

Prof. Dr. Ansgar Ohly

Chair in Civil Law, Intellectual Property and Competition Law

Good citation practice versus plagiarism – common ground and open questions

Responsible Research, LMU Biocenter Martinsried,
24 July 2014





16 February 2011



*T. Dreier / A. Ohly (eds.), Plagiate
– Wissenschaftsethik und Recht,
Tübingen: Mohr Siebeck 2013*

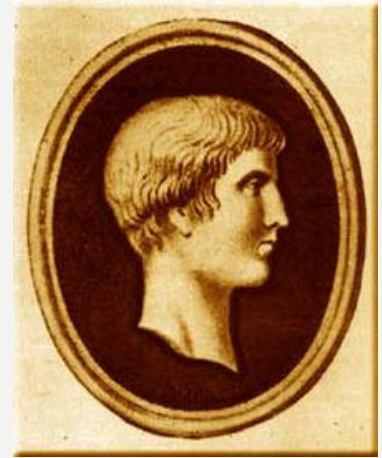


- 1. What is plagiarism?**
- 2. Why is it wrong and what are its causes?**
- 3. What are its consequences?**
- 4. How can it be detected and prevented?**



What is plagiarism?

- *Martial* (40-104 A.D.): those who steal other people's verses are as bad as those who steal other people's slaves ("plagiarii")
- Passing off someone else's work as one's own = misappropriation of someone else's work, combined with the misrepresentation of one's own authorship
- But no legal definition!





Plagiarism

Law

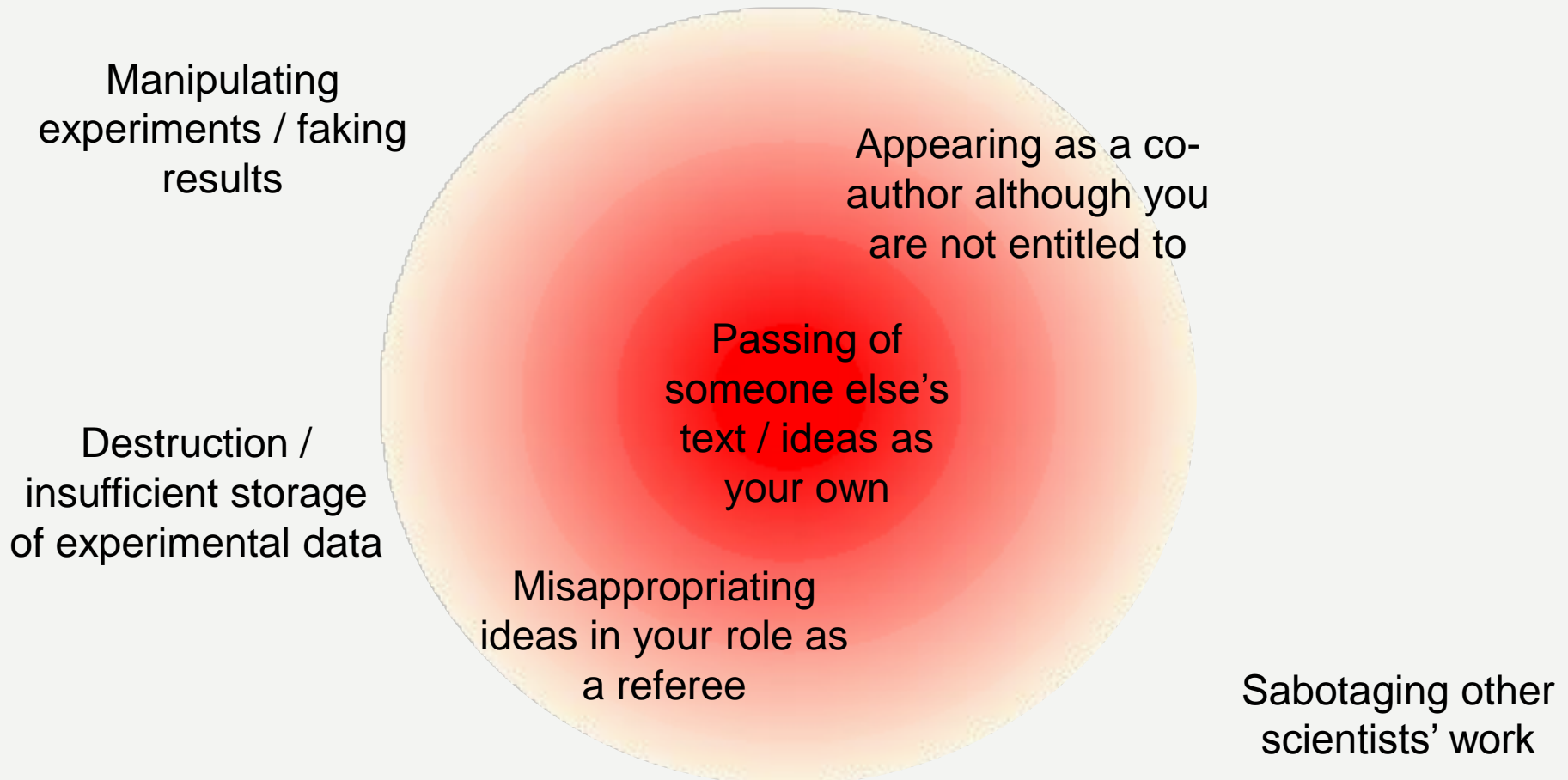


Good academic practice



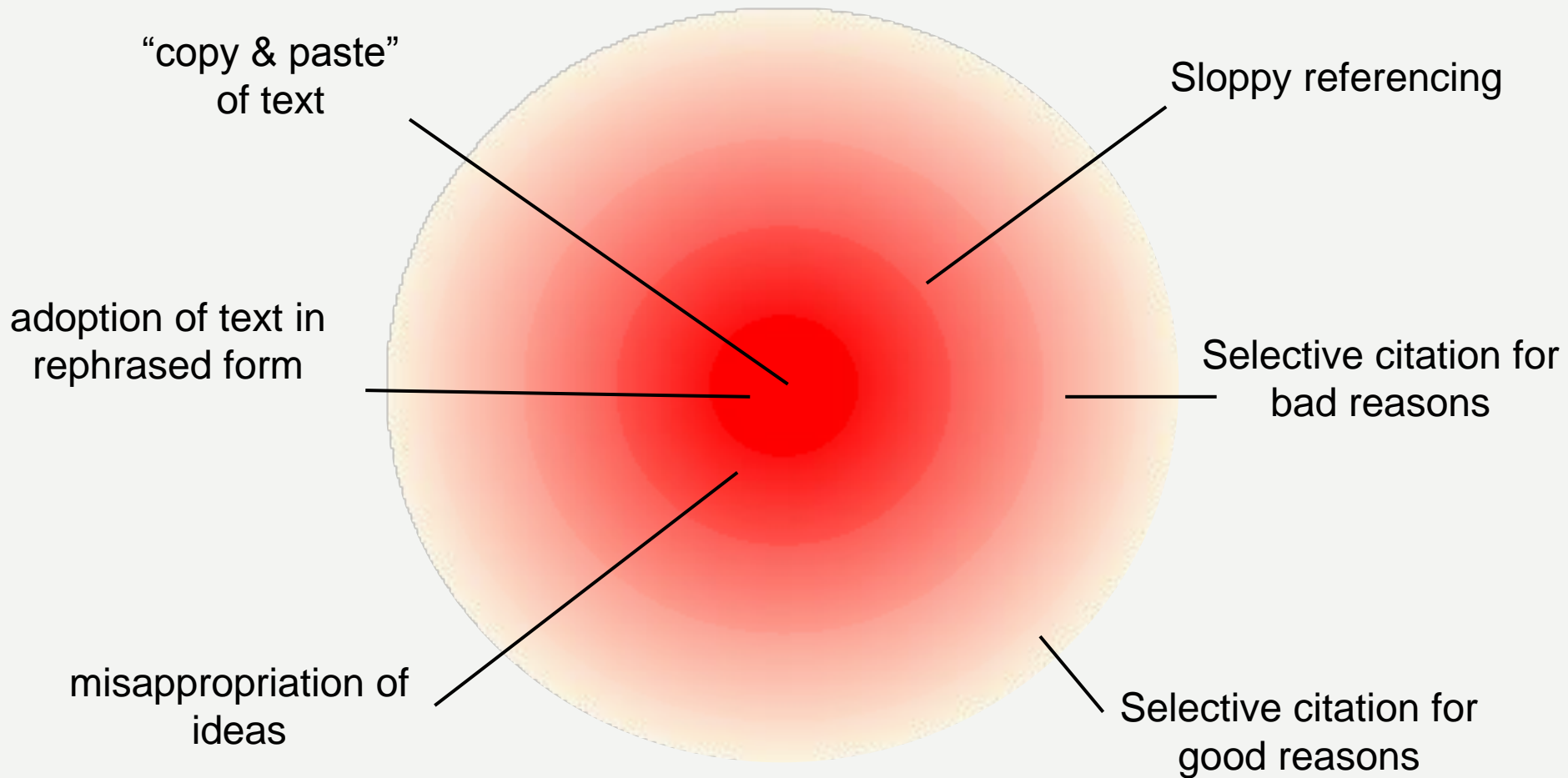


Plagiarism = just one of several forms of academic misconduct





Plagiarism = a concept with a clear core and furry edges





What is plagiarism?

- No legal definition
- Misappropriation of someone else's work, combined with the misrepresentation of one's own authorship
- Clear core meaning, but fuzzy edges
- Depends on ...
 - citation practices in respective academic discipline
 - type of work: in-depth study or overview
- How about self-plagiarism?



Who is the author? (1)

- Disputes over authorship are “frequent, harsh and ugly” (*Robert K. Merton*)
- Different perspectives:
 - good practice and university statutes: any person who contributes relevant scientific content
 - © law: any person who writes or composes the text
- Art. 6 (2) BayHSchG (Bavarian Act on Universities)
 - When publishing research results, persons who have made an own academic or a significant other contribution are to be named as co-authors; wherever possible their contribution is to be identified
- Differences between academic disciplines, esp. as regards the ranking



Who is the author? (2)

- You are a (co-)author if you ...
 - formulate the hypothesis
 - design the experimental setup
 - interpret experimental results
 - structure the presentation of arguments (“textual web”)
 - write the article
- You are not a (co-) author just because you ...
 - head the department
 - supervise the thesis
 - have applied for the grant
 - have taught relevant methods
 - contribute materials (e.g. tissue samples)
 - do technical laboratory work



1. What is plagiarism?
2. Why is it wrong and what are its causes?
3. What are its consequences?
4. How can it be detected and prevented?

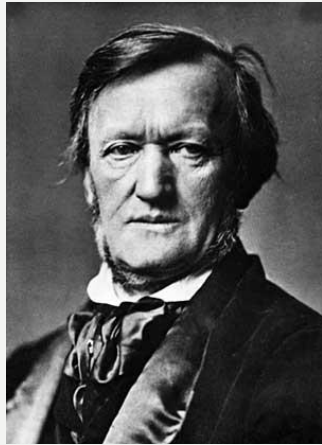




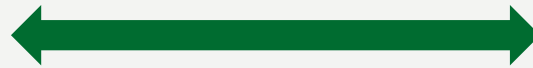
Why is plagiarism wrong?

- “Thou shalt not lie.”
- correct attribution = central condition of academic discourse
- merit for achievements, responsibility for mistakes
- equality of opportunities

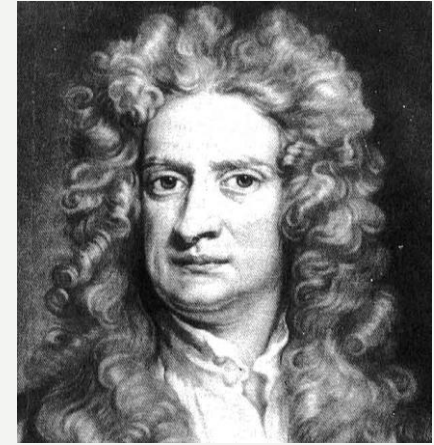
→ There is much more to rules of correct citation than the trivial formality (*Alexander Dobrindt*: “nur ein paar Gänsefüßchen”) of setting the right quotation marks



**Kids, create
something new!**



**The modern
dilemma: Imitate
and don't imitate!**



**On the shoulders
of giants**



Causes

- tension between need to be original and need to satisfy peers
- lacking knowledge about standards
- “publish or perish”
- delegation of work to assistants (who wish to deliver but who don’t have the knowledge)



1. What is plagiarism?
2. Why is it wrong and what are its causes?
3. What are its consequences?
4. How can it be detected and prevented?





The law

Private law:
© and
contract law

**Criminal law: fraud,
false oath, ©
infringement**

Administrative law:
award of academic
titles, disciplinary
measures



Copyright law is less significant than one thinks.

- Copyright protects the expression, not the idea
 - Example: BGH GRUR 1981, 352 – Staatsexamensarbeit
- Copyright is a property right
 - protecting (only) the author's interests
 - enforceable only by the author
 - who may not be interested in suing
- Copyright is a private right
 - enforced almost entirely by private actions for injunctions and damages
 - criminal sanctions practically insignificant
- But contract law may be helpful



Plagiarism is not a (legal) crime in most cases.

- Nulla poena sine lege!
- No liability for negligent behaviour unless explicitly provided.
- Fraud requires economic damage and equivalence between intention and damage
- Copyright infringement is not always a crime, and it is generally only enforceable by the victim
- False oath
- Issue: a novel crime of “academic fraud”?



The most effective legal sanctions are provided by university laws and statutes.

- Examination statutes and procedures in case of cheating
- Administrative law rules on revocation of administrative acts
- Disciplinary measures
- Should there be a limitation period?
- But there are deficiencies:
 - Unclear mix of acts, by-laws and self-regulation
 - Ill-defined procedures

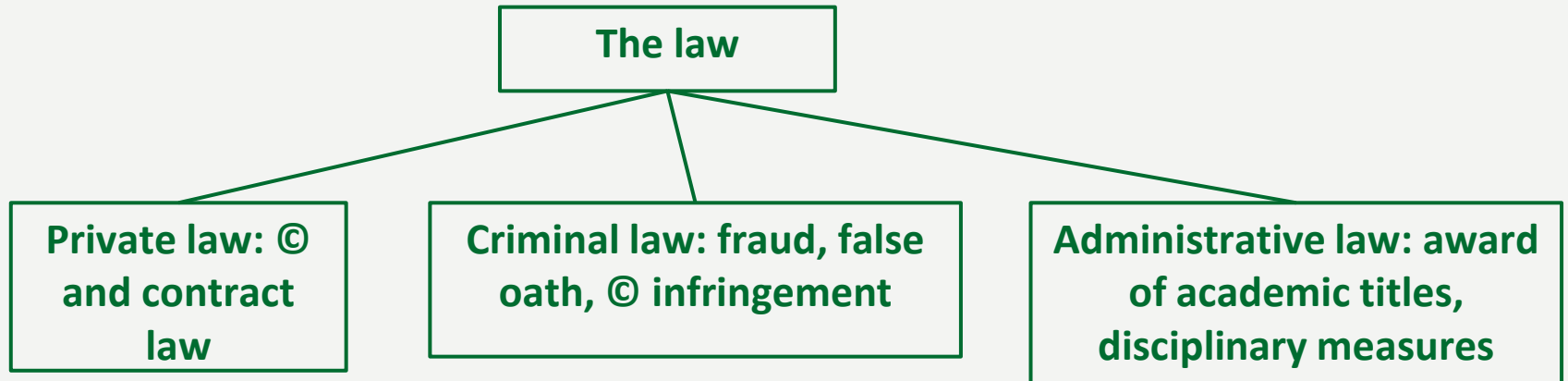


The law

Private law:
© and
contract law

**Criminal law: fraud,
false oath, ©
infringement**

Administrative law:
award of academic
titles, disciplinary
measures



Extra-legal sanctions



1. What is plagiarism?
2. Why is it wrong and what are its causes?
3. What are its consequences?
4. How can it be detected and prevented?



How to detect plagiarism?

- This problem is underestimated by the general public
→ no “patent recipe”!
- Software: results disappointing
- Googling may help where many sources are freely available online
- The merits and dangers of “crowd prosecution”
- “Cave lectorem!” (*Sloterdijk*)





Prevention

- Refine rules on good citation practice
- Teach critical approach to (internet) sources to pupils at schools and to first year students at universities
- Provide graduate schools – but still allow for independent doctoral studies
- Dishonour plagiarists
- Read, read read – and give supervisors the leisure to read





**Thank you for
your attention!**

