

## CAN GHOSTWRITING BE CONSIDERED CONSENSUAL PLAGIARISM?

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### ABSTRACT

*The purpose of this paper is to contribute to making a safe conclusion regarding the connection between ghostwriting and plagiarism. The argumentation focuses on the question of whether the element of consent in ghostwriting is so crucial as to totally separate ghostwriting from plagiarism, or if ghostwriting still constitutes a kind of plagiarism.*

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## I. INTRODUCTION

Undoubtedly, intellectual property law’s main target is to provide the creators of works with a wide range of rights that are related to the economic exploitation of the work (e.g., reproduction, public performance, distribution). Apart from the purely economic rights, intellectual property law also provides the creators with a narrower range of rights concerning the personal connection between the creator and the work. These rights, which regard the work as part of the creator’s personality, form a separate category of rights that are called *moral rights*.<sup>1</sup>

One of the most representative examples of widely acceptable moral rights—in spite of differences among domestic legislations—is the right of the creator to be recognized in public as the creator of the work, the so-called *paternity of the creator*.<sup>2</sup> The Berne Convention for the Protection of Literary and Artistic Works, an international treaty, accepts two specific moral rights: paternity and integrity.<sup>3</sup> However, there are some cases where a deliberate differentiation between the publicly recognized creator, i.e. the “named” author, and the real author of the work takes place. Two possible forms of this distinction are ghostwriting and plagiarism. These two

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<sup>1</sup> See *Authors, Attribution, and Integrity: Examining Moral Rights in the United States*, U.S. COPYRIGHT OFFICE (Apr. 23, 2019), <https://www.copyright.gov/policy/moralrights/> [<https://perma.cc/M6T6-ZDL2>].

<sup>2</sup> J. Carlos Fernandez-Molina & Eduardo Peis, *The Moral Right of Authors in the Age of Digital Information*, 52 J. AM. SOC’Y INFO. SCI. & TECH. 109, 109 (2001).

<sup>3</sup> *Id.* at 110.

forms seem to be quite separate, but this separation is not as indisputable as it seems.

The interesting point that makes this specific issue deserving of a deeper examination is that both plagiarism and ghostwriting are not modern practices. While plagiarism has always been considered morally and legally unacceptable, ghostwriting has not attracted the attention of legal research for many centuries.<sup>4</sup> Therefore, there has been little discussion about its acceptance.<sup>5</sup> In the last few decades, the demand for communication has increased the demand for ghostwriters as “even ordinary citizens seek writing support for speeches, articles, and books, as well as for newer forms of communication, such as blogs, tweets, even personal dating profiles.”<sup>6</sup> The gradually growing demand of ghostwriting in various activities and the multidimensional ethical matters that inevitably arose have motivated us to elaborate on this subject.<sup>7</sup>

In the following sections, as the interrogative form of the title implies, we will examine whether the aforementioned separation is actually as apparent as it seems, or if under specific conditions ghostwriting can be considered a special form of plagiarism. The starting point regarding the elaboration of the subject is to define,

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<sup>4</sup> JOHN C. KNAPP & AZALEA M. HULBERT, *GHOSTWRITING AND THE ETHICS OF AUTHENTICITY* vii (1st ed. 2017) (characterizing ghostwritten texts as “virtually taboo”).

<sup>5</sup> See Marlena Maria Jankowska, *Ghostwriting in Polish Copyright Law-A New Perspective Needed?*, 19 J. INTEL. PROP. RIGHTS 133, 134 (March 2014) (“Doubts concerning the legal justification of ghostwriting became more common only at the beginning of the twentieth century, when regulations concerning moral rights became an obstacle in this practice.”).

<sup>6</sup> KNAPP & HULBERT, *supra* note 4, at viii.

<sup>7</sup> See Fernandez-Molina & Peis, *supra* note 2, at 109 (“Although for different reasons, it is generally agreed that the new technological situation has caused moral rights to become one of the central issues in the international debate on intellectual property within the digital environment.”).

describe, and compare these two terms. The truth is that an interdisciplinary point of view is necessary. For this reason, apart from the legal dimension of the subject, we will try to approach its ethical dimension through examples as well.

## II. DEFINITION/DESCRIPTION OF PLAGIARISM

Though there are plenty of definitions for plagiarism as a term, it describes a deliberate lack of proper acknowledgment and attribution.<sup>8</sup> It is defined as the practice of deliberate copying and presenting someone else’s work as personal either without the proper citation or reference or by complete omission of a citation or reference.<sup>9</sup> Although there is a huge dispute among academics about the accurate definition of plagiarism, it is often considered *the theft of intellectual property*.<sup>10</sup> There

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<sup>8</sup> *What is Plagiarism?*, PLAGIARISM.ORG (May 18, 2017), <https://www.plagiarism.org/article/what-is-plagiarism> [<https://perma.cc/8AZK-7GM5>]; see also Minh Ngoc Tran, Linda Hogg & Stephen Marshall, *Understanding Postgraduate Students’ Perceptions of Plagiarism: A Case Study of Vietnamese and Local Students in New Zealand*, INT’L J. FOR EDUC. INTEGRITY, Feb. 1, 2022, at 1, 1; David Carl Ison, *Plagiarism Among Dissertations: Prevalence at Online Institutions*, 10 J. ACAD. ETHICS 227, 228 (2012) (“Other descriptions of plagiarism delineate it into two types—intentional and unintentional.”).

<sup>9</sup> See DIANE PECORARI, *STUDENT PLAGIARISM IN HIGHER EDUCATION 12–27* (Diane Pecorari & Philip Shaw eds., 2018) (“Most dictionary definitions of plagiarism are rather shorter than those found in university policies, and this suggests that they are insufficient for academic purposes.”); see also Teddi Fishman, “*We Know It When We See It*” *Is Not Good Enough: Toward A Standard Definition of Plagiarism That Transcends Theft, Fraud, and Copyright*, in 4TH ASIA PACIFIC CONFERENCE ON EDUCATIONAL INTEGRITY 1–2 (2009).

<sup>10</sup> Patricia I. Fusch et al., *The Ethical Implications of Plagiarism and Ghostwriting in an Open Society*, 9 J. SOC. CHANGE 55, 55 (2017).

are two basic components of intentional plagiarism.<sup>11</sup> The first, most apparent component is the deliberate use of another persons' ideas, words, or work without having obtained permission of the original producer and without providing any kind of attribution.<sup>12</sup> The second, less apparent component is the author's intention to mislead the audience by presenting another person's work as if it was the outcome of their personal effort.<sup>13</sup> An interesting point about plagiarism is that there are legal consequences if it is discovered.<sup>14</sup> The range of the consequences depends on the importance of the work and the kind of audience to which the work is addressed. For example, if an undergraduate student uses this method to write an assignment or pass an exam and the professor finds out that the student has plagiarized, a possible punishment for the student is to be disqualified or to be obliged to write the assignment again on his/her own.<sup>15</sup> Things, of course, are more strict in a case where the university professor has plagiarized his/her own PhD to get a job as a university professor. Apart from the ethical impact in such a case, plagiarism may result in the removal of the title or even the loss of the job.<sup>16</sup>

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<sup>11</sup> Ison, *supra* note 8, at 228.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See Fishman, *supra* note 9, at 9.

<sup>15</sup> See Fusch et al., *supra* note 10, at 59 (arguing that in cases of student plagiarism sanctions are not strict enough and they ought to be stricter).

<sup>16</sup> Jonathan Bailey, *When Professors Plagiarize*, PLAGIARISMTODAY (Oct. 1, 2019), <https://www.plagiarismtoday.com/2019/10/01/when-professors-plagiarize/> [<https://perma.cc/VB7K-NJGG>].

### III. DEFINITION/DESCRIPTION OF GHOSTWRITING

Ghostwriting is a mutual agreement between two parties.<sup>17</sup> The first party designates the second to create a work which will be circulated to the public.<sup>18</sup> However, the work will not publish under the name of the real author, in this case the second party, but will instead publish under the name of the first party who has asked for the creation of the work and who actually is the *ostensible* author.<sup>19</sup> “Scientific ghostwriting is usually an economic transaction”<sup>20</sup> Ghostwriting has been more commonly known and widely used since the ancient times by politicians who had their speeches written by professional speech writers. For example, Lysias was a famous Greek speech writer who lived in ancient Athens and displayed “a characteristic adaptability in suiting his composition to the character of the speaker.”<sup>21</sup> Though the object of ghostwriting agreement is usually a written work, such an agreement can also cover other kinds of artistic work, such as fine arts (“ghostpainting”) or music (“ghostcomposing”).<sup>22</sup>

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<sup>17</sup> See Nandita Saikia, *Ghost-writing, Plagiarism and Copyright*, IN CONTENT L. (Sept. 2010), <https://copyright.lawmatters.in/2010/09/ghost-writing-plagiarism-and-copyright.html> [<https://perma.cc/3Y9X-2CTV>].

<sup>18</sup> See *id.*

<sup>19</sup> See Saikia, *supra* note 17; Ben Almassi, *Medical Ghostwriting and Informed Consent*, 28 *BIOETHICS* 491, 491–99 (stating that the prefix “ghost-” can be used to define the role of the real author).

<sup>20</sup> Stuart Kirsch, *Scientific Ghostwriting in the Amazon? The Role of Experts in the Lawsuit against Chevron in Ecuador*, 64(2) *COMPAR. STUD. SOC’Y & HIST.* 335, 336 (2022).

<sup>21</sup> *Lysias*, ENCYC. BRITANNICA (Jan. 2022), <https://www.britannica.com/biography/Lysias-Greek-writer> [<https://perma.cc/6BG5-LVHV>].

<sup>22</sup> See, e.g., Mizuho Aoki, “Deaf” Composer Samuragochi Says He’s Sorry for Deceiving, *THE JAPAN TIMES* (May 7, 2014),

The real author, the ghostwriter, is obliged to stay away from the work and tolerate that the public credits for the work are given to the person that has merely assigned the creation of the product.<sup>23</sup> Through such an agreement, the real author renounces the paternity right and the real author's identity remains secret.<sup>24</sup> "Typically, a person associated with ghostwriting is . . . namely, someone who effectively 'enters' the character of the other party, their style, their way of thinking and speaking, as a result of which they remain a sort of 'ghost' shadowing the whole creation of a work."<sup>25</sup>

Although the ghostwriting contract is not explicitly forbidden in many countries, there is a huge dispute about its validity.<sup>26</sup> The main arguments are that: a) a ghostwriting contracts seems to ignore the fact that the right of paternity as an expression of the personal connection between the creator and the work cannot be waived; and b) the consent may be forced.<sup>27</sup> One of the secondary arguments that is used to emphasize the invalidity of this contract is that it involves plagiarism.<sup>28</sup>

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<https://www.japantimes.co.jp/news/2014/03/07/national/deaf-composer-samuragochi-says-hes-sorry-for-deceiving/> [<https://perma.cc/5VJP-DYWX>].

<sup>23</sup> KNAPP & HULBERT, *supra* note 4, at vi.

<sup>24</sup> *Id.*

<sup>25</sup> Jankowska, *supra* note 5, at 133.

<sup>26</sup> *Compare Ghostwriting and Copyright Laws*, KNOW L. (Nov. 20, 2020) <https://knowlaw.in/index.php/2020/11/20/ghostwriting-and-copywriting/> [<https://perma.cc/JY5K-772T>] ("[T]hough the fundamentals of ghostwriting seem unscrupulous one cannot neglect it in order to provide employment and remuneration to a large population."), with Tomas Foltynek & Veronika Kralikova, *Analysis of the Contract Cheating Market in Czechia*, 14 INT'L J. EDUC. INTEGRITY, July 10, 2018, at 1, 1 ("Contract cheating has become one of the most severe problems in academia across the globe.").

<sup>27</sup> Jankowska, *supra* note 5, at 133.

<sup>28</sup> See generally Tobenna D. Anekwe, *Profits and Plagiarism: The Case of Medical Ghostwriting*, 24 BIOETHICS 267, 284 (2010)

#### IV. SIMILARITIES & DIFFERENCES BETWEEN GHOSTWRITING & PLAGIARISM

As already mentioned, both plagiarism and ghostwriting result in violating the right of the real author to be recognized publicly as the creator of the work. The main similarity is that there is no congruence between the real and the credited author. The main difference is the number of the participants. Plagiarism is a totally one-sided behavior—the real author does not give permission because they are not involved at all! The real author usually is not informed that somebody else is taking advantage of their personal work without proper attribution.

Conversely, ghostwriting requires a mutual agreement between the persons involved. The real author gives consent and tolerates the public recognition of another person as the creator of their own work. It would be easy enough to accept that the presence of the consent itself contributes in considering ghostwriting as something innocent. Professional ghostwriters offer their services “to those who are too busy (such as political celebrities), too lacking in the necessary skills or too prolific to go without assistance in research and preparatory drafts” and generally to those who wish to enter this kind of agreement with them based upon mutual consent and trust.<sup>29</sup> According to this point of view, plagiarism and ghostwriting are completely separate concepts because in the case of ghostwriting, the provided consent can erase the suspicion about dishonesty.

However, this kind of agreement does not only affect the participants. Such an agreement always has an

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(arguing that medical ghostwriting often involves plagiarism and, in those cases, can be treated as an act of research misconduct).

<sup>29</sup> See Anuradha Swaminathan, *Ghostwriters, Creators, Cheats*, WIPO (Sept. 2008) [https://www.wipo.int/wipo\\_magazine/en/2008/05/article\\_0011.html](https://www.wipo.int/wipo_magazine/en/2008/05/article_0011.html) [<https://perma.cc/9ZEB-B5SJ>].



additional dimension, which is its impact on the audience. Taking this additional impact into account, can the consent of the real author on its own really be enough? Can the audience be deprived of the right to decide whether to approve or to disapprove of ghostwriting? In plagiarism, the intention to deceive the audience into thinking that another author's work is their own by using their work without permission is a *conditio sine qua non*.<sup>30</sup> In ghostwriting, though it doesn't always exist by default, it still can be detected. "Phrases such as 'ghost authorship' and 'honorary authorship' suggest that the ethical problem is one of deception: hiding the involvement of the actual writer of a scientific article."<sup>31</sup>

After examining the basic features of plagiarism and ghostwriting, after spotting the main similarities and differences between them, and after providing a food for thought, the next step is to examine whether these two forms of deliberate confusion are actually separate. To make a safe conclusion about the (non)separation, we should always keep in mind the basic feature of ghostwriting, which is its extremely controversial nature.<sup>32</sup> This controversial nature results in placing ghostwriting into a gray area, making it difficult to categorize whether it should be acceptable and therefore legal or unacceptable and therefore illegal.<sup>33</sup> Besides that, it is necessary to analyze the criteria that affect the acceptability of ghostwriting.

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<sup>30</sup> See Ison, *supra* note 8, at 228.

<sup>31</sup> Carl Elliot & Amy Snow Landa, *What's Wrong with Ghostwriting?*, 24 *BIOETHICS* 284, 284 (2010).

<sup>32</sup> Jonathan Bailey, *Why is Ghostwriting not Always Considered Plagiarism?*, *PLAGIARISMTODAY* (March 2, 2015) <https://www.plagiarismtoday.com/2015/03/02/why-is-ghostwriting-not-always-considered-plagiarism/> [<https://perma.cc/CZZ9-SPXB>].

<sup>33</sup> See generally Saikia, *supra* note 17.

## V. AUDIENCE EXPECTATIONS

The audience's expectation of the author's originality forms the first criterion. It has been argued that among other things plagiarism occurs "in a situation where there is a legitimate expectation of original authorship."<sup>34</sup> In such a case, even if the real author has no objection to crediting the named author, there are still matters concerning the non-fulfillment of the expectation. To be more specific, we provide two examples, comparing a ghostwritten poem by a famous poet and a legal opinion on a case, attributed to a judge and ghostwritten by the judge's staff of law clerks. In the first case, the audience reasonably expects to read a poem that represents the personal style of the poet. The term *expectation* refers to the audience's reasonable belief to see their favorite author reflect themselves in the work.<sup>35</sup> In such a case, paying another person to create the work on behalf of the named author could raise hard criticism because just putting a signature on the poem does not mean that the personal style of the named author is automatically transferred in the poem. "The originality and individual authorship are especially important features of the communicative interaction."<sup>36</sup> The involvement of a ghostwriter when there is an expectation of originality means hypocrisy towards the audience. In the case of the legal opinion, "originality tends to be valued less than consistency and adherence to precedent . . . [i]n this case, what matters to the audience is not whether the judge composed (authored) an opinion but whether the judge endorsed (authorized) the opinion."<sup>37</sup> Therefore, as long as the expectation of the

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<sup>34</sup> See Fishman, *supra* note 9, at 5.

<sup>35</sup> See *id.*

<sup>36</sup> RICHARD L. JOHANNESSEN ET AL., *ETHICS IN HUM. COMM.* 288 (6th ed. 2008).

<sup>37</sup> *Id.*

audience is oriented towards the value of the work itself, ghostwriting does not provoke plagiarism issues. When the expectation is oriented towards the author's originality, the intervention of a ghostwriter weakens the connection to the author, and the work can still be plagiarism

A second parameter within the same criterion is the customary (or uncusomary) use of a ghostwriter. Custom is a source of unwritten law. According to one definition, custom is a "rule of conduct, obligatory on those within its scope, established by long usage."<sup>38</sup> It is created by the adoption, most of the time unconscious, of a certain rule of conduct. Its power is based on its constant uniform use and acceptance accompanied by the belief that the conduct is in conformity with the law. As already mentioned, certain professionals, such as politicians, are reasonably expected to ask for the contribution of a ghostwriter.<sup>39</sup> It is no surprise that the speeches of politicians are ghostwritten, so if the identity of the ghostwriter is revealed, nobody is reasonably expected to be surprised.<sup>40</sup> In that instance, consistency plays a more important role than originality of the author. The crucial point is that the ghostwriter should express his employer's political profile and use proper arguments. The parameter of the customary use of ghostwriters is applicable in the case of autobiographies. When a famous person decides to write a book about themselves, the hiring of a ghostwriter is something very

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<sup>38</sup> *Customary Law, Traditional Knowledge and Intellectual Property: An Outline of the Issues*, WIPO (2013), [https://www.wipo.int/export/sites/www/tk/en/resources/pdf/overview\\_customary\\_law.pdf](https://www.wipo.int/export/sites/www/tk/en/resources/pdf/overview_customary_law.pdf) [https://perma.cc/AR3H-3APC] (citing OSBORNE'S CONCISE LAW DICTIONARY (9<sup>th</sup> ed. 2001)).

<sup>39</sup> See Gil Troy, *How Originality Vanished From Political Speeches*, POLITICO (July 21, 2016) <https://www.politico.com/magazine/story/2016/07/melania-trump-speechwriter-plagiarism-ghost-writers-history-214081/> [https://perma.cc/2ES9-VH5L] (explaining that ghostwriting in the political sphere has become commonplace).

<sup>40</sup> Fusch et al., *supra* note 10, at 58.

common.<sup>41</sup> Less common, but still possible, is that the famous person asks for a *postmortem* publication of the autobiography.<sup>42</sup> Especially in this case, it is impossible to believe that the autobiography has really been written by a person who is already dead. As such, the widely acceptable customary use of ghostwriters in autobiographies also excludes the concept of deception of the audience.

## VI. THE AUTHOR’S INTEGRITY

The intentional deception of the audience forms the second feature of plagiarism. Deception is defined as “the act of hiding the truth, especially to get an advantage.”<sup>43</sup> That is why deception is considered a serious breach of integrity. Before proceeding, to avoid any possible misconceptions, it is important to point out that integrity as a right—which is accepted as a form of moral rights—and integrity as a characteristic are not synonyms. The integrity right means “the author’s right to impede the distortion, mutilation, modification, or alteration of a work without express consent.”<sup>44</sup> Integrity as a characteristic means “the

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<sup>41</sup> Gabrielle Emanuel, *So You Need A Celebrity Book. Who Ya Gonna Call? Ghostwriters*, NPR (Apr. 12, 2014, 9:03 AM), <https://www.npr.org/2014/04/12/292382481/so-you-need-a-celebrity-book-who-ya-gonna-call-ghostwriters> [https://perma.cc/H4GW-944E] (“[One ghostwriter] estimates that if you look at the nonfiction bestsellers list right now, at least 60 percent of the books are ghostwritten.”); Kirsch, *supra* note 20, at 336–37.

<sup>42</sup> See, e.g., Amanda Moore, *Mark Twain’s Autobiography to Be Published 100 Years After Death*, WNYC (May 26, 2010) <https://www.wnycstudios.org/podcasts/takeaway/segments/66384-mark-twains-autobiography-be-published-100-years-after-death> [https://perma.cc/Q6FY-EAE9] (discussing the publication of Mark Twain’s autobiography 100 years after his death per his instructions).

<sup>43</sup> *Deception*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/deception> [https://perma.cc/ZV94-SBZC] (last visited Sept. 7, 2022).

<sup>44</sup> Fernandez-Molina & Peis, *supra* note 2, at 110.

quality of being honest and having strong moral principles that you refuse to change.”<sup>45</sup> Integrity also includes “reliability, consistency and keeping promises.”<sup>46</sup>

It may seem self-evident that the named author who pays for the right to use another person’s work and does not use it without permission is compliant with moral principles. However, this compliance should not be taken for granted. Deception is presenting the invalid as valid. The validity with regards to ghostwriting covers not only the context of the ghostwritten text, but also the ability of the named author to take credit for the context of the ghostwritten text. Two examples will help illustrate this dimension of validity.

On one hand, a sports magazine asks a famous marathon runner’s coach, a former Olympic champion, to write an article giving advice to the readers of the magazine who themselves are preparing for participation in a marathon. Due to lack of writing skills, this coach hires a ghostwriter to help “find better language so as to articulate his or her own thoughts.”<sup>47</sup> The responsibility for the final outcome still remains on the named author (i.e., the coach) who should examine the article in detail to ensure that the proposed advice is something that represents them.

On the other hand, consider the typical example of an undergraduate university student who pays a ghostwriter to prepare an assignment to help him or her pass the exams. This way, the student gets a university degree without having made the necessary effort.

The difference is easy enough to understand. In the first case, there is no dependence between the integrity of the authorship and the work. As long as the personal

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<sup>45</sup> *Integrity*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/integrity> [<https://perma.cc/7EWU-6H47>] (last visited Sept. 7, 2022).

<sup>46</sup> Fusch et al., *supra* note 10, at 59.

<sup>47</sup> See KNAPP, *supra* note 4, at vi–vii.

experience is incorporated within the text, and as long as the coach still remains a person able to inspire the readers of the magazine, there are no ethical issues. Things cannot be considered that innocent in the second case.<sup>48</sup> The undergraduate student uses ghostwriting to gain a degree undeservingly. For this reason, in many universities, before submitting an assignment, students are obliged to sign an academic integrity declaration to ensure that they have not taken advantage of another person’s work without attributing them.<sup>49</sup> In general, it is considered unacceptable to pay a ghostwriter to write a scientific article that can help the named author establish their presence in the academic or scientific community.<sup>50</sup>

Integrity as a quality is not only related to persons, but also to other entities. The demand for integrity is crucial, especially to the entities involved in medical journals such as medical research centers and pharmaceutical companies.<sup>51</sup> A lack of integrity can put health and even human life into serious jeopardy and threaten to erode public trust in the research system.<sup>52</sup> In the United States, the policy on plagiarism applied by the Office of Research Integrity (ORI) is a representative example that, in medical journals, insufficient author

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<sup>48</sup> See *id.* (“Where one writer may be called upon to originate most of the ideas and words for a client, another may simply help the client find better language to articulate his or her own thoughts.”).

<sup>49</sup> See *Plagiarism, Citation and Referencing Styles: Plagiarism Declaration Form (Wits)*, UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG [https://libguides.wits.ac.za/plagiarism\\_citation\\_and\\_referencing/declarationform](https://libguides.wits.ac.za/plagiarism_citation_and_referencing/declarationform) [<https://perma.cc/QA5W-FE8L>] (last visited Oct. 3, 2022); *Plagiarism Rules Awareness Statement*, UNIVERSITEIT UTRECHT [<https://perma.cc/SP73-2R4Z>] (last visited Oct. 3, 2022).

<sup>50</sup> See Fishman, *supra* note 9, at 5.

<sup>51</sup> See Simon Stern & Trudo Lemmens, *Legal Remedies for Medical Ghostwriting: Imposing Fraud Liability on Guest Authors of Ghostwritten Articles*, PLOS MEDICINE, Aug. 2, 2011, at 1, 4.

<sup>52</sup> See *id.*

integrity is capable of leading to plagiarism issues.<sup>53</sup> According to this policy, “ORI considers plagiarism to include both the theft or misappropriation of intellectual property and the substantial unattributed textual copying of another’s work.”<sup>54</sup> This definition of plagiarism is remarkably wide, covering not only the theft, which is the most frequent form of plagiarism, but any possible case of misappropriation of the real author. According to this definition, plagiarism is considered to take place as long as the real author does not take the appropriate range of credit, no matter if their consent is provided or not.<sup>55</sup> From these two criteria—audience expectation and intentional deception—the first is applicable mainly in literature ghostwriting because the expectation of the audience basically has a sentimental dimension. On the other hand, it can be easily understood that the need for integrity is stronger in the academic and scientific fields. That is why the second criterion, which has a more objective and less sentimental dimension, is mainly applicable in academic or scientific ghostwriting. Usually, but not always, there is a reciprocal interaction between the two criteria. When the audience’s expectation that the creator will be reflected in the work is high, the need for the author’s integrity is also high. When the use of ghostwriters is widely considered and therefore accepted as customary, the request for the author’s integrity is lower.

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<sup>53</sup> *ORI Policy on Plagiarism*, OFF. OF RSCH. INTEGRITY (Dec. 1994), <https://ori.hhs.gov/ori-policy-plagiarism> [<https://perma.cc/PGG4RGSW>].

<sup>54</sup> *Id.*

<sup>55</sup> See Kirsch, *supra* note 20, at 337 (“[S]cientific ghostwriting splits the relationship between writing and responsibility that are conjoined in the modern figure of the author.”).

## VII. CONCLUSION

From what has been analyzed, it is readily seen that the real author's consent is not sufficient to keep a ghostwriting contract away from the concept of plagiarism. We have mentioned two basic criteria, audience expectation and intentional deception, the use of which is under no circumstances exhaustive.<sup>56</sup> Every time a ghostwriting agreement is revealed, all the specific circumstances should be thoroughly examined to justify whether there are reasons for separating ghostwriting from plagiarism or not. Such an examination may be warranted in a disagreement or conflict between the parties that participate in the agreement. However, as long as the two parties remain silent—especially the real author, who usually has comparatively less power than the “named” author—the agreement remains secret.<sup>57</sup>

And here comes the reasonable question: what is the practical dimension of making it clear if ghostwriting can be considered plagiarism? As explained above, plagiarism is totally unacceptable, while ghostwriting is not always unacceptable. Even when ghostwriting is unacceptable, it is less offensive to be accused of participating in a ghostwriter contract than to be accused of plagiarizing. Notwithstanding the ethical consequences, the legal consequences of plagiarism can be severe. In ghostwriting, the consequences are not as severe, at least until recent years.<sup>58</sup> As such, if ghostwriting can be considered a form of plagiarism, an equal legal treatment for both

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<sup>56</sup> See Fishman, *supra* note 9, at 1.

<sup>57</sup> See Saika, *supra* note 17.

<sup>58</sup> Until the beginnings of the 20<sup>th</sup> century, there has not been in-depth legal research concerning ghostwriting, which may be the reason that there are not many specific legal provisions concerning the legal consequences of ghostwriting. See *supra* note 4 and accompanying text.



ghostwriting and plagiarism should be taken into serious consideration.

It is necessary to take into account the coexistence of two levels of relationship in ghostwriting. The first level—which is the superficial one—has to do with the relation between the named and the real author. The second level—which is undoubtedly more profound—has to do with the author, the work, and the audience. No matter how innocent it may seem, even when there is no dishonesty in the first level because of the paid consent, dishonesty can still be present in the second level. For all these aforementioned reasons, under specific circumstances ghostwriting can still be considered *consensual plagiarism*.