

Section 7a.

Dealing with plagiarism in student theses at FH Upper Austria

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1. Introduction

- (1) FH Upper Austria's legal remit includes taking responsibility for academic research and teaching, and supporting young academics. It aims to enable all students to complete their degree and achieve the highest possible level of qualification through their individual performance. The University has implemented a Code of Ethics as a means of support, and in order to ensure high standards of academic practice. The code is in keeping with the academic ethos of complying with agreed rules and treating the knowledge of others with respect. These guidelines are intended to raise awareness of the topic of plagiarism and provide assistance in cases of suspected plagiarism in courses or academic papers.

2. Definition of plagiarism

- (1) Neither the Austrian *Urheberrechtsgesetz* (Copyright Act) nor the *Fachhochschulgesetz* (University of Applied Sciences Act) provide a legal definition of the term "plagiarism". Plagiarism is rather the opposite of correct citation, and proper citation is defined in section 46 Copyright Act, while the definition of referencing is provided in section 57 of that Act.

On this basis, and in line with the principle that an academic paper should reflect personal performance, plagiarism mainly occurs in higher education when authors take texts, content or ideas from other authors and present them as their own. In particular, this includes appropriating and using excerpts from texts, thoughts, hypotheses, findings or data, either directly or by paraphrasing or translating them, without appropriately acknowledging and referencing the source and the author.

The following actions constitute plagiarism:

- **Full plagiarism**
A student submits another person's work as their own without referencing the actual author.
- **Self-plagiarism**
A student submits the same paper in several courses or uses texts or parts of texts they have written previously without indicating this appropriately in the submitted paper.
- **Translation plagiarism**
A student translates foreign-language texts or extracts from another person's work and presents them as their own without referencing the source.
- **Quotation without reference**
Here, a student uses extracts from other people's works without properly quoting the source; this includes the use of excerpts from texts taken from the internet without referencing the source.
- **Paraphrasing**
This means taking extracts from another person's work and changing or restructuring them slightly without referencing the source by means of a citation.
- **Ghostwriting**
Here, a student submits a paper written on their behalf by another person with the actual author's consent, and presents it as their own. This also applies if substantial parts of the paper were written by another person.

3. Permitted degree of assistance

- (1) Section 3(2)(6) University of Applied Sciences Act, and sections 11(1) and 12(1) of the FH Upper Austria Study and Examination Regulations state that bachelor's, master's, undergraduate and doctoral theses must be written independently. By doing so, students demonstrate that they are able to independently develop solutions related to a specified topic

or a specialist topic of their own choosing using academic methods. Students will also be considered to have fulfilled the legal requirements for independent work if they receive assistance from their supervisor, lecturers, tutors or experienced students in order to produce proper academic papers, or if the paper is proofread by friends or an editor with a view to correcting typing or spelling mistakes.

- (2) When producing academic papers, assistance from third parties that goes beyond the correction (e.g. by friends, editors or fellow students) of formal criteria such as spelling, and corrections or revisions of content made by an individual other than the student are not permitted. Assistance provided by lecturers or the supervisor is limited to academic work, e.g. applying academic methodologies, making suggestions regarding structure, as well as interventions and instructions in combination with efforts designed to enable the student to adopt new perspectives. Students must process this information and make the corresponding corrections to their paper independently.

4. Identifying and preventing plagiarism

- (1) Creating awareness and promoting skills development

The most important measure in preventing plagiarism is raising awareness among students, as well as providing appropriate training in academic work and application of academic techniques. For example, this can be done by:

- Implementing suitable rules to ensure good scientific practice and providing information about the consequences of plagiarism in courses.
- Raising awareness among students regarding the use of AI-based tools (e.g. ChatGPT; cf. " Guide on Handling AI Systems at the University of Applied Sciences Upper Austria in the Field of Teaching").
- Holding courses on how to draft academic and semi-academic papers correctly, and proper citation.
- Having students sign a declaration that they have drafted a paper independently, have not used any sources and aids other than those stated, and have never submitted the paper in question for assessment at an educational institution.

- (2) Identifying plagiarism

The following characteristics may indicate plagiarism:

- Changes in style or stylistic inconsistencies
- Use of unusual vocabulary, phrases or foreign words
- Inconsistent chapter headings or subheadings
- Conspicuous and repeated spelling, grammatical and typing errors
- Changes in formatting
- A student's examination performance deviates significantly from their performance in other assessments

It should be noted that these are only indications that closer examination by the lecturer or supervisor concerned is required. However, lecturers are obliged to investigate any suspicions as soon as they arise.

According to the established case law of the Austrian Supreme Administrative Court, supervisors of academic papers are not obliged to take the view from the outset that a paper could potentially contain plagiarism. The assessor is allowed to initially trust information provided by the student (with regard to authorship, independence and academic and methods-based approaches), as the assessor is reliant on this information. It is also unreasonable to expect the assessor to compare the paper with others word for word. On the contrary, the assessor must be able to rely on the student's integrity. Assessors are only obliged to review a paper in detail and carry out corresponding detailed investigations in case of justified suspicions

(Austrian Supreme Administrative Court, 26 Jun. 1996, 93/12/0241; 11 Dec. 2009, 2008/10/0088).

(3) Use of plagiarism-checking software

The initial decision to use a plagiarism checker is at the discretion of each faculty. If a plagiarism check will be carried out using software, it is recommended – including as a means to raise awareness – that students' attention is once again drawn to the fact that the check will take place by having them sign a separate agreement as part of the submission process for academic papers.

The following text can be used for this purpose:

"I acknowledge that the submitted paper may be checked electronically using suitable, state-of-the-art means (plagiarism-checking software)".

5. Legal consequences of plagiarism

(1) Consequences under higher education law:

Under higher education law, students may face legal consequences as a result of plagiarising works if a positive grade is obtained by fraudulent means, in particular by using unauthorised aids (section 20 University of Applied Sciences Act). "Fraudulent means" refers to an intentional act which involves making objectively false statements with an intention to deceive, or deliberately concealing material circumstances in order to obtain a more favourable outcome (section 69 *Allgemeines Verwaltungsverfahrensgesetz* [Austrian General Administrative Procedure Act]). An outcome can be assumed to be more favourable if the grade would have been lower without using fraudulent means. Partial use of fraudulent means is also relevant if it has an impact on an assessment. A student's failure to disclose sources also constitutes use of fraudulent means as outlined above. Since the use of fraudulent means requires an intentional act, this is not the case if the lack of citation is due to negligence. However, if a conspicuously high number of references are found to be missing, it can be assumed that fraudulent means have been used.

The following applies if a grade is obtained fraudulently due to plagiarism:

- The programme director (see section 20 University of Applied Sciences Act in conjunction with section 10[5][3]) will annul the assessment of the academic paper, whereby the annulled assessment will be counted towards the permissible number of resits, and
- if necessary, the academic degree will be revoked by the Head of the Academic Board (see section 15[4] FH Upper Austria Study and Examination Regulations in conjunction with section 10[4][4] University of Applied Sciences Act).

Annulment of an academic degree will have particularly serious consequences under higher education law if the degree is a prerequisite for admission to further degree programmes. For example, if the grade for a bachelor's thesis written as part of a bachelor's degree programme was obtained by means of plagiarism, and consequently the grade was declared null and void and the bachelor's degree revoked, this would mean admission to a subsequent master's and doctoral programme was obtained by fraudulent means. As a result, all grades for examinations taken and papers written for subsequent degree programmes would be annulled and academic degrees awarded would be revoked pursuant to section 15(4) of the FH Upper Austria Study and Examination Regulations.

In this case, the official notice of conferral of the degree would be revoked and the student would no longer be permitted to use the academic degree. If the student does not refrain from using the academic degree and continues to do so without authorisation, the provisions on penalties in section 24 University of Applied Sciences Act will apply.

(2) Consequences under copyright law

Plagiarism in higher education not only constitutes academic misconduct, it usually also represents a violation of sections 46 and 47 (citation) and section 57(2) (referencing sources) Copyright Act.

Under the Copyright Act, plagiarism constitutes an illegal infringement of the author's rights of exploitation. In cases of plagiarism, the author may take the following action under civil law:

- Prohibitory injunction (section 81 Copyright Act)
The author is entitled to file an injunction, possibly in combination with a temporary injunction (section 381 *Exekutionsordnung* [Austrian Execution Code]).
- Action for removal (section 82 Copyright Act)
Put simply, such action is designed to eliminate unlawful reproductions of works and render them useless.
- Publication of judgements (section 85 Copyright Act)
If a court establishes an infringement of copyright, the author may demand publication of the judgement if there is a legitimate interest in doing so.
- Demand for payment (section 86 Copyright Act)
In this case, an appropriate fee must be paid for use of the work.
- Claims for damages and disgorgement of profits (section 87 Copyright Act)
In the event of infringement of copyright, the author has the option of claiming damages and demanding the surrender of any profits generated.

Additionally, section 91 Copyright Act provides for potential punishment for infringement of rights of exploitation as defined in sections 14-18 Copyright Act. Premeditated action is punishable with a fine of up to 360 day-fines or up to six months' imprisonment.

6. Procedure in case of identification of plagiarism

- (1) If plagiarism is found to have taken place, the subsequent procedure is based on section 20 University of Applied Sciences Act.

"Academic papers" refers to master's, undergraduate and doctoral theses. All other papers (e.g. bachelor's theses and seminar papers) are referred to as "semi-academic papers". The following provisions apply by analogy to semi-academic papers.

- (2) Suspected plagiarism prior to assessment (during supervision)

After the programme director has examined the case, the programme director, in consultation with the supervisor, will request the student to correct the paper and rewrite the plagiarised sections before the paper is assessed. It is important that the student is made aware of the academic misconduct, copyright violation and the related possibility of injunctions being filed, and of claims for damages by the author.

If the student complies with the request to make corrections, the entire academic paper will be assessed in accordance with the procedure set out in the statutes (sections 11 and 12 FH Upper Austria Study and Examination Regulations).

If the student refuses to make corrections, the paper will be assessed in accordance with section 6(3) of those regulations.

- (3) Suspected plagiarism during and after assessment

If an academic paper (or parts of it) is plagiarised and submitted for assessment, or if a paper including plagiarised sections has already been assessed, the procedure set out in section 20 University of Applied Sciences Act will apply.

In accordance with that section, the grade awarded for an academic paper will be declared invalid in writing if the grade was obtained by fraudulent means, in particular through the use of

unauthorised aids. Section 20 University of Applied Sciences Act cites the use of unauthorised aids solely as an example of fraud. Therefore, this does not represent a limitation. Plagiarism is classified as a use of fraudulent means, because the work of a third party is presented as an individual's own work. In accordance with the case law of the Austrian Supreme Administrative Court, plagiarism constitutes fraud if substantial parts of a paper were copied and the paper would be considered to have been unlawfully produced if these circumstances had been known (see e.g. Austrian Supreme Administrative Court 11 Dec. 2009, 2008/10/0088). The provisions of the Universities Act on ghostwriting apply by analogy to FH Upper Austria.

Pursuant to section 10(5)(3) University of Applied Sciences Act, the programme director is responsible for declaring the revocation of examination grades.

(4) Suspicion of plagiarism after award of an academic degree

In such cases, an expert opinion on the extent of the plagiarism will be obtained. If, on the basis of this expert opinion, it is concluded that substantial parts of the paper have been copied or written with the help of third parties, and the academic paper would be considered to have been unlawfully produced if these circumstances had been known, the grade for the academic paper will be annulled in writing pursuant to section 20 University of Applied Sciences Act and, in accordance with section 10(4)(4) University of Applied Sciences Act, the Head of the Academic Board will issue an official notice revoking the academic degree, the official notice of conferral of the degree will be revoked and use of the academic degree will be prohibited.

7. Entry into force

- (1) Pursuant to the Academic Board resolution of 28 February 2024, and following approval by the provider FH OÖ Studienbetriebs GmbH, represented by the University President, the “Dealing with plagiarism in student theses at FH Upper Austria” section of the statutes will enter into force on 1 March 2024.