

Plagiarism or copyright infringement: The difference and overlap

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Tourism Minister, Lindiwe Sisulu has faced criticism after the publication on 7 January 2022 of her [opinion piece](#) entitled "Hi Mzansi, have we seen justice" in which she criticised the South African judiciary, amongst others. She was accused of committing plagiarism as it was claimed that a large section of her opinion piece incorporated parts of a speech given by former United Kingdom attorney-general Dominic Grieve in 2013. Considering the traction this topic is receiving on social media, it is important to understand what exactly plagiarism entails and how plagiarism differs and, in some cases, overlaps with copyright infringement.



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Plagiarism is the false representation/appropriation of words and thoughts of someone else without giving credit to the original author and ultimately passing them off as your own. Whereas copyright infringement is the unauthorised use or reproduction of copyright protected material without the permission of the rightful copyright holder and thereby infringing certain exclusive rights granted to the copyright holder. Plagiarism is a violation of intellectual creation but is not illegal (but is obviously considered a severe ethical violation) whereas copyright infringement is illegal in terms in the Copyright Act.

Both plagiarism and copyright infringement can happen at the same time or by the same act. It is however important that copyright can only subsist in works insofar as they are reduced to material form and cannot subsist in ideas that are not reduced to or expressed in some material form (this includes a performance of a work). The test for determining whether copyright infringement has taken place is a qualitative rather than a quantitative one. This means that even if a minimal but essential part of the work is copied it can still constitute copyright infringement.

Another aspect to consider is the territorial nature of intellectual property and the application of the Berne Convention for the Protection of Literary and Artistic Works (1886) - specifically how this convention provides contracting states with national treatment in the protection of works subject to copyright protection. The Berne Convention makes provision for the protection of works originating in one of the contracting countries and ultimately making it possible for copyright to subsist

in any other country that is a contracting state. This means that if an original work was created in the United Kingdom, it will also have copyright protection in South Africa, as both these territories are members of the Berne Convention.

Understanding the differences between plagiarism and copyright infringement is paramount to the defences and remedies available to enforce rights against infringers.

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