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Abstract

Almost any sort of higher education assignment can now be purchased from a third party, from traditional essays all the way through to paying someone else to sit an exam. The use of custom essay-writing companies, freelancers, exam stand-ins, and other paid third parties represents a potentially significant problem for the provision of education around the world. This chapter provides a summary of this fast-evolving issue in education. We focus on written assignments, which are cheap and easy to access. Prewritten assignments are available instantly, while bespoke custom-written assignments can be purchased with a few hours' notice. The extent of their use is difficult to ascertain, but the limited evidence available indicates that it is widespread. The detection of their use is, at best, difficult and time-consuming. Preventative and deterrent strategies may be more effective. One author (PN) proposes preventative strategies based upon assessment design. The other (CL) proposes deterrent strategies based upon a legal approach. There is a legislative basis for the use of legal approaches to prevent misuse of paid services in higher education, and a summary of existing legislation is given, alongside examples of cases where it has been used.

Introduction

It is currently extremely easy for students, in any area of education, to pay a third party to do their work for them. Bespoke "custom essays" are available from hundreds of companies, and many online contract employment sites have sections for "academic writing." "Essay mills" may contain many thousands of prewritten assignments, available for some form of fee. It is even possible for students to pay for someone else to do examinations on their behalf. The fee for an assignment is determined by the topic, deadline, and standard required. The main legal cases addressing the use of paid third parties first emerged in the 1970s (McCormick and Whaley 2014), and it seems reasonable to assume that the notion of a student paying someone else to do their academic work for them has existed for a lot longer. However, in the last generation, the Internet has made this transaction much easier, and assignment preparation services are offered in many forms by many companies (Table 1). Many essay-writing companies are well-established businesses with professional marketing campaigns that advertise directly to students. These companies are occasionally the subject of stories in the mainstream media, which normally portray them in a negative light as "pay-to-cheat" services ("Overseas students 'buying essays'" 2008; "Parents 'buy essays' for students" 2008; "'Cheating' in essays up for sale" 2012). In such stories, and in their promotional materials, many companies defend their actions by stating that they do not seek to help students commit academic misconduct but that they provide study aids and model answers. The use of paid third parties also features in articles in the higher

education press, often provoking intense debate and soul-searching among academics (Bartlett 2009; Dante 2010; Anonymous 2013; Matthews 2013). Despite this attention from journalists, there has been very little peer-reviewed research into the (mis)use of paid third parties in higher education, a fact noted in a recent review (Walker and Townley 2012).

What Can Paid Third Parties Do?

The types of services offered can be broadly classified into a few distinct groups according to the type of provider (see Table 1 for examples). In many cases, either public or private auctions are used to manage the relationship between the student and the person who actually completes the assignment.

Although traditionally portrayed as “custom essay-writing companies,” it is possible for almost any sort of academic assignment to be contracted out to a paid third party, including oral presentations, data collection and analysis, and the sitting of exams. A range of examples is shown in Table 2.

Table 1 Types of paid third party service available, classified according to the nature of the service provider. The example companies listed were active at the time of writing (October 2014), and the list of examples chosen is intended to be representative rather than exhaustive

Type	Description	Current examples	Notes
Academic custom writing	Student contacts company with assignment details, which are passed on to custom writer via an internal auction	UnemployedProfessors.com UKEssays.com	
Online labor markets	Student posts details of assignments, which writers then bid to complete	Freelancer.com Transtutors.com	Online labor markets do not exist solely to provide academic writing and offer many other services
Prewritten essay banks	Searchable repositories of prewritten essays. Students either pay a subscription or submit essays of their own to gain access	Studymode.com 123helpme.com OPPapers.com	
File-sharing sites	Similar to essay banks but not specifically for essays	Baidoo.com	Sites like these do not exist solely to provide academic writing services
Paid exam takers	Students pay someone to sit exams on their behalf, either online or in person	Boostmygrades.com Allhomework.net	These sites offer additional services besides exam taking

Table 2 Examples of written and other assignments available from (anonymized) paid third parties. The list is intended to be representative rather than exhaustive and includes comparisons of similar assignments from different types of paid third party, to allow crude comparisons of the sorts of fees charged (online labor markets are generally cheaper). All assignment/quotes were from 29–30 October 2014. For online labor markets, the “cost” was calculated from the average bid and converted into UK currency (GBP) (from US or Canadian dollars) using www.xe.com. For all online labor market assignments, there were at least 17 bids. *ns* not stated. For further examples, see Clarke and Lancaster (2013)

Site	Discipline	Level	No. of words	Assignment	Required in days	Cost in GBP
Online labor market	Sociology	Undergrad	3000	Lit review	ns	48.11
Academic Custom Writing Co. #1	Sociology	Undergrad	3000	Essay	7	390
Academic Custom Writing Co. #1	Sociology	Undergrad	3000	Lit review	7	390
Online labor market	Law	Masters	3000	Dissertation proposal	ns	15
Academic Custom Writing Co. #1	Law	Masters	3000	Dissertation proposal	7	540
Academic Custom Writing Co. #2	Law	Masters	3000	Dissertation proposal	5	270.01
Online labor market	IT	Undergrad		Employment portfolio including website, resume, and PowerPoint presentation	3	44.36
Academic Custom Writing Co. #3	History	Undergrad	4 pages	Research paper	7	39.95
Academic Custom Writing Co. #1	English literature	PhD	100,000	PhD dissertation	POA	67,500
Online labor market	Computing	Undergrad	Short answers	“Perfectly balanced binary search trees”	3	51.37

Characteristics of the Use of Paid Third Parties for Written Assignments

A simple route to paying for an assignment is to contact an academic custom essay-writing company of the type described in Table 1. Companies may use an in-house auction to allocate authors to assignments (Tomar 2012). An alternative and seemingly cheaper route (Table 2) is for students (or persons acting on their behalf) to put the work out to tender through online labor markets which use a public auction system. The use of this type of service to engage in academic misconduct has been described as “contract cheating” (see ► Chap. 44, “Contract Cheating: The Outsourcing of Assessed Student Work”). Whether operating through internal or public auctions, custom essay-writing services generally operate along similar lines. The student gives a detailed set of instructions regarding the assignment, which may include details such as the institution where it is to be submitted, the module/course code, and the referencing guidelines to be used. With custom essay-writing companies, the price charged is then apparently dependent on certain key characteristics such as assignment length (e.g., number of words), level (e.g., undergraduate essay, PhD thesis), and the date by which the student would like the work prepared. The student may then be offered the opportunity to purchase additional “extras” such as a set of notes detailing the preparation of the assignment, copies of “drafts,” and an opportunity to send the work back to the writer for reediting after it has been marked. When using public auction/online labor markets, the student, or someone operating on their behalf, posts these details on the auction site, and writers bid for the opportunity to complete the work. The poster then selects a “winning” bid and the transaction occurs “offline.” Much like traditional auction sites such as eBay™, bidders and posters using online labor markets have detailed profiles which include user reviews, their work history, and their qualifications.

Custom-written assignments are also available very quickly with academic custom writing companies generally offering turnaround times measured in days. A recent research study, conducted in part by one of the authors, analyzed the turnaround time requested in posts requesting academic writing on online labor markets such as *Freelancer* and *Transtutors*. Sixty-eight percent of the posts analyzed stated a desired turnaround time in the initial posting, with a mean of 5.14 days (SEM = 0.56, range 0–24 days). Twenty-four percent of these requests were for a turnaround time of 1 day or less. Eighty percent of requests appeared to have been completed within the stated time, although it was not possible to verify the accuracy of stated completion times, the number of stated bidders, or the quality of the work returned. Most significantly, for every fulfilled request, there were ten (average) freelancers bidding to complete the work within the requested time (Wallace and Newton 2014). In addition to demonstrating the speed with which custom-written assignments appear to be available, these data demonstrate that, on the basis of this study, there is significant spare capacity in the market for the types of assignment generated through these routes.

How Widespread Is the Use of Paid Third Parties?

It is extremely difficult to obtain, or even generate, accurate data on the use of paid third parties in higher education. It seems reasonable to assume that there will also be a difference in usage frequency between the different types of paid third party, as it is considerably easier to access a free prewritten paper than to arrange for a stand-in to sit a face-to-face exam. The custom-written work generated by freelancers and custom essay-writing companies is supposedly original and thus likely to evade originality detection software, while the materials available on websites offering prewritten essays may be behind paywalls or other systems which make it difficult to detect. Some of the available evidence comes from self-report by students. There are well-established concerns regarding the reliability of self-reported behavior, particularly concerning reports of issues related to academic integrity (Juni et al. 2006). These difficulties are compounded by the borderless and rapidly evolving nature of the issue – it exists largely online and with writers and students often on different continents (Dante 2010).

Despite these caveats, triangulation of the limited data that are available indicates that the use of paid third parties is likely to be widespread. A recent study of female university students at one institution in Saudi Arabia revealed that 22 % of students self-report having paid someone to complete an assignment for them (Hosny and Fatima 2014). A “white paper” published by the originality detection company Turnitin on their website analyzed the most common sources of unoriginal text in the 28 million higher education assignments submitted through their system between July 2011 and June 2012. Prewritten essay mills accounted for 19 % of the unoriginal text in student submissions, with one site alone (OPPapers.com; this site is now part of “Studymode.com”) accounting for 4.5 million individual matches. The actual amount of unoriginal text taken from these sources is almost certainly higher than that reported by Turnitin, given the aforementioned paywalls and other systems which make it hard for detection to occur. Unpublished (i.e., not peer-reviewed) survey data, also collected by Turnitin, from university students in the USA showed that 7 % of students’ self-report having purchased an assignment at least once, with 23 % of students reporting that their peers have purchased an assignment (Turnitin 2013). These percentages potentially represent an enormous number of students if replicated across the international higher education sector.

Ethical Issues

Many essay-writing companies are well-established businesses with professional marketing campaigns that advertise directly to students. As mentioned in the introduction, these companies are occasionally the subject of stories in the mainstream media, which often use dramatic headlines to portray them as pay-to-cheat services. In such articles, many companies defend their actions, stating that they do not seek to help students commit academic misconduct but that they provide study

aids and model answers. One recent news story used an undercover journalist posing as a student to demonstrate that, in the story's words, a custom essay-writing company was "willing to pose as a student to submit [the essay]" (Henry et al. 2014). Some companies are overt about their intentions – one company (UnemployedProfessors.com) has a Frequently Asked Questions Page which includes the question "Isn't it really unethical for you to be writing these essays for cash?," to which the first line of the response is "Incredibly so, and because the academic system is already so corrupt, we're totally cool with that" ("Unemployed Professors – Frequently Asked Questions" 2014). Whether or not companies intend students to pass off purchased work as if it was their own, there is little doubt that many students do so (Dante 2010).

The use of a paid third party is, arguably, a distinct form of academic misconduct, and many institutions treat it as such on the basis that it represents a deliberate attempt to commit very serious academic misconduct (Tennant and Duggan 2008). Two studies have examined ethical issues surrounding the use of paid homework or exam assistance. The first examined the views of writers working to produce student assignments. Christopher Harris and Padmini Srinivasan at the University of Iowa (USA) recruited participants to a website called "Homework Assist," which the authors had created for the purpose of the study. Participants were told that the site was "a broker for academic assistance." Workers were recruited to the site through the Amazon Mechanical Turk™ (MTurk) system, an "online labor market" where "jobs" are advertised and anonymous workers are paid to complete them. Using an experimental design, one group of workers were told that their answers were to be used for "unethical" purposes (e.g., as a homework assignment or exam answer). Seventy-nine percent of workers who completed a piece of work gave permission for it to be used in this way, although only 61 % of those who first visited the site went on to complete a piece of work. Nevertheless, these findings suggest that a high proportion of those who complete paid academic work on behalf of others are happy for it to be used by those wishing to commit academic misconduct (Harris and Srinivasan 2012).

The second study, again conducted by one of the authors (Newton 2015), investigated the attitudes of 469 new undergraduate students, across disciplines, toward various academic misconduct scenarios. Answer options represented the full range of outcomes possible from a plagiarism investigation at the host institution. It was found that most students consider the purchase and submission of an essay, for which a student has done no work whatsoever, to be an act which should be modestly penalized through failure of that assignment alone – a penalty equivalent to copying from a friend without their permission. As mentioned above, in reality, they would be expelled from the university, as is the case at many institutions (Tennant and Duggan 2008). These data highlight a significant mismatch between student perceptions of paying for assignments and the reality of how many universities penalize it.

Much of what we know about the current custom essay-writing industry comes from the work of Dave Tomar, who has written about his 10-year experience as a full-time custom essay writer (Dante 2010; Tomar 2012). One of the main themes

of his writing is that, in his view, students are let down by their academic institutions, particularly students who are not studying in their native language or who are not suited academically to the subject they are studying. If Tomar is correct, and students are paying essay writers because they are struggling with the language in which the assessment is required, or they have been accepted to an expensive program of study for which they are not well suited beyond their ability to pay, or the support provided by academic institutions is significantly lacking, then it seems logical that some will resort to academic misconduct in order to complete their assignments. These pressures contribute toward the motivation of students to commit “traditional” plagiarism, and it seems reasonable to assume that they will also motivate students to use paid third parties. Although these pressures do not make it acceptable for students to pay someone else to complete their assignments, they do perhaps make it sadly inevitable. Although it is somewhat beyond the scope of this chapter, a failure to address the underlying motivation of students who use paid third parties (or, indeed, who commit any form of academic misconduct) will fundamentally undermine any attempts to deal with it, especially given the rapidly evolving nature of the issue, powered by advances in technology and access to services provided online.

Can We Prevent the Use of Paid Third Parties to Complete Written Assignments Using Assessment Design (PN)?

As stated above, there has been very little research into the use of paid third parties in education. In the absence of a broad, high-quality evidence base, strategies aimed to combat the misuse of custom writing services are based largely on personal experience and speculation. Suggested methods to detect custom-written assignments include encoding of bespoke search terms within assessment details, payment/encouragement of other students to identify peers who are using these services, and electronic watermarking or other means of securing assessment details (Mahmood 2009; O'Malley and Roberts 2012; Walker and Townley 2012; Clarke and Lancaster 2013). Students who are found to have used paid third parties would then presumably be penalized by their institutions. The effectiveness of these strategies has not been investigated in detail, and attempts to do so are likely to be undermined by the fundamental problems associated with detecting the work of paid third parties in the first place. Even if effective, the methods described seem likely to require significant resources to implement.

One suggested strategy to prevent, rather than detect, the use of paid third parties is “just-in-time” release of assessment details, so that students have a limited time to complete the assignment. This strategy is based on the principle that a short turnaround time will give students less time to arrange for a paid third party to do the work (Mahmood 2009; O'Malley and Roberts 2012). The suggestion was directly tested in a recent research study as described above, which concluded

that it is extremely unlikely to be effective as work is already turned around quickly and there is significant spare capacity in the market (Wallace and Newton 2014).

Another suggested, though untested, strategy to prevent the use of paid third parties in education is to design assessments that are harder to contract out. This strategy has been the subject of numerous workshops run by one of the authors, and several common themes have emerged. The first is an increased use of assignments which require the student to be visually present, either in person or remotely, for example, face-to-face oral presentations or other “viva”-type assessments, online narrated video presentations, or even “traditional” written exams. The use of these approaches is potentially compromised by their validity as assessments of certain types of learning. For example, the ability of a student to search, critically review, and synthesize the literature on a specific topic may not be best assessed through an oral exam, and the validity of the assessment may even be undermined if the student struggles with oral presentation, for example, through “stage fright” or language difficulties. A second theme is the personalization of assignments – making the context of an assignment specific to the individual or some other aspect which is less generic. Again, this may not be suitable for all types of assignments, and it is fairly straightforward for a custom writer to personalize an assignment with only minor input from their client. A third theme, often suggested to run alongside the others, is to “think positive” – create a positive climate of academic integrity, make it easier for students to do the “right thing,” support them properly in the academic endeavors, and accept that there will always be some students who deliberately set out to commit academic misconduct.

Finally, one of the main themes of the aforementioned work of the former custom essay writer Dave Tomar is that prevention of paid third party use can be achieved, in part, through educators developing and maintaining a close academic relationship with their students. “Get to know your students,” he writes. The effectiveness of this strategy is obviously going to be limited under circumstances where anonymous marking is used to *prevent* prior knowledge of a student from influencing the assessment process, for example, through the creation of “halo effects” or related forms of cognitive bias wherein previous experiences with a student unduly influence the grading of subsequent assessments (e.g., see Malouff et al. 2013). In addition, the ability of individual instructors to “get to know” their students is extremely limited where there are large class sizes, although this may be relevant to the points made by Dave Tomar about academic institutions failing to support their students (see above).

Given that it is possible to purchase almost any type of assignment online, it seems unlikely that any single assessment design principle is going to completely prevent the use of paid third parties, and each has limitations and consequences of its own. However, it seems reasonable to assume that the use of a diverse range of assessment methods, including some which focus on having the student physically present to present their work, will make it harder for students to contract out all of their work and will also make it easier to triangulate between assessment types.

Legal Issues Surrounding the Use of Essay-Writing Companies and the Possible Development of a Deterrent Legal Approach (CL)

Educational institutions generally deal with purchased work by monitoring and attempting to “catch” students who use these services, which can be extremely difficult. In addition, this approach only addresses issues of “demand,” which begs the question, “can the supply side of the equation, which would entail targeting the companies directly, be tackled?” This section will cover the current status of using paid third parties for the purchase of assignments, from a legal perspective. There has been little research into legal approaches to the use of paid third parties in higher education, largely due to the fact that legislation is sparse and what little there is largely concerns term paper companies. This in turn means that legal cases are few and far between. The synopsis of legislation and cases is mainly from the USA, as this is where most legal action has occurred. By examining prior legal actions, one may be able to provide guidance in terms of addressing the use of paid third parties directly, through a potential future legal or legislative action, by identifying what might be pertinent legal issues. Examples are given from both the USA and New Zealand; however, the principles are likely to be important across jurisdictions. Many of these issues are also being examined in a project that is being developed simultaneously with the International Center for Academic Integrity with the generous assistance of Pro Bono Students Canada. As such, there is some overlap between that non-released research paper and the part of this chapter dealing with legal issues. Acknowledgment should go to Ms. Maya Kanani, Ms. Megan Jamieson, Dr. Tricia Bertram Gallant and Ms. Giselle Basanta.

Legislation

In the USA, at October 2014, seventeen states have some type of law specifically addressing the preparation of assignments by third parties. The states with such laws are California, Colorado, Connecticut, Florida, Illinois, Maine, Maryland, Massachusetts, Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Texas, Vermont, and Washington. We will not provide a detailed analysis and reference to all the legislation, but will highlight samples and similarities to demonstrate how issues may be addressed differently in various legislations. Appendix 1 shows examples of current state legislation in the USA. These pieces of legislation generally define the third party companies, academic assignments, offenses, and educational institutions quite broadly, so as to capture a wide range of situations, but the definitions can be quite different. For example, most prohibit the preparation or distribution of papers, while others prohibit assisting with the sale of papers or advertising these services, while yet another prohibits conducting research for students (Dickerson 2007).

For a comprehensive summary of current US legislation and some cases pertaining to legalities of term paper mills, please see the research conducted for

the International Center for Academic Integrity by Mary McCormick assisted by Hunter Whaley at <http://law-fsu.beta.libguides.com/termpapermills>. At this site, the statutes are listed in their entirety, as well as being organized into sections with a fuller cross-comparison (only a summary of this work is shown in Appendix 1).

In New Zealand, it is illegal to advertise or provide third party assistance to cheat. These changes to the law were added in August 2011, when the New Zealand Qualifications Authority (“NZQA”) was given the power to prosecute anyone providing or advertising such services (Heather and Fensome 2013). As stated on their own website, the NZQA’s “role in the education sector is to ensure that New Zealand qualifications are regarded as credible and robust, nationally and internationally, in order to help learners succeed in their chosen endeavours and to contribute to New Zealand society” (<http://www.nzqa.govt.nz/about-us/our-role/>).

The principles set out in Section 292E of the New Zealand Education Act are similar to those included in various US state legislations, including making the advertising of such services an offense. There are, however, differences (New Zealand Qualification Authority). The New Zealand law is broader in terms of what is considered improper, as it speaks to services, and not just assignments. For example, it covers sitting an examination for someone (Section 292E(4) (d)). Yet, at the same time, the law appears to be somewhat narrower than in the USA in that there is no section regarding “should reasonably have known” (see below). Finally, under the New Zealand Act, those who commit offenses are liable to a fine up to \$10,000 (see Appendix 2 for the relevant language from the New Zealand legislation).

Intent of the Paid Third Party

In legislation, *intent* usually refers to the “knowledge” of the seller vis-à-vis the purpose for which they were producing the academic work. This is an important legal consideration, given the defenses employed by paid third parties who have prepared assignments for student clients. Some US legislation such as that in Virginia or California, for example, defines intent broadly to include not only what the seller knew was the purpose or use for which they produced the academic work, but, further, what they *reasonably should have known* was the purpose for which the work was produced (Virginia Code § 18.2-505(a) and California Education Code § 66400, as cited in McCormick 2014, emphasis added). In other words, if a third party has a disclaimer, yet a student provides information (either direct or indirect), regarding their intention to hand in the work that is produced, the implication could be that the disclaimer is irrelevant – that is, the provider *should have known* the work was going to be handed in as is. The known versus reasonably should have known is an important distinction and would likely turn on the circumstances under which the “contract” was made. As stated by Capano, “[c]lose examination of the business activities of term-paper mills indicate their knowledge of students’ intent to use these papers to obtain fraudulent credit” (Capano 1991, p. 286).

Defenses and Exemptions

Most legislation also includes defenses and exemptions – apart from any disclaimers used by the actual paid third parties – which permit certain paid academic work to be allowed and therefore not be considered a breach of the statute. These exemptions range from owning a copyright to providing tutoring services or research material and to assisting someone where you did not intend for that person to submit the academic work as their own. This, of course, is related to the previous discussion on intent (Dickerson 2007).

Penalties and Remedies/Sanctions

So what happens if an individual is found to have breached legislation? What is the penalty? These can vary greatly across the different jurisdictions and can range from injunctive relief (i.e., legally preventing the provider from doing something, e.g., selling academic work, while a case makes its way through the courts) to a civil penalty, which could involve a financial penalty of between 1000 and 10,000 dollars (USA), and to being found guilty of a misdemeanor and facing imprisonment (Dickerson 2007).

Legal Cases: The USA

There have been few legal cases over the past 30 or 40 years, and what little legal action has been taken has largely either been many years in the past, not brought under state legislation, has settled, or the final disposition was not published. We will therefore cover the relevant principles and facts that were important in a few cases that might assist in identifying legal issues that could be at play in a current action.

The first case is from New York and is that of *State v. Saksniit* 1972. The attorney general sought to dissolve the defendant business, arguing that their activities were contrary to public policy. The argument was that the defendant encouraged cheating, and it was against the public policy of the state to maintain the integrity of the educational process. The New York legislature, as per Section 224 of the Education Law, enacted laws to prevent fraud in obtaining degrees or diplomas.

The attorney general won this case, although it only involved an injunction. The defendant was found to operate a business in direct contravention of public policy and the education code because they aided and abetted students to obtain degrees or diplomas by fraudulent means (Capano 1991). The court examined the order forms filled out by the customers of the defendant, as well as the advertising campaign to clarify the intent of the seller, and determined the company provided custom-made papers to be submitted, as written, for credit (Capano 1991). Justice Gellinoff

wrote, “[t]hese instructions show that the student is plainly telling defendants that he intends to palm off the term paper he receives from the defendants as his own” (*State v. Saksniit* 1972).

The end result – the injunction – was that the defendants were prevented from carrying, conducting, or transacting business as sellers of essays, theses, term papers, or other school assignments during the legal action. They were also prevented from “advertising, soliciting, accepting, delivering, and contacting for the production and sale of term papers or other research materials to students” (*State v. Saksniit* 1972).

In another New York decision (*State v. Magee* 1979), the attorney general also brought an action against the defendant, who ran a term paper company, Collegiate Research Systems, arguing that the company breached Section 213-b of the New York Education Law. Previous to this, the court granted a preliminary injunction against Magee, preventing the company from selling academic work to students. The defendant argued that his products were not “assistance” as defined under the law in question but rather were publications entitled to First Amendment Protection (which deals with, among other things, freedom of speech and freedom of the press), that the papers were no different than an encyclopedia or bibliography, and that he had purchasers sign a form stating that their intent was not to use the work for improper purposes (*State v. Magee* 1979).

The defendant’s argument was rejected by the court. The court found that the papers did not fall within the exception of the law for materials that were copyrighted, and neither were they protected by the form signed by the purchasers. Justice Wallach, in rejecting the defendant’s arguments, stated, “[t]he papers purchased by the Attorney General’s agents and annexed to the motion are plainly designed to deceive and would have no other utility in the world of scholarship. Carefully tailored for submission as undergraduate work and keyed to the assignments in specific undergraduate and graduate courses, they were sold for that express purpose by defendant and do not fall within the copyright exception” (*State v. Magee* 1979). Justice Wallach went on to say “These typewritten papers, in a format designed for direct submission, and taken together with defendant’s seductive sales literature, are full proof of unlawful intended use. . . . Nor is the defendant saved by the pious disavowals of plagiaristic intent which the paper buyer ritualistically signs. This procedure is patently tongue-in-cheek.”

These two cases are important because they were successful in using their respective state legislation to address the problem of the third party provider directly. The various defenses employed pertaining to disclaimers, copyright, and intent were not persuasive and are thus useful in terms of identifying arguments and facts that could address these defenses in future cases.

Finally, in *Macellari v. Carroll* (2005), Blue Macellari was a student at Mount Holyoke in Massachusetts. During a study abroad program in South Africa, she wrote a paper for academic credit, which she then posted on her website as a writing sample. While attending graduate school, a friend found some of Macellari’s papers located in their database of essay websites such as “doingmyhomework.com.”

In order to access full papers, students must subscribe to the site, and if someone purchases a paper from the site, they have to provide the site with another paper, which then becomes the company's property. Macellari denied that she had provided her papers to the sites and alleged the companies' actions made it appear she condoned plagiarism and placed her in possible breach of her institution's honor code. Macellari also alleged she had copyright ownership to the material. The case settled in 2006 and the settlement was confidential (Dickerson 2007).

In the USA, some paid third parties have made arguments using First Amendment Rights to free speech as a defense, as demonstrated in the *Magee* case. We will not discuss this here, but for a detailed review, see either Capano (1991) or a comment from the Duke Law Journal (1973).

New Zealand

At the time of writing, there is a case making its way through the courts in New Zealand. The case involves companies (including Assignment4U) which "reportedly used a network of tutors to write assignments for Chinese-speaking students at New Zealand tertiary institutions" (Elder 2013). As reported by the New Zealand Herald in March 2014, the couple who owned the companies were allegedly paid \$1.1 million over 7 years by hundreds of clients (Savage 2014). Although no criminal charges have been filed, restraining orders were granted under the Criminal Proceeds (Recovery) Act 2009, basically freezing eight properties owned by the couple. According to the New Zealand Qualifications Authority ("NZQA"), "[the judge] was satisfied the Court had reasonable grounds for believing that significant criminal activity had occurred and that [the couple] had benefited from it" (NZQA website). The New Zealand legislation mentioned earlier has not been at play to date but the case is still active at the time of writing.

Considerations for a Legal Challenge

As described above, there are very few pieces of legislation in place, and even fewer cases, and thus the potential for legal difficulties or complications to exist is quite high. These legal difficulties could occur in terms of both legal principles and logistics around a potential legal challenge and would likely be even more pronounced in jurisdictions that do not have legislation in place. Legislation, as outlined above, can directly alleviate some of these potential difficulties by outlining a public policy rationale, but also by creating the conditions for a court to create a new action or principle under the law, which they might otherwise be reluctant to do.

As discussed earlier in this chapter, since paid third parties can produce unique one-of-a-kind products that are virtually impossible to detect, the ability to prove a case can be very difficult. Additionally, if evidence cannot be obtained from the

person/company providing the service, a case can be particularly problematic. This issue of evidence existed in the New Zealand case involving *Assignment4U* and highlights one of these legal difficulties. In this case, restraining orders were needed to freeze the properties of the owners, as some data had been destroyed, computers and servers had been moved, and numerous documents had been deleted (Savage 2014).

Another legal complication relates to jurisdiction. It is important to note that the legislation in place in one jurisdiction may not apply outside that jurisdiction. In terms of US state legislation, currently “eight states restrict the reach of the statutes to educational institutions within their own borders, . . . [the] Massachusetts statute specifically refers to out-of-state institutions, . . . an amendment to the Washington statute indicates that its reach does not stop at the state’s borders, [while] the other statutes are silent about geographic reach” (Dickerson 2007, p. 21).

When factoring in the international aspect of modern education, the jurisdictional complexity becomes even more pronounced. Many parties are involved in the transactions that produce a custom-written assignment: the company providing the service, its workers and owners, the person who writes the assignment, the student client who purchases the paper, and, finally, the institution to which the assignment is submitted. In the case of a “distance learning” student, these entities could all be located in different countries bound by different legal regimes. Bartlett (2009) alerts us to the increasingly international nature of writers for essay mills, while Walker and Townley reference many sources when reviewing this issue and write that “offers to complete work posted on auction sites not infrequently came from India, the Philippines, and other places where currency exchange rates allow work to be offered cheaply [relative to assignments written by individuals located in the same country as the student client]” (Lancaster and Clarke 2006; Shepherd 2008; Daily Mail 2006, as cited in Walker and Townley 2012, p. 31).

This leads to many questions. Which legal forum applies? How do you, in effect, obtain an injunction or remedy from someone in another legal jurisdiction? How do you find the relevant person(s)? How do you force any of those involved to participate in the legal proceeding? Further, pursuing a custom essay-writing company through legal means may only cause the company to shut down and relocate, which is analogous to events which unfolded with “diploma mills” (sites offering fake degree certificates), as “state lawsuits against diploma mills have often been ineffective, doing little more than causing a diploma mill to relocate to a different jurisdiction from which it continues to sell its product unimpeded” (Gollin et al. 2010 as cited in Osipian 2012, pp. 157–158).

A third potential legal issue pertains to *standing*, or put differently, who has the right to bring a legal action against a person/company that produces an assignment on behalf of another. Where legislation exists, it can be much easier to determine. As analyzed by Dickerson (2007, pp. 49–50), “in most states, no private right of enforcement exists under the term paper-mill statutes; instead, enforcement is by the state attorney general or the local district attorney. In Illinois and New Jersey, higher education institutions can request that the State seek an injunction; in a few

states, a college or university also may seek an injunction.” This might explain why there have been so few actions in the USA, even though there is legislation in seventeen states. The attorney general has not deemed this to be a public policy issue of importance.

The issue of standing is more difficult to determine where there is no legislation in place and would vary among jurisdictions. For example, there is clearly a relationship between a student and an educational institution, but what is the relationship involving the paid third party? Another way to look at it is to ask “who has been “wronged”? Is it the student who is caught? Is it the student who pays for an “A” grade paper but only gets a “B” grade? Is it the educational institution? Is it other students who do not use these services and argue that their degrees are devalued by those who do, or even a prospective employer who feels they cannot rely on the qualifications behind a degree? Or is it all or a combination of all of these?”

As mentioned above, many of the companies described in Table 1 operate under disclaimers, to the effect that they argue their products are merely study aids and not intended to be handed in by students or used as a “cheating” aid. From a legal perspective, what might be relevant is not what they knew but, rather, as discussed earlier, what they ought *reasonably* to have known was the purpose for which they produced the work. Another way to look at this would be to ask whether the company/writer turned a “blind eye” to the situation.

There are many important facts that could lead to a determination that a person preparing an assignment for someone else ought to have known the purpose for which they were producing the work. Such facts, as stated above, worked against the (paid third party) defendants in *Magee* and *Saksniit*. Specific facts that could be relevant might revolve around what these companies ask their clients to provide that might reasonably then be used as evidence to support the theory that they are providing assignments for students who would submit the work as their own. These facts include requests for the number of words required, the font type and word size, the required grade/standard, the course name, formatting instructions such as where to insert the page numbers, and even a blank space for a student to fill in their name once they receive the product. These are all facts that arguably work against any disclaimer or argument that the provider was not cheating, or aiding cheating, or knowing that they were doing so.

As a final consideration, even if one wins a case, how would damages be assessed? Legislation would often address this, but in the absence of such statutes, it could prove difficult. How would the courts measure harm, and to whom? How would they put a value on a degree or an individual assignment? How would one prove a nexus or causal connection between the actions of a third party provider and the alleged devaluation of a degree? These questions have yet to be addressed in current cases where there is no legislation, but must be kept in mind if there is to be legal action, to ensure that any proposed legislation is effective.

While little research currently exists regarding legal ways of dealing with these providers, it is hoped that this discussion serves as a model in terms of advocating for legislative change and education regarding these companies. Although we

cannot generalize in terms of situations, legislation, or jurisdictions, we have attempted to identify the pertinent issues and facts that would be at play to facilitate legislative action. Even though legislation and legal cases are currently infrequent, the issue is certainly gaining both more attention and legal traction. The more legislation that is introduced, the more public policy reasons will exist to legally address the supply problem directly, which can be an important tool to supplement important educational initiatives and delegitimize these third party providers.

Summary

The practice of paying someone else to complete an assignment is not new to higher education, but setting up such a transaction is currently extremely easy, perhaps facilitated by the use of “traditional” assessment designs, easy access to providers, and a lack of clarity over the legal picture. Although legal avenues exist, very few cases are pursued, perhaps due to the numerous legal complexities surrounding the issue.

Solutions which include an updated and enhanced legal framework surrounding these companies, the use of assessment designs which make it harder to contract out assessments, and a focus on the positive issues of academic integrity may prevent and/or deter students from using these paid third parties.

Appendix 1: Sample Legislation from the USA (for comprehensive comparison chart, see McCormick and Whaley 2014)

State	Citation	
CA	Cal. Educ. Code § 66400	<p>66400. No person shall prepare, offer to prepare, cause to be prepared, sell, or otherwise distribute any term paper, thesis, dissertation, or other written material for another person, for a fee or other compensation, with the knowledge, or under circumstances in which he should reasonably have known, that such term paper, thesis, dissertation, or other written material is to be submitted by any other person for academic credit at any public or private college, university, or other institution of higher learning in this state (<i>Enacted by Stats. 1976, Ch. 1010</i>)</p> <p>66401. No person shall make or disseminate, with the intent to induce any other person to enter into any obligation</p>

(continued)

State	Citation	
		<p>relating thereto, any statement, written or oral, that he will prepare, cause to be prepared, sell, or otherwise distribute any term paper, thesis, dissertation, or other written material, for a fee or other compensation, for or on behalf of any person who has been assigned the written preparation of such term paper, thesis, dissertation, or other written material for academic credit at any public or private college, university, or other institution of higher learning in this state (<i>Enacted by Stats. 1976, Ch. 1010</i>)</p> <p>66402. Any court of competent jurisdiction is hereby authorized to grant such relief as is necessary to enforce the provisions of this chapter, including the issuance of an injunction (<i>Enacted by Stats. 1976, Ch. 1010</i>)</p> <p>66403. Actions for injunction under the provisions of this chapter may be brought in the name of the people of the State of California upon their own complaint or upon the complaint of any person, or in the name of any public or private college, university, or other institution of higher learning, acting for the interest of itself, its students, or the general public (<i>Enacted by Stats. 1976, Ch. 1010</i>)</p>
NY	N.Y. Educ. Law § 213-b (Note: there is a recent proposed amendment that is not included)	<p>213-b. Unlawful sale of dissertations, theses and term papers</p> <p>1. No person shall, for financial consideration, or the promise of financial consideration, prepare, offer to prepare, cause to be prepared, sell or offer for sale to any person any written material which the seller knows, is informed or has reason to believe is intended for submission as a dissertation, thesis, term paper, essay, report or other written assignment by a student in a university, college, academy, school or other educational institution to such institution or to a course, seminar or degree program held by such institution</p> <p>2. Nothing herein contained shall prevent such educational institution or any member of its faculty or staff, from offering courses, instruction, counseling or tutoring for research or writing as part of a curriculum or other program conducted by</p>

(continued)

State	Citation
	<p>such educational institution. Nor shall this section prevent any educational institution or any member of its faculty or staff from authorizing students to use statistical, computer, or any other services which may be required or permitted by such educational institution in the preparation, research or writing of a dissertation, thesis, term paper, essay, report or other written assignment. Nor shall this section prevent tutorial assistance rendered by other persons which does not include the preparation, research or writing of a dissertation, thesis, term paper, essay, report or other written assignment intended for submission to such educational institution in fulfillment of the requirements for a degree, diploma, certificate or course of study. Nor shall any person be prevented by the provisions of this section from rendering services for a fee which shall be limited to the typing, transcription or reproduction of a manuscript</p> <p>3. Nothing contained within this section shall prevent any person from selling or offering for sale a publication or other written material which shall have been registered under the United States laws of copyright, provided, however, that the owner of such copyright shall have given his authorization or approval for such sale and provided further that such publication or other written material shall not be intended for submission as a dissertation, thesis, term paper, essay, report or other written assignment to such educational institution within the state of New York in fulfillment of the requirements for a degree, diploma, certificate or course of study</p>
	<p>4. No person shall sell, assign or otherwise transfer for business or for any other purpose to any person any information and material of a personal or private nature acquired from a purchaser of a dissertation, thesis, term paper, essay, report or other written assignment without the prior consent of such purchaser. The term "information and material of a personal or</p>

(continued)

State	Citation	
		<p>private nature” as used in this subdivision shall include, but not be limited to the name of such purchaser, his address and telephone number, the name of such educational institution, the name or number of the course, the name of the faculty member or members for whom such written assignment has been prepared and any description of the research involved or the nature of such written assignment</p> <p>5. A violation of the provisions of this section shall constitute a class B misdemeanor</p> <p>6. The attorney general and district attorney of the county wherein a violation of this section occurs shall have concurrent authority to investigate and prosecute any violation of this section and any related violations discovered during the course of such investigation</p> <p>7. Whenever there shall be a violation of this section, an application also may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than 5 days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in section eighty-three hundred three, subdivision six of the civil practice law and rules. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Additionally, the attorney general may apply in any such proceeding for a monetary penalty of not more than one thousand dollars per violation</p>

Appendix 2: New Zealand Legislation

292E Offence to provide or advertise cheating services

1. A person commits an offence if the person provides any service specified in subsection (4) with the intention of giving a student an unfair advantage over other students.
2. A person commits an offence if the person advertises any service described in subsection (4) knowing that the service has or would have the effect of giving a student an unfair advantage over other students.
3. A person commits an offence who, without reasonable excuse, publishes an advertisement for any service described in subsection (4).
4. The services referred to in subsections (1) to (3) are as follows:
 - (a) completing an assignment or any other work that a student is required to complete as part of a programme or training scheme;
 - (b) providing or arranging the provision of an assignment that a student is required to complete as part of a programme or training scheme;
 - (c) providing or arranging the provision of answers for an examination that a student is required to sit as part of a programme or training scheme; and
 - (d) sitting an examination that a student is required to sit as part of a programme or training scheme or providing another person to sit the exam in place of the student.
5. A person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$10,000.
6. In this section,

Programme has the meaning given to it in section 159(1);

Student means a student of a programme or training scheme; and

Training scheme has the meaning given to it in section 159(1).

Section 292E: inserted, on 30 August 2011, by section 42 of the Education Amendment Act 2011 (2011 No 66)

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