



## Plagiarism versus Copyright Infringement: When Attribution isn't Enough

BY DOROTHY KELLY, CFA

Long before advent of the internet, the invention of the photocopier, or even the development of the printing press, authors and creators struggled to protect their works from unauthorized use. Nearly two millennia ago, the Roman poet known as Martial (Marcus Valerius Martialis, 38–41 AD to 102–104 AD) accused a rival of theft, calling the offender “insatiable thief of my writings” and admonishing him for attempting to build a reputation based on the work of another.<sup>1</sup> He titled the poem, “To a Plagiarist” (“plagiarism” being from the Latin word for kidnapper), and for many, the term “plagiarism” has become synonymous with literary theft.

Not surprisingly, plagiarism is a violation of the CFA Institute Standards of Practice. Standard 1(C), which relates to misrepresentation, prohibits members and candidates from knowingly making any misrepresentations relating to investment analysis, recommendations, actions, or other professional activities. Claiming credit, implicitly or explicitly, for material developed by someone else is a misrepresentation.

In the *Standards of Practice Handbook*, plagiarism is defined as “copying or using in substantially the same form materials prepared by others without acknowledging the source of the material or identifying the author and publisher of such material.”<sup>2</sup> Significantly, the guidance provided in the handbook offers advice that helps guard against not only plagiarism but also copyright infringement, stating “Members and candidates must not copy (or represent as their own) original ideas or material *without permission* and must acknowledge and identify the source of ideas or material that is not their own.”

Copyright infringement is distinct from plagiarism and can occur even when an author diligently and scrupulously cites sources. While plagiarism results from a lack of proper attribution, copyright infringement results from a lack of proper permission.<sup>3</sup> Think misrepresentation versus misappropriation. Remember that chart you saw online recently? Your partner suggested it would look great in the next client report. What about that cartoon you and you colleagues laughed over? It would make a great introductory slide in your next presentation. In many cases,

using an image or other creative work owned by someone else without permission may infringe on the owner's copyright—the exclusive right to reproduce and distribute copies of the work.

Digitization has made information not only more readily available but also easier to copy, transmit, and distribute. As a result, plagiarism and copyright infringement are both increasing—posing both a reputational and financial risk for members and candidates. But these issues are not new to the investment industry. One well-known and expensive copyright infringement case is *Lowry's Reports Inc. v. Legg Mason Inc., et al.* For years, Legg Mason, a financial services firm based in Baltimore, purchased a single subscription to Lowry's “New York Stock Exchange Market Trend Analysis” for its research department. For a period of about five years in the 1990s, an employee of the research department, unaware of copyright laws, regularly copied and distributed the reports throughout the firm and to its network of brokers via facsimile. Eventually, technology made distribution easier; the employee posted the reports on the firm's intranet, making the reports available for all employees and brokers.<sup>4</sup> In 2003, a jury found Legg Mason had *willfully* infringed on Lowry's copyrights. The jury awarded Lowry US\$18.9 million for hundreds of infringements, some of which occurred after Lowry had alerted Legg Mason to the copyright violation.

As the Legg Mason case illustrates, the risks for investment professionals who are uninformated about proper citation and copyrights escalate as more copyright owners seek to protect their works from unauthorized use.

Education is the first line of defense for members and candidates to protect themselves and act both ethically and legally. Members should educate themselves and their staff members on proper citation and copyright issues. The next line of defense is seeking help and legal advice when appropriate. Firms that publish frequently may have staff members who are well-versed regarding proper citations, fair use, and copyright protocols. They can provide expertise and help the company avoid embarrassing situations and expensive errors. Finally, members and candidates should exercise diligence in their research and writing. Carefully track reference materials. When copying text from a source, insert quotation marks or use a different font or color to indicate quotation marks and cite sources appropriately. Avoid copying and pasting as much as possible.

Oh, and if you want to share this or any other article, send a hyperlink, because the link is not copyrighted. **■**

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1 Martial, “LXVI. To a Plagiarist,” Epigrams (Bohn's Classical Library, 1897).

2 CFA Institute, *Standards of Practice Handbook* (2010): 35.

3 Michael Rawson, “Plagiarism: Curricular Materials for History Instructors” (American Historical Association, 2007).

4 Dan Jamieson, “Costly Legg Mason Copyright Case Reaches Settlement,” Investment News (Crain Communications, 2005).