the work and increases the confidence a publisher might have in publishing that work."

Under copyright law, the fair-use exception is easier to justify if freely distributed copies of a document are not expected to threaten its commercial value.

Dan L. Burk, who is a professor at the University of Minnesota Law School who specializes in intellectual property, says of Mr. Barrie's fair-use defense: "That's baloney."

As many as three factors undermine the argument, the professor says: The students' papers are completely copied. They are often creative works, as opposed to compilations of scientific facts. And they are being submitted to a commercial enterprise, not an educational institution. "To run a database, you've got to make a copy, and if the student hasn't authorized that, then that's potentially an infringing copy," says Mr. Burk.

That's one reason Turnitin.com has not been popular among faculty members at the University of Minnesota-Twin Cities, which has a one-year trial subscription to the service that is set to expire in August. Only 40 professors have signed up for the service, says the assistant vice provost, Linda K. Ellinger.

Success Stories

Still, some professors and college administrators staunchly defend Turnitin.com and say they aren't worried that subscribing to the service might subject them to lawsuits.

"I view Turnitin.com as an agent for the university," says Nicholas S. Aguilar, director of student policies and judicial affairs at the University of California at San Diego. "It's no different than having a teaching assistant review students' work and confirm whether it's authentic."

San Diego requires professors to inform students that they will be required to submit their papers to Turnitin.com as part of the grading process. And if a student refuses to comply? "We leave it up to the instructor to determine how to treat that," says Mr. Aguilar.

The university is in the first year of two-year contract with Turnitin.com and is pleased with the results of the service.

"Anecdotally, I'm getting feedback from instructors that they are seeing significantly fewer instances of papers that contain plagiarized text," says Mr. Aguilar. He adds that the university has assurances from Turnitin.com that it will not use students' papers for any purpose other than to validate their originality.

Duke University's College of Arts and Sciences, too, has had its legal concerns satisfied by Turnitin.com. "They sent us a lengthy document that said they weren't infringing, since nothing goes out of the database without students' express permission," says Michele Rasmussen, assistant to the dean.

But, since August, when the college began subscribing to the service, fewer than 15 professors have used it, she notes. "We're not sure if faculty are not willing to use it, or faculty have not caught on to it."

Duke advises professors to submit only those papers that they suspect might be plagiarized. And it's up to professors to decide whether to warn students about the potential use of the service. The college "expected a vocal reaction" from students and was surprised when that didn't happen, Ms. Rasmussen says. "Maybe if the usage was higher, we'd be getting more of a reaction."

In fact, Duke's student newspaper, *The Chronicle*, endorsed Turnitin.com in an editorial, calling the service "unobtrusive" and arguing that it "comes the closest to maintaining academic honesty without damaging the trusting environment that administrators have attempted to foster."

Sheldon E. Steinbach, vice president and general counsel of the American Council on Education, scoffs at the notion that students' privacy might be violated when their papers are uploaded.

"If a system is being employed to try to promote academic integrity, and sustain the value of a degree from being diminished by fraud, I don't quite see where there's a FERPA claim," says Mr. Steinbach.

Similarly, Virginia's Mr. Bloomfield says it would be an injustice if Turnitin.com was forced to stop providing its service because of a legal complication.

He suggests that students who object to having their papers become a part of a commercial database be offered alternative, in-class assignments. Or perhaps copyright law should be amended to accommodate a plagiarism-detection service like Turnitin.com, Mr. Bloomfield suggests.

After his own computer program flagged 157 papers at Virginia for suspected plagiarism, the professor turned the cases over to the university's honor committee in April 2001. Forty-three of the students were found guilty after a trial or admitted plagiarism, and 88 were cleared; trials are pending in most of the remaining cases.

He says Turnitin.com and other plagiarism-detection services do more than just ferret out plagiarists: They improve the higher-education system by helping to attach more meaning to students' grades, and they make dishonest students realize that it doesn't pay to use any means necessary to get ahead.

"If copyright problems make it difficult to ensure the integrity of the classroom, how does this benefit society? How does this benefit the students?" he asks. "What important right of students is being preserved by barring a service from retaining a copy of their paper?"

---

http://chronicle.com
Section: Information Technology
Page: A37