

Canadian Legal Document

Turnitin has engaged the services of the Canadian law firm [Miller Thomson LLP](#) to insure that our use of student work complies with Canadian copyright and privacy laws.

Miller Thomson LLP enjoys a reputation as one of Canada's most respected national business law firms. Comprising more than 350 lawyers located in Toronto, Vancouver, Calgary, Edmonton, Waterloo-Wellington, Markham, Whitehorse and Washington, D.C., the firm offers a complete range of business law, advocacy and personal legal services to corporations, financial institutions, entrepreneurs, governments, not-for-profit organizations and individuals.

Turnitin Canada

iParadigms, LLC is a California company that provides a service to universities, colleges and other educational institutions to assist in the prevention of plagiarism. The founder of iParadigms, LLC is a mathematician who developed a proprietary system to evaluate the originality of a submitted work by applying mathematical algorithms to its content.

The TURNITIN system makes a “fingerprint” of the work. This is merely a digital code that relays the fact that certain pre-defined content is present in the work. The ‘fingerprint’ does not include any of the work’s actual contents, and is therefore neither a copy nor a true derivative of the original text.

Plagiarism

Plagiarism is generally the representation of someone else’s writing as your own, that is, without a credit to the original writer. Universities usually have their own specific definitions in their academic integrity or discipline policies.

Knowingly submitting someone else’s work as your own for grading at a university or other academic institution is a type of fraud, as the term is used in Canada’s Criminal Code and as defined in common law. The system used by Turnitin.com does not, and cannot, determine if plagiarism has in fact occurred. It only indicates to an instructor that the submitted work does or does not, to varying degrees, match some previously written material.

It is up to the instructor after reading the report from Turnitin.com to decide whether to proceed with a further investigation in accordance with the procedures specified by the institution.

Concerns

iParadigms, LLC is aware of stories in the media where students have expressed concerns about the use of Turnitin.com’s services. Some were concerned about their privacy and some students felt that their copyright in the papers submitted was being infringed by the use of Turnitin.com’s services, either in examining the

paper or retaining it.

Accordingly iParadigms, LLC has sought Canadian legal advice on the matters of copyright and privacy.

Copyright

Under Canadian copyright law, students own the copyright in their papers. Further, we are advised that based on the nature of the relationship between students and their university or other educational institution in Canada there is authority for an implied licence to take the steps necessary to review the paper for grading, and to retain it to prevent future plagiarism. We are advised that Canadian copyright law is significantly different from copyright law in the U.S.

Unfortunately in our increasingly technological society copyright claims are being used frequently for other than the purpose for which copyright is intended. An example of this use is the assertion of copyright to force Stanford University to remove documents critical of the security standards in Diebold's online voting program from a student website.

In a Canadian case, a structural engineer who had agreed to prepare plans for a civic centre, including changes, was unhappy with some of the changes suggested by the steel supplier. He refused to modify the plans, so the steel supplier had its engineers do the modifications. The structural engineer, Netupsky, sued the supplier, Dominion Bridge, for breach of copyright in the plans. The Supreme Court held that there was an implied licence for any incidental copying from Netupsky to the owner of the building in order to erect the building in accordance with the plans.¹

We are advised that students at a degree granting institution such as a university are in a form of contractual relationship. They enrol and pay tuition fees subject to the university's policies. In order to obtain the desired degree students must submit for review their own work for grading. If they have achieved the required standard, they are granted the degree that they have applied for.

The university has the right to review a paper submitted by a student to ensure that it is all the student's own work, and universities have been doing this for years, although in a less comprehensive manner. Where there are reasons to retain the submitted copy, universities may do so, while the student retains the copyright. Exams are usually not returned to students, for example.

The internet has greatly expanded the task of ensuring that the work submitted is the student's own work. Cited elsewhere on our website are studies and surveys reporting that approximately 80% of students admit to having cheated once.

Turnitin.com offers universities and their students a service to assist them in preserving the value of their degrees. Turnitin.com supplies an automated way for instructors to conduct a more thorough review more efficiently.

¹ *Netupsky v. Dominion Bridge Co. Ltd.*, [1972] S.C.R.368; (1971) 24 D.L.R. (3d) 484; (1971) 3 C.P.R. (2d)1.

iParadigms, LLC is thus only exercising the rights of the university inherent in the student/university relationship. In this regard it is iParadigms, LLC's policy that if a university requests the removal of all papers from that institution from Turnitin.com's database, the request will be honoured.

If the student submits the work directly to Turnitin.com there is not only an implied licence by operation of law, based on the student/university relationship, but also by consent.

Privacy

Canadian privacy law is also significantly different from privacy law in the United States.

We are advised that because of Canada's constitutional structure there is currently a federal law, the Personal Information Protection and Electronic Documents Act ("PIPEDA") that applies to interprovincial commercial activities and commercial activities entirely within a province, if that province has not passed a law that is substantially similar to PIPEDA.

As of January, 2004, only three provinces, Québec, British Columbia, and Alberta have passed such laws. Further the Government of Québec is challenging the constitutional validity of PIPEDA. Finally in some provinces some education institutions, such as community colleges, are subject to the government's public sector privacy law.

Generally Canadian privacy laws require that personal information be collected, used and disclosed with the consent, express or implied, of the individual. Subcontractors may be used for such collection, use or disclosure if their contract specifies that they are to provide a comparable level of protection.

Turnitin.com's privacy policy describes the purposes for which personal information is collected used and disclosed. [[click here to see the policy](#)].

As noted above with respect to copyright, a student submitting a paper to Turnitin.com impliedly provides consent to the use of his or her personal information for the purposes described.

Where an instructor submits the papers, iParadigms, LLC, as a sub-contractor; relies upon any consent obtained by the instructor and/or the educational institution.