

Turnitin's Student Papers Use Not A Copyright Violation

iParadigms, L.L.C., operates Turnitin, a technology system designed to evaluate the originality of written works in order to detect plagiarism. Many educational institutions, including this university, have contracted for use of the on-line services of Turnitin. To use those services, the institution requires students to submit their written works through Turnitin. The system compares the submitted works electronically to content available on the Internet, commercial databases of journal articles and periodicals, and archived student works previously submitted to Turnitin. Based on this comparison, Turnitin provides an Originality Report to the teacher submitting the request. The teacher evaluates that Report and decides whether to obtain, for comparison, copies of archived works which appear to have been plagiarized.

In the case of *A.V. v. iParadigms, L.L.C.*, No. 07-0293, (E.D. Va. Mar. 11, 2008), four high school students were required by their schools to submit written work through Turnitin. Each of them placed a disclaimer on the face of their submitted works stating that they did not consent to the archiving of their works by Turnitin. Despite this disclaimer, Turnitin continued to archive all student-submitted works, including those submitted by the four students. The students brought suit claiming that the continued archiving of their works without their permission constituted copyright infringement.

The court quickly concluded that the purported disclaimers were of no effect since the students had clicked on an "I agree" button signifying their assent to an agreement which by its terms was not modifiable. It then went on to consider whether Turnitin's use of the students' papers was within the fair use exception to copyright infringement. Under that exception, there is no infringement where the unauthorized use or reproduction is "for purposes such as criticism, comment, news reporting, teaching (including multiple cases for classroom use), scholarship, or research." In determining whether a use is fair use, the court will consider the purpose and character of the use, the nature of the copyrighted work, the amount of the work that is used, and the effect of the use on the potential market for or value of the copyrighted work.

Here the court found that the character of the use favored its falling with the exception since it was a "transformative" use. The works were created for the purpose of education and expression. Turnitin's use was entirely different, namely, to prevent plagiarism. The court concluded, therefore, that the purpose and character of the use favored application of the exception since it did not diminish the incentive for student creativity. While Turnitin used the entire original works, the use is limited in scope and purpose since works are stored digitally and reviewed electronically for comparison purposes only. This factor, the court concluded, favors neither party or fair use. Finally, the court found that it was clear that Turnitin's use caused no harm to the market value of the works. Based upon this analysis, the court concluded that Turnitin's use of the student works was fair use. The lawyer representing the students has announced that there will be an appeal.