



# Legalize text recycling

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## Key points

- Text recycling is the reuse of material from an author's own prior work in a new document.
- While the ethical aspects of text recycling have received considerable attention, the legal aspects have been largely ignored or inaccurately portrayed.
- Copyright laws and publisher contracts are difficult to interpret and highly variable, making it difficult for authors or editors to know when text recycling in research writing is legal or illegal.
- We argue that publishers should revise their author contracts to make text recycling explicitly legal as long as authors follow ethics-based guidelines.

Lovers of poetry would disdain a poet who reused stanzas from one of their previously published poems in a new one. Movie lovers would be stunned if their favourite filmmaker reused the car chase scene from their previous thriller in its sequel. But most of us would have no qualms about a university committee chair or head of a government research lab copying and pasting some paragraphs from last year's annual report into this year's report as long as that particular content was still accurate. The central questions about *text recycling*, then, are not whether it is inherently right or wrong, but when it is acceptable or unacceptable, and—the topic of this essay—when it is legal.

If we imagine a spectrum of written genres—with artistic works such as poems at one end and purely informational documents such as software user manuals at the other—the scientific article would sit somewhere in the middle. As an intellectually driven document, the article must offer something original and valuable to the field to be worthy of publication. But scientific papers are not works of art; while some can be pleasing to read and occasionally even elegant, research papers are principally a means of advancing knowledge in the field. Unlike the poet or filmmaker, scientists often have legitimate need to repeat some material from their prior works in their new ones. If a new study uses some of the same methods or is based on the same

theoretical model, or addresses the same practical problem, the author will undoubtedly need to repeat some of that information for readers of their new paper.

Text recycling has been the subject of considerable debate over the past two decades (see e.g., Scanlon, 2007; Bretag & Mahmud, 2009; Bonnell et al., 2012; Harriman & Patel, 2014; Moskovitz, 2020), driven in large part by the digitization of written communication and subsequent rise of plagiarism detection software. To date, discourse on the acceptability of text recycling has focused on the ethical aspects. While differences remain regarding the boundaries of ethically appropriate practice, there is growing consensus that some uses of text recycling are acceptable (see, e.g., Kharasch et al., 2021).

The legal aspects of text recycling, however, have been largely ignored or inaccurately represented. This is not surprising, given the technical challenges of interpreting copyright laws and publishing contracts; but, as we explain below, the resulting confusion makes the task of scientific writing less effective and efficient. We argue here that when text recycling is ethical and professionally appropriate, it should also be clearly legal—and that the best way to accomplish this is for publishers of science to make simple alterations to their publishing contracts that allow for text recycling within reasonable bounds.

## LEGAL COMPLEXITIES

The Text Recycling Research Project (TRRP) has been studying text recycling in scientific writing for over 5 years. Much of our work has focused on the considerable ethical and practical complexities of text recycling in scientific writing. A key step was developing a taxonomy of text recycling in order to clarify the different ethical and legal concerns—from the clearly acceptable reuse of material from one's conference poster in a subsequent article, to the context-dependent adaptation of a published conference paper into a journal article, to the clearly unacceptable practice of disguising a published article and publishing it as a new one (Moskovitz, 2021a). Here, we address the legal aspects of what has been the most contentious context—recycling text from one published research article to another. Even when scientists or editors believe specific instances of such recycling are ethically acceptable, they may be unsure or even mistaken about its legality.

To the authors' knowledge, no country has laws or legal precedents that directly address text recycling in scientific publishing or even scholarly writing more generally. As far as copyright law is concerned, our legal analysis suggests that the most common uses of text recycling are likely permissible within some jurisdictions. In the United States, typical instances of recycling in scientific writing seem clearly allowed under the doctrine of fair use (Hansen & Moskovitz, 2021). But copyright laws across international jurisdictions vary considerably (Seng, n.d.), including regarding authors' rights to modify or reuse their own work after copyright has been transferred to a publisher (Piotrak, 2006); and even where laws may permit some recycling, application of these laws to specific cases is far from straightforward. In short, while fair use in the United States (and other similar defences in other jurisdictions) may be a partial solution to copyright obstacles to text recycling, it does not cleanly or fully resolve the problem.

Contracts actually play a much larger role in governing authors' rights to recycle their own work: most authors sign publication agreements, and these private agreements often restrict how authors can reuse their own work in ways that go beyond the controls imposed by copyright law. These contracts are frequently unclear—sometimes explicitly and sometimes indirectly addressing text recycling, with little consistency from one agreement to another (Moskovitz, 2021b). Even in the case of open access publishing, which now accounts for millions of articles each year and a nearly a third of all research article output (Piowar et al., 2018), publishing agreements can still impose significant restrictions on author reuse that apply outside of the permissive Creative Commons licences that those works are made available under. Lacking sophisticated legal expertise, editors and researchers rarely know whether any particular instance of recycling is actually legal.

The resulting anxiety about legal repercussions has real consequences. Our own research shows that even when an editor may believe some instance of recycling to be ethically unproblematic, they may instruct authors to "rewrite" the passages due to worry about copyright infringement (Pemberton et al., 2019). This risk-averse approach to editing can lead to

inferior communication as the rewritten version may be less clear. For those who are closely following that research, arbitrary changes in wording make it harder to know precisely how one study differs from its predecessors. And aside from these concerns, should scientists be spending their time and mental effort thinking up synonyms and ways to rearrange clauses, just so plagiarism detection software does not flag the duplicate material (which is, let us admit, still fundamentally the same)? Such rewriting is especially challenging for those who primarily speak languages other than English—an inequality which further burdens those scientists who already face greater barriers when publishing their work in English, the *lingua franca* of science.

## WHY NOT MAKE TEXT RECYCLING LEGAL?

So why might publishers not want to give authors the legal right to recycle text when it is ethically and professionally appropriate? Those on the business side may worry that letting scientists freely reuse parts of their published papers will harm their bottom line. But will a new paper that shares some material with a prior one really negatively impact the publisher's ability to profit from the earlier article? Probably not. After all, by the time the new paper comes out, most of those who are interested in the older paper will already have read it. Regardless, most science publishers' profits come from subscriptions; the kind of recycling we are addressing could not possibly affect those. And publishers are increasingly converting to an open access model within which text recycling would have no economic impact. Overall, there do not seem to be valid business concerns.

Those on the legal side of the publishing house may worry that if they include an article with copyrighted material from another publisher, they may be at risk of an infringement lawsuit. Now, if the "new" paper is merely a disguised version of a prior work, that would be duplicate publication—legitimate grounds for an infringement case. But we are concerned here only with recycling which is considered acceptable by the relevant scientific community, and this does not include duplicate publication, salami slicing, or any other form of duplicitous publishing behaviour. Add to this the fact that text recycling has been so common for so long, and the rewards of a lawsuit would be so trivial, any publisher with the resources to bring such a suit would be reluctant to do so. After all, that publisher could then be sued for the many similar cases of recycling that certainly exist in its own pages. In fact, while our research has shown that text recycling between published scientific articles is common (Anson & Moskovitz, 2020), we are unaware of any lawsuit ever filed for text recycling in this context.

## A REASONABLE COURSE OF ACTION

The key question, then, is how to make text recycling clearly legal in those cases where it is otherwise acceptable to the scientific

community. Getting the government of any single country to revise its copyright laws for this purpose would be extraordinarily challenging. Attempting to obtain harmonization of the law internationally on such an issue would be futile. And even if successful, these changes would not address the matter of publisher contracts—which often include binding restrictions on reuse that are independent of copyright laws.

Author–publisher contracts, on the other hand, are an ideal mechanism. Because contracts are completely under the control of individual publishers, the only barrier to change is the publisher's willingness to do so. And unlike copyright laws, which vary by country, contract law is substantially uniform globally; thus, if a contract explicitly grants authors specific rights of reuse, the ambiguities and international differences in copyright law are rendered moot. When an author and a publisher agree on a contract, its terms become the determining factor in how authors may reuse their work.

Given that there are different types of recycling, each of which requires different considerations, it would be highly impractical for the specific rights and restrictions to be laid out in the contract itself. Instead, those guidelines would best be articulated externally to the contract in author guidelines or policies. The TRRP has produced two research-based documents that could be useful for this purpose: Best Practices for Researchers and the TRRP Model Text Recycling Policy. Both documents were thoroughly vetted by the TRRP Advisory Board, whose members include leaders of both the Committee on Publication Ethics (COPE) and the Council of Science Editors (CSE) along with experts in publishing and research ethics from major publishing houses, government agencies, and universities.

Referencing such documents in the contract language could be very simple. We recommend something like this:

Authors retain the right to reuse material from this work in a manner consistent with the TRRP Best Practices for Researchers.

To promote adherence to these guidelines on the authors' side, we recommend that publishers also add a parallel statement to the attestations required of authors submitting new manuscripts. There, authors must explicitly acknowledge that any recycling is consistent with the publisher's preferred standards. We suggest this:

If this manuscript includes any material reused from my/our prior works, that use shall be consistent with the TRRP Best Practices for Researchers.

Publishers that prefer to set more explicit limits on recycling could instead refer to their own text recycling policy (we suggest the TRRP model policy) in these statements. We encourage publishers who are willing to consider the contractual changes we argue for here to learn more about text recycling through the documents on the TRRP Resources page.

We recognize that some publishers may be reluctant to revise their publishing contracts for this purpose. But this is the best, and perhaps the only, practical path to establishing clear and consistent legal conditions for text recycling. Once scientists and editors are clear as to when text recycling is and is not legally allowable, decisions about the uses of text recycling can be made in the realms of ethics and communication effectiveness—which is where they belong.

## AUTHOR CONTRIBUTIONS

CM conceived the project; CM, DH and MY wrote and edited the article.

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None.

## CONFLICT OF INTEREST

The authors declare no conflict of interest.

## DATA AVAILABILITY STATEMENT

Data sharing not applicable to this article as no datasets were generated or analysed.

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