

Education on the Cloud: Governing Plagiarism in Higher Education Institutions of Malaysia

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Abstract

In recent years, education has taken a shift from traditional classroom settings to online and remote classes. Teaching and learning have had a robust makeover, particularly given the COVID-19 breakout since end of 2019 and early 2020, in which higher education institutions all moved to online and remote learning. However, being a doubled-edged sword, technology works both ways. While one potential advantage of online learning is online search and research opportunities through online medium, where information is at the fingertips, there is also risk involved, particularly potential plagiarism among students of higher education institutions. Plagiarism is form of cheating and is a serious academic offence. In Malaysia, plagiarism, is a growing concern. It's violation of law and it deals with ethical and integrity issues. This article discusses the law that govern the issue of plagiarism and the defences to plagiarism in Malaysian higher education institution. Various laws and policies are outlined, to demonstrate the governance of plagiarism as well as its defences. The paper concludes by highlighting that plagiarism shouldn't be a norm for the students in Malaysia. There can be many rules and regulations against plagiarism, but the utmost important thing is to raise awareness among the students on the dangers and liabilities forthcoming the commission of plagiarism.

Keywords: Education on the Cloud, Cloud Computing, Cloud Computing Governance, Plagiarism, Governance, Integrity.

Introduction

According to The People's Law Dictionary (Hill & Kathleen, 2002), the act of plagiarising the works or literary conceptions (such as a plot, characters, or language) of another individual and passing them off as one's own product to sell or publish them is considered plagiarism. Plagiarism is considered a form of academic misconduct, particularly in the context of higher education institutions. Academic integrity and quality are both negatively impacted when a person plagiarises (Zain, *et.al.*, 2021). In Malaysian universities, this practise, which is also considered academic dishonesty, has become a contentious problem. It could certainly explain why student writers have easy access to the ever-increasing number of information sources despite there being no restrictions on their access. Even though there is software and other tools available like Turnitin to identify instances of similarity between different

submitted papers. The students are not required to carry out the similarity exam because there is neither a mandatory nor a compulsory practise. Contract cheating is a form of academic dishonesty that can occur when a student hires another person or organisation to complete their academic work on their behalf. This type of plagiarism can be distinguished from the type of plagiarism that can be identified using software that compares texts (Perkins, *et.al*, 2020). However, it is extremely difficult to catch someone cheating on a contract. Plagiarism is an act that infringes on the rights of the person whose academic work is being copied, so it is essential to be aware of the fact that the creator or author of the academic piece has an exclusive right over their works. However, there are a few defences that are acknowledged by the law, therefore there is a possibility that the act of mentioning the phrases, or the works of the creator will not be considered an offence in certain circumstances.

Situation in Malaysia

The use of cloud computing is becoming increasingly common in educational institutions across the globe, and Malaysia is not an exception (Hamzah, *et.al*, 2017). Learning management systems that are housed on the cloud, such as OpenLearning.com, or any other platforms for hosting the learning materials for the purposes of teaching and learning are examples of some of the common applications that are adopted for cloud computing. In addition to that, students attending institutes of higher education make widespread use of programmes such as management software (Ng & Mohamad, 2021). However, because there is such easy access to a wealth of materials and tools online, there is a concerning possibility that individuals will plagiarise one another's work. Since students are expected to participate in ongoing assessments as a required component of their educational programmes, students are also subjected to time constraints and stringent due dates for the submission of their works.

Students in Malaysia tend to consider of plagiarism as nothing more than an accepted practise, even though it is a serious kind of academic dishonesty that can result in the revocation of a student's degree. Plagiarism is frequent in Malaysia. In the matter of *Fauzilah Salleh v. Universiti Malaysia Terengganu [2012] 4 CLJ 601*, the defendant was required to grant the plaintiff a Master of Science degree in Marketing Science. The plaintiff, on the other hand, was sent a letter a few years later informing her that her Master's degree had been cancelled due to the fact that she had plagiarised work. Because the Defendant had failed to properly monitor the research, the court found that the Defendant had contributed in some way to the act of plagiarism. As a result, the court ordered that the Master's degree should be re-conferred to the Plaintiff. It is possible to draw the conclusion from the scenario that was presented above that the offence of plagiarism may result in a student not receiving their degree; therefore, it is important to pay attention to this topic.

Governing Plagiarism

The act of plagiarising someone else's work is governed by a few different rules and regulations. It is of the utmost importance to acknowledge the rights of the author and owner of academic works, and disciplinary action should be taken against the student who is found guilty of committing the offence of plagiarism or infringing on copyright. If a student were to simply be a copycat and imitate the academic works of others for the sake of getting his or her degree, then the aim and objective of education would be completely tarnished, and education would have no significance at all.

Educational Institution (Discipline) Act 1976 (Act 174)

A student is forbidden from plagiarising any idea, writing, data, or invention that belongs to another person, as stated in Rule 8A of the Educational Institutions (Discipline of Students) Rules from 1976. Any concept, writing, data or invention that is owned by another person must not be plagiarised by a student. Plagiarism includes claiming ownership of someone else's work while using the work of that person as evidence of one's own original research or invention. It also includes making false claims about one's own work while using it as evidence of one's own original research or invention. Plagiarism can also include the act of making out that one is the original

An institution's discipline authority has the right to suspend or expel students who have been found guilty of such disciplinary offences. Punishments can include reprimand, a fine of up to RM500, suspension from taking part in part of the examinations, and suspension or expulsion. This is stated in Rule 48 of the Educational Institutions (Discipline of Students) Rules 1976.

Universities and University Colleges Act 1971 (Act 30)

According to section 53 of the First Schedule of the Universities and University Colleges Act 1971 (Act 30), it stipulates that universities could strip a student of their degree if the student has engaged in academic misconduct. Therefore, it is up to the discretion of the educational institution to decide whether to strip a student who has been found guilty of plagiarism of their degree. In addition, the public universities in Malaysia each have their own set of standards and constitutions. Most universities in Malaysia had articulated their policies regarding the prohibition and punishment of plagiarism.

Copyright Act 1987

Those who own the copyright of a literary, musical, or artistic work, a film or sound recording or a derivative work have the exclusive right to govern different acts, according to Section 13 of the Copyright Act of 1987. Any act that reproduces or distributes the work in any material form; communicates, shows or plays the work; distributes the work to the public; or commercially rents the work are examples of these activities. Without the owner's permission, an individual may violate an owner's exclusive right if they bring a product into Malaysia with the intention of selling it, renting it out, or offering it for sale or hire, and if they distribute it for any other reason in a way that harms the copyright owner in a way that is detrimental to that owner (Mohamed, *et. al.*, 2018).

Interlocutory and final injunctions, Anton Piller orders, monetary remedies including damages, additional damages account of profits, statutory damages, and delivery up are some of the civil remedies that are available in the event of an offence of copyright infringement (Tay, 2013). To elaborate, an injunction is a type of equitable relief, and as such, the decision to issue one is left up to the judge. An injunction is often imposed once it has been demonstrated that a breach of an intellectual property right has occurred; nevertheless, there is no one norm that applies in every circumstance, and the court is required to examine the particulars of each individual case (Mohamed, 2016). On the other hand, an Anton Pillar order is a court order that authorises the warrantless search and seizure of material (Gaze, 1985). Both actions can be carried out without first obtaining a warrant. This is done with the intention of preventing the deletion or destruction of relevant evidence, particularly in situations involving allegations of infringement of copyright, trademark, or patent rights (Gaze, 1985). In terms of the monetary damages, the owner of the copyright has the right to

recover not only his or her own actual damages but also the profits made by the defendant, provided that the defendant's earnings were not previously factored into the calculation of the actual damages (Samuelson et al., 2012). In other words, the owner of the copyright has the right to recover not only his or her own actual damages but also the profits made by the defendant. The key metric that is used to establish whether actual damages have been experienced is the amount by which the market value of the copyrighted work has been injured or destroyed as a result of the infringement. This is used to determine whether actual damages have been sustained.

Defences to Plagiarism

To strike a balance between the exclusive right of the owner of the copyright to govern various activities regarding his copyright work and the interests of the users of the public, there are some exceptions that can be used as defences against plagiarism. The Copyright Act 1987 in Malaysia stipulates several activities that the owner of the copyright does not have the authority to regulate. Because of this, there is a potential for abuse of the copyright if the owner of the copyright has complete control over his or her own copyright work (Khaw, 2008). In other words, owners of copyrights have the exclusive right to govern some acts regarding their works; nevertheless, they do not have all potential rights in respect to their works when they acquire copyrights for their works.

Research and Private Study

Research is defined as "the systematic investigation into and study of materials and sources to establish fact and reach new conclusion" by the New Oxford Dictionary of English, whereas "study" is defined as "the devotion of time and attention to acquiring knowledge on an academic subject, particularly by means of books." As a result, the research must take the form of a "private study" and must not be utilised in any way, shape, or form for the aim of making a profit. In accordance with the provisions of subsection 13(2)a) of the Copyright Act of 1987, this has been made possible. On the other hand, research, private study, critique and evaluation, or the reporting of news or current events are all examples of fair dealing.

In *Canada Law Book Inc. vs. Law Society of Upper Canada [2004] 1 SCR 339*, the Law Society of Canada was sued for copyright infringement. Publishers sued the Law Society of Canada because it provided a photocopying service for law enforcement officers, judges, and other authorised researchers who requested it. Employees of the Law Society reproduced legal documents and subsequently delivered them to the individual who had requested them. The act of taking another person's ideas, writings, or literary work and passing them off as one's own without giving credit to the original author or owner of the copyright is known as plagiarism. The court determined that such an act would not constitute any act of copyright infringement on the grounds that the action was amounted to fair dealing for the purpose of research or private study. This ruling was made in light of the fact that the court found that such an act would not constitute any act of copyright infringement. Therefore, it is possible that an act of plagiarism that is used for the goal of research and private study but not for the aim of making a profit does not constitute an infringement of copyright laws.

Education

The plagiarism in education may be exempted from copyright infringement. According to section 13 of Copyright Act 1987, it clearly states defences to the plagiarism for the furtherance of education. These are as follows

- (i) Section 13(2)(f) - Use of an illustration for instructional purposes in a broadcast, performance, exhibiting, or playing to the public of a collection of literary or musical works, sound recording or film, provided that such use is consistent with fair practise and is made in the context of the activity in question. It is necessary to include citations for both the original source as well as the author of the work that was utilised.
- ii) Section 13(2)(ff) - Examining, whether in the form of creating questions or offering answers to those questions, involves the use of another person's work in some way. On the other hand, it stipulates that an examination candidate is not permitted to make a reprographic copy of a musical piece to use it for the purposes of performing the work.
- iii) Section 13(2)(g) - Accurately reproducing a work that is part of a broadcast that is intended for educational institutions such as schools, universities or other educational institutions.

However, it shall be emphasized that the citation of the owner as recognition shall be made, otherwise, it may still be constituted as an offence of infringement of copyright or plagiarism.

Fair Dealing

Even when the works by the owner of the copyright are substantially identical as plagiarism, the fact that you are claiming the defences of fair dealing or fair usage renders the issue immaterial. The reason for this is because the defendant has a legal right to use the items that were copied. To phrase it another way, fair dealing is a form of illegal infringement that is tolerated under the law governing copyright.

Copyright (Amendment) Bill 2010's Explanatory Statement states that the proposed amendment to Section 13(2)(a) is intended to expand the scope of the fair-dealing exception. It is not considered a copyright infringement if the prohibited activities are carried out in accordance with fair dealing principles, such as research, private study, criticism, review, or reporting on news or current events, according to section 13(2)(a) of the Copyright Act 1987. It is only relevant that the use of the copyrighted work be fair regarding specified purposes; the fact that it might also be acceptable for additional uses that are not specifically outlined in the provision is irrelevant. Therefore, according to the principle of fair dealing, it's possible that plagiarism isn't a violation of the law.

In section 13(2A) of the Copyright Act 1987, the criteria for determining what constitutes fair dealing covers if the transaction is for profit or non-profit educational purposes, the purpose and character of it; if it is commercial or non-profit educational purposes; if the copyright work is commercial or non-profit educational purposes; and if it is commercial or non-profit educational purposes.

On the other hand, successfully raising the issues of fair use and fair dealing would not be a simple task. This is demonstrated in the case of *MediaCorp News Pte Ltd and Others vs. MediaBanc (JB) Sdn Bhd and Others*, [2010] 5 MLJ 562. The defendants, who were the dominant broadcasting and media group of enterprises in Singapore, were the plaintiffs. Television and radio were the primary means through which they disseminated information and news to the public. whereas the defendants were Malaysian companies that offered an integrated radio and television monitoring service through which television and radio programmes could be monitored, compiled, catalogued, and accomplished in a database. this service was provided in the context of the defendants being companies. The primary goal was to answer, for a fee, questions that their customers had about the exposure that either they

or other entities had received in the media. This information would be provided to the customers who had questions about the exposure.

When delivering the information, the defendants would routinely supplement and back up the information and data provided with clips of news segments and advertising taken from their database. This was done to ensure that the material was accurate. They did the same thing as the plaintiffs and obtained information from other people, but they exploited it for their own business purposes and presented it as their own. Plagiarism is one of the most serious forms of copyright infringement, and thus is plagiarism. As a kind of defence, the defendant used the provision for fair dealing found in section 13(2)(a). The court decided that the defendants' ongoing recording, compilation, and archiving of the broadcast, as well as their presentation of the recordings as their own original works, constituted an act of intellectual property infringement. The defendants do not have the option of utilising the defence of fair dealing.

Defence According to Berne Convention

The Berne Convention counts Malaysia as a participant nation. In this light, it is essential to be aware that the Berne Convention for the Protection of Literary and Artistic Works does, in fact, allow specific provisions to be made for certain uses; nevertheless, these provisions can only be made regarding the reproduction right. In instance, paragraph two of Article 9 of the treaty allows for the reproduction right to be modified in certain circumstances. Before an exemption of any kind may be granted, the so-called "three-step test" must be passed with flying colours. This means that all three of the stipulated requirements must be met. The three conditions are self-explanatory. First, the exemption must only apply in specific circumstances; second, the reproduction must not clash with a standard commercial exploitation; third, it must not adversely affect the author's legitimate interest.

Discussion

It is a truism that one the primary purposes of universities is to produce graduates with holistic graduates (Mustafa, *et.al.*, 2019). Nevertheless, the plagiarism phenomenon is still a problem plaguing students at both undergraduate and levels. Even though the preceding discussion demonstrates that there are a significant number of rules and regulations that govern the act of plagiarism and infringement of copyright, if a university does not pay attention on this matter, then a student who commits the offence of plagiarism may still be able to graduate easily without making any effort in completing his or her studies. This is the case even though there are quite a lot of rules and regulations that govern the act of plagiarism and infringement of copyright. Because of this, the authors strongly recommend that every student do a similarity test before turning in their academic works such as assignments. In the event that the similarity test score is higher than thirty percent, the assignment will not be accepted, and the student will be instructed to redo the assignment until the report of the similarity test receives a score that is lower than thirty percent. This will continue to be the case until every university makes it a requirement.

A student can prevent plagiarising their work using a few different approaches or strategies. The information that a student creates should be paraphrased, which means that they should not simply copy and paste the language of another person but should instead comprehend the thought that lies behind the text and reorganise it using their own words. Second, a student is required to provide a quote and cite the sources that were used to develop the language and the notion. It is one of the ways to acknowledge the effort put in

by the owner while at the same time removing the possibility of being accused of plagiarising someone else's work.

Conclusion

In conclusion, education in the cloud has resulted in significant changes to the way teaching and learning are currently taking place. It brings about significant benefits and advantages, but it also introduces uncertainties, such as in this study, a great potential for plagiarism from the online sources or any sources as at all that have been digitised and made available online. At one point, it brings about significant benefits and advantages, but at another point, it introduces uncertainties.

Considering this, it is imperative that students in Malaysia refrain from plagiarising the work of others. Before the submission of any assignment, every institution in Malaysia is required to apply the practise of conducting a similarity test as a part of a mandated policy. This is to protect both the educational experience and the students themselves. Even though there are many rules and regulations that have been gazetted in Malaysia, those rules and regulations are just some words without any actual effect or impact in Malaysia's higher education institutions because there is no method of checking the academic work that the students have completed.

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References

Canada Law Book Inc vs Law Society of Upper Canada [2004] 1 SCR 339.

Fauzilah Salleh v. Universiti Malaysia Terengganu [2012] 4 CLJ 601.

Gaze, E. (1985). The Anton Piller order-a review of its development and scope. *Australian Business Law Review*, 13(6), 354-395.

Hamzah, N. H., Mahmud, M., Zukri, S. M., Yaacob, W. F. W., & Yacob, J. (2017). The Awareness and Challenges of Cloud Computing Adoption on Tertiary Education in Malaysia, *Journal of Physics: Conference Series*, 892(1), 012014

Hill, G. N., & Kathleen, T. H. (2002) *The People's Law Dictionary: Taking the Mystery Out of Legal Language*. MJF Books.

Khaw, L. T. (2008). *Copyright Law in Malaysia*, LexisNexis Malaysia Sdn Bhd, 257.

MediaCorp News Pte Ltd & Ors vs MediaBanc (JB) Sdn Bhd & Ors [2010] 5 MLJ 562.

Mohamed, K. (2016). Protecting Business Interest Against Intellectual Property Rights Infringement Through Interim Injunction in Malaysia, *International Business Management*, 10(16), 3619-3626.

- Mohamed, K., Abdul Samat, N. H., Abd Aziz, A. S., Noor, M. N. A., & Ismail, N. (2018). Academic Plagiarism in Malaysia: Legal Perspective. *International Journal of Law, Government and Communication*, 3 (13), 245-253.
- Zain, M. I., Rahmat, N. E., Zulkarnain, M. N., & Awasthi, S. (2021) Plagiarism of Academic Writing in Malaysian Universities: A legal analysis. *AMER International Conference on Quality of Life, E-BPJ*, 6(16) (pp.197-202).
- Mustafa, E., Mohd, A. N., Mohd, A. A., Mohamad, A. M., & Hanafiah, N. A. H. (2019). Roles of Higher Education Institutions (HEIs) in Producing Holistic Graduates. *International Journal of Education, Psychology and Counseling*, 4(32), 29.
- Ng C. H., & Mohamad, A. M. (2021). Potential And Pitfalls of Cloud Computing Adoption Towards Quality Higher Education in Malaysia. In *Proceedings: Seminar on Law and Society 2021 (SOLAS V)* (p. 81).
- Perkins, M., Gezgin, U. B., & Roe, J. (2020). Reducing Plagiarism Through Academic Misconduct Education. *Int J Educ Integr*, 16(3) <https://doi.org/10.1007/s40979-020-00052-8>.
- Samuelson, P., Hill, P., & Wheatland, T. (2012). Statutory damages: A rarity in copyright laws internationally, but for how long. *J. Copyright Soc'y USA*, 60, 529.
- Tay, P. S. (2013), *Intellectual Property Law in Malaysia* (Sweet and Maxwell Asia) 424-434.
- The New Oxford Dictionary of English, Oxford University Press (2010).