

Mum's the Word

Jack and Jill are graduate students, working at the same university but in different labs. They are friends and frequently discuss their projects, which are often along similar lines. One day, Jill tells Jack about her progress and discloses a lot of details about her experimental design and data. However, she mentions to Jack that she has gotten stuck and can't move forward because her lab doesn't have the resources to move her work along. Jack, as it turns out, is not only very interested in Jill's work, but his lab is well supported, and his professor likes him and would support Jack's ideas. Without telling Jill, Jack spends the next few months working out his own version of Jill's experiment with great support from his advisor. He then publishes an important paper which Jill had no idea about until she sees it appear in a high impact journal.

Perhaps one can argue that Jack did not steal Jill's work because he did not include any of Jill's data in his paper. But was it ethical of him to dismiss Jill's contribution altogether since Jack's work derived totally from Jill's original conceptual design and ideas? His experimental design was entirely Jill's and was inspired by Jill's preliminary work.

Should Jack at least have acknowledged Jill's contribution at the end of his paper? Should he have included her as an author? Should he have suggested collaborating with her from the start?

Expert Opinion

So, the ethical suspicion is that Jack has stolen or plagiarized Jill's "ideas" or her intellectual property. In legal point of fact, though, Section 102 of the copyright law, title 17, United States Code, says that ideas, methods or systems are not subject to copyright protection:

In no case does copyright protection for an original work of authorship extend to any idea, procedure, system, method of operation, concept, principle or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.¹

One can argue that from a legal perspective, Jill gave up the secrecy or ownership of her work when she disclosed certain of its details to Jack. Still, Jack's behavior hardly seems professional, and his university might indeed have rules that Jack violated (about which we will say more later). But let's first examine some issues or try to answer some questions that can inform an ethical opinion.

For instance, how far along was Jill in her project? This question is worth asking because according to one influential theory of "property," namely John Locke's, one acquires a property interest according to the labor he or she invests in the project.² Although Locke was thinking about land ownership when he wrote about property, we could easily apply his "labor mixing" principle to Jack and Jill's situation. If Jill had not devoted much effort to her project, had only a very half-baked idea of it, and was simply trying out some experimental approaches, we might not accord her much ideational "ownership" such that Jack's behavior would not seem egregious. But apparently Jill

was at least well enough along so that Jack could appropriate her original conceptual design and method and run with it. On the Lockean account, then, Jill should be able to make a serious moral claim that it was unethical or unprofessional of Jack to take her idea wholesale and give her no credit whatsoever. In fact, if Jill's conceptual design benefited from the input of others in her lab (and there's a good chance it did), then Jack appropriated that collective effort, not just Jill's, for his own benefit.

There's another, utilitarian reason, why Jack's behavior was unprofessional. In addition to Locke's labor-mixing theory of property, utilitarians believe that protecting property rights is conducive to creating "greater happiness for the great number" or that property rights promote the overall social good. David Resnik has pointed out that utilitarians can applaud intellectual property rights according to the way those rights "maximize social utility by providing authors and inventors (and entrepreneurs and investors) with incentives and rewards which encourage the development of science, technology, industry and the arts."², p. 32⁴ My knowing that my intellectual work will be protected as mine and credited to me is a motivating force, such that I will be more likely to turn out deliverables that have social value than if intellectual property rights did not exist.

One would think that universities would recognize the same and expect all their investigators to be more inclined to collaborate and respect one another's intellectual property rather than "scoop" one another. Consider, for example, the situation at "Dog-Eat-Dog University" where investigators are always on the prowl to steal one another's work or novel ideas. It's easy to imagine how investigators there would hesitate to discuss their projects with anyone inside (or outside) their laboratories—and thus would be entirely unable to take advantage of the collective knowledge of their peers. Consider how the dog-eat-dog ideology would have a chilling effect on investigator morale, collegiality, productivity, and professional respect. Obviously, Jill thought she could trust Jack's honoring her intellectual property because they work at the same university that would expect and want them to share ideas. Had Jack been employed at a competitor university, Jill probably wouldn't have been nearly as forthcoming because she knew she might be risking Jack's making off with her ideas.

While ideas are not legally protected (because it is practically impossible to prove one's ideas as original or novel), respecting another's right to his or her ideas as intellectual property is critical in certain scientific situations. If researchers invited to the NIH to review research proposals didn't honor the confidentiality of those proposals—i.e., if, as soon as they could, they'd run back home to their labs with ideas they pilfered from those proposals—or if journal reviewers didn't honor the confidentiality of the papers they review for possible publication, the engine of research and its dissemination would come undone.

So we suggest that Jack's behavior was antithetical to the kind of relational atmosphere in scientific institutions that encourages collaboration for the sake of superior morale and heightened productivity. Indeed, at least one institution would categorically indict Jack's behavior as plagiarism (and a violation of the honor code) because plagiarism is defined there as "any person who uses a writer's ideas or phraseology with giving due credit."³

Once Jack realized he might be able to take Jill's experiments forward, he should have consulted with her and his lab director and negotiated a work plan that would have respected, through authorship attribution or at least an acknowledgement at the end of the article, Jill's original contributions. As the situation now stands, Jill might proceed with a complaint against Jack, whereupon both of them will experience the unpleasanties of an institutional inquiry. Indeed, one might argue that Jill has an obligation to report Jack's professional and ethical misconduct to her lab director as well as to Jack's. To ignore the issue, even if it results in "the unpleasanties of an institutional inquiry," would arguably undermine the integrity of the institution. Transparency and support for reporting unprofessional conduct is crucial to any profession. Had Jack and Jill worked together early on, perhaps on multiple papers with each one as first author, the outcome would likely have been much more favorable.

References

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