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Articles

FACILITATED PLAGIARISM: THE SAGA OF TERM-PAPER MILLS AND THE FAILURE OF LEGISLATION AND LITIGATION TO CONTROL THEM

DARBY DICKERSON*

I. INTRODUCTION

CHEATING and plagiarism are as common on college campuses as dirty laundry and beer. According to studies conducted by the Center for Academic Integrity, more than seventy percent of college students admit to some cheating, and more than half of the 2100 students surveyed, admitted to “serious cheating on written assignments.”¹ A 1999 survey found that fifty percent of participating students admitted they had used the Internet to commit plagiarism.² In a third survey, five percent of students reported they had submitted a paper obtained from an online term-paper mill, and ten percent acknowledged they had plagiarized a paper taken from the Internet.³ Unfortunately, this trend of academic dishonesty is likely to worsen, because cheating and plagiarism are

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1. Ctr. for Academic Integrity, *CAI Research*, http://www.academicintegrity.org/cai_research.asp (last visited Oct. 22, 2006) (summarizing findings by Donald L. McCabe of Rutgers University). Studies about academic dishonesty on college campuses dates to the 1940s. William L. Kibler, *Academic Dishonesty: A Student Development Dilemma*, 30 *NASPA J.* 252, 255 (1993) (listing findings of various studies on cheating). A 1941 study “found that 23% of college students cheated.” *Id.* In a 1960 study, the number “increased to 49%.” *Id.* Studies in 1981 and 1988 reported cheating levels at 50 to 75%. *Id.*

2. See Ctr. for Academic Integrity, *supra* note 1 (summarizing findings by Donald L. McCabe of Rutgers University).

3. *New Research on Academic Integrity: The Success of ‘Modified’ Honor Codes*, SYNFAK WEEKLY REP. (May 15, 2000), available at <http://www.collegepubs.com/ref/SFX000515.shtml> (interview with Donald L. McCabe, discussing effects of Internet on cheating in American colleges and universities).

“widespread and growing”⁴ among high school students,⁵ and occur as early as first grade.⁶

Although the history of cheating and plagiarism parallel the history of organized education,⁷ the Internet has provided students with new ways to avoid the processes of thinking and learning. While students still have many ways to cheat and plagiarize, the term-paper industry profits from facilitating this conduct. This industry, which prepares and sells a variety of papers to students, depends on academic misconduct to survive. Given the myriad sites that can be located simply by Googling “term paper,”⁸ the

4. Donald L. McCabe, *Academic Dishonesty Among High Schools Students*, 34 ADOLESCENCE 681 (1999), available at <http://www.findarticles.com> (indicating that “high school students were decidedly more blasé about cheating than were the college students”). According to McCabe, “[i]t appears that cheating does not weigh heavily on the conscience of high school students.” *Id.* at 682. McCabe further discussed the prevalence of high schoolers’ use of Internet term-paper mills. See generally *id.* (illustrating use of paper mills among high school students).

5. Kevin Bushweller, *Generation of Cheaters*, AM. SCH. BD. J. (1999), available at <http://www.asbj.com/199904/0499coverstory.html> (explaining that, “[i]n a 1998 survey . . . by Who’s Who Among American High School Students . . . roughly 80 percent” of the students surveyed “admit[ted] . . . cheating”). Furthermore, in a nationwide poll of 20,000 middle and high school students, seven out of ten high school students “admitted to having cheated on an exam.” *Id.*; see also Stephen F. Davis & H. Wayne Ludvigson, *Additional Data on Academic Dishonesty and a Proposal for Remediation*, 22 FAC. F. 119, 119 (1995) (reporting that, in sample of 2153 upper-level college students, more than seventy percent in each survey sample “reported cheating in high school”); Donald L. McCabe, *Cheating: Why Students Do It and How We Can Help Them Stop*, 25 AM. EDUCATOR 38 (2001), available at http://www.aft.org/pubs-reports/american_educator/winter2001/Cheating.html (illustrating prevalence of cheating in high schools). According to the report, thirty-four percent of surveyed high school juniors:

[c]opied almost word for word from a source and submitted [it] as [their] own work . . . [68%] [t]urned in work copied from another . . . [20%] [t]urned in assignment done by parents . . . [60% copied] a few sentences without citation . . . [86%] [l]et another copy homework . . . [16%] [t]urned in paper obtained in large part from a term-paper mill or Web site . . . [and 52%] [c]opied a few sentences from a Web site without footnoting them.

Id. (summarizing table of survey results).

6. See Kibler, *supra* note 1, at 255 (describing 1969 study in which “approximately 24% of the girls and 20% of the boys admitted they began cheating in first grade”); see also McCabe, *supra* note 5 (citing 1985 California State Department of Education study in which forty-one percent of sixth graders acknowledged having plagiarized).

7. See Joe Chidley, *Tales Out of School: Cheating Has Long Been a Great Temptation, and the Internet Makes It Easier Than Ever*, 110 MACLEAN’S 76 (1997) (illustrating history of cheating).

8. See Coastal Carolina U., *Kimbel Library: Presentations, Cheating 101: Internet Paper Mills*, <http://www.coastal.edu/library/presentations/mills2.html> (last visited Oct. 18, 2006) (identifying more than 250 active sites); Coastal Carolina U., *Kimbel Library: Presentations, Cheating 101: Internet Subject Specific Paper Mills*, <http://www.coastal.edu/library/presentations/mills5.html> (last visited Oct. 30, 2006) (identifying active sites); Sharon Stoerger, *Plagiarism*, <http://www.web-miner.com/plagiarism#sites> (last visited Oct. 30, 2006) (providing annotated list about many term-paper mill sites). A search run by the author on February 26, 2005 returned

steep rate some sites charge per page⁹ and the sizeable number of papers purchased,¹⁰ business is booming.¹¹

The commercial success of term-paper companies is distressing. These companies, which fancy themselves as research services, are helping to make a mockery of the American education system. They shamelessly encourage and facilitate plagiarism and cheating. They seduce students into thinking it is perfectly acceptable to represent others' work as their own. With their clever domain names and slick messages, the companies work hard to convince students that the process of learning holds no value, and they condone students defrauding professors and future employers. They implicitly belittle students who work hard, engage in the educational process and do their own work. With their prefabricated product, they cheapen the value of a college diploma.

about 31,100,000 hits. Although not all of the hits were for sites that prepare or sell term papers, many were.

9. For a list of rates charged from sampled sites that prepare custom-written papers, see *infra* note 78 and accompanying text.

10. See, e.g., Cheathouse.com, *Press Kit*, http://www.cheathouse.com/page.php?id=press_facts (last visited Aug. 20, 2002) (illustrating popularity of site). According to Cheathouse.com:

The site gets around over 50,000 page-views a day, which translates into roughly 6,000 visitors a day. The database is always growing and currently contains over 8,000 essays. On average 600 new essays are submitted to the site a month. CheatHouse.com has over 24,000 members and gets around 1,000 new members a month.

Id.; see also Students Term Papers, <http://www.studentstermpaper.com/student-stermpaper/index.htm> (last visited Mar. 11, 2006) (noting that company receives 350 inquiries per day, but accepts only fifty-five assignments per day); Term Papers Heaven, <http://www.papersheaven.com> (last accessed Mar. 11, 2006) ("Term Papers Heaven is proud to assist more than 3000 students every month with their research and writing assignments.").

11. See Joanna Glasner, *Where Cheaters Often Prosper*, WIRED NEWS, Aug. 26, 2002, <http://www.wired.com/news/school/0,1383,54571,00.html> (last visited Oct. 22, 2006) (illustrating success of Internet cheating sites). According to Glasner, "[p]urveyors of collegiate prose are finding life on the dark side of online commerce quite lucrative. 'They're the only ones besides casinos or porn really making money on the Internet.'" *Id.* (quoting founder of SchoolSucks.com). Furthermore, Genius Papers has sold 20,000 subscriptions (for \$20 each) over the past six years. *Id.* (reporting quote from co-founder of Genius Papers); see also Kendra Mayfield, *Catching Digital Cheaters*, WIRED NEWS, Feb. 29, 2000, <http://www.wired.com/news/culture/0,1284,33021,00.html> (last visited Oct. 22, 2006) (explaining that owner of SchoolSucks.com purchased domain name for \$100 in 1997). According to Mayfield, "the free term-paper site receives ad revenue in six digits, doubling every year." *Id.* (quoting founder of SchoolSucks.com). Moreover, the fee-based service "The Evil House of Cheat" has more than 4000 visitors each day. *Id.* As a result, "business is booming—much to the consternation of academics." *Id.*; see also Errin J. Jeffes & Steven M. Janosik, *The Court's Response to Student Cheating with the Help of Term-Paper Mills: Implications for Student Affairs Administrators*, 21 C. STUDENT AFFS. J. 68, 70 (2002) (indicating that SchoolSucks.com web site is doing so well it gave away \$50,000 college scholarship that was funded from advertising revenues).

The companies are symptomatic of a more significant problem in education. Too many students—and sometimes their parents—are more concerned about getting a certain grade or obtaining a degree than achieving competency and learning to learn. They view a “college education” as a mere commodity, as a ticket that has to be punched on their way to a career in corporate America. In this Internet age, students literally have the world at their fingertips. But instead of tapping into that vast intellectual base to master fundamental concepts and learn how to think independently, too frequently they use it to avoid the hard work. They search, click, cut and paste. Instant paper. But no learning.

Since term-paper mills appeared on the scene in the late 1960s and transformed plagiarism from an informal, loose and very local form of misconduct into an organized, formalized and international activity, teachers and scholars have sought ways to eradicate these companies and to curb plagiarism and other forms of academic misconduct. Legislatures have enacted statutes; attorneys general, colleges and, very recently, a student, have filed lawsuits; schools have enacted honor and conduct codes; teachers have changed assignments and learned to surf the web themselves; and entrepreneurs have developed plagiarism detection software. Yet, term-paper mills survive, and thrive. And, on a larger scale, academic dishonesty appears to be reaching crisis levels on many campuses.

Part II of this Article traces forty-five years of term-paper mill history and operations, including the move to the Internet and efforts to circumvent regulations. Part III discusses statutory and judicial efforts to control these companies. Part IV analyzes why legal efforts have failed. Part V then lays the groundwork for future work regarding a comprehensive approach to academic dishonesty on college campuses. That foundation involves adopting and applying concepts of environmental management to issues of academic dishonesty, including plagiarism and facilitated plagiarism.

II. TERM-PAPER MILLS: THEIR HISTORY AND OPERATION

A. *The Early Years*

It seems that students always have contemplated ways to avoid the process of learning.¹² One time-tested technique is for a student to have another person write a paper for him or her.¹³ Sometimes the student asks

12. See Tom Rocklin, *Downloadable Term Papers: What's a Prof. to Do?*, <http://www.uiowa.edu/~centeach/recourses/ideas/term-paper-download.html> (1996) (“I imagine that people have been presenting others’ work as their own at least since . . . well, at least since there have been people.”).

13. See Diana Amsden, *Fraud in Academe*, PHI KAPPA PHI J. 37, 41 (1977) (identifying journalist who “confesse[d] that for years he has been writing term-papers ‘for a clientele that consists of several grade school nieces, some nephews, and a cousin’”); Eric Wein, *Cheating: Risking It All for Grades*, ARIZ. DAILY WILDCAT (U. ARIZ.), Dec. 2, 1994, available at http://secure-wildcat.arizona.edu/papers/old-wildcats/fall94/December/December2,1994/03_1_m.html (illustrating how stu-

friends for help; sometimes he bullies or exerts other pressure to “convince” another person to prepare the paper; sometimes she retains a hired gun.¹⁴ Another reliable source for would-be plagiarists is CliffsNotes, “[t]he original study guides” for “hundreds of literary classics.”¹⁵ Yet another age-old technique is copying from a book or article.¹⁶ Also, one perk of joining a fraternity or sorority is access to the group’s archives of examinations and research papers.¹⁷ Although these traditional methods have not disappeared, over the years, fresh temptations have arisen.

dent wrote papers for another student). A student who wrote papers for another student he knew stopped when a professor suspected that one “client’s” paper was written by someone else and requested the “client” to submit photocopies of the sources. *Id.* The student-seller had based the paper on a high-school paper he had written and had his father send him the sources he had at home in another city. *Id.*

14. See Amsden, *supra* note 13, at 37 (describing 1938 *Scribner’s Magazine* article written by “campus ghost writer”). The article indicated that he was “one of a widespread and rapidly growing” group that has “made an industry out of studying for other people.” See *id.* (quoting from *Scribner’s Magazine* article). The writer at issue:

got started in his career at the University of Kansas City in a Chaucer class with 14 students. He wrote 12 of the 14 reports, assembling neighbors’ typewriters and available kinds of paper to maximize the number of combinations. He made the girls’ papers sweet and hesitant, and the boys’ excited and dogmatic. “The climax was capped when the teacher asked me to help grade the papers!”

Id.; see also Mary Kate Frank, *Term Papers for Sale*, MONTCLAIRION, Jan. 21, 1999, available at <http://www.chss.montclair.edu/english/furr/franktermpprs.html> (originally published as lead story, “A Special Report: Term Papers For Sale” and illustrating professional term-paper writer). Frank discusses “Doctor Research,” a professional term paper writer who “meets students in the parking lots of the 7-11 and an Italian eatery, Brother Bruno’s, on the Hamburg Turnpike in Wayne, less than a mile from William Paterson University.” See *id.* (describing “Doctor Research”).

15. CliffsNotes, *CliffsNotes Family of Products*, <http://www.cliffsnotes.com/WileyCDA/Section/id-106248.html> (last visited Oct. 22, 2006). The CliffsNotes web site includes a page titled *Cite Sources for a Plagiarism-Free Paper*, available at <http://www.cliffsnotes.com/WileyCDA/Section/id-106296.html>.

16. See, e.g., *Napolitano v. Trs. of Princeton Univ.*, 453 A.2d 279 (N.J. Super. Ct. Ch. Div. 1982) (describing Princeton senior who plagiarized most of her Spanish term paper from library book), *aff’d*, 453 A.2d 263 (N.J. Super. Ct. App. Div. 1982); *Sanderson v. Univ. of Tenn.*, No. 01A01-9607-CH-00289, 1997 WL 718427 (Tenn. Ct. App. Nov. 19, 1997) (describing student who plagiarized from textbook used in another course); Amsden, *supra* note 13, at 39 (recounting incident from 1960s in which student “copied every word except the author’s name” from book in library); Caitlin E. Anderson, *Cheating at Harvard*, HARV. CRIMSON, Apr. 28, 1997, available at <http://www.thecrimson.harvard.edu> (recounting incident in which “student just retyped a whole article”); see also McCabe, *supra* note 5 (“The number of students who acknowledged they had copied material, word for word, out of a book, grew . . . from 67 percent in 1969 to 76 percent in 1989.”).

17. See Christopher S. Hawley, *The Thieves of Academe: Plagiarism in the University System*, 32 IMPROVING C. & U. TEACHING 35, 35 (1984) (recounting story of professor who submitted paper as undergraduate, received “A” on paper, donated paper to his fraternity’s files and, many years later, had his paper submitted to him in course he was teaching); Rene Sanchez, *University Tries to Pull Plug on Internet*

In the late 1960s and early 1970s, a new enterprise appeared on the scene—the “modern”¹⁸ term-paper company.¹⁹ Starting in Boston²⁰ and Los Angeles,²¹ these businesses transformed the way students plagiarized and cheated. From the very beginning, the new companies were aggressive, audacious and successful. The advertisements for Quality Bullshit, one of the first term-paper companies,²² bodaciously announced, “[w]e write termpapers, reports, essays, theses, and dissertations. QBS can relieve your verbal constipation in the unkempt outhouse of synthetic education.”²³ The owner of another company had the nerve to designate “We do not condone plagiarism” as the operation’s motto, while its president asserted that he was “helping students overcome the busy work and repetition and wasted time of going from shelf to shelf and page to page doing term papers in which no learning is involved.”²⁴

The president of International Termpapers, Inc., another pioneer in this questionable industry, spoke about why he established a term-paper business:

People talked about setting up a term-paper business for ages Well, about four years ago, I began to test the market to see if the whole idea was really feasible. I put a few advertisements in *Boston After Dark* in order to attract students and writers. The re-

Term-Paper Mills, WASH. POST, Nov. 5, 1997, at A1 (noting historic scenario of “lazy college students rummaging through fraternity houses for files of musty old term papers”).

18. See *Term Paper Companies and the Constitution*, 1973 DUKE L.J. 1275, 1289 n.41 (describing evidence of early term-paper companies). Some evidence exists that term-paper companies actually existed as early as the 1920s:

One Columbia graduate recalled the term-paper mills along Amsterdam Avenue in New York City in the Twenties, businesses that bought and sold used papers. Another spoke of the similar establishments near Harvard in the early forties—companies which were only whispered of and which, for the most part, only the affluent could afford to frequent.

Id. (quoting E. Einsiedler, *Buying Term Papers*, 61 TODAY’S EDUC. 44, 44 (1972)).

19. Compare Joan Trexler & Laura Kent, *Commercial Theme-Writing Services 1* (Higher Educ. Panel Rpt., Am. Council of Educ., Survey No. 7, June 15, 1972) (indicating term paper “factories” were established during Fall 1970) with Ronald B. Standler, *Plagiarism in Colleges in USA* (2000), <http://www.rbs2.com/plag.htm> (last visited Oct. 22, 2006) (indicating commercial services developed in late 1960s).

20. See Trexler & Kent, *supra* note 19, at 1.

21. See Research Assistance, <http://www.research-assistance.com> (last visited Mar. 10, 2006). Research Assistance indicated that it started in 1969, in Los Angeles. It is now a web-based company. See *id.*

22. Four major companies in Boston are Quality Bullshit, Termpapers Unlimited, Termpapers International, and Universal Termpapers. See Philip B. Moshcovitz, *Hey, Students! Get Your Term Papers Here . . .*, C. MGMT. 26, 26 (1972).

23. *Id.* (quoting Quality Bullshit’s advertisement and discussing Boston’s role as home base of some term-paper companies).

24. Trexler & Kent, *supra* note 19, at 1.

sponse was unbelievable. So I founded International, and our phones have been jangling like mad ever since.²⁵

A representative of Quality Bullshit defended his company's services by stating:

The kids are assigned so many papers that they're an obstacle to a degree rather than a learning technique The size of the business is related to the stress students are under. The system builds considerable tensions. As long as a student is in a bind he'll look for help. Now, thanks to these term-paper services, maybe the universities will wake up and take a close look at what they're doing.²⁶

Prices per page for these early papers typically ranged from \$1.50 to \$6.00 per page, depending on whether the student wanted a pre-written or custom-written paper and whether the paper was for an undergraduate or graduate course.²⁷ Commentators conservatively estimated that "students [who purchased papers from the first four term-paper companies in Boston] spent at least \$250,000 for 10,000 term papers [in 1971]."²⁸ Although the president of one company refused to disclose his revenues, one journalist concluded that they "must be considerable, for [the company] not only has numerous employees and a plush office, [but] also spends \$1000 on advertisements per week."²⁹

The early companies typically had storefronts where students could drop in—just like going to McDonald's or the local pharmacy—and place orders for papers they needed.³⁰ Students could order a custom-written paper or request a pre-written paper from the company's files.³¹ Many

25. Rob Eggert, *Who Wants Yesterday's Term Papers? Eager Students Crowd Offices of Four Term-Paper Services*, HARV. CRIMSON, May 11, 1971, available at <http://www.thecrimson.com/article.aspx?ref=356128> (describing why president founded International Termpapers, Inc.).

26. Moshcovitz, *supra* note 22, at 27.

27. See Eggert, *supra* note 25.

28. Moshcovitz, *supra* note 22, at 26 (referencing estimates of term paper sales in Boston); see also Eggert, *supra* note 25 (illustrating success of term-paper companies).

29. Eggert, *supra* note 25 (illustrating success of four term-paper companies).

30. See *id.* (describing set-up of early term-paper companies); Thomas H. Moore, *Colleges Try New Ways to Thwart Companies That Sell Term Papers*, 35 CHRON. HIGHER EDUC., Nov. 9, 1988, at A1, A36, available at <http://chronicle.com> (describing paper-purchasing process). According to Moore:

You go into the [company] and they have a catalogue. It has papers on everything, and you pick out the type of paper you want. They ask for your college I.D. and ask what school you're from, and then give you the papers you request and tell you when they've been used, and where.

Id. (quoting David T. Ouimette, Associate Director of Student-Conduct Office at University of Southern California). See generally Abigail Witherspoon, *This Pen Is for Hire: On Grinding Out Papers for College Students*, HARPER'S MAG., June 1995, at 49 (recounting author's experiences working for store-front operation in Toronto).

31. See Eggert, *supra* note 25 (describing early term-paper companies).

companies, realizing that students in more rural areas might also be interested in their services, installed 1-800 numbers³² and prepared catalogues³³ they would mail to prospective clients. Word of mouth from satisfied customers helped boost business,³⁴ as did advertisements in magazines such as *Rolling Stone*³⁵ and *National Lampoon*.³⁶ To the chagrin of professors and administrators, companies even advertised in student newspapers on campus.³⁷ Moreover, these companies posted business cards, posters and flyers around campus to attract new business.³⁸

32. See, e.g., Amsden, *supra* note 13, at 41-42 ("Educational Research, Inc. in Washington, has an 800 phone number so patrons all across the country can call tollfree."); William K. McHenry, *Reflections on the Internet Paper Mills* (1998), <http://www.georgetown.edu/honor/papermill.html> (noting one company stated its archives must be accessed by calling 800 number).

33. See Moore, *supra* note 30, at A1 (describing Los Angeles-based company that published catalogue that listed 16,242 papers in 141 areas).

34. Iain Steinberg, *Of Academic Fraud and the Education Crisis—Confessions and Revelations from an Ivy League Whore; Illegal Term Paper Writing*, WORLD AND I, Sept. 1, 2000, at 284 (illustrating how word of mouth aided business). According to Steinberg:

Word of mouth ensured that local demand continued to soar. As in any service industry, a satisfied customer is a repeat customer. And so they came in what seemed like a never-ending procession: future teaches, lawyers, psychologists, social workers, journalists, nurses, business majors, stoned zombies, wearing down my carpeting as fast as they were my nerves and patience.

Id.; see also Witherspoon, *supra* note 30 (indicating business at her company boomed after cheating expose aired on local television station).

35. See Moore, *supra* note 30, at A36 (illustrating term-paper company that advertised in *Rolling Stone*); see also Michael A. Pemberton, *Threshold of Desperation: Winning the Fight Against Term Paper Mills*, WRITING INSTRUCTOR, Spring-Summer 1992, at 143, 144 (describing four ads from recent issues of *Rolling Stone* and how each company was located near major university but also appeared to rely on mail order business).

36. See John N. Hickman, *Cybercheats*, NEW REPUBLIC, Mar. 23, 1998, at 14 (describing term-paper company that advertised in *National Lampoon*).

37. See Moore, *supra* note 30, at A36 (describing advertisements in student newspapers); see also Wein, *supra* note 13 (describing advertisements in student newspapers). According to Wein:

Classified advertisements pitch catalogs full of term papers which students can try to pass off as their own. One such classified advertisement recently printed in the *Arizona Daily Wildcat* was from a company called Berkeley Research, which sends out a catalog of 29,000 term papers. The company sells papers for \$6.50 per page and recommends students use them in conjunction with books and articles for their own papers. Students can order papers over the phone and have them delivered by the next day.

Id. See generally Trexler & Kent, *supra* note 19 (indicating that twenty-eight percent of colleges surveyed in early 1970s indicated that term-paper companies advertised in campus newspapers).

38. See *State v. Saksniit*, 332 N.Y.S.2d 343, 345, 348 (N.Y. Sup. Ct. 1972) (providing detailed information about flyers defendants prepared and distributed to students); Moore, *supra* note 30, at A36 (describing methods of on-campus advertising); Trexler & Kent, *supra* note 19, at 4; Edward M. White, *Too Many Campuses Want to Sweep Plagiarism Under the Rug*, CHRON. HIGHER EDUC., Feb. 24, 1993, at

The term-paper companies typically hired freelance writers to fill their customers' orders.³⁹ By 1972, Boston-based Termpapers International had 300 writers on staff.⁴⁰ Most seemed to have at least an undergraduate degree, and some had advanced degrees.⁴¹ The founder of Universal Termpapers, known as "Mr. Papers," was working on his doctorate when he started freelancing for another company.⁴² The extra pocket money attracted one Harvard graduate student, who said that "writing papers is 'a damn good way to pick up some extra bucks. Once you learn how to dish out the shit successfully, the whole thing becomes pretty easy.'"⁴³

The Boston-based companies prided themselves on "quality control." Universal Termpapers boasted that "[n]o paper we have ever written—so far as we know—has received less than a B."⁴⁴ International Termpapers kept detailed records "to make sure no one instructor receiv[ed] two identical papers. And any paper which [got] less than a B twice [was] immediately tossed out of the files."⁴⁵ At least one—Quality Bullshit—also had a

A44, available at <http://chronicle.com> (describing advertisements in student newspapers).

39. See Eggert, *supra* note 25 (noting use of freelance writers by term-paper companies); Moshcovitz, *supra* note 22, at 26 (describing term-paper companies use of "network of college educated freelance writers" on "full-time" or "part-time basis"). But see Erik J. Dahl, *Termpaper Firm to Operate in Boston, Claiming State Law Is Unconstitutional*, HARV. CRIMSON, Jan. 28, 1977, available at <http://www.thecrimson.com/article.aspx?ref=118606> ("Term paper companies first became news at Harvard in the spring of 1972, when student papers stolen from professors' offices during intersession were traced to a New York term paper firm.").

40. See Moshcovitz, *supra* note 22, at 26 (illustrating growth of Termpapers International).

41. See Eggert, *supra* note 25 (describing education level of employees of Termpapers International); Moshcovitz, *supra* note 22, at 26 (characterizing freelance writers as "college educated").

42. See Eggert, *supra* note 25 (illustrating education level of employee). While in graduate school, "Mr. Papers . . . supported himself by teaching at college, and, he said, established a reputation as 'a tough teacher who would not tolerate plagiarism.'" See *id.* (describing "Mr. Papers"). When asked about his long-range plans, he replied he would "like to be a professor at a college in the Boston area." See *id.* (same).

43. See *id.* (describing benefits of writing term-papers).

44. See Moshcovitz, *supra* note 22, at 26 (illustrating quality of term-papers).

45. See Eggert, *supra* note 25 (describing organization of International Termpapers). But see *Term-Paper Company Admits Possible Error*, HARV. CRIMSON, May 20, 1971, available at <http://www.thecrimson.com/article.aspx?ref=356234> (describing incident in which Termpapers Unlimited sold two identical papers to two Harvard students enrolled in same course); *Two Students Disciplined for Buying Termpapers*, HARV. CRIMSON, May 19, 1971, available at <http://www.thecrimson.com/article.aspx?ref=356216> (indicating that one student involved was graduate student and other was undergraduate student). The graduate student was suspended for one year and the undergraduate student, due to a previous record of plagiarism, was dismissed. *Id.* (describing punishment for incident of plagiarism).

philanthropic streak and gave away at least one paper a week to a needy student.⁴⁶

Despite their self-proclaimed virtues, the companies almost immediately drew the ire of college administrators.⁴⁷ Harvard, Northeastern, Boston University, MIT and University of Massachusetts-Boston all condemned the companies and sought ways to stop them.⁴⁸ One Harvard Dean declared, “[a]s soon as we get a case involving one of the companies, we intend to go to court to claim damages, damages to the value of the degree we grant.”⁴⁹ An attorney for Northeastern asserted that “[t]his activity is a serious attack on academic integrity and we hope to persuade them to stop. If persuasion doesn’t work, they can be enjoined by the courts for interfering with the contractual relationship between the student and the university.”⁵⁰

The companies also drew the attention of state legislatures. In the early 1970s, many states enacted legislation making it illegal for individuals and companies to prepare or sell papers for students.⁵¹ Some state attorneys general and educational institutions also sought to enforce these statutes.⁵²

Despite these attacks, term-paper companies continued to flourish. More and more companies popped up across the country, the number of customers grew and, with increasing demand, prices per page rose.⁵³ The companies did, however, try to “work around” new legislation. As one writer aptly, and wryly, observed, “[l]ike head shops that sell ‘smoking accessories,’ term paper mills adhere to the letter of the law while knowingly violating the intent.”⁵⁴ Many started to refer to themselves as “research

46. See Eggert, *supra* note 25 (recounting that Quality Bullshit, as “humanitarian gesture” provided free, custom-written paper to “a senior at a Carolina college” who was dying of cancer and needed one final paper to complete his degree).

47. See Moshcovitz, *supra* note 22, at 26 (“Campus administrators have reacted sternly against these organizations which threaten the educational system.”).

48. See generally *id.* at 26-27 (discussing Universities efforts to prevent students from using term-paper companies).

49. *Id.* at 26.

50. *Id.* at 27.

51. For further discussion of legislative efforts to regulate term-paper companies, see *infra* notes 137-256 and accompanying text.

52. For further discussion of judicial actions against term-paper companies, see *infra* notes 187-257 and accompanying text.

53. See Amsden, *supra* note 13, at 42 (explaining that before one Boston-based company closed, it had “a string of 50 offices at campuses across the country”); *id.* at 42 (describing “term paper junkie” who ended up buying all of his assignments—even ones only few paragraphs long—both out of fear of exposure and because he liked getting higher grades than he thought he could earn on his own); Moore, *supra* note 30, at A1, A36 (stating that typical costs for these services in late 1980s were \$7 per page for pre-written papers and up to \$22 per page for custom-written papers).

54. Pemberton, *supra* note 35, at 146.

services” in an attempt to skirt the new statutes.⁵⁵ To comply with a 1972 Illinois law,⁵⁶ one company photocopied the research papers it sent to customers onto colored paper and stamped a copyright notice on each paper.⁵⁷ Thus, it was more difficult for the paper “to go directly from mailing envelope to professor’s desk.”⁵⁸ Some term-paper companies made students sign contracts “stipulating that the work they receive will not be submitted for credit for any class”⁵⁹ or required that the student “will not use the research results to defraud any college or university.”⁶⁰

As the term-paper companies continued their work, colleges continued to seek ways to thwart them. One university, for example, ordered the companies’ catalogues; when a professor was suspicious about a paper, the college would order similar papers from the companies for comparison.⁶¹ At that same university, when term-paper companies ran ads in the campus papers, the school “[ran] ads nearby explaining that [the office of judicial affairs kept] copies of the catalogues.”⁶² Other schools regularly removed posters and flyers from campus locations and retained attorneys to “write to the firms to cease and desist, to let them know that they are not welcome on . . . campus.”⁶³

Colleges also encouraged faculty to examine how they assessed students.⁶⁴ Some professors started using more in-class writing assignments and other professors shifted from term-papers to final examinations.⁶⁵

55. *E.g.*, Dahl, *supra* note 39 (describing company called “Collegiate Research Systems,” whose president claims it “is not a ‘term paper agency,’ but offers ‘instant information that can be expounded upon’ by students and others”); Moore, *supra* note 30, at A1, A36 (describing company called “Research Assistance,” which proclaims in its letter to all catalogue recipients, “Our theory is simple. The best way to learn sound research is through studying letter-perfect research papers in the exact area of your assignment.”).

56. 110 ILL. COMP. STAT. 5/1-1 (2005) (authorizing Attorney General or “state’s attorney of county in which such campus is located” to “institute civil proceedings in Circuit court to enjoin the sale, preparation for sale, advertising for sale or offering for sale of any academic papers”).

57. 57. *See* Moore, *supra* note 30, at A1 (describing method company used to thwart intent of Illinois law).

58. *See id.* (exploring technique research paper company used in order to ensure that their papers would not be used by students).

59. Pemberton, *supra* note 35, at 146.

60. Dahl, *supra* note 39.

61. *See* Moore, *supra* note 30, at A36 (discussing efforts of Gary M. Pavela, Director of Judicial Programs at University of Maryland); *see also Mail-Order Term Papers for Sale*, HARV. CRIMSON, Feb. 23, 1980, available at <http://www.thecrimson.harvard.edu> (indicating that some departments at Portland State University also order and keep catalogues on file).

62. Moore, *supra* note 30, at A36.

63. *Id.* at A36.

64. *See id.* (“[F]aculty members can and should do more to discourage students from turning in papers bought from research companies.”).

65. *See id.* (explaining professors’ efforts to curb use of research paper writing services).

Some refused to accept photocopies of papers.⁶⁶ Others started to require conferences, interim assignments and other drafts before the final paper was due.⁶⁷ Still others required a series of shorter writing assignments throughout the semester so the professor could become familiar with each student's writing style.⁶⁸ More schools implemented honor codes,⁶⁹ passed policies prohibiting term-paper companies from operating or advertising on campus,⁷⁰ included information about plagiarism and inappropriate use of others' work in course syllabi⁷¹ and discussed concepts of academic integrity with students.⁷²

66. *See id.* (same).

67. *See id.* (same).

68. *See id.* (same).

69. *E.g.*, Liana Wyler, *Cheater Cheater*, DUKE CHRON., Apr. 21, 2004, available at <http://www.dukechronicle.com> (follow "Archives" hyperlink; then follow "directly browse our archives" hyperlink) (noting that Duke's adoption of honor code in 1993 "was the first step toward creating a community of integrity" on campus). *See generally* Donald L. McCabe et al., *Faculty and Academic Integrity: The Influence of Current Honor Codes and Past Honor Code Experiences*, 44 RESEARCH IN HIGHER EDUC. 367, 367 (2003) ("Research has demonstrated that honor codes are effective in reducing cheating in academic settings.").

70. *E.g.*, York University, *University Policies, Procedures & Regulations Database, Prohibiting On-Campus Essay-Writing Services* (effective 1987), available at http://www.yorku.ca/secretariat/legislation/u_pol/essaywriting.htm:

York University regards as reprehensible so-called 'essay services' which seek to provide students, almost always in return for some fee, with some course work done by others. Accordingly, the University will not tolerate the use of its premises, facilities or activities by agents, representatives and users of such services. It is the policy of the University vigorously to employ all lawful means at its disposal to prevent such activity from occurring on campus and to prosecute individuals, groups, organizations and companies which engage in it.

Id. *See generally* Kibler, *supra* note 1, at 263 (explaining that institutions should have clearly written policies regarding academic dishonesty, and that "[i]nstitutional policies should [among other things] include definitions of academic dishonesty [and] examples of behaviors that constitute infractions").

71. *E.g.*, Jane Adams, S. Ill. Univ., *Peoples & Cultures of North America Syllabus*, <http://www.siu.edu/~anthro/adams/pages/310g/anth310g.html> (last visited Sept. 29, 2006) ("Buying a paper online, copying text from several websites, turning in someone else's paper . . . are examples of plagiarism when you claim such work as your own."); R.G. Martin, Univ. of Calgary, *Historical Studies Syllabus*, <http://hist.ucalgary.ca/courses/Su2003/HTST 47560.htm> (last visited Sept. 29, 2006) ("Borrowed, purchased, and/or ghost written papers are considered plagiarism A plagiarized paper will automatically be failed."). *See generally* Kibler, *supra* note 1, at 263 (emphasizing importance of discussing academic integrity with students and indicating that such discussions "may help students avoid unintentional violations resulting from ignorance or misunderstanding"); Melodie R. Phillips & Veronica Horton, *Cybercheating: Has Morality Evaporated in Business Education?*, 14 INTL. J. EDUC. MGMT. 150, 152 (2000) (encouraging faculty to incorporate information about academic dishonesty into their syllabi so that students will know professors are aware of cheating and plagiarism opportunities).

72. *E.g.*, Mary J. Frank, Letter to the Editor, *Teaching Academic Integrity*, CHRON. HIGHER EDUC., Nov. 24, 1995, at B5, available at <http://chronicle.com> (membership required) (stressing role of faculty in teaching college students importance of academic integrity); *see also* Moore, *supra* note 30, at A36 (noting need

In a strange way, then, term-paper mills forced colleges to reassess the educational process and to develop more careful assignments and assessment techniques.⁷³ This “service,” however, is not the equivalent of civil disobedience and certainly did not justify the companies’ violation of law and flagrant facilitation of plagiarism. But alas, the efforts of colleges and legislatures did not stop the mills; instead, the companies “kicked it up a notch,” and started using the Internet to hawk their wares.⁷⁴

B. *Going High-Tech*

Term-paper companies started migrating to the Internet in the late 1980s.⁷⁵ In some fundamental ways, the web versions of term-paper mills are identical to their non-web kindred.⁷⁶ For example, both pre-written or “file” papers and custom-written papers are available on the Internet.⁷⁷ Some sites offer only pre-written papers, some offer only custom-written papers, but many offer both. Not surprisingly, custom papers still cost more than pre-written papers, which sometimes can be obtained for free or by “trading” one paper for another.⁷⁸

to discuss plagiarism and academic integrity with foreign students during orientation to ensure that cultural differences are properly bridged).

73. For further discussion of changes produced in academic settings due to increasing use of purchased term-papers, see *supra* notes 64-72 and accompanying text.

74. For further discussion of movement of term-paper sellers to the Internet, see *infra* notes 75-80 and accompanying text.

75. See *Trs. of Boston Univ. v. ASM Comms., Inc.*, 33 F. Supp. 2d 66, 69-70 (D. Mass. 1998) (suing several companies that sold papers to students over the Internet); Margaret Fain & Peggy Bates, *Cheating 101: Paper Mills and You* (Mar. 10, 2003), <http://www.coastal.edu/library/presentations/papermil.html> (indicating that trend accelerated in mid-1990s).

76. See Mick O’Leary, *The Web Banishes Term-Paper Blues* (1999), available at <http://www.infotoday.com> (“Selling or swapping term papers goes a long way back. What the internet has done, as it has in so many other ways, is to throw open the gates and pick up the pace.”).

77. See Seth Stevenson, *Adventures in Cheating*, SLATE, Dec. 11, 2004, <http://slate.msn.com/?id=2059540> (describing author’s process of shopping at several online term-paper sites and then having papers graded by friends and relatives who teach at colleges and universities).

78. See, e.g., Paper Masters, <http://www.papermasters.com> (last visited Oct. 3, 2006) (announcing services at \$19.95 per page); Same Day Research, <http://www.samedayresearch.com/?p=custom&s=google&k=term+paper> (last visited Oct. 3, 2006) (declaring “[i]mpeccable custom research and writing at reasonable rates” and advertising 3 day service at \$16.95/page, 2 day service at \$21.95/page, 1 day service at \$26.95/page, 12 hour service at \$36.95/page, 6 hour service at \$46.95/page, and 3 hour service at \$66.95/page); Term Paper Relief, <http://www.termpaperrelief.com> (last visited Oct. 3, 2006) (advertising \$9.95 per page for “regular” customized papers); Thousands of Papers, <http://www.termpapers-on-file.com> (last visited Oct. 3, 2006) (promising \$19.95 per custom-written page and \$9.95 per page for “on file” papers).

Speed, the vast amount of information available, privacy and ease of purchasing are the major “advantages” of web-based term-paper companies:⁷⁹

Before the Web, students certainly plagiarized—but they had to plan ahead to do so. Fraternities and sororities often had files of term papers, and some high-tech term-paper firms could fax papers to students. Overall, however, plagiarism required forethought. Online term-paper sites changed all that. Overnight, students could order a term paper, print it out and have it ready for class in the morning—and still get a good night’s sleep. All they needed was a charge card and an Internet connection.⁸⁰

In other words, for students seeking pre-written papers, cheating is as easy as running a search, typing in a credit card number, downloading content, adding their name as author and printing the final product. And it takes only a little more time and a little more money to order a custom-written paper.⁸¹

Unlike the olden days, the cheater need not have contact with any other person. Accordingly, the perceived risks decrease. Instead of walking into a term-paper office, or calling a friend for help, a student can simply sit in his or her own dorm room, log on to a computer and download a completed paper.⁸²

Going high-tech also has resulted in some product differentiation within the market. In addition to the pre-written versus custom-written distinction, some sites are general and cover a wide variety of academic

79. See Elizabeth Guiliano, *Deterring Plagiarism in the Age of the Internet*, INQUIRY (2000), available at <http://www.vccaedu.org/inquiry/inquiry-spring2000/i-51-guiliano.html> (observing that “[s]tudents in earlier days needed to go out of their way to cheat, whereas now access can be gained from home computers,” and that “[f]or the student who has procrastinated, the Internet is a dream come true”); Lisa Renard, *Cut and Paste 101: Plagiarism and the Net*, 57 EDUC. LEADERSHIP 38, 38 (1999/2000) (“The major draws of Internet plagiarism are the ease with which students can simply cut and paste a paper from other sources and the mind-boggling array of information available and encouraging them to do so.”).

80. Lawrence M. Hinman, *How to Fight College Cheating*, WASH. POST, Sept. 3, 2004, at A19, available at <http://ethics.acusd.edu/LMH/op-ed/CollegeCheating/Index.html>.

81. See, e.g., Student Term Papers, <http://www.studentstermpaper.com/studentstermpaper/index.htm> (last visited Oct. 3, 2006) (offering between \$14.95 per page on “supersaver” and \$24.95 per page on “rush delivery”); TermPaperExample.com, <http://www.termpaperexample.com/faq.html> (last visited Oct. 3, 2006) (charging \$19.95 per page for typical seven-day service, but providing a custom paper in twelve hours for \$45.95 per page).

82. See, e.g., Karen Aman, *Internet Makes Cheating Easy*, UNIV. WIRE, May 10, 2006, available at UNIWIRE 01:46:48 (“According to Plagiarism.com, plagiarism has never been easier. The Internet enables a plagiarizer to find sources in seconds and quickly compose a term paper or other copy.”).

subjects, while others are limited to a single area.⁸³ An interesting site is EthicsPapers.com, which provides papers in the field of ethics and ethical theory.⁸⁴ How ironic. Other sites have expanded their services to offer help writing college admissions essays⁸⁵ and assistance with “sophisticated statistical analysis.”⁸⁶

Just as 1-800 numbers converted the term-paper preparation business from a local to a national one, the Internet has allowed term-paper companies to go global. Sites now boast that they sell papers to students around the world,⁸⁷ and some sites contain links that translate their sites into other languages.⁸⁸

83. For a discussion of the variety and number of term-paper sites, see *supra* note 8.

84. See EthicsPapers.com, <http://www.ethicspapers.com> (last visited Sept. 29, 2006) (promising to make it “easier for any student to complete a term paper on any theoretical topic with far less struggle and far greater understanding”).

85. E.g., ACI Writing Assistance Center, <http://www.aci-plus.com/> (last visited Oct. 3, 2006); Anti Essays, <http://www.antiessays.com> (last visited Sept. 28, 2006); see Kelly McCollum, *One Way to Get into College: Buy an Essay That Worked for Someone Else*, CHRON. HIGHER EDUC., Feb. 28, 1997, at A25, available at <http://chronicle.com> (membership required) (describing IvyEssays.com as “using the Internet to buy and sell compositions written by successful applicants to top colleges and professional schools”); *New Company to Sell \$10 Ticket to Ivy League*, HARV. CRIMSON, Dec. 11, 1996, available at <http://www.the.crimson.harvard.edu> (illustrating “increased availability” Internet offers for application essays even though “business of hawking application essays has been around for years”).

86. See, e.g., College Research Assistance, <http://www.research-assistance.com/> (last visited Sept. 30, 2006).

87. See, e.g., Sabrina Peric, *A Whole New Breed of Cheating*, THE DARTMOUTH, Feb. 28, 2001, available at <http://www.thedartmouth.com> (interviewing founder of School Sucks.com, who indicated that “he is currently expanding his collection to include papers in 15 languages in addition to the three languages—English, Russian, Hebrew—that are already available”); PapersHighway, <http://www.papershighway.com/faq.htm> (last visited Oct. 21, 2006) (explaining that “we have a lot of clients from Canada, Australia, UK, and far eastern regions”); ThePaperExperts.com, <http://www.thepaperexperts.com/faq.shtml> (last visited Oct. 1, 2006) (helping “tens of thousands of college students in the U.S. and around the world”). The following Q&A appears on Paper Geeks, <http://www.papergeeks.com/faq.html> (last visited Oct. 3, 2006):

Do I Have To Live In The United States? Nope! We geeks sell our papers all over the world—thanks to the Internet!

. . .

Can I Read These Reports In Languages Other Than English?

Of course! Bien sur! Mais Oui! We have geeky translation abilities [sic] in Spanish, French, Italian, German, or Portuguese. You’ll find a spot to make your selection on our papergeeks.com order form Please note that our translations are reasonable but far from perfect. To compensate, we send a backup of every translated paper in English as well.

Id.

88. See, e.g., Cópiale, <http://www.geocities.com/Athens/Acropolis/5757> (last visited Oct. 2, 2006) (providing option to translate Spanish-language site into different language); ThePaperExperts.com, <http://www.thepaperexperts.com/faq.shtml> (last visited Oct. 2, 2006) (containing links to Spanish and Chinese versions of site).

Term-paper web sites suck students in by empathizing with their busy lives at college—busy enough to date and work, but too busy to write papers: “As if a job and a social life are not enough to drive you insane while you try to pass college! Add to this the burden of term papers, which are sometimes designed to make you tear your hair out in frustration.”⁸⁹ They also play on students’ fears,⁹⁰ hope for good grades⁹¹ and senses of urgency and despair when having fallen behind during the semester.⁹² Some also appeal to the slackers on campus.⁹³

The sites attempt to lull students into a false sense of security by proclaiming that their papers are plagiarism-free and will not be recognized

89. Perfect Term Papers, <http://www.perfecttermpapers.com> (last visited Oct. 2, 2006); *see also* SchoolSucks.com, <http://www.schoolsucks.com> (last visited Oct. 2, 2006) (“Download your Workload”); Sparrow Papers, <http://www.sparrowpapers.com> (last visited Oct. 2, 2006) (advertising for clients to be “free as a bird”).

90. *See, e.g.*, Ivy Research Papers, <http://www.ivyresearchpapers.com> (last visited Oct. 3, 2006) (“Stop staring blankly at your computer screen. Stop wondering if you’re doing it right. Stop missing your deadline.”); Term Paper Hotline, <http://www.termpaperhotline.com/term-paper/glossary-op.html> (last visited Oct. 2, 2006) (“Don’t panic! Just rely on us!”); Term Paper Relief, <http://www.termpaperrelief.com> (last visited Oct. 3, 2006) (“Dad’s gonna take away my car if I fail again this term.”).

91. *See, e.g.*, Accepted Term Papers, <http://www.acceptedpapers.com/custom%20term%20papers.html> (last visited Oct. 2, 2006) (“We do not help students cheat, rather we help them get a winning edge over their classmates.”); Term Paper Relief, <http://www.termpaperrelief.com> (last visited Oct. 2, 2006) (promising to “provide A-grade term papers”); Term Paper Solutions, <http://www.termpapersolution.com> (last visited Oct. 2, 2006) (“Your A+ paper is only a few clicks away.”).

92. *See, e.g.*, EssayTown.com, <http://www.essaytown.com/faq.html#5> (last visited Oct. 21, 2006) (“With EssayTown.com, it’s never too late! We specialize in same-day service, and can handle virtually any deadline.”); Paper Experts, <http://www.abcpapers.com> (last visited Oct. 2, 2006) (“Don’t despair, you are at the right place, at the right time. Whether it is two in the afternoon or eleven at night, The Paper Experts can help you with any term paper with which you need help.”); Top-Term-Paper-Sites.com, <http://www.top-term-paper-sites.com> (last visited Oct. 2, 2006) (stating as “fact” that “[n]early 30% of the students fail the course for not turning their term papers on time”).

93. *See, e.g.*, 1001 Free Book Reports and Study Aids, <http://www.1001reports.com> (last visited Oct. 2, 2006) (“This is the ultimate slackers home page My view of what a student’s role in school should be is a little different than the view of most. I think that just because you didn’t read the book doesn’t mean you shouldn’t get an A on the book report or even the test.”); A Level Essays and Coursework, http://members.tripod.com/alevel_essays (last visited Oct. 2, 2006) (stating that “we offer free history and [E]nglish essays for the average, lazy student”); LazyStudent.com, <http://www.lazystudents.com/our-research-services-rock.html> (last visited Oct. 2, 2006):

If you’re like most students, you’ll probably agree that it’s hard to balance out your busy schedule when you’re drowning in a sea of homework, studying, and researching When you let Lazy Students step in as your personal research assistant, we’ll help take some of the burden off your shoulders. We’ll filter through a lot of materials, so you’ll have more time for YOU!

Id.

by plagiarism detection software.⁹⁴ One company touts that its papers “are free from plagiarism,” and tells students that it “back[s] up this guarantee by showing you how to find out if the research you purchase is plagiarized.”⁹⁵ Some sites demonstrate confidence in their product by providing links to plagiarism detection sites, such as turnitin.com.⁹⁶

Some sites that specialize in custom-written papers—which are more expensive, and thus more lucrative⁹⁷—attempt to scare students away from using free sites by “advising” them about the dangers of plagiarism:

While there are numerous reasons why you should try to avoid using free online paper databases, your main concern should be that of plagiarism. The staff of many high-schools, universities and colleges have begun using online anti-plagiarism databases to ensure that all work that is handed in is 100% original and does not match any of the papers in their database. While DueNow.com Inc. in no way condones plagiarism, the good news is that all of the papers that you will find on DueNow.com are under the legal copyright of our company, and, as such, are not available for the use of any other organization without our express written consent (including the anti-plagiarism databases). Free paper sites, on the other hand, usually accumulate their papers simply by browsing the internet and “lifting” them from other free sites. Not only is this act illegal in itself, but it also places those papers in the public domain (accessible by anyone) and does not protect the originality of that paper.⁹⁸

94. See, e.g., Perfect Term Papers, <http://www.perfecttermpapers.com> (last visited Oct. 2, 2006) (“All term papers, essays, book reports are custom-made, original and written for you.”); Same Day Research, <http://www.samedayresearch.com/?p=custom&s=google&k=term+paper> (last visited Oct. 2, 2006) (“Custom essays and custom research papers from Same Day Research are 100% authentic (written and researched from scratch)—guaranteed by the commercial plagiarism detection package used for quality control.”).

95. Paper Masters, <http://www.papermasters.com/plagiarism.htm> (last visited Oct. 2, 2006) (explaining how to “find plagiarism in a research paper”).

96. See, e.g., *id.*

97. For a discussion of pricing, see *supra* note 78 and accompanying text.

98. Duenow.com, <http://duenow.com/plagarism.php> (last visited Mar. 12, 2006); see also Top-Term-Papers.com, <http://www.top-term-paper-sites.com/> (last visited Mar. 12, 2006) (warning that 80% to 85% of all term papers sold online are plagiarized and that 3 out of 10 term paper bibliographies are fake or made up). Another company takes a more paternalistic tone:

Can I take your paper and submit it as my own?

Papers Highway is a company with high ethical standards. Plagiarism is an illegal practice and we strongly advise you not to submit our papers in your own name. We know for [sic] experience that students who use our papers as *models* get higher grades in their courses. Term Papers Highway does tutorial research and in no way advocates plagiarism.

Papers Highway, <http://www.papershighway.com/faq.htm> (last visited Mar. 12, 2006).

For students who might have heard that term-paper companies are illegal, some sites attempt to downplay legal questions with statements such as, "To the best of our knowledge, we are unaware of any legal authority that prohibits customers from purchasing papers from a research service. However, it is your responsibility to investigate the legalities in your city/state/province and country before purchasing research services from this Web site."⁹⁹ The sites conveniently omit information about statutes that prohibit their operation.¹⁰⁰

Sites with pre-written papers tend to compete with each other based on the number of papers in their database, how current those papers are and how much the papers cost.¹⁰¹ Sites that specialize in custom-written papers often denigrate the credibility of sites with pre-written papers and promote their own product based on quality.

Regarding the number of papers available, one site boasts that "more than 30,000 research papers are currently logged in our enormous, searchable database."¹⁰² Another advertises more than 50,000 papers.¹⁰³ Yet another claims to have "more than 60,000 new Research Papers."¹⁰⁴ One database purportedly contains more than 1,250,000 free papers.¹⁰⁵

A point of contention regarding the quality of papers is the authors' pedigree. One site warns, "Many of our competitors can only compete on price and hire students from Honduras or Pakistan enrolled in the English as a Second Language (ESL) programs. If you can afford to take chances with your important project then a cheap custom essay writing service might be a way out."¹⁰⁶ Another states, "With this service you get an Amer-

99. EssayTown.com, <http://www.essaytown.com/faq.html#18> (last visited Mar. 12, 2006); see also 123HelpMe.com, <http://www.123helpme.com/FAQ.ASP> (last visited Sept. 29, 2006) ("We do comply with all consumer protection laws and voluntary guidelines! No exceptions."); PaperWright.com, <http://www.paperwright.com/faq.htm#faq2> (last visited Mar. 12, 2006):

It is not illegal to purchase a custom written and researched paper from PaperWright.com and Wizdom Information Services. However, submitting a custom written paper as your own does constitute both fraud and plagiarism and can carry serious consequences. Submitting someone else's paper or ideas as your own is plagiarism. PaperWright.com and Wizdom Information Services and its parent company, Wizdom Information Services, does not condone this practice.

Id.

100. For a discussion of these statutes, see *infra* notes 137-256 and accompanying text.

101. For a discussion of pricing, see *supra* note 78 and accompanying text.

102. 1MillionPapers.com, <http://www.1millionpapers.com/about.html> (last visited Mar. 12, 2006).

103. SchoolSucks.com, <http://www.schoolsucks.com> (last visited Mar. 12, 2006).

104. Research Papers Online, <http://www.thetermpaper.com/?src=google&kwd=term+papers> (last visited Mar. 12, 2006).

105. MonsterPapers.com, <http://www.monsterpapers.com/> (last visited Mar. 12, 2006).

106. Same Day Research, <http://www.samedayresearch.com/?p=custom&s=google&k=term+paper> (last visited Feb. 17, 2006).

ican or Canadian writer writing your paper. We don't outsource our papers to anyone who is less qualified than yourself to write them."¹⁰⁷

In an attempt to establish a caste system among term-paper companies, sites that specialize in pre-written papers try to scare students away from databases chock full of pre-written papers. As one custom site cautions, "Custom [w]riting is all we do This means that your paper is never resold, never published to the internet and never added to a database We guarantee it!"¹⁰⁸

Within the custom-paper category, one basis for determining "quality" is who writes those custom-ordered papers.¹⁰⁹ One site touts its authors, or "researchers," as "[ranging] from attorneys to teachers who love their specialized fields and enjoy what they do."¹¹⁰ WritingLabEdge.com brags that "[n]o matter what your paper is about, our 200+ Harvard-educated tutors provide one-on-one tutoring 7 days a week, 365 days a year."¹¹¹ Another site, attempting to convey quality and skirt the statutes that outlaw term-paper writing but permit research assistance, states: "Custom-written term papers by PhD writers to help you write your own."¹¹² Yet another boasts that it has "a huge network of PhD writers, retired from well-known universities, with 25 years of experience in this field, who know exactly what gets a term paper an A grade."¹¹³

One of the more self-effacing sites states:

107. Express Papers, <http://www.expresspapers.com/> (last visited Mar. 12, 2006).

108. Paper Masters, <http://www.papermasters.com/> (last visited Mar. 12, 2006). Another site explains:

The cheaper your prices, more vulnerable the quality. The sites selling custom term papers for \$9 or even less cannot even imagine hiring a PhD Graduate to write a paper for you. They hire unprofessional, unskilled, foreign, low-paid, ESL amateurs who can't write a coherent sentence in the English language. But we do hire professional, American writer[s] [sic] with a high-level college degree in the necessary field of study and we have to pay them handsomely to write original term papers.

Students Term Paper, <http://www.studentstermpaper.com/studentstermpaper/index.htm> (last visited Sept. 29, 2006).

109. For a particularly shrill "industry warning" about who writes papers, see ThePaperExperts, <http://www.thepaperexperts.com/industrywarning.shtml> (last visited Mar. 12, 2006).

110. PerfectTermPapers.com, <http://www.perfecttermpapers.com/aboutus.html> (last visited Mar. 12, 2006).

111. WritingLabEdge.com, <http://www.writinglabedge.com> (last visited Mar. 12, 2006).

112. The Paper Experts, <http://www.abcpapers.com/> (last visited Mar. 12, 2006); *see also* Original Research Paper, <http://www.originalresearchpaper.com/originalresearchpaper/researchpaper/faqs.htm> (last visited Sept. 29, 2006) ("We only hire [writers] having Masters or above degrees. They have been writing Masters and Doctoral-level papers for more than 5 years.").

113. Term Paper Relief, http://www.termpaperrelief.com/home_learn.htm (last visited Mar. 20, 2006).

We have no social life. Let's be frank! All we do is *write* research papers! We *create* research papers! We *sell* research papers! . . . We're the biggest paper geeks on the internet!! -A group of knowledgeable, modest geniuses writing papers around the clock while everyone else has fun!!¹¹⁴

The most shocking claim appears on the Ivy Research Papers site:

We are a group of retired professors holding nothing less than PhDs in our respective fields. During the years we served as senior faculty members and research associates at various IVY LEAGUE UNIVERSITIES, we became well-aware of the pain and frustration that students endure during research paper writing. We know how they feel when their professors reject their research papers due to insufficient data, inadequate research, ineffective writing style, or incorrect formatting and compilation.¹¹⁵

On the other end of the quality spectrum are sites that seek donated papers. One site is "glad to accept and post any papers you send to us."¹¹⁶ Another site laments, "All papers located on this site are submitted by students so they're not all professional quality."¹¹⁷ SchoolSucks.com warns, "[W]e don't rate [the papers]—you could be downloading garbage."¹¹⁸

As successful companies that supposedly know the law—which in many states precludes them from selling papers to students who will use them for academic credit¹¹⁹—most sites contain disclaimers warning students that they should not actually submit the papers they order. These disclaimers, however, either appear in minuscule print at the very bottom of the front page, or are buried deep within the site. A typical disclaimer reads as follows:

114. Paper Geeks, <http://www.papergeeks.com> (last visited Mar. 12, 2006). The runner-up for most self-effacing sites is Urgent Research & Tempapers, <http://www.urgenttempapers.com> (last visited Mar. 12, 2006):

Having been the type of students who left work for the last moment our parents really found it hard to believe when we actually graduated with honors and found respectable jobs and they realize the irony when we tell them what we do for a living—write term papers for others. As they say the sins of the past . . .

Id.

115. Ivy Research Papers, <http://www.ivyresearchpapers.com> (last visited Mar. 12, 2006).

116. 123Student, <http://www.123student.com/donate.php> (last visited Mar. 12, 2006); *see also* Academic Library, <http://www.academiclibrary.com/> (last visited Mar. 12, 2006) ("Articles are donated and published from scholarly students attending junior high school, high school, and college.")

117. Essay Depot, <http://www.essaydepot.com> (last visited Mar. 12, 2006).

118. SchoolSucks.com, http://schoolsucks.com/public_html/index.php?name=Content&pid=7 (last visited Mar. 12, 2006).

119. For a discussion of various statutes aimed at prohibiting the sale of term papers to students, *see infra* notes 137-86 and accompanying text.

Our research papers are created to be used as models to assist you in the preparation of your own term paper. Neither 1MillionPapers.Com nor any website owned by The Paper Store Enterprises Inc., will EVER sell a research paper to ANY student giving us ANY reason to believe that (s)he will submit our work, either in whole or part, for academic credit at any institution in their own name. Plagiarism is a CRIME! IF YOU QUOTE FROM OUR WORK, YOU MUST CITE OUR PAPER AS ONE OF YOUR SOURCES. The Paper Store does not engage nor participate in any transactions for the purpose of assisting students in committing academic fraud. This service is NOT available to anyone who does not have a valid, ethical reason for seeking our tutorial assistance. The organization's rights to research, write, and globally-publish exemplary papers on the Internet are protected, Free Speech and shall continue unabated and uncensored.¹²⁰

The companies' lack of sincerity about these disclaimers is evident on the Paper Pimp home page. Under its motto, "We write papers so you don't have to," appears the warning, "DON'T CHEAT DAMMIT!"¹²¹ One site took the charade about not submitting papers to the extreme. Its FAQ features a question asking, "I want to cite an essay here, but there is no author listed on the essay. Can you tell me who the author is?" The company responds, "No. If the author wishes to remain anonymous, then you can simply cite the essay as written by 'anonymous.' This is perfectly legitimate, you'd be surprised by the number of published books written by anonymous authors."¹²²

As one author correctly observed, "The warnings and disclaimers are window dressing We can compare warnings and disclaimers at cheating sites with those at pornography sites that ask whether the user is 21 and request that underage users kindly leave the site."¹²³ The companies know very well how students are using the sites; as the co-founder of one company admitted, "I'm sure there's a ton of kids using it for plagiarism."¹²⁴ The disclaimers are not designed to warn students about right and wrong, but are "CYA" efforts by the companies to avoid prosecution under the applicable statutes.¹²⁵

120. 1MillionPapers.com, <http://www.1millionpapers.com/faq.html> (last visited Mar. 12, 2006).

121. Paper Pimp, <http://www.paperpimp.com/main.html> (last visited Mar. 12, 2006); *see also* Renard, *supra* note 79, at 39 (noting that some sites "feature a catchy motto that contradicts any disclaimer the site may offer").

122. Planet Papers, <http://www.planetpapers.com/faq.shtml> (last visited Mar. 12, 2006).

123. Renard, *supra* note 79, at 39.

124. Glasner, *supra* note 11 (quoting co-founder of Genius Papers, who started site when he was in eleventh grade).

125. *See* People v. Magee, 423 N.Y.S.2d 417, 420 (N.Y. 1979) ("Nor is [the term paper company] saved by the pious disavowals of plagiaristic intent which the

In other attempts to avoid statutory liability, Internet-based term-paper companies often attempt to characterize themselves as research services.¹²⁶ One site compares itself to the library: “Forget about spending hours on end searching for your topic at the library! Now, you can browse through literally over one million term papers written on all topics right from your computer.”¹²⁷ Another subtly states that “[o]nce you receive your model paper you will notice that it is *professionally written* and *full of ideas* you can use in writing your paper.”¹²⁸ A self-important sounding site brags, “Our exemplary term papers provide archetypal models rich with information, ideas, & up-to-date, quality research material you can cite in your own paper!”¹²⁹ Yet another adopts a hard-nosed tone:

IF I DO NOT LIKE YOUR REFERENCE MATERIAL, CAN I GET A REFUND?

No. There are no refunds or credits at all. There are no guarantees at all. You are just using the work as reference material. You cannot hand it in to your professor or school. You must use your own words and thoughts in writing your own report. The idea is that we are writing this paper for you, not for your professor.¹³⁰

This “advertising strategy” is undermined by stories like that of a University of Arizona senior who ordered a term paper from a web-based company; five minutes later, the company called urging him to reconsider his purchase because someone from his school had just ordered the same paper.¹³¹ Although this company might receive high marks in customer service, its actions demonstrate that at least some of these businesses realize students are submitting the papers for academic credit. The only reasonable explanation why a company would panic over the fact that two people

paper buyer ritualistically signs. This procedure is patently tongue-in-cheek, and executed with an obvious wink.”).

126. See, e.g., EssayBank, <http://www.essaybank.com> (last visited Mar. 12, 2006) (U.K.-based service “[c]ollat[es] thousands of essays in order to provide you with a valuable educational resource for referencing and research purposes”); Genius Papers, <http://www.geniuspapers.com> (last visited Mar. 20, 2006) (“With your one-time \$19.95 access fee, you will also receive a membership for the Genius Papers Academic Research Center. The Academic Research Center has every tool you need to aid you in putting together a perfect paper.”).

127. Term Paper Solution, <http://www.termpapersolution.com> (last visited Mar. 13, 2006).

128. Express Papers, <http://www.expresspapers.com> (last visited Mar. 13, 2006).

129. NoCheaters.com, <http://www.nocheaters.com> (last visited Mar. 13, 2006).

130. Non Plagiarized College Term Papers.com, <http://www.non-plagiarized-term-papers.com/FAQ.html> (last visited Mar. 13, 2006).

131. See Carolyn Kleiner et al., *The Great Term-Paper Buying Caper: How They Do It*, U.S. NEWS & WORLD REP., Nov. 22, 1999, at 63 (illustrating that Internet-based term-paper companies know students are using their papers for academic credit and not just for research purposes).

purchased the same item is that the company knows the paper will not be used simply for background research.

Some term-paper companies also try to take advantage of the tutoring¹³² or editing¹³³ exceptions in many of the statutes. One site, for example, contains testimonials from students who purportedly used the site not to purchase term papers, but to seek help with citation form and grammar:

In my first year in college English, my professor told the class to write a paper using APA style. Someone asked what does APA format mean and the professor said if you don't know this you should not be in this class. Well I did not know because I never wrote an APA report. I handed in my report and the professor immediately gave it back to me saying [that it] was not written using APA style. I sent this company my paper, and they corrected it to APA style. They also corrected the grammar. The professor took my report and from this point onward, I now know how to properly do a report using APA style.¹³⁴

Other sites prefer hardball tactics. It has been reported that one company "habitually overcharges customers' credit card accounts When customers complain, the owner threatens to report them to their school authorities for purchasing research materials from him."¹³⁵

Another interesting development is that some of these term-paper mills have spawned a related cottage industry—online plagiarism detection services used by professors to catch students who purchase papers from online term-paper mills. "PlagiServe and EduTie have connections to term paper sites like MightyStudents.com, Essaymill.com and EssayOnFile.com."¹³⁶ Ironically, these companies are profiting both from students who cheat and from schools who want to catch the cheaters.

132. See, e.g., The Doctor, <http://www.serve.com/doctor/resumes.html> (last visited Mar. 12, 2006) (advertising tutoring services).

133. See, e.g., EssayEdge.com, <http://www.essayedge.com> (last visited Mar. 12, 2006) (proclaiming to be "the world's premier application essay editing service"); Mad Papers, <http://www.snrinfo.com/madpapers/editing.php> (last visited Mar. 12, 2006) (providing "Professional Editing Service[s]").

134. Non Plagiarized College Term Papers.com, <http://www.non-plagiarized-termpapers.com/comments.html> (last visited Mar. 13, 2006).

135. ACI Net Guide to Term Papers, <http://members.aol.com/aciplus/netguide.htm> (last visited Mar. 13, 2006).

136. Sharon Stoerger, *Plagiarism, Term Paper Sites – Examples*, <http://www.webminer.com/plagiarism#sites> (last visited Sept. 29, 2006) (internal citations omitted) (noting that several term-paper sites have ties to plagiarism detection software companies); see also Jeffrey R. Young, *The Cat-and-Mouse Game of Plagiarism Detection*, CHRON. HIGHER EDUC., July 6, 2001, at A26, available at <http://chronicle.com/free/v47/i43/43a02601.htm> (discussing increased sales of plagiarism-detection software and fact that many colleges are now equipping all their professors with such tools).

III. LEGISLATIVE AND JUDICIAL EFFORTS TO STOP TERM-PAPER MILLS

A. *Legislative Action*

Since the proliferation of term-paper companies in the 1970s, legislators and educators have sought ways to prevent these companies from facilitating plagiarism and cheating. Seventeen states have enacted laws that prohibit a person from preparing, selling or distributing term papers, theses, dissertations and other written academic material for another person.¹³⁷ Only one state, Oklahoma, which does not have a statute, has determined that it is not “per se illegal” to sell academic material.¹³⁸ These “term-paper mill” laws, with titles such as “Unlawful sale of dissertations, theses and term papers”¹³⁹ and “Deceptive Preparation and Marketing of Academic Product,”¹⁴⁰ are designed to advance public policy by protecting academic integrity on college and university campuses.¹⁴¹

137. CAL. EDUC. CODE § 66400 (West 2006); COLO. REV. STAT. § 23-4-101 (2005); CONN. GEN. STAT. § 53-392b (2004); FLA. STAT. § 877.17 (2005); 110 ILL. COMP. STAT. 5/1 (2005); ME. REV. STAT. ANN. tit. 17-A, § 705 (2005); MD. CODE ANN., EDUC. § 26-201 (West 2006); MASS. GEN. LAWS ch. 271, § 50 (2005); NEV. REV. STAT. § 207.320 (2005); N.J. STAT. ANN. § 18A:2-3 (West 2006); N.Y. EDUC. LAW § 213-b (McKinney 2005); N.C. GEN. STAT. ANN. § 14-118.2 (West 2005); OR. REV. STAT. § 165.114 (2003); 18 PA. CONS. STAT. ANN. § 7324 (West 2005); TEX. PENAL CODE ANN. § 32.50 (Vernon 2005); VA. CODE ANN. § 18.2-505 (2006); WASH. REV. CODE § 28B.10.580 (2005).

138. 10 Op. Att’y Gen. Okla. 262 (1978), 1978 Okla. AG LEXIS 153, at *17 (Feb. 28, 1978). The state attorney general determined that it is not “per se illegal . . . for an individual, association, corporation, or other organization to advertise on State college and university campuses, solicit, and [sell] to students certain services of the type that accomplish[] assignments” for academic credit. *Id.* The sale of research and term papers, however, that students would then submit for academic credit as their own work may violate the laws of another state or may violate the federal criminal mail fraud statute. *Id.* at **17-18.

139. N.Y. EDUC. LAW § 213-b.

140. TEX. PENAL CODE ANN. § 32.50.

141. *See, e.g.*, 110 ILL. COMP. STAT. 5/1 § 1 (declaring that “assisting or promoting . . . plagiarism in institutions of higher education is declared to be against the public policy of this State”). The Washington State legislature issued an even stronger pronouncement about the importance of academic integrity:

The legislature finds that commercial operations selling term papers, theses, and dissertations encourages academic dishonesty, and in so doing impairs the public confidence in the credibility of institutions of higher education whether in this state or any other to function within their prime mission, that of providing a quality education to the citizens of this or any other state.

The legislature further finds that this problem, beyond the ability of these institutions to control effectively, is a matter of state concern, while at the same time recognizing the need for and the existence of legitimate research functions.

WASH. REV. CODE § 28B.10.580(1), (2).

Virtually all of the statutes prohibit persons from preparing, offering to prepare or distributing certain academic papers.¹⁴² Some also prohibit persons from attempting to prepare papers,¹⁴³ arranging for or assisting with the sale of academic papers¹⁴⁴ or advertising the availability of papers or paper-writing services.¹⁴⁵ Maine also criminalizes “possess[ion] with intent to sell or transfer,”¹⁴⁶ and Maryland prohibits persons from con-

142. Four state statutes also include “statements of preparation.” CAL. EDUC. CODE §§ 66400- 66401; COLO. REV. STAT. § 23-4-103; TEX. PENAL CODE ANN. § 32.50(b), (c); VA. CODE ANN. § 18.2-505. The Texas statute states:

A person commits an offense if, with intent to induce another person to enter into an agreement or obligation to obtain or have prepared an academic product, the person knowingly makes or disseminates a written or oral statement that the person will prepare or cause to be prepared an academic product to be sold for use in satisfying an academic requirement of a person other than the person who prepared the product.

TEX. PENAL CODE ANN. § 32.50(c).

143. *See* N.C. GEN. STAT. ANN. § 14-118.2(a) (West 2005). The statute states:

It shall be unlawful for any person, firm, corporation or association to assist any student, or advertise, offer or attempt to assist any student, in obtaining or in attempting to obtain, by fraudulent means, any academic credit, grade or test score, or any diploma, certificate or other instrument purporting to confer any literary, scientific, professional, technical or other degree in any course of study in any university, college, academy or other educational institution. The activity prohibited by this subsection includes, but is not limited to, preparing or advertising, offering, or attempting to prepare a term paper, thesis, or dissertation for another; impersonating or advertising, offering or attempting to impersonate another in taking or attempting to take an examination; and the giving or changing of a grade or test score or offering to give or change a grade or test score in exchange for an article of value or money.

Id.

144. *See* MASS. GEN. LAWS ch. 271, § 50 (2005). Massachusetts law states:

Whoever, alone or in concert with others, sells to another, or arranges for or assists in such sale for another, a theme, term paper, thesis or other paper or the written results of research, knowing or having reason to know that such theme, term paper, thesis or other paper or research results or substantial material therefrom will be submitted or used by some other person for academic credit and represented as the original work of such person at an educational institution in the commonwealth or elsewhere without proper attribution as to source, or whoever takes an examination for another at any educational institution in the commonwealth, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months or both.

Id.

145. *See* FLA. STAT. § 877.17(1) (2005) (“It shall be unlawful for any person or business to . . . advertise for sale any term paper . . .”); 110 ILL. COMP. STAT. 5/1-1 (“[T]he public interest requires that such preparation, advertising or selling be enjoined . . .”); N.C. GEN. STAT. ANN. § 14-118.2(a) (“It shall be unlawful for any person . . . to advertise, offer or attempt to assist any student, in obtaining or in attempting to obtain, by fraudulent means . . . any academic credit . . .”); TEX. PENAL CODE ANN. § 32.50(b) (“A person commits an offense if . . . the person prepares, sells, offers or advertises for sale . . . an academic product . . .”).

146. ME. REV. STAT. ANN. tit. 17-A, § 705(1)(B)(1) (2005).

ducting research for students.¹⁴⁷ Pennsylvania's statute goes one step further and prohibits a person from selling or offering to sell an academic paper to a person who in turn sells the paper or offers it for sale to a third person.¹⁴⁸

All seventeen statutes cover term papers, theses and dissertations to be submitted for academic credit.¹⁴⁹ Many also include essays¹⁵⁰ and reports,¹⁵¹ and some include a combination of pictorial, recorded and artistic assignments.¹⁵² Several use more inclusive terms, such as "academic paper,"¹⁵³ "academic product,"¹⁵⁴ "assignment,"¹⁵⁵ "manuscript,"¹⁵⁶ "written results of research,"¹⁵⁷ and "written material."¹⁵⁸

The statutes typically require that the person who engages in the prohibited conduct must either know or have a reason to know or believe that the purchaser will submit the work—or a substantial portion thereof—for academic credit.¹⁵⁹ Some use variations on this standard, such as "know-

147. See MD. CODE ANN., EDUC. § 26-201(b) (West 2006) ("A person may not . . . offer any assistance in the preparation, research, or writing, of an academic paper . . .").

148. See 18 PA. CONS. STAT. ANN. § 7324(d) (West 2005) ("No person shall sell . . . [a] term paper . . . or other written assignment to any person who sells or offers for sale any such . . . term paper . . ."). Presumably this portion of the statute is intended to discourage students from selling papers already submitted for credit and to discourage free-lance writers from working for the term-paper mills.

149. CAL. EDUC. CODE § 66400 (West 2006); COLO. REV. STAT. § 23-4-101 (2005); CONN. GEN. STAT. § 53-392b (2004); FLA. STAT. § 877.17; 110 ILL. COMP. STAT. 5/1; ME. REV. STAT. ANN. tit. 17-A, § 705; MD. CODE ANN., EDUC. § 26-201; MASS. GEN. LAWS ch. 271, § 50; NEV. REV. STAT. § 207.320 (2005); N.J. STAT. ANN. § 18A:2-3 (West 2006); N.Y. EDUC. LAW § 213-b (McKinney 2005); N.C. GEN. STAT. ANN. § 14-118.2; OR. REV. STAT. § 165.114 (2003); 18 PA. CONS. STAT. ANN. § 7324; TEX. PENAL CODE ANN. § 32.50; VA. CODE ANN. § 18.2-505 (2006); WASH. REV. CODE § 28B.10.580 (2005).

150. CONN. GEN. STAT. § 53-392b; FLA. STAT. § 877.17(1); 110 ILL. COMP. STAT. 5/1-1; ME. REV. STAT. ANN. tit. 17-A, § 705(1)(B)(1); MD. CODE ANN., EDUC. § 26-201(a); N.J. STAT. ANN. § 18A:2-3(a); N.Y. EDUC. LAW § 213-b(1); OR. REV. STAT. § 165.114(7)(a); 18 PA. CONS. STAT. ANN. § 7324(b)-(d); TEX. PENAL CODE ANN. § 32.50(a)(1).

151. CONN. GEN. STAT. § 53-392b; FLA. STAT. § 877.17(1); 110 ILL. COMP. STAT. 5/1-1; MD. CODE ANN., EDUC. § 26-201(a); N.J. STAT. ANN. § 18A:2-3(a); TEX. PENAL CODE ANN. § 32.50(a)(1).

152. CONN. GEN. STAT. § 53-392b; FLA. STAT. § 877.17; N.J. STAT. ANN. § 18A:2-3(a); OR. REV. STAT. § 165.114(7)(a); 18 PA. CONS. STAT. ANN. § 7324(a)(2); TEX. PENAL CODE ANN. § 32.50(a)(1).

153. 110 ILL. COMP. STAT. 5/1-1; MD. CODE ANN., EDUC. § 26-201(a).

154. TEX. PENAL CODE ANN. § 32.50(a)(1).

155. CONN. GEN. STAT. § 53-392b; FLA. STAT. § 877.17 (2005); N.J. STAT. ANN. § 18A:2-3(a); N.Y. EDUC. LAW § 213-b(1); OR. REV. STAT. § 165.114(7)(a); 18 PA. CONS. STAT. ANN. § 7324(a)(1).

156. ME. REV. STAT. ANN. tit. 17-A, § 705(1)(B)(1).

157. MASS. GEN. LAWS ch. 271, § 50 (2005).

158. CAL. EDUC. CODE § 66400 (West 2006); COLO. REV. STAT. § 23-4-103 (2005); VA. CODE ANN. § 18.2-505 (2006).

159. See CAL. EDUC. CODE § 66400 ("With the knowledge, or under the circumstances in which he should reasonably have known, that the term paper . . . is

ing” or “believing” that the buyer “probably” will submit the paper for academic credit.¹⁶⁰ Maryland’s statute covers only actual knowledge,¹⁶¹ and North Carolina’s statute does not include a knowledge requirement.¹⁶² Nevada’s knowledge standard is problematic; as written, it appears to address only the purchaser’s intent.¹⁶³

Many of the statutes concern only assignments that will be submitted to a college, university or other post-secondary institution.¹⁶⁴ Other statutes refer more broadly to assignments that are to be submitted to schools,¹⁶⁵ academies,¹⁶⁶ educational institutions¹⁶⁷ and institutions that

to be submitted.”); COLO. REV. STAT. § 23-4-103(1); FLA. STAT. § 877.17(1); N.J. STAT. ANN. § 18A:2-3(a); N.Y. EDUC. LAW § 213-b(1); OR. REV. STAT. § 165.114(1)-(2); 18 PA. CONS. STAT. ANN. § 7324(b)-(d); TEX. PENAL CODE ANN. § 32.50(b); VA. CODE ANN. § 18.2-505(a).

160. ME. REV. STAT. ANN. tit. 17-A, § 705(1)(B)(1).

161. See MD. CODE ANN., EDUC. § 26-201(b) (West 2006). Following a 1975 lawsuit that challenged the statute on First Amendment grounds, see *infra* notes 226-31 and accompanying text, the Maryland legislature amended the statute. The original version of the statute, which was approved in 1972, prohibited any “person, firm, association or corporation” from “sell[ing] or offer[ing] for sale to any person assistance in the preparation, research, or writing of a dissertation, thesis, term paper, essay, report or other written assignment for submission to an educational institution in fulfillment of the requirements for a degree, diploma, certificate or course of study.” Higher Education Act, ch. 474, sec. 1, § 70, 1972 Md. LAWS 1401-02 (codified at MD. ANN. CODE art. 77A, § 70 (1972)). It did not have a knowledge requirement. See *id.* The 1977 revision added a provision that the seller “know” that the “buyer intends to submit the academic paper substantially unchanged as the original work of a person other than the author to an educational institution in fulfillment of the requirements for a degree, diploma, certificate, or course of study.” MD. ANN. CODE art. 77A, § 70 (1972) (repealed 1978). The wording “or has reason to know” originally was included in a draft, but was stricken before the bill was passed. See *id.*

162. See N.C. GEN. STAT. § 14-118.2(a) (West 2005).

163. NEV. REV. STAT. § 207.320 (2005):

Any person who prepares for sale or sells any term paper, thesis, dissertation or similar writing *intending* such writing to be submitted to an academic institution as the work of any person not the author in fulfillment of a requirement for completion of a course of study, award of a degree or other academic credit is guilty of a misdemeanor.

Id. (emphasis added).

164. CAL. EDUC. CODE § 66400; COLO. REV. STAT. § 23-4-103; N.J. STAT. ANN. § 18A:2-3(b); VA. CODE ANN. § 18.2-505; WASH. REV. CODE § 28B.10.582(4) (2005); see also 110 ILL. COMP. STAT. 5/1-1 (2005) (“accredited institution of higher education”).

165. CONN. GEN. STAT. § 53-392a (2004); FLA. STAT. § 877.17(1) (2005); N.J. STAT. ANN. § 18A:2-3(a); N.Y. EDUC. LAW § 213-b(1) (McKinney 2005); 18 PA. CONS. STAT. ANN. § 7324(a)-(d) (West 2005).

166. CONN. GEN. STAT. § 53-392a; FLA. STAT. § 877.17(1); N.J. STAT. ANN. § 18A:2-3(a); N.Y. EDUC. LAW § 213-b(1); N.C. GEN. STAT. § 14-118.2(a); 18 PA. CONS. STAT. ANN. § 7324(a)-(d).

167. MD. CODE ANN., EDUC. § 26-201(b) (West 2006); MASS. GEN. LAWS ch. 271, § 50 (2005); N.J. STAT. ANN. § 18A:2-3(a); N.Y. EDUC. LAW § 213-b(1); N.C. GEN. STAT. § 14-118.2(a); see also NEV. REV. STAT. § 207.320 (encompassing any “writing to be submitted to an academic institution . . . for completion of a course of study, award of a degree or other academic credit”).

grant diplomas and certificates.¹⁶⁸

Eight states restrict the reach of the statutes to educational institutions within their own borders.¹⁶⁹ The Massachusetts statute specifically refers to out-of-state institutions,¹⁷⁰ and an amendment to the Washington statute indicates that its reach does not stop at the state's borders.¹⁷¹ The other statutes are silent about geographic reach.¹⁷²

In addition to three states that provide exceptions for copyrighted material,¹⁷³ several of the laws contain exceptions which provide that individuals, schools and organizations may provide the following services without violating the statute:¹⁷⁴

- tutoring;¹⁷⁵

168. ME. REV. STAT. ANN. tit. 17-A, § 705(1)(B)(1) (2005); *see also* MD. CODE ANN., EDUC. § 26-201(b) (“[I]n fulfilling the requirements for a degree, diploma, certificate, or course of study.”).

169. *See* CAL. EDUC. CODE § 66400; COLO. REV. STAT. § 23-4-103; CONN. GEN. STAT. § 53-392a; FLA. STAT. § 877.17(1); 110 ILL. COMP. STAT. 5/1-1; N.J. STAT. ANN. § 18A:2-3(d); 18 PA. CONS. STAT. ANN. § 7324(b)-(d); VA. CODE ANN. § 18.2-505.

170. *See* MASS. GEN. LAWS ch. 271, § 50 (“[A]n educational institution in the [C]ommonwealth or elsewhere . . .”).

171. *See* WASH. REV. CODE § 28B.10.580 (2005) (expanding earlier version that was limited to in-state educational institutions).

172. The original bill in Maryland limited the prohibition to papers submitted at an institution in Maryland. Higher Education Act, ch. 474, sec. 1, § 70, 1972 MD. LAWS 1401-02 (codified at MD. ANN. CODE art. 77A, § 70 (West 1972)). That language was stricken before the bill was passed in 1972. *Id.*

173. CONN. GEN. STAT. § 53-392c; N.Y. EDUC. LAW § 213-b(3) (McKinney 2005); 18 PA. CONS. STAT. ANN. § 7324(f). All three exceptions are similarly worded. Connecticut's exception reads:

Nothing contained in this chapter 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 the owner of such copyright shall have given his authorization or approval for such sale and provided 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 an educational institution within the state of Connecticut in fulfillment of the requirements for a degree, diploma, certificate or course of study.

CONN. GEN. STAT. § 53-392c.

174. These exceptions often indicate that the exception applies only when the offered service or product “is not intended for submission directly or in substantial part as an assignment under the student's name to such educational institution in fulfillment of the requirements for a degree, diploma, certificate or course of study” *See, e.g.*, CONN. GEN. STAT. § 53-392b (excluding receiving “tutorial assistance, research material, information or other assistance” that will not be submitted directly or wholly for academic credit).

175. CONN. GEN. STAT. § 53-392b; FLA. STAT. § 877.17(2) (2005); N.J. STAT. ANN. § 18A:2-3(b) (West 2006); OR. REV. STAT. § 165.114(3)(a) (2003); *see* MD. CODE ANN., EDUC. § 26-201(c)(2) (West 2006) (“This section does not prevent . . . [a]ny person from offering tutorial assistance that does not include the preparation, research, or writing of an academic paper intended for submission to an educational institution in fulfilling the requirements for a degree, diploma, certificate, or course of study.”).

- teaching courses in research and writing;¹⁷⁶
- providing research assistance;¹⁷⁷
- typing, assembling or transcribing papers or materials;¹⁷⁸
- copying or reproducing papers or materials;¹⁷⁹ and
- editing papers.¹⁸⁰

In addition, North Carolina's statute contains the following unique exception regarding students: "[T]he provisions of this section shall not apply to the acts of one student in assisting another student as herein defined if the former is duly registered in an educational institution in North Carolina and is subject to the disciplinary authority thereof."¹⁸¹

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.¹⁸² In Illinois and New Jersey, higher education

176. See FLA. STAT. § 877.17(2); N.Y. EDUC. LAW § 213-b(2); 18 PA. CONS. STAT. ANN. § 7324(e); TEX. PENAL CODE ANN. § 32.50(d)-(e) (Vernon 2005); see also MD. CODE ANN., EDUC. § 26-201(c)(1) ("This section does not prevent . . . [a]n educational institution, or any of its faculty or staff, from offering courses, instruction, counseling, or tutoring in research or writing as part of a program authorized by the institution.").

177. See CONN. GEN. STAT. § 53-392b; FLA. STAT. § 877.17(2); N.J. STAT. ANN. § 18A:2-3(b); see also WASH. REV. CODE § 28B.10.580 (2005) ("[P]rovided, [t]hat such legislation shall not affect legitimate and proper research activities . . ."). But see MD. CODE ANN., EDUC. § 26-201(b) (providing that "[a] person may not sell or offer for sale any assistance in the preparation, *research*, or writing of an academic paper") (emphasis added).

178. See CONN. GEN. STAT. § 53-392b(b); FLA. STAT. § 877.17(2); MD. CODE ANN., EDUC. § 26-201(c)(3); N.J. STAT. ANN. § 18A:2-3(b); N.Y. EDUC. LAW § 213-b(2); OR. REV. STAT. § 165.114(3)(b); 18 PA. CONS. STAT. ANN. § 7324(e); TEX. PENAL CODE ANN. § 32.50(f).

179. See CONN. GEN. STAT. § 53-392b(b) ("Nothing in this section shall prevent . . . any person from rendering a fee for services which include the . . . reproduction or editing of a manuscript[.]"); FLA. STAT. § 877.17(2) ("No person shall be prevented by this section from . . . reproduction, or editing of a manuscript[.]"); MD. CODE ANN., EDUC. § 26-201(c)(3) ("This section does not prevent . . . [a]ny person from . . . reproducing a manuscript for a fee."); N.J. STAT. ANN. § 18A:2-3(b) ("Nor shall any person be prevented by this act from . . . [the] reproduction or editing of a manuscript[.]"); N.Y. EDUC. LAW § 213-b(2) ("Nor shall any person be prevented by the provisions of this manuscript from . . . [the] reproduction of a manuscript."); OR. REV. STAT. § 165.114(3)(b) ("Nothing in this section prohibits . . . reproducing or editing an assignment[.]"); 18 PA. CONS. STAT. ANN. § 7324(e) ("Nor shall any person be prevented by the provisions of this section from . . . [the] reproduction of a manuscript."); TEX. PENAL CODE ANN. § 32.50(f) ("It is a defense to prosecution . . . that the actor's conduct consisted solely of . . . reproducing a manuscript for a fee[.]").

180. CONN. GEN. STAT. § 53-392b(b); FLA. STAT. § 877.17(2); N.J. STAT. ANN. § 18A:2-3(b); TEX. PENAL CODE ANN. § 32.50(f); see also OR. REV. STAT. § 165.114(3)(b) ("[I]f this service is not intended to make substantive changes in the assignment.").

181. N.C. GEN. STAT. ANN. § 14-118.2(b) (West 2005).

182. See, e.g., N.Y. EDUC. LAW § 213-b(6) (stating attorney general and local district attorney have concurrent jurisdiction); OR. REV. STAT. § 165.114(6) (stating attorney general or district attorney have jurisdiction); 18 PA. CONS. STAT. ANN.

institutions can request that the State seek an injunction; in a few states, a college or university also may seek an injunction.¹⁸³

Violation of the twelve criminal statutes constitutes a misdemeanor.¹⁸⁴ Oregon and Washington currently have the steepest monetary penalties; in those states, a second violation of the statute can carry a penalty of up to \$10,000.¹⁸⁵ The only states whose laws provide for imprison-

§ 7324(h) (attorney general); *cf.* *Trs. of Boston Univ. v. ASM Commc'ns, Inc.* 33 F. Supp. 2d 66, 75-76 (D. Mass. 1998) (holding that Massachusetts statute did not provide university with private state law cause of action against term-paper mill operators because state legislature had considered but rejected private cause of action under statute).

183. In Illinois—which has a civil statute—the attorney general or state's attorney may seek a civil injunction “[u]pon written petition by the chief executive officer of the campus of any accredited institution of higher education in this State” 110 ILL. COMP. STAT. 5/1-1 (2005). In New Jersey,

Actions for injunction under the provisions of this act may be brought in the name of the people of this State upon their own complaint or upon the complaint of any person, or any public or private college, university, academy, school or other educational institution which is chartered, incorporated, licensed, registered or supervised by this State, acting for the interest of itself, its students, or the general public.

N.J. STAT. ANN. § 18A:2-3(d). Injunctions are also a possible remedy in California, Colorado, Connecticut, New York, Oregon, Pennsylvania, Virginia and Washington. *See* CAL. EDUC. CODE § 66402 (West 2006) (“Any court of competent jurisdiction is hereby authorized to grant . . . an injunction.”); COLO. REV. STAT. § 23-4-104 (2005) (“Actions for injunctions . . . may be brought[.]”); CONN. GEN. STAT. § 53-392e (“Any court of competent jurisdiction may grant . . . an injunction.”); N.Y. EDUC. LAW § 213-b(7) (“[A]n injunction may be issued[.]”); OR. REV. STAT. § 165.114(6) (“[A] court of competent jurisdiction may grant . . . an injunction.”); 18 PA. CONS. STAT. ANN. § 7324(h) (“[T]he Attorney General . . . [has] jurisdiction to issue an injunction[.]”); VA. CODE ANN. § 18.2-507 (2006) (“[A] college, university or other institution of higher learning in the Commonwealth shall duly file a bill in chancery court of any county.”); WASH. REV. CODE § 28B.10.584(4) (2005) (“Any court of competent jurisdiction is hereby authorized to grant . . . an injunction.”). In addition, the laws in California, Colorado, Connecticut, Oregon and Washington allow courts to “grant such further relief as is necessary to enforce the provisions of this section.” CAL. EDUC. CODE § 66402; COLO. REV. STAT. § 23-4-104(1); CONN. GEN. STAT. § 53-392e; OR. REV. STAT. § 165.114(6); WASH. REV. CODE § 28B.10.582(5).

184. *See* CONN. GEN. STAT. § 53-392e (“Class B misdemeanor”); FLA. STAT. § 877.17(3) (“[M]isdemeanor of the second degree”); ME. REV. STAT. ANN. tit. 17-A, § 705(2) (2005) (“Class E crime”); MD. CODE ANN., EDUC. § 26-201(d) (“misdemeanor”); MASS. GEN. LAWS ch. 271, § 50 (2005) (“[S]hall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months, or both.”); NEV. REV. STAT. § 207.320 (2005) (“misdemeanor”); N.Y. EDUC. LAW § 213-b(5) (“A violation . . . shall constitute a class B misdemeanor.”); N.C. GEN. STAT. ANN. § 14-118.2(b) (“Class 2 misdemeanor”); OR. REV. STAT. § 165.114(4) (Class A violation”); 18 PA. CONS. STAT. ANN. § 7324(h) (“misdemeanor of the third degree”); TEX. PENAL CODE ANN. § 32.50(g) (“Class C misdemeanor”); VA. CODE ANN. § 18.2-508 (“[M]isdemeanor and shall be punished by a fine not to exceed \$1,000.”).

185. *See* OR. REV. STAT. § 165.114(5) (“[A]ny subsequent violation of this section . . . [is] subject to a fine of not more than \$10,000.”); WASH. REV. CODE § 28B.10.584(5) (“Any person violating [these provisions] shall be subject to civil penalties of not more than one thousand dollars for each violation”).

ment are Maryland and Massachusetts, where conviction can result in a jail sentence of up to six months.¹⁸⁶

B. *Judicial Action*

These legislative mandates have had little practical effect: little enforcement or other litigation against term-paper companies has occurred in the past three decades.

The first lawsuit against term-paper companies actually pre-dates the statutes. In 1972, a group of Boston universities sued five companies.¹⁸⁷ The suit, led by Boston University, “resulted in an injunction that prohibited term-paper companies from operating in Massachusetts.”¹⁸⁸ The next year, the Massachusetts legislature passed a statute outlawing term-paper companies.¹⁸⁹

In addition to the Massachusetts action, the early 1970s saw actions against term-paper companies in California,¹⁹⁰ Connecticut,¹⁹¹ Louisiana,¹⁹² Michigan,¹⁹³ New York,¹⁹⁴ Ohio¹⁹⁵ and Wisconsin.¹⁹⁶ In North

186. See MD. CODE ANN., EDUC. § 26-201(d) (“subject to . . . imprisonment not exceeding 6 months”); MASS. GEN. LAWS ch. 271, § 50 (“[subject to] a fine . . . or by imprisonment for not more than six months”).

187. See *Trs. of Boston Univ. v. Champion Research Corp. et al*, Equity No. 96114 (order filed Oct. 26, 1972); Dahl, *supra* note 39, at 1 (explaining that term-paper companies first surfaced at Harvard in spring of 1972, after student papers were stolen from professor’s office).

188. See *United States v. Int’l Term Papers, Inc.*, 351 F. Supp. 76, 79 (D. Mass. 1972) (recounting that “the Suffolk Superior Court has enjoined these defendants . . . from selling their products to students pending further order of that court”), *vacated*, 477 F.2d 1277 (1st Cir. 1973).

189. MASS. GEN. LAWS ch. 271, § 50 (approved Oct. 4, 1973).

190. See *Trexler & Kent*, *supra* note 19, at 4 (indicating term-paper “factories” were first established in fall 1970).

191. See *Term Paper Companies and the Constitution*, *supra* note 18, at 1279 n.16 (discussing term paper case in Connecticut). The Author had access to correspondence and court papers through the Institute of Government at the University of North Carolina. *Id.* at 1275. It is, therefore, a critical source regarding the early lawsuits against term-paper companies. Unfortunately, the Institute no longer has these sources available. Telephone interview with Alex Hall, Univ. N.C. Inst. Govt. (Apr. 2005).

192. See *Term Paper Companies and the Constitution*, *supra* note 18, at 1290 n.47 (indicating that court held that Louisiana Fair Trades and Practices Act did not apply to suit against term-paper company).

193. See *id.* at 1281 n.18 (stating cases “against incorporated term companies” have been brought “in Connecticut, Michigan, and New York”).

194. See *id.*

195. See *id.* at 1279-80 n.16 (discussing case in Ohio where defendant destroyed business documents containing student purchasers).

196. See *id.* at 1294 (explaining that in administrative proceeding before Wisconsin Department of Agriculture, “the sale of term papers [was declared] ‘an unlawful activity’ in violation of Wisconsin’s ‘Little FTC Act’”) (footnote omitted). “[A]n injunction was issued forbidding the respondent from advertising, preparing, or selling term papers.” *Id.* at 1295 (footnote omitted).

Carolina, the Durham County solicitor obtained a search warrant to obtain the business records of two local companies.¹⁹⁷

The earliest published case, *In re Minuteman Research, Inc.*,¹⁹⁸ concerned a term-paper company's motion to quash a subpoena *duces tecum* issued by the state attorney general.¹⁹⁹ The attorney general obtained the subpoena after receiving complaints about students purchasing term papers from the company and about stolen term papers traced to the company.²⁰⁰ The court upheld the subpoenas,²⁰¹ but the final disposition was not published.

In *State v. Saksniit*,²⁰² the state attorney general initiated an action to dissolve the term-paper corporation and to enjoin individual defendants from preparing and selling term papers to students.²⁰³ The case was built on New York Education Law § 224, which prohibits any person from "attempt[ing] to obtain" an academic credential "by fraudulent means," and also prohibits any person from aiding or abetting another in committing this type of fraud.²⁰⁴ The court determined that a person who purchases a term paper and submits it for credit violates the statute.²⁰⁵ Thus, a company that aids in the fraudulent activity by selling term papers also violates the statute.²⁰⁶

In *Saksniit*, the corporation advertised its services on various college campuses.²⁰⁷ Although the advertisements stated, "This material is in-

197. *See id.* at 1283 n.22 (noting that although solicitor received records, solicitor did not intend to disclose names of student purchasers).

198. 329 N.Y.S.2d 969 (N.Y. 1972). This case predated the New York term-paper mill statute and was based on New York Executive Law § 63(12). *Id.* at 970.

199. *See id.* at 971 (demonstrating good faith of investigation). The New York court explained:

The investigation is based, at least in part, on a complaint received from a college instructor to whom a student confessed [that the student had obtained] a custom made term paper from [the term-paper company], a report from an investigator who posed as a student and thereby obtained the services of [the company], and from a student who traced to [the company] his own original term paper, which had been stolen.

Id.

200. *See id.* at 970 (noting basis for investigation of term paper company).

201. *See id.* at 971-72 (noting that subpoenas were not overbroad and denying motion to quash).

202. 332 N.Y.S.2d 343 (N.Y. 1972). This case also predated the New York term-paper mill statute and was based on New York Executive Law § 63(12), Business Corporations Law § 1101, and Education Law § 224(2)-(3). *Id.* at 344, 346.

203. *See id.* at 344 (stating basis of action brought by attorney general).

204. *See id.* at 346 (discussing sections of Education Law § 224 (2) and (3)).

205. *See id.* (concluding that person who submits "ghost-written" term-paper is "attempt[ing] to obtain his diploma or degree by 'fraudulent means'").

206. *See id.* ("And if defendants sell [term-papers] to students, with reason to believe that the students intend to submit them as the students' own work, then defendants are aiding and abetting the students to attempt to obtain their diplomas or degrees by 'fraudulent means.'").

207. *See id.* at 345 (describing how students are "attracted either through advertising in college newspapers, or by 'fliers' given to passersby at college cam-

tended to be used for research and reference purposes only,” and signs in the office stated, “We don’t condone plagiarism,” the attorney general discovered that many customer-students had submitted the company’s product for academic credit.²⁰⁸ Most damning from the court’s perspective was the company’s order form, which asked for the student’s school, course and instructor; asked how long the paper should be; sought a detailed description of the assignment; and requested textbooks and other references that could be consulted when preparing the paper.²⁰⁹ “These 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. And these instructions . . . also show that defendants recognize the student’s avowed purpose to palm off defendants’ term paper as his own.”²¹⁰ The court also determined that the company’s products were not “outlines” or “reference guides,” but were “fully written term papers.”²¹¹

The court understood how term-paper mills undermine the learning process,²¹² and proclaimed: “The business defendants are conducting is morally wrong. It subverts the learning process and encourages intellec-

uses”). The complaint alleged “[t]hat in response to . . . advertising at least 965 students from over 100 different colleges purchased papers from defendants resulting in sales approximating \$35,416 between approximately November 1, 1971 and January 31, 1972.” *Term Paper Companies and the Constitution*, *supra* note 18, at 1283 n.23 (quoting Complaint of State of N.Y. at 4, *State v. Saksniit*, 332 N.Y.S.2d 343 (N.Y. 1972)). Papers had been purchased by high school students, undergraduate students and graduate students. *See id.* (citing *Aff. of Stephen Mindell* at 5, *State v. Saksniit*, 332 N.Y.S.2d 343 (N.Y. 1972)).

208. *See Saksniit*, 332 N.Y.S.2d at 345-46 (revealing that although students were aware that advertisement and signs prohibited submission for credit, students testified to submission of purchased papers as their own work).

209. *See id.* at 346-48 (outlining instructions in order forms and providing examples of student instructions).

210. *Id.* at 347-48. A former employee of the companies testified that “defendants’ purpose in requesting the students to list their school, course and instructor on the order form, is to enable the student to ‘use the paper verbatim’ without fear that someone else in the same course will submit an identical paper to the same instructor.” *Id.*

211. *See id.* at 348 (concluding that defendants’ term-papers were not outlines or reference guides, but “written term papers” that enabled student to “append his name and submit it”).

The custom made papers, prepared according to the ‘detailed description,’ are typed on plain white paper, without any indication of their source or authorship. All a student has to do with the custom made paper is append his name and submit it. Any doubt that defendants know the students buy their [term-papers] in order to submit them as the student’s own scholastic achievement, is dispelled by the agreement defendants exact from their writers, to submit ‘work sufficient to be accepted in a Graduate Program at an accredited university.’

Id. The court also found that the companies’ warning, “‘We don’t guarantee grades,’ only accentuates their awareness that some students could be relying on defendants’ [term-papers] for their grades.” *Id.*

212. *See id.* at 349 (“Doing a student’s work for him not only deprives him of the valuable disciplines of the learning process, but tends to destroy his moral fibre

tual dishonesty and cheating. It is directly opposed to the declared public policy of our State.”²¹³ Therefore, the court dissolved the corporate defendant and issued a preliminary injunction that prohibited the individual defendants “from carrying on, conducting or transacting business as sellers of essays, theses, termpapers or other school assignments.”²¹⁴

Seven years later, it was *deja vu* all over again. In *People v. Magee*,²¹⁵ the state attorney general sought to “shut down” a commercial term-paper company.²¹⁶ An earlier order had preliminarily enjoined the defendant “from peddling prepared texts to be palmed off upon unsuspecting faculty as student completed work on the college campuses of this state.”²¹⁷ Opposing the attorney general’s motion for summary judgment, the company argued that its papers were entitled to First Amendment protection, like an encyclopedia or bibliography.²¹⁸ The court rejected this argument as “plainly specious,” determined that the papers “are plainly designed to deceive and would have no other utility in the world of scholarship,”²¹⁹ and issued a permanent injunction.²²⁰

In the sole published federal action against a term-paper company, the United States and the United States Postal Service sought an injunction against Boston-based International Term Papers, Inc. under the civil mail fraud statute.²²¹ The government alleged that the defendants were involved “in a scheme of receiving money through the mail from students at educational institutions in exchange for term papers sold to the students, with knowledge that the students submit the papers for academic

by lending credence to the all too prevalent notion that anything, including a college degree, can be bought for a price.”).

213. *Id.* at 350.

214. *Id.* at 350–51.

215. 423 N.Y.S.2d 417 (N.Y. 1979).

216. *See id.* at 419 (noting action brought to “shut down” activities of defendant “which consist[ed] of selling on a large commercial basis written materials designed and tailored for student cheating in the course of preparing college and graduate level academic assignments”).

217. *Id.*

218. *See id.* (stating opposition to summary judgment on First Amendment rights and warnings posted were “sufficient to raise an issue of fact as to his good faith”). The following warning appeared on the company’s catalogue of papers:

Our Company operates as a publisher and distributor of educational source material. It is not, and never has been, a writer of term papers or other academic work. The material we provide is intended to provide the reader with background and source material on a given topic, and not as a substitute for the reader’s own original research and writing. We do not support or condone plagiarism or academic fraud of any nature.

Id. at 419 n.1.

219. *Id.* at 419 (“Carefully tailored for submission as undergraduate work and keyed to the assignments in specific undergraduate and graduate courses, [the papers] were sold for that express purpose by defendant and his agents.”).

220. *See id.* at 420.

221. *See United States v. Int’l Term Papers, Inc.*, 351 F. Supp. 76, 77 (D. Mass. 1972), *judgment vacated*, 477 F.2d 1277 (1st Cir. 1973) (providing basis of action).

credit to the institutions under false representations that the term papers are the work product of the students."²²² Although the district court denounced the defendant's business,²²³ it found that the civil mail fraud statute did not apply, and dismissed the case.²²⁴ On appeal, the United States Court of Appeals for the First Circuit held that the statute did apply, vacated the district court's judgment and remanded for further proceedings.²²⁵ The final disposition was not published.

The only case to strike down a term-paper statute was issued by the Baltimore County Circuit Court in 1975.²²⁶ This unpublished case arose when an individual was convicted of selling a term-paper to an undercover police officer posing as a student.²²⁷ When the defendant was arrested, the police confiscated more than 800 term-papers.²²⁸ The defendant claimed he did not know that the purchased term-paper would be submitted for academic purposes.²²⁹ Although the judge indicated that "the state might preserve the integrity of Maryland schools by prosecuting 'persons who seek to aid in the fraudulent submission' of research papers," he ultimately determined that the statute violated the defendant's First Amendment free speech rights.²³⁰ Specifically, the judge ruled that the statute was overly broad because it applied to individuals who might not know that his customers intended to submit the purchased papers as their own work for academic credit.²³¹ In 1977, the Maryland General Assembly revised the statute to pertain only to those who have actual knowledge that the paper will be submitted for academic credit.²³²

222. *Id.* (footnote omitted).

223. *Id.* at 79. The court stated:

The business of selling term papers and the like is indeed a shabby business, and does a disservice to the students who support the business. Student cheating and plagiarizing is nothing new; and perhaps it is simply a sign of the times that these once more or less clandestine activities are now being aided and abetted by competitive commercial enterprises openly operating in the market place. These are deplorable developments, their eroding effect on our educational system is a matter of grave concern, and they should not be tolerated.

Id.

224. *Id.* at 80 (stating holding of case that "the civil remedy under section 3005 is not appropriate . . . and, the order requested is denied and the petition dismissed").

225. *See* *United States v. Int'l Term Papers, Inc.*, 477 F.2d 1277, 1280 (1st Cir. 1973) (vacating judgment and remanding case for further proceedings).

226. *See* Edward R. Fiske, *Institute Runs Tests on Educational Aids*, N.Y. TIMES, Aug. 13, 1975, at 20 (describing case that found "Maryland law banning the sale of college term papers . . . unconstitutional").

227. *Id.* (reciting facts of case).

228. *See id.*

229. *See id.* ("During the trial, Mr. McNulty's lawyer contended that he did not know that the term paper was to be submitted for academic credit.").

230. *See id.*

231. *See id.* (discussing basis for holding law unconstitutional).

232. *See supra* note 161 and accompanying text (outlining revisions to Maryland's statute).

The most recent published case filed by a university against a term-paper company is *Trustees of Boston University v. ASM Communications, Inc.*²³³ Boston University, which had a long history of battling term-paper mills,²³⁴ sued eight term-paper companies under RICO, the state term-paper statute,²³⁵ and other state laws and theories.²³⁶ Concerned about the harm these companies were wreaking at BU and other universities, the administration organized a sting operation. From June through October 1997, BU hired a law student to purchase a term paper from each of the eight named defendants.²³⁷ The student made it clear to each company that she intended to submit the paper for academic credit.²³⁸ The court dismissed the RICO claim based on inadequate pleadings.²³⁹ It dismissed the action under the state term-paper statute on grounds that the statute did not provide for a private remedy; thus, the University did not have standing to sue.²⁴⁰

Other states and universities also have sued term-paper companies, although published opinions are not available. For example, in 1990, the California Attorney General's office and the California State University System sued Research Assistance, Inc. to enjoin it from selling academic papers to California students.²⁴¹ Additionally, a similar suit was filed by

233. 33 F. Supp. 2d 66 (D. Mass. 1998).

234. See *supra* notes 187-89 and accompanying text. In addition to the 1972 action, in 1981, "BU obtained permanent injunctions in Massachusetts Superior Court against various term paper companies." *Trs. of Boston Univ.*, 33 F. Supp. 2d at 71. In these actions,

the court prohibited the defendants from selling term papers with the knowledge or reason to know that there was 'a reasonable likelihood' that the papers would be 'submitted or used, directly or indirectly, by a student as his own work for credit in satisfaction of a course requirement at a college or university.

Id. (citing unpublished 1981 decisions).

235. The Massachusetts statute is reprinted in Appendix 1, *infra*.

236. See *Trs. of Boston Univ.*, 33 F. Supp. 2d at 69 (discussing alleged violations of state and federal laws).

237. See *id.* at 71 (describing "sting operation to investigate the nature and extent of online term paper promotion and sales").

238. See *id.* Boston University's complaint is available at 1997 WL 33635480.

239. See *Trs. of Boston Univ.*, 33 F. Supp. 2d at 74 (concluding "BU has failed to allege that a culpable person was employed by or associated with a RICO enterprise").

240. See *id.* at 75 (finding no private right of action under state term paper statute). The other state claims also were dismissed. *Id.* at 76-78; see also Julianne Basinger & Kelly McCollum, *Boston U. Sues Companies for Selling Term Papers over the Internet*, CHRON. HIGHER EDUC., Oct. 31, 1997, at A34-35, available at <http://chronicle.com> (providing analysis on reasoning behind lawsuit and facts leading to filing); Lisa Guernsey, *Judge Dismisses Boston U.'s Suit Against On-line Term-Paper Companies*, CHRON. HIGHER EDUC., Dec. 18, 1998, at A23, available at <http://chronicle.com> (discussing and providing analysis of holding by federal court).

241. See *Term-Paper Company Sued by State and Colleges*, CHRON. HIGHER EDUC., July 4, 1990, at A3.

the Los Angeles County District Attorney's office and Pepperdine University.²⁴²

Law-enforcement officials, colleges and universities have also taken steps short of filing suit. In the late 1980s, a United States Attorney General "arranged a binding consent agreement between a term-paper mill and New Jersey educators whereby the companies were allowed to operate freely if they agreed not to operate on campus, agreed to stamp each page of each paper with a disclaimer, and, under certain conditions, to report names of students who used their services."²⁴³ In 1997, Texas passed its term-paper mill statute.²⁴⁴ Shortly thereafter, administrators at South Plains College sent an e-mail warning to about forty term-paper web sites demanding they cease and desist or risk prosecution.²⁴⁵ In 1999, Carleton University suspended e-mail messages containing the address of an online term-paper service.²⁴⁶

The most recent lawsuit in this area was filed by a graduate student against three term-paper web sites.²⁴⁷ The student, Blue Macellari, alleged that, without her permission, the sites sold a paper she wrote as an undergraduate.²⁴⁸ After writing the paper for a class project, she allegedly

242. *Id.*

243. Kathleen M. Capano, Student Article, *Stopping Students from Cheating: Halting the Activities of Term-Paper Mills and Enforcing Disciplinary Sanctions Against Students Who Purchase Term Papers*, 18 J.C. & U.L. 277, 292-93 (1991) (footnotes omitted).

244. See 1997 Tex. Gen. Laws p. no. 730 (effective Sept. 1, 1997) (prohibiting "offenses involving the preparation, sale, or distribution of certain academic materials for profit"); codified at TEX. PENAL CODE ANN. § 32.50 (Vernon 1997) (same).

245. See *Distributors of Term Papers over the Internet Are Warned*, CHRON. HIGHER EDUC., Aug. 15, 1997, available at <http://www.chronicle.com/che-data/articles.dir/art-43.dir/issue-49.dir/49a01902.htm> (notifying term-paper web sites of Texas law prohibiting plagiarism); see also Clay D. Rooks, *www.2cheat.com* (Apr. 1998), <http://web.archive.org/web/20041010174526/leahi.kcc.hawaii.edu/org/tcon98/paper/rooks.html>:

Another student who runs his own site complained self-righteously that he had received a formal warning on his site from a 'Net Nazi' informing him that to traffic in term papers in Texas is now illegal and subject to a fine of \$500 per violation. The student's printed response was one of outrage, cursing, and an in-your-face attitude of 'how dare you.'

Id.

246. See Dave Rogers, *Term Paper Dealer Cut Off: Plagiarism Fears Prompt Carleton to Filter out Supplier's E-mail*, OTTAWA CITIZEN, Mar. 7, 2001, at D3.

247. See Jeffrey R. Young, *Student Sues Term-Paper Web Sites for Selling One of Her Papers*, CHRON. HIGHER EDUC., Sept. 9, 2005, available at <http://www.chronicle.com/weekly/v52/i03/03a03302.htm> (adding that "case could be . . . first of its kind").

248. See Blue Macellari's Complaint for Copyright Infringement, False Designation of Origin, False Advertising, Consumer Fraud and Deception, Defamation, False Light Invasion of Privacy, and Unjust Enrichment, Case No. 05-4161-JPG ¶¶ 17-18 (S.D. Ill. filed Aug. 31, 2005) (copy on file with Author) (alleging that Macellari found manuscript on multiple web sites). An interesting aside is that Ms. Macellari's attorneys represented her on a pro bono basis. See Press Release, Mc-

registered the copyright and posted the paper on her personal web site, but did not submit it to any online term-paper company.²⁴⁹ Several years later, an acquaintance ran her name through Google and found her paper on two term-paper web sites; Ms. Macellari later found the paper on a third web site.²⁵⁰ Although many of the essays available on these sites do not name the author, her name did appear on the posted paper.²⁵¹ The suit, which was filed in the United States District Court for the Middle District of Illinois, sought damages for a wide variety of claims, including copyright infringement, false designation of origin, false advertising, consumer fraud and deception, defamation, false light invasion of privacy and unjust enrichment.²⁵²

In her pleading, Ms. Macellari explained that, as an undergraduate student at Mount Holyoke and as a graduate student in a dual-degree program offered by Johns Hopkins University and Duke University, she was obligated to follow the schools' honor codes, which prohibited plagiarism, cheating and having knowledge of a violation without reporting it.²⁵³ Because at least two of the web sites at issue required users to submit one of their own papers before using other papers on the site, Ms. Macellari asserted that the companies made it appear that she was a customer of these services and that she obtained essays from these sites and submitted them at Mount Holyoke, Johns Hopkins or Duke.²⁵⁴ She also alleged that the companies' actions made it appear that she condoned plagiarism and the companies' practice of selling papers to students.²⁵⁵ Moreover, Ms. Macellari stated that the companies' conduct "impute[d] plagiarism-related conduct" to her, "which is tantamount to acts of moral turpitude, and/or the statements ascribe[d] conduct, characteristics, and/or conditions" to her that would affect her reputation and opportunities in the community and with future employers, especially academic institutions.²⁵⁶ Following an October 2005 motion to dismiss the complaint, the parties reached a confidential settlement in January 2006.²⁵⁷

Dermott, Will & Emery, *McDermott Announces Resolution of Term Paper Case* (Jan. 12, 2006), http://www.mwe.com/index.cfm/fuseaction/media.prde_tail/object_id/da47e9c2-5712-4d50-aff3-1cd270c8f674.cfm (announcing that pro bono case terminated with "successful resolution").

249. See Complaint, *supra* note 248, ¶¶ 15, 29–30, 36 (alleging that Macellari posted manuscript on personal website, owned and registered copyright, and never assigned copyright to term paper web sites).

250. See *id.* ¶¶ 17–18 (alleging Macellari found manuscript on multiple web sites).

251. See *id.* ¶ 27 (alleging that Macellari's name listed on manuscript on web sites).

252. See *id.*

253. See *id.* ¶ 37.

254. See *id.* ¶¶ 41–42.

255. See *id.* ¶ 42.

256. See *id.* ¶ 43.

257. See Andrea L. Foster, *Student Who Sued Operator of Term-Paper Sites Settles Her Case out of Court*, CHRON. HIGHER EDUC., Jan. 20, 2006, at A41, available at <http://>

IV. WHY LEGAL ENFORCEMENT HAS FAILED

Many factors have contributed to the dearth of enforcement actions under the term-paper mill statutes. First, state law enforcement officials have more significant crimes to investigate and prosecute. In this age of high crime rates and tight budgets, pursuing term-paper companies does not appear to be high on their list of priorities.²⁵⁸ Moreover, many people (inaccurately) consider facilitated plagiarism to be a victimless crime not worthy of public expenditures.²⁵⁹

A related problem is that few of the statutes create a private cause of action; schools often have a greater drive to redress facilitated plagiarism, and some schools, such as Boston University,²⁶⁰ appear eager to pursue term-paper companies, but are not permitted to do so under most of the statutes. On the other hand, with limited budgets and other significant problems to tackle, it is not likely that many schools would spend scarce resources to litigate regularly against term-paper companies.

Term-paper entrepreneurs are savvy, and they know how to adapt. For example, many companies began to label themselves as “research services” after the first statutes were enacted that carved out exceptions for companies that assisted with research.²⁶¹ Consequently, it is a challenge to catch them violating the strict letter of the law.

In addition, with the advent of web-based services, it is often difficult to determine where the company is based and who owns it.²⁶² It is also extremely easy for these ventures to shut down and reincarnate under a new name and domain. If a site feels pressured, it can simply disappear.

Another challenge is the sheer number of term-paper sites.²⁶³ If one, two, or a dozen are stopped, then they will be replaced in short order. A

/www.chronicle.com/weekly/v52/i20/20a04102.htm (noting that case settled and terms were not disclosed); *see also* Natalie Gott, *Agreement Reached in Term Paper Case*, BOSTON GLOBE, Jan. 11, 2006, available at http://www.boston.com/news/education/higher/articles/2006/01/11/agreement_reached_in_term_paper_case/ (adding that though terms were not disclosed, “Macellari was satisfied” with outcome).

258. *See* Kathy Walt, *A Crime to Cheat: Senate OKs Bill that Punishes Term Paper Factories*, HOUSTON CHRON., May 18, 1997, at A35, available at http://www.chron.com/CDA/archives/archive.mpl?id=1997_1413402 (primary sponsor of Texas term-paper statute “conceded . . . that prosecutors likely would not aggressively pursue violators”).

259. *See, e.g.*, Mick O’Leary, *The Web Banishes Term-Paper Blues*, INFO. TODAY, Mar. 1999, at 14 (“Like drugs and prostitution, term-paper selling is a crime in which all parties participate willingly.”).

260. *See supra* notes 187-88, 221-25, 233-40 and accompanying text (detailing lawsuits brought by Boston University).

261. *See supra* notes 53-60 and accompanying text (providing examples of companies that relabeled themselves to avoid statutory language).

262. *See supra* notes 75-136 and accompanying text (noting popularity of term-paper web sites, due in part to privacy and anonymity).

263. *See supra* note 8 and accompanying text (noting high quantity of returns for internet search of “term paper”).

scholar on Internet law from Harvard recently analogized the online term-paper situation to efforts to control illegal sharing of music and video files.²⁶⁴ Record companies started having success only after filing lawsuits, en masse, against individuals.²⁶⁵ Because the most likely plaintiffs in cases against term-paper companies are universities and students, it is not likely that concerted litigation at this level could or would be launched.

A more recent obstacle is that, even if we could rid the world of term-paper sites, students now have many other *free* ways to obtain papers. Specifically, many individuals—including scholars—post completed papers on web sites. They do so for many legitimate reasons, such as promoting their abilities, providing access to new publications before the printed copy is available or providing examples of good writing. Therefore, even without term-paper mills, any student with a computer and Internet connection can find a useable paper in the surf.

A more practical problem is that plagiarism can be difficult to detect. Although teachers have access to the same databases as students,²⁶⁶ finding the “original” paper can be like finding a needle in a haystack, especially if the professor has dozens of papers to grade.²⁶⁷ In addition, this approach requires teachers to assume that every student has plagiarized.²⁶⁸ And custom-written papers can be even harder to

264. See Doug Lederman, *New Tack Against Term Paper Providers* (Sept. 2, 2005), <http://www.insidehighered.com/layout/set/print/news/2005/09/02/papers> (interviewing John Palfrey, Executive Director of Berkman Center for Internet & Society at Harvard Law School, and noting difficulty facing lawyers who are challenging term-paper companies).

265. See *id.* (adding that “when [record companies] began filing the lawsuits . . . they really had an impact”).

266. See, e.g., Kelly McCollum, *Term-Paper Web Site Has Professors Worried About Plagiarism*, CHRON. HIGHER EDUC., Aug. 2, 1996, available at <http://chronicle.com/che-data/articles.dir/art-42.dir/issue-47.dir/47a02801.htm> (paraphrasing owner of Internet site who described his term-paper site as “checks-and-balances system” for coping with plagiarism because “[s]tudents have open access to the archive, but so do professors”); see also David Plotz, *New Frontier in Cheating*, ROLLING STONE, Oct. 14, 1999, at 107 (warning students that “[a]nything found once can be found again”).

267. See Marie Groark et al., *Term Paper Mills, Anti-Plagiarism Tools, and Academic Integrity*, EDUCAUSE REV. 40, 43 (2001), available at <http://www.educause.edu/ir/library/pdf/erm0153.pdf> (noting that “once an instructor suspects plagiarism, it can be a laborious process proving that plagiarism has actually taken place”); see also Richard Muti, *Making the Grade: Students Plagiarizing Best Term Papers Money Can Buy*, RECORD (Bergen County, N.J.), Jan. 6, 2002, at O1 (“I worked the Internet until 3 a.m. and tracked down four papers as outright plagiarism, lifted verbatim without attribution.”).

268. See, e.g., Grace Lee, *Plagiarism 101* (Apr. 28, 2004), <http://journalism.nyu.edu/pubzone/ReadMe/print.php%3Fid=441.html> (discussing growing use of turnitin.com, plagiarism-detection software, by university faculty nationwide). Students, however, usually stay one step ahead of teachers. For example, students who learned that professors also surf the web looking for plagiarism have turned to Microsoft Word’s “AutoSummarize” feature, which takes a document and highlights key points. See Brigid Schulte, *Cheatin’, Writin’ & ‘Rithmetic: How to Succeed in School Without Really Trying*, WASH. POST, Sept. 15, 2002, at W16, available

trace, since they typically do not appear online, at least not immediately.²⁶⁹

Some view the situation regarding term-paper mills, plagiarism and facilitated plagiarism as hopeless: “[I]n the end, it’s a losing battle. The whole point of the Internet is to share information. To get the benefits of online technology, universities have to cope with the costs. The only real solution to cyberplagiarism, then, is old-fashioned vigilance.”²⁷⁰ Given the ever-increasing number of Internet sites that offer term-paper writing services, this concern is understandable. Protecting academic integrity, however, is crucial to our educational system, and to society in general. Accordingly, educators should not capitulate, but instead should step back, regroup and employ a new strategy.

V. FOUNDATION FOR A NEW SOLUTION

To date, legal efforts to control term-paper mills have largely failed. That does not mean, however, that future legal efforts should stop. Instead, it means that legal action should not be viewed as the magic cure. As an alternative, universities should begin to view the issues of academic dishonesty, such as plagiarism and facilitated plagiarism, the same as other campus-related public-health challenges, such as high-risk alcohol and other drug use.

With regard to those challenges, the most successful strategies have been based on the environmental management model.²⁷¹ Universities that use this model promote “multiple prevention strategies that affect the campus environment as a whole and can, thereby, have a large-scale impact on the entire campus community.”²⁷² “Environmental management means moving beyond general awareness and other education programs to identify and change those factors in the physical, social, legal, and economic environment that promote or abet” the specific problem.²⁷³ Envi-

at ProQuest, Doc. ID 177757771 (discussing Microsoft Word’s “AutoSummarize” feature and commenting on technological gap between teachers and students).

269. See Steinberg, *supra* note 34 (“How can legislators, professors, or administrators rightfully tell if a submitted piece of academic work was personally written or professionally subcontracted?”).

270. Hickman, *supra* note 36, at 15.

271. See William DeJong et al., *Environmental Management: A Comprehensive Strategy for Reducing Alcohol and Other Drug Use on College Campuses*, Higher Educ. Ctr. for Alcohol & Other Drug Prevention (1998), <http://www.edc.org/hec/pubs/enviromgmt.pdf> (providing example of environmental management approach to reducing alcohol and drug use on college campuses). “The environmental management approach is intellectually grounded in the field of public health, which emphasizes the broader physical, social, cultural, and institutional forces that contribute to problems of human health.” *Id.* at 6.

272. Higher Educ. Ctr. for Alcohol & Other Drug Prevention, *Environmental Management: A Comprehensive Strategy for Reducing Alcohol and Other Drug Use on College Campuses*, <http://www.edc.org/hec/framework/> (last visited Oct. 21, 2006) [hereinafter *Environmental Management*].

273. DeJong et al., *supra* note 271, at Preface.

ronmental management recognizes that many factors influence health-related behavior; these factors include individual factors, group factors, institutional factors, community factors and public policy.²⁷⁴

In the alcohol context, science has demonstrated that students' decisions to drink are influenced by

- campus social norms and expectancies;
- campus policies and procedures;
- availability of alcohol and other drugs;
- enforcement of regulations and laws; [and]
- availability of alcohol-free social and recreational options.²⁷⁵

Similarly, in the context of academic dishonesty, students are influenced by a variety of factors, including their own beliefs about academic honesty and how honesty impacts the value of a degree, peer pressure, campus academic norms and expectations, campus policies regarding academic integrity, professors' attitudes and expectations, the availability of sources that promote academic dishonesty, such as online term-paper mills and whether schools and the government enforce codes and laws related to academic dishonesty.

In the context of alcohol and other drug prevention, colleges and universities have learned that it literally does take a village to make a difference; everyone on campus has to perceive that they play a role in prevention. The best programs are campus-wide efforts that involve faculty, a wide variety of staff, students, alumni, parents and others.²⁷⁶ These programs are multi-pronged, environmental and often include

- general awareness and other educational programs;
- awareness weeks and peer-education programs;
- "curriculum infusion," in which professors incorporate alcohol-and-drug-related lessons into their courses;
- social norms campaigns, which, among other things, seek to provide more accurate information about actual levels of alcohol use on campus;
- harm-reduction programs, such as safe-ride programs;
- alcohol-free events;
- social and recreational options during the late night and early morning hours when the alcohol culture typically thrives;

274. *See id.* at 12 (noting factors that influence health-related behavior).

275. *Environmental Management*, *supra* note 272.

276. *See* DeJong et al., *supra* note 271, at Preface (discussing range of participants needed to ensure success); *see also Environmental Management: An Approach to Alcohol and Drug Prevention, Prevention Updates*, Higher Educ. Ctr. for Alcohol & Other Drug Prevention, Newton, Mass., July 2002, available at <http://www.edc.org/hec/pubs/prev-updates/em101.pdf> (identifying "keys to success" in implementing environmental management strategies as "comprehensive efforts," "strong presidential leadership," "faculty involvement," "staff involvement," "student involvement," "needs assessment and strategic planning," "resources," "evaluation," and "patience and persistence").

- scheduling Friday morning classes and encouraging faculty to give quizzes and set assignment deadlines on Thursdays and Fridays;
- programs to identify and refer to intervention services students who have problems with alcohol and drug use;
- collaborative on-campus teams that share information, recommend new solutions and evaluate the effectiveness of various programs;
- campus-community coalitions that help to change the environment off campuses; for example, some coalitions have worked with tavern owners to enforce existing laws and to encourage the owners not to hold events, such as low-price promotions, that encourage high-risk drinking; and
- efforts to tighten state-wide alcohol regulations and to change alcohol laws.²⁷⁷

Applying the environmental management model to academic dishonesty on campus will take time and effort, but has the potential for success. To adopt this model, a college would need to define and understand the problem of academic dishonesty, identify contributing factors, institute measures that break the chain of events that relate to the problem and use science-based evaluation techniques to examine whether the programs and efforts implemented helped to improve academic honesty on campus.²⁷⁸ Colleges also must be willing to devote human and financial resources to the issue and be willing to take a long-term view of challenges related to academic dishonesty, as change will not occur overnight.

For a university willing to embrace this model, steps in this process would include the following:

- Developing a scientifically valid and reliable instrument to help determine the types and extent of academic dishonesty issues on campus, and the factors that contribute to academic dishonesty. This instrument would be akin to the Core survey in the alcohol and drug prevention context.²⁷⁹ Professor Donald McCabe at Rutgers University-Newark has developed an instrument that might serve as the basis for a more widely available survey.²⁸⁰

277. See DeJong et al., *supra* note 271, at 1–5, 12 and accompanying text (discussing common aspects of prevention programs).

278. See Linda Langford, Powerpoint Presentation, *Student Privacy: A Scientific Approach to Policy and Program Development* slide 7 (Post-Conf. Seminar, 27th Annual Nat'l Conf. on L. & Higher Educ., Clearwater Beach, Fla., Feb. 22, 2006) (copy on file with Author).

279. S. Ill. Univ. Carbondale, Core Institute, <http://www.siu.edu/~coreinst/> (last visited Oct. 20, 2006) ("Core Institute is the leading research, assessment and development organization serving alcohol and drug prevention programs across the nation.").

280. See, e.g., *supra* notes 1-4 and accompanying text (describing selection of Professor McCabe's work).

- Articulating the desired outcomes,²⁸¹ such as reducing the number of papers submitted that contain inappropriate use of others' work, reducing inappropriate collaboration on assignments, increasing students' awareness of rules and regulations regarding academic dishonesty, or increasing students' understanding of why doing one's own work is important to long-term career success.
- Analyzing the problem of academic dishonesty by reviewing the existing scholarly literature, including the scientific literature, and by reviewing local conditions and problems.²⁸²
- Creating a collaborative team of faculty, administrators, students, alumni and possibly parents and members of the community to *strategically* study, make recommendations and evaluate programs concerning academic dishonesty.²⁸³ The programs must be multiple, coordinated and sustained.²⁸⁴ The programs also must be designed to effectuate change. Instead of asking what should be done, such as conduct a plagiarism workshop, the team should ask what should be changed; for example, the attitude that material found on the Internet is simply "public domain" and thus not subject to regular attribution and citation rules, or the belief that certain assignments have no educational value or benefit.²⁸⁵
- Implementing various programs and efforts designed to create the desired outcomes.²⁸⁶
- Developing evaluation techniques to measure the effectiveness of various programs and efforts.²⁸⁷

Specific measures employed will necessarily vary from campus to campus depending on the extent of the problem and the desired outcomes. Nevertheless, programs and efforts should be designed to span the range of contributing factors (from individual to public policy),²⁸⁸ and might include the following programs, some of which have proven successful in the alcohol and other drug prevention field:

- Examining various environmental strategies that can impact the level of academic honesty, or dishonesty, on campus, such as ad-

281. See Langford, *supra* note 278, at slide 21.

282. See *id.* at slide 15.

283. See Darby Dickerson & Peter F. Lake, *A Blueprint for Collaborative Risk-Management Teams*, Campus Activities Programming (forthcoming Apr. 2006) (providing additional information on collaborative teams in risk-management context).

284. See Langford, *supra* note 278, at slide 15.

285. See *id.* at slide 19.

286. See *id.* at slide 28.

287. See *id.*

288. See *infra* notes 289-91 and accompanying text (discussing factors to be considered).

missions procedures, faculty advisor duties, academic requirements and the level of alcohol use on campus.²⁸⁹

- Developing a protocol for presidential leadership on the issue of academic honesty. This protocol could be modeled on the “Be Vocal, Be Visible, Be Visionary” protocol developed by the President’s Leadership Group through the Higher Education Center for Alcohol and Other Drug Prevention.²⁹⁰
- Developing, with faculty, key staff and students, techniques to educate students about the importance of life-long learning and the long-term consequences of academic dishonesty, even when that dishonesty is not caught.
- Educating faculty about current and emerging types of academic dishonesty, and encouraging faculty members to collaborate and design assignments that cannot easily be purchased or lifted wholesale from web sites, or other sources.
- Infusing lessons about academic dishonesty, including lessons about the inappropriate use of others’ work—which would encompass plagiarism and purchasing assignments from term-paper mills—into the curriculum.
- Investigating the use of “anti-plagiarism” software, such as Turnitin.²⁹¹
- Using honor and conduct codes to help educate students about the importance of academic honesty.
- Working with advisors in areas where academic honesty has seemed to be a more persistent issue, such as in the Greek community and inathletic departments.
- Working with the state attorney general to prosecute the most serious offenders of the term-paper mill statutes.
- Working with primary and secondary schools, parents and key government officials to help reinforce the message that academic honesty is an important issue to society at large because it impacts the workforce and our nation’s future competitiveness.
- Working with all campus constituencies to develop methods to turn back the tide of student consumerism insofar as students have come to view college as more of an obstacle to overcome than an opportunity to be cherished.

289. See DeJong et al., *supra* note 271, at 15 (delineating strategies for “Campus Task Force”).

290. *Be Vocal, Be Visible, Be Visionary: Recommendations for College and University Presidents on Alcohol and Other Drug Prevention*, Higher Educ. Ctr. for Alcohol & Other Drug Prevention (1997), <http://www.edc.org/hec/pubs/plgvisionary.htm> (outlining “Proposals for Effective Prevention”).

291. See Turnitin, <http://www.turnitin.com/static/index.html> (last visited Oct. 20, 2006) (providing software for plagiarism prevention, peer review and other education-related activities).

- Each suggested step, taken in isolation, is not new. However, no one step will solve the issue of term-paper mills, or the larger issue of academic dishonesty on college campuses. What is new is the call to pull all of the steps together into a comprehensive strategy based on the public-health-based environmental management model. Like alcohol and drug use, academic dishonesty is a serious issue in higher education. Therefore, we cannot throw up our hands when one program or technique, when taken in isolation, seems to fail. Instead, we must continue to think, research, experiment, gather and share information and results and debate.

VI. CONCLUSION

Academic dishonesty, including the related problems of plagiarism and facilitated plagiarism, is a serious problem in American higher education. One symptom of this problem is the continued growth of term-paper mills that allow students to obtain complete papers from the Internet without research, analysis or writing. Although several states have enacted legislation prohibiting these companies from engaging in activities such as selling papers to students for use in academic courses, these laws have not halted the companies' popularity or profitability. In addition, while some states, universities and more recently a student, have pursued legal action against term-paper mill companies, these suits have done little to thwart the companies' conduct or to dissuade students from using their services.

Going forward, legislative and judicial action should not be abandoned. Colleges must recognize, however, that legal action, in isolation, will not stop term-paper mills and will not curb the larger issue of academic dishonesty. Instead, colleges should consider adopting, for academic dishonesty issues, the environmental management model that has proven successful in addressing public-health challenges, such as alcohol and other drug prevention on college campuses. Under this model, schools should take a comprehensive, coordinated, science-based approach to tackling matters of academic dishonesty. Steps under this paradigm include problem identification, outcome identification, research, collaborative problem-solving, program implementation and evaluation. This Article presents the foundation for a possible new solution to academic dishonesty issues. My hope is that the Article will help generate a continued dialogue on this topic of importance to higher education and the general public.