

# Penalties for plagiarism of literary works imposed by Peru's Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (Indecopi) (National Institute of Jurisdiction and Protection of Intellectual Property) \*

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## ABSTRACT

The research describes and analyzes the jurisprudence of the Court of Indecopi, which through the Chamber of Intellectual Property issues rulings as the second and final administrative authority in Peru. This study examined rulings handed down over a four-year period (2008-2011) in copyright infringement cases, i.e., plagiarism, which, moreover, appear on the institution's web page. The study employs a documentary analysis methodology of each plagiarism case ruling issued by the Chamber. Notwithstanding the relatively

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scant number of plagiarism cases arising from online publishing, the study concludes that the legal conception of plagiarism has expanded since the advent of internet. Most of these cases are filed and pursued ex officio by the office charged with protecting intellectual property and copyright.

**Keywords:** Ethics; Plagiarism; Intellectual property; Copyright.

## RESUMEN

### **Sanción al plagio de obras literarias en el Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (Indecopi) en Perú**

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La investigación describe y analiza la jurisprudencia del Tribunal de Indecopi, que a través de la Sala de Propiedad Intelectual emite sus resoluciones en segunda y última instancia administrativa en Perú. El estudio se realizó con base en las resoluciones sobre casos de infracción a los derechos morales del autor en su modalidad de plagio, las mismas que se encuentran en la página web de la institución. El periodo objeto de análisis comprende los años 2008-2011. La metodología empleada ha sido básicamente el análisis documental, teniendo a la vista cada una de las resoluciones emitidas por la Sala que resuelven las causas de infracción al derecho de autor. En conclusión, no obstante que la figura del plagio se ha extendido con la aparición de Internet, las denuncias son muy escasas, la mayoría son formalizadas por denuncia de oficio a partir de la función que ejerce la entidad competente encargada de velar por la protección a la propiedad intelectual.

**Palabras clave:** Ética; Plagio; Propiedad intelectual; Derecho de autor.

## INTRODUCTION

In the last decades, actions and conducts incompatible with moral and legal issues have exacerbated, especially in the scientific activity developed

in the academic world, among these we find plagiarism, fraud, piracy, which threaten science, art and technique.

Even when academic dishonesty among students is documented since long time ago, it was until the 1990s that its systematic research began, with the purpose of fighting the academic plagiarism phenomenon, which in those years was already starting to be alarming (Sureda, Comas and Morey, 2009: 1989).

Causes are multiple, one of the most important is the advance of new information and communication technologies, particularly internet, which has generated an explosion and abundance of information sources, along with the easiness to have in real time complete articles in journals, projects, theses, monographs, books and databases, among other materials. Another cause is the moral crisis that the entire society experiences, which reflects in dishonest conducts in all type of activities, including precisely the academic activity, by not respecting the intellectual property, turning to plagiarism without any trace of remorse. Thus, several studies report the theft of other people's creation, which has become a more and more extended conduct, up to the point of naming this the "copy and paste" generation. According to Carmona, "Plagiarism is a malicious fraud against the literary, artistic and scientific production of an author, in which, based on a preceding creation, a person appropriates others' work as own" (1988: 315).

Peru's reality is not alien to this problem; there is a high degree of permissiveness and impunity in all areas of society and an evident ineffectiveness, particularly in higher education institutions, due to the almost null penalty imposed to this type of conducts. It is considered a minor offense, not within the real dimension of a crime threatening the academic community. So authorities do nothing, or almost nothing, to implement measures for awareness and prevention of plagiarism. Besides, the use of modern technological tools to track and compare different texts with original documents is unknown.

Rojas and Olarte point out:

It is important, to reemphasize that plagiarism, so understood, constitutes a simultaneous infringement of different moral and economic rights. The infraction against the moral right of the plagiarized author is shaped according to its right of attribution, since the plagiarist pretends to be the author of another person's work. Likewise, it is common that the moral right of integrity is affected, because by disguising or hiding its illegal action, the actor modifies or suppresses substantial parts of the work to pretend it is a creation different from the original (2010: 2).

This fact lead us to set out our research objectives, that is, to identify and analyze the administrative procedure performed in Peru by the state agency in charge of looking out for the protection of intellectual property (Indecopi), in cases of plagiarism of literary works. A second objective was to determine the type of penalties the Court imposed in the last four years through orders issued as the last instance. For such purpose, the jurisprudence on infringement of moral rights resolved by the Intellectual Property Chamber of Indecopi-Peru was located in detail, and can be found in the institution website (*Attachment 1*). Having the orders at sight, these were analyzed according to a series of variables and indicators previously established to comply with the study objectives. Research results indicated that the higher incidence of complaints for moral rights infringement corresponds to the infringement of the author's right of attribution as direct plagiarism, a conduct that manifests in the robbery or theft of others' work. Complaints usually were formalized ex officio by the authorities of the competent entity, and penalties imposed in the first instance were high (more than 5 Applicable Tax Units), but were drastically reduced in the second and last instance.

## REVIEW OF THE LITERATURE

### *Plagiarism*

Plagiarism is the robbery of other people's intellectual creation that consists in the appropriation of the author's right of attribution, modifying, revealing or reproducing such creation as own. According to Cabanellas, plagiarism is "In matters of literary, scientific or artistic property, the copy or imitation that does not confess the model or author which was based on" (1976: 305). In the opinion of Saldaña, Quezada, Peña and Mayta, "Plagiarism is defined as the appropriation of ideas, processes or results, presented in a publication without crediting the original author" (2010: 2). While Delgado considers it as "An ideal appropriation of other's work, either presenting it as own, or using its creative elements to elaborate the illegitimate creation" (1988: 117).

In the literary field, plagiarism is the wrongful appropriation of phrases, sentences, paragraphs or full texts without citing the source or crediting the author.

Girón details some actions of literary plagiarism:

- Copy the total or partial work of another student (with or without authorization).

- Copy and paste the contents of internet articles or web pages without using quotation marks and citing the consulted source.
- Not citing the source where the information was obtained.
- Move or relocate some few words or phrases in a text or change their original order.
- Copy significant parts of another person's text or work.
- Not capable to explain or sustain work contents.
- Developing thoughts or theories based in other people's ideas, not crediting the person in whose idea the discussion is based.
- Repeat or paraphrase another person's words, ideas or arguments without giving due credit.
- Buy or acquire a work presenting it partially or completely as own (2008: 7).

Also considering the definitions contained in the resolutions of national and international courts when supporting their decisions, along with those corresponding to the community legislation and to another organisms mentioned below.

The *Tribunal de Justicia de la Comunidad Andina de Naciones* (CAN) (Court of Justice of the Andean Nations Community), cited by Astudillo, defines in Process 139-IP-2003:

Plagiarism is, in its most simplistic definition, anything involving copying others' works substantially, presenting these as own. It is a material action with very poor or no intellectual content, lacking originality (2006: 244).

The author adds:

In a former decision, the same Court stated "To that end, plagiarism is '[...] the act of offering or presenting as own, wholly or partially, the work of another person, in a way or context more or less altered [...]' " (Process 10-IP-99) (Astudillo, 2006: 244).

Balbuena also cites some jurisprudences in which plagiarism is defined:

The jurisprudence of April 27, 1978 of the Spanish Supreme Court stated that: Plagiarism occurs when the work creator is suppressed and eliminated putting someone else in his/her place, being the individual more than the thing who suffers the attack inflicted by the plagiarist, since identity is what disappears, the work remaining more or less undamaged. In the sentence dated on February 13, 1984, the Spanish High Court stated: Plagiarism also occurs when copying the original or authentic idea directly or falsified to induce a mistake on the authenticity or imi-

tation, partially or wholly, and when impersonating to present other's work as own taking advantage of the unpublished and mental signature of the author (n.y.: 4).

In this same line, Indecopi, state entity in Peru in charge of the protection of intellectual property, through a jurisprudence of the Court in Order No. 1266-2008/TPI-. Record No. 81-2007/ODA dated on May 29, 2008, reproduces Balbuena's quote about plagiarism, referring to Delgado, Quintano and García:

According to the doctrine, plagiarism is the appropriation of all or some original elements contained in other author's work, presenting these as own, either pretending that the work is his/her creation or using the creative elements of the original to produce an illegitimate work. Both cases suppress the author's right of attribution of the pre-existing work and his/her authorization, resulting in the capital offense in the field of copyright. Through this conduct, the plagiarist takes advantage of the creative work of another person, substantially copying the work pretending to be its authentic creator (Indecopi, Order No. 1266-2008/TPI: 5).

For the World Intellectual Property Organization (WIPO), plagiarism is "The act of offering or presenting as own the work of another, wholly or partly, in a more or less altered form or context" (1988: 182). The *Pontificia Universidad Católica del Perú* (PUCP) (Pontifical Catholic University of Peru) states in its web page (<http://www.pucp.edu.pe>): "Plagiarism consists in presenting as one's own ideas, the texts produced by others that were transmitted by them, either in writing or orally or by another means of communication."

According to the *Cuerpo Académico de Ética* (Academic Body of Ethics) of the *Universidad Autónoma del Estado de Morelos* (Autonomous University of Morelos):

Plagiarism is to dishonestly copy or imitate other's work, particularly, a literary or artistic work. It is a moral offense that can become serious given the conditions involved. Some of the circumstances that make plagiarism serious are the importance of the person making the plagiarism, quality of the plagiarized document, difficulty to distinguish it, and the amount of plagiarized material. In the education world, plagiarism is always serious from elementary schools to universities because it goes precisely against one of the essential rules of education: the search for truth and justice. Plagiarism steals ideas, images and projects from others. This dimension is unknown for many who consider this practice as a minor offense easily justified. It is important to show, instruct and educate to banish plagiarism from school life (UAEM, 2002: 1).

As the above definitions state, plagiarism is the conduct that deliberately infringes the author's moral rights, appropriating the right of attribution, modifying or altering the integrity of the work. Plagiarism involves three elements: the plagiarist, an individual with an evident unlawful and immoral conduct; the author, whose moral rights have been infringed; and the plagiarized work.

### *Origin*

Literature reveals that the origin of plagiarism dates back to old times, since a work was created by the first thinkers, i.e. philosophers, poets or mathematicians, along with artists and painters. Astudillo notes: "The Latin poet Marcus Valerius Martialis seems to be the first one that used the term plagiarism in a figurative sense referring to the appropriation of others' phrases (L'Encyclopédie de L'Agora, sf. p. s(n))" (2006: 245-246).

Research performed by Perromat in his doctoral thesis also confirms that plagiarism dates from very ancient times. Even the most prominent philosophers, such as Plato and Aristotle, among others, were accused of theft or appropriation of other's work:

Plato, in a known anecdote that circulated in ancient times in different versions, was accused of plagiarizing Pythagoras, after having acquired a text of Philolaus (disciple of Pythagoras) for ten thousand denarii. Aulus Gellius, in the second century, reproduced in his *Attic Nights* the following verses of Timon: "Thou, Plato, since for learning thou didst yearn,/ A tiny book for a vast sum did'st buy,/ Which taught thee a *Timaëus* to compose."

(In <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A2007.01.0072%3Apage%3D194> (Consulted: May 8, 2015))

The wide circulation of these complaints has left us some examples in preserved Greek texts. In this way, Theopompus of Chios in his work *Against the Diatribē of Plato*, affirms "One would find that many of his dialogues are worthless and fake. Most are plagiarized from the teachings of Aristippus, and some, even, from those of Aristotle, from those of Antisthenes and many also from those of Bryson of Heraclea."

(Modified from [https://books.google.com.mx/books?id=1tRf3DQycDEC&pg=PA272&lpg=PA272&dq=%22theopompus+of+chios%22+%22bryson%22+%22plato%22&source=bl&ots=MI0KgOQSSf&sig=\\_lg34KwqRWpoWams-MQZ21ybcQO8&hl=es&sa=X&ei=Ee1MVbSbIZKsyASZsoDoBg&ved=0C-CkQ6AEwAg#v=onepage&q=%22theopompus%20of%20chios%22%20%22bryson%22%20%22plato%22&f=false](https://books.google.com.mx/books?id=1tRf3DQycDEC&pg=PA272&lpg=PA272&dq=%22theopompus+of+chios%22+%22bryson%22+%22plato%22&source=bl&ots=MI0KgOQSSf&sig=_lg34KwqRWpoWams-MQZ21ybcQO8&hl=es&sa=X&ei=Ee1MVbSbIZKsyASZsoDoBg&ved=0C-CkQ6AEwAg#v=onepage&q=%22theopompus%20of%20chios%22%20%22bryson%22%20%22plato%22&f=false) p. 271 (Consulted: May 8, 2015))

These complaints also extended to Aristotle. They provide an approximate idea on the consolidation of an author figure (a specific function of proper names

accompanying the texts) and the resistance exerted by different authors facing works perceived as discordant with this hermeneutic paradigm. The fact that these complaints have political or ideological objectives mixed with literary appreciations does not invalidate the hypothesis of an ancient origin of the Author-Text relationship or, if you prefer, of the Function-Author as maximum guarantee of coherence and textual authenticity (2010: 29).

Other authors hold that the figure of plagiarism, as the appropriation of other's work, appeared in the fifteenth century with Gutenberg's mobile printing press, which made possible the appearance of printed works of different authors and therefore the cultural expansion and democratization of books, due to its wide circulation among various sectors of the population. Busta refers the following:

In ancient times, literary and artistic production did not have a great development; however, the Christian Church had the most brilliant production, which was protected from the barbarian hordes. Later on, in the Renaissance, creations were very productive in the field of painting, sculpture, architecture and other arts, but due to the lack of rules many authors and artists ended up in misery and oblivion. The discovery of the printing press originated the creation of the Royal Privileges or Royalties. These figures appeared to avoid the free circulation of ideas through previous censorship, prohibiting the reproduction and sell of the works without the king's permit. Likewise, the possibility to reproduce literary works massively was established, initiating the protection of intellectual creations by means of privileges (1997: 32-33).

After this brief historical overview on the origin of plagiarism, it can be said that the legal recognition and systematization of mind creations arose in the eighteenth century with the first copyright protection laws. Thus, in England (1710), the act named Statute of Anne was approved. It regulated the authors and editors activity ending the monopoly of the latter, the "royal privileges." Starting from that moment, authors had the exclusive ownership of their works, and also the right to authorize the printing of copies, initially for a 14-year term renewable for another 14 years, along with the obligation of giving nine copies for universities and libraries.

It is important to highlight that in 1813, the Court of Cadiz introduced in the field of copyright the concept of public domain for literary works, which was nothing more than the society's right to access information and culture in general, reproducing or communicating the works without the previous consent of the author or their rightful claimants, but always recognizing the authorship or right of attribution. The Court authorized the re-

production of the works after 10 years of the author's death and without the express consent of the heirs. Currently, according to the Berne Convention (1886) the minimum term of protection is 50 years, which later was extended in several countries up to 100 years, before the work enters into public domain. In Peru, the term is 70 years, in Colombia is 80 years and in Mexico is 100 years.

### *Requirements for the constitution of plagiarism*

Since plagiarism is the plagiarist's wrongful and immoral conduct, to achieve its real identification and classification, it is essential the concurrence of several elements.

#### The work

The Legal Mandate No. 822 of 1996, Article 2.17, includes the following definition: "Work: is any personal and original intellectual creation, susceptible to be disclosed or reproduced in any way known or to be known." Lipszyc considers that "According to copyright, work is the personal expression of intelligence that develops a thought, which is manifested under a perceptible way with enough originality or individuality, and is suitable to be disclosed and reproduced" (1993: 61). Of course, in order for plagiarism to occur, it is necessary the previous existence of the work product of the author's creation. If this cannot be demonstrated, it would be useless to classify a conduct as plagiarism.

#### The author

Article 2.1 of the mentioned decree states the following: "Author: individual performing an intellectual creation." The author's presence is required, who is the only one that has the original ownership with moral rights on his/her work. It is worth to mention that the mandate distinguishes two types of ownership: original and derived.

- Article 2.44. Original ownership: The one arising from the sole creation of the work, only the author has ownership.
- Article 2.45. Derived ownership: The one derived from circumstances other than creation, whether by legal mandate or presumption, or by assignment *inter vivos* or *mortis causa* transmission.

### Lack of author's consent

The author is the only person who has the faculty to authorize the use of his/her work; it is part of his/her moral rights, which are exclusive, non-attachable, imprescriptible, and unrenounceable. Accordingly, one of the characteristics of plagiarism is that it occurs because the author's authorization is lacking.

### The unlawful conduct

The plagiarist will always be an individual, whose unlawful or contrary to the law conduct must be manifest, objective and demonstrable. The action of copying, reproducing or imitating wholly or partially phrases, sentences, paragraphs or the integrity of the contents of a literary work must occur, supplanting the right of attribution and without crediting the author or citing the source. This condition is essential to be in conformity with the law and the principle of law, since the classification of the conduct can only be performed by the law before the infringement, hence the Latin phrase *nullum crimen, nullum poena sine lege* (there is no crime and no punishment without a law).

### Lack of originality

One of the elements in work contents is author's originality, understood as the clear and unequivocal manifestation of his/her personality.

The Indecopi sets out in its Order No. 286-1998-TPI-P.4.4 that:

Considering that any work is the product of the author's effort, not everything produced with effort deserves copyright protection. This will be possible to the extent that the creation has sufficient originality elements to be considered as a work. Admitting to the contrary, would imply to protect even those not being subject to copyright protection, as the lists of the movies shown in Lima. The requirement of originality or individuality implies that for work creation, a space must exist for the development of its author's personality. Consequently, those already included in the cultural heritage —artistic, scientific or literary— cannot be individual. Likewise, originality differentiates the works protected by copyright from trivial ones, those from daily life, unimaginative.

Elaborating on the subject, Lipszyc states that other requirements exist in plagiarism: "a. Appropriate the right of attribution of a work. b. Transform the work. c. Disclose the plagiarized work [...]. d. Act with deceit, with

bad faith, with intentionality, and be aware that the plagiarized work is not his/hers but from third parties, this is called '[...] the alienation of the work as element of competence to constitute the deceit [...]' ” (cited in Balbuena, n.y.: 11-13). Indeed, it has to be noted that the presence of these elements in the constitution of plagiarism excludes others, as the work value, contents, extension, purpose of its creation, contents support, as well as being in the market or not. It is enough that the infringement of the legally protected right occurs to demand its penalty, apart from other considerations serving as justification for the plagiarist. Therefore, the universal principle of the law has to be observed, stating that ignorance of the law does not prevent its penalty or exempt its observance.

Laws must be strictly applied as from the day following their publication, unless otherwise provided for, thus assumed as known by everybody, moreover, the respondent cannot argue that he/she ignored the legal issues on Copyright” (Indecopi, Order No. 0355-2007/ODA-INDECOPI: 2-12).

### *Plagiarism, theft of ideas?*

From a conceptual overview, according to the *Diccionario de la Lengua Española*, idea is “Image or representation of the perceived object that remains in the mind. Plan and disposition ordered in the fantasy for the formation of a work” (RAE, 2001: 843). In the doctrine and legislation on copyright, ideas are not subject of plagiarism, thus it is erroneous to affirm that plagiarism is the theft of other's ideas. In this sense, the following domestic and international laws state:

- Legislative Decree No. 822 Article 9. Elements that are not subject to copyright protection: Ideas contained in literary or artistic works, procedures, operative methods or mathematic concepts itself [...].
- Decision No. 351 of the Andean Nations Community. Article 7. The way in which the author's ideas are described, explained, illustrated or incorporated into works is exclusively protected. The ideas contained in literary and artistic works, or the ideological or technical contents of scientific works, or its industrial or commercial use are not subject to protection.

From the foregoing, it is clear the law protects original contents, those which authors, using previous ideas or knowledge, express in their works, either literary, artistic or scientific. For example, the subject of the European economic crisis can be in the mind, it can be an idea of hundreds or thou-

sands of potential authors, what it matters is the original, novel form of expressing it. In that sense, the basic condition is the protection of the originality and individuality as a manifestation of the author's personality, "[...] the personal and peculiar way in which each author produces a character, this can be subject to protection, since it is here where the creative and artistic touch of the author appears" (Gaffoglio, n.y.: 2).

The Court of the Indecopi in its Order No. 2855-2010/TPI-.p.4 states:

Copyright protects work creation; these creations must be formal, in which the way ideas have been expressed is protected. Ideas are not works and, accordingly, their use is free. No protection or ownership on these is possible, even when these are novel.

In turn, Lipszyc states the following:

If exclusive rights were granted on ideas considered per se, their disclosure would be obstructed preventing the development of intellectual creativity, that is, the creation of an unlimited quantity of different works would be obstructed. One same idea, one same research, one same subject, are taken many times. In its development, each author provides the impression of his/her personality and individuality. Sometimes, the result is highly enriching, in others, trivial, but what drives each generation in the slow advance of civilization is the possibility of working on existing elements, to continue the way without remaking everything and initiating from the beginning (1993: 62).

### *Types of plagiarism*

Plagiarism manifests under different types, it can be whole or partial plagiarism; in the first case, is the verbatim copy of the entire work contents by the plagiarist, substituting the author's right of attribution and pretending to be the real author. Partial plagiarism usually involves the use of synonyms, substitutions or minor changes of words, phrases, abstracts and paraphrasing, not citing the source and covering up the work's original text.

In Peru, the classification stated by Lipszyc is the most used in the founding of rulings issued by the Court of Indecopi:

The doctrine distinguishes between direct plagiarism (less frequent) in which the appropriation of other's work is total or almost total, and "intelligent" plagiarism in which the plagiarist tries to dissimulate plagiarism and gets some substantial and original elements. The last is the most common type of plagiarism, reason why this has to be presented by similarities not by differences between the involved works (1993: 567).

Notwithstanding, many authors offer their own classification criteria. Balbuena classifies plagiarism in direct imitation and elaborated imitation.

This mentioned appropriation of the right of attribution can occur in several ways. It may be that the plagiarist just plain and simply suppresses the name of the real author without modifying the work contents or take significant portions of it to incorporate into the plagiarized work. The first case is known as direct imitation and the second, as elaborated imitation. In both cases the infringement is classified, although in the last case discovery of the crime can be a difficult task (n.y.: 9).

Morató cites Tripathi and Kumar, who “[...] have elaborated one of the most complete plagiarism classifications listing 17 types of plagiarism [...]”:

1. Without citing sources
  - 1.1 Deliver other's work as own.
  - 1.2 Reproduction of complete fragments with no alteration.
  - 1.3 Combination of different sources without citing any.
  - 1.4 Reproduction of the fragment, changing certain words.
  - 1.5 Reformulation of different sources comprising the final work.
  - 1.6 “Borrowing” the own previous work, violating originality requirements.
2. Citing sources (but still plagiarized)
  - 2.1 The author is cited, but without the data necessary to locate the source.  
This practice usually hides other forms of plagiarism.
  - 2.2 Cited sources cannot be located due to an incorrect reference.
  - 2.3 The author is cited, but actual words are not placed in quotation marks, pretending other's interpretation as own.
  - 2.4 Citations and references are correct, but practically comprise most of the article.
  - 2.5 In some fragments sources are correctly cited, but in others there is a paraphrase of the same sources, this time without express recognition.
3. Other types of plagiarism
  - 3.1 Direct citations are reproduced without quotation marks.
  - 3.2 Changes of some words in the citation, reproduced without quotation marks.
  - 3.3 Use an author's creative language without due recognition.
  - 3.4 Pretend other's idea as own.
  - 3.5 Follow another author's reasoning in an approximate order to that developed in the original article.
  - 3.6 Plagiarism of data from other studies (Morató, 2012: 363).

### *Causes of plagiarism*

To be completely clear: plagiarism is considered as the robbery of another person's intellectual work. Among the multiple causes why students make this mistake, is the belief that ideas "belong to everybody" as well as an inadequate and poor methodology for knowing how to cite (Cerezo, 2006: 32).

The more and more recurrent presence of plagiarism is discussed in the academic world; this conduct sorely affects teaching-learning process and research. Also, this represents a real threat to the progress of science, art and technology, discouraging authors and inventors with the illegal appropriation of their works.

In this regard, Pastor states:

[...] students adopt and present in their research, as their own ideas, the theory and hypothesis generated by other investigators, and these technologies associated with the Information Society facilitate this ethically reprehensible and academically incorrect practice. Plagiarism has become a constant element in our society, because not only has invaded the academic world, but also has entered other spaces such as music, painting, movies, etc., that is, science and art in general (2009: 106).

Several researches establish that one of the first causes of plagiarism is the existence of new information technologies, particularly internet, which due to its capacity of storing unimaginable quantities of data and information (currently, zettabytes), has allowed illegitimate conducts, including the so-called "academic cyberplagiarism." This type of plagiarism has a high degree of permissiveness, not only from society, but also from educational institutions particularly, since few have in place rulings and concrete measures against academic fraud or dishonesty.

This happens so frequently that Comas, Sureda, Casero and Morey, after obtaining the results of an exhaustive research, ask in anger:

Why, if this data is so blatant as this work and others demonstrate, there are no measures in place in our country to improve the situation? It is possible that there is no intention to fix everything mentioned in these pages trying to keep a sort of silence pact between students and teachers that helps to maintain certain *statu quo* in the university institution? (2011: 223).

As such, what happens in the education world is only the reflect of society as a whole, which is going through an acute moral crisis, and lack of

compliance of rules and responsibilities. This reflects in the crisis of their institutions, than among other manifestations, show a lack of ethics leading to little respect for other's property. Additionally, from the legal field, countries jurisdiction becomes blurred because there is no global regulation in internet, so it can be presumed that the information contained there belongs to everybody and nobody. Vargas Llosa warned about this when he was recently impersonated: "[...] the theme of Copyright, in the digital world, is still a confused forest, subject to multiple negotiations in which still no one agrees on [...]" (2012: 11). "Frontiers do not exist in internet and States have serious trouble to delimit their jurisdictions. It is unquestionable that the State tries to regulate unilaterally, without the consent of other entities, any issue occurring in its territory" (Téllez, 2009: 103).

In a recent study, Sureda, Comas and Morey (2009) divided in two groups factors occurring in the incidence of academic plagiarism: those within the educational system (intrasystem) and those external to it. They also mention that plagiarism is the result of certain characteristics and conducts of the teaching staff; to certain characteristics and conducts of the students; to certain characteristics of the university, essentially overcrowding; to the development of ICTs; and to certain predominant social values.

Cabedo cites Parki regarding other factors that determine plagiarism:

1. Gender. Plagiarism is more common among men than women.
2. Age and maturity. Youngsters use to plagiarize more than older individuals.
3. Intelligence quotient. Individuals with lower intelligence quotient use to copy more, although there is also the contrary: students with a high intelligence quotient copy to a large extent.
4. Social life. Students with an active social life use to copy more because the time dedicated to social life prevents them to dedicate more intensively to prepare work and exams.
5. Student's personality factors. Students copy if they have an aggressive behavior, but also if they want to even out with their peers.
6. Student's attitude toward the course. In this case, the student's motivation influences on a greater or lower academic copy.
7. All these factors are present in the conduct and environment of the plagiarist. Therefore, being a complex event, it must be widely analyzed (Cabedo, 2010: 10).

According to the aforementioned, one of the factors that has to be considered to stop plagiarism is the educational issue, because this is one of the most important factors in the development of capacities of human beings, and its consequences persist throughout life.

Soto emphasizes:

As previously stated, there are multiple types of plagiarism, most of them can be prevented with an appropriate education on how to avoid plagiarism, both in universities and schools. This way students would get used to cite correctly from the beginning, not leaving the references in their works to the end, and at least they would not fall into accidental or unintentional plagiarism (2012: 12).

Indeed, responsibilities have to be shared, those of parents and teachers, educational institutions in general and the State. Several regulatory plans and instruments approved by the State set this out, such as the *Plan de Acción de Educación para Todos* (2005-2015) (Education for All Action Plan), which literally states:

The principles on which the Education for All Action Plan was founded arise from the fact of considering education as a universal right, inherent to the human being [...]. Education also has to promote people's moral conscience, an ethics exerted in public, which forms a society based on truth, justice, freedom, love, solidarity, peace, responsibility and respect (Vexler, 2005: 16).

There is a need to perform an intense work from the family, teaching values and moral conscience in children. In turn, teachers must develop in the student the knowledge of basic skills and capabilities in reading and writing. This will allow students to learn to read and understand so they will be capable to summarize, comment, analyze and synthesize texts autonomously and with personal effort. Using their own terms, they will progressively achieve a fluid oral and written communication, contributing to the development of their higher order mental capabilities.

Gutiérrez and Montes de Oca cite Arenzana, who mentions:

[...] the act of reading becomes a complex and superior capability exclusive of human beings in which all their abilities are simultaneously compromised involving a series of biological, psychological, affective and social processes that result in a particular meaningful relationship with what was read and, thus, this interaction leads to a new cognitive acquisition (Gutiérrez and Montes de Oca, 2004: 1).

When a child learns to read, he/she must internalize that the images perceived or the text he/she is reading are product of other people's creation, of the mental effort of its author and that this deserves respect, because the texts and other works that he/she will know beyond school life will constitute indispensable elements of personal development. In order to complement his/her learning, the student also needs to know he/she can copy the contents of

others' texts, regardless where they are supported. However, he/she needs to learn how to use citations, credit the author, and realize that what he/she is literally copying does not belong to him/her. So, he/she must clearly write whose phrase, paragraph, text, graph or image he/she used. It must be remembered what the UAEM mentions: "[...] plagiarism is always serious because it goes precisely against one of the essential rules of education: the search for truth and justice, since it steals ideas, images, and projects from others. [...]" (2002: 1).

Although students enter into higher education level with their own values and behavior patterns, it is the responsibility of the institutions to implement prevention mechanisms against dishonest and illicit conducts. As a first step, these should permanently raise awareness in community members with campaigns in favor of academic honesty, such as the PUCP is doing with the reiterative phrase around university environments "do not eat quotation marks." The purpose is to achieve the internalization of respect for other people's creation, as well as to understand and value that the basic conditions for the progress of humanity have always been the creativity and ingenuity of authors and inventors. At the same time, it would be worth to set out the compulsory nature, for teachers, to control and permanently follow up students to revert mental laziness, making no effort, and the culture of making a minimal effort which prevent them from thinking and creating by themselves.

### *Consequences of plagiarism*

Plagiarism is the appropriation of other people's creation, since the moment it is classified as an offense or a crime, it can lead to personal, social, academic and work consequences, among others.

- a) Personal consequences. Human beings perform within a context of rules and values conditioning their behavior. Acting against morals by appropriating other people's work turns them into immoral beings devoid of values.

It impoverishes us as persons, it is a selfish act that impairs the creativity and innovation of human beings (who must be responsible for the truthfulness and quality of his/her work), and can also involve criminal liabilities or academic penalties, but mostly it implies damage of moral rights related to authorship, one of the most important parts of copyright (Dominguez, 2012: 498).

On the other hand, this type of conducts limits permanent learning and the development of higher order mental abilities and potenti-

alities, such as research, description, use of information, analysis and synthesis, which allow the individual to understand and interpret the world, the society in which he/she lives and the “home” he/she inhabits. In this regard, Polo stated: “Our being is constituted by three homes: natural, social and internal” (2001: 35).

- b) Academic consequences. If elementary and higher education academic centers have regulations in place, the plagiarist will be punishable by the institution proving such conduct.
- c) Administrative and criminal consequences. In the administrative context, the entity protecting intellectual property is Indecopi, which on behalf of the State in Peru penalizes plagiarism through a contested administrative process. As necessary, it can inform the Public Prosecutor to investigate the act and formalize the respective penal complaint. In the judicial context, plagiarism is an offense as defined in the Criminal Code. If the assumptions set out in the law are met, the plagiarist can be tried and sentenced in the Judiciary with up to eight years.
- d) Occupational consequences. If within the context of a work relationship the plagiarist’s dishonest conduct is proved, it can be subject to an internal penal process and even be removed from work, regardless of being a private or public institution.
- e) Social consequences. Another regrettable consequence is that society is cheated with a work generated by the theft of other people’s creation. This is an infringement of trust, of the good faith upon the goods and services acquired. Here, Cavanillas states:

[...] plagiarize means “To steal the author and cheat the target person of the plagiarized work.” One same act of plagiarism affects two groups of interests: a) the author’s interests (and, if applicable, the interests of the holder of the exploitation rights of the work, for example, the editor); b) the interests of the person acquiring the work, by intending to mislead him/her presenting the work as own (2008: 2).

- e) Stops the development of science, technique and art. Because of the creative ability of authors and inventors throughout history, humanity has achieved the evolution and development that society currently enjoys. Just as the wheel, energy, vapor and the revolution of new information technologies are the product of lucid minds, they have a positive influence on the development of society. However, conducts such as plagiarism discourage authors and inventors, consequently stopping the scientific and technological development of the country.

*Plagiarism detection*

As mentioned above, plagiarism has become a generalized conduct, particularly in many education system levels; different studies reveal that a great percentage of students declare they have committed plagiarism at some point in their student life. Moreover, they have the idea that most students make high plagiarism, especially of internet sources or web pages, since the huge quantity of stored information makes it difficult to detect plagiarism. This is disturbing because society considers such conduct just a minor offense, reflecting there is no regulation in most education institutions, as in Peru, where no cases are known to have been punished in any instance by a competent authority.

Morató cites some research works revealing this serious problem:

More than three quarters of the student's population have partially or totally plagiarized a work with information from the internet at least once during university years (Bowman, 2004). Although other studies showed a lower proportion, the practice is so widespread that Comas, Urbina and Sureda (2005) talk about a "copy and paste generation." Hansen (2003: 773) considers that the percentage of students committing plagiarism is 40-50%, and states there are two fundamental causes leading students to resort to plagiarism. The first is the conviction they will not be discovered; the second obeys to the bad influence of the social context: "in the current ethical climate plagiarism is considered as something trivial if compared with more than known cases of political or business dishonesty" (2012: 361).

However, to detect and prove plagiarism is a complex task; not only knowledge, experience and thoroughness are required, but tools support as well. The plagiarist's conduct must be real, evident and discovered to prove plagiarism, facts that demand a search for the most suitable mechanisms to prove them. Whenever plagiarism is suspected, the first condition is that, in parallel with the plagiarized work, the documental preexistence of the plagiarized author's original work is demonstrated. Once located, a thorough contents comparison mechanism has to be set up ("parallel passages" method), either wholly or partially, and preferably done by experts. Administrative and criminal rules admit confession as means of evidence, an expert report, public or private documents presented in the process, and witnesses' declarations, who can express the circumstances that elucidate the act.

New technological tools, both commercial and free, facilitate the detection of plagiarism. So, we have the most important and accessible web search engines such as *Google*, *Yahoo*, *Javi*, *Altavista* and the *Turtunin* software, that facilitate web searches to locate original or similar documents for an effective comparison.

The details of some of these web tools are listed below.

- *Google and Google Scholar*. These are the most common and most easy to use web search engines. By just entering the searched phrase or paragraph between quotation marks, the engines will respond in real time. The huge collection of *Google Books* and *Google Scholar* includes books and journal articles in full text, among other documents.
- *Plagiarism Checker*. Using *Google*, allows to search for much larger and complete texts.
- *Articlechecker*. Very similar to the last tool, it works through *Yahoo* and *Google* search engines.
- *Plagium*. Performs the search in *Google*, the advantage is that it allows to locate the original documents in different languages.
- *PlagiarismDetect*. Free tool that makes easy working with complete documents.
- *Duplichecker*. Allows to enter a larger amount of data and shows the link of the original document, which facilitates the access to the contents.
- *Plagiarism Checker*. Similar to the last tool, based on the term “Possible plagiarism” goes to the link of the original document.
- *SeeSources*. It works with full documents or small extracts, facilitating the web search for documents similar to the searched one.
- *WCopyFind*. This is a scanner that manually helps to compare plagiarism between two documents, without requiring to enter the web. The comparison document must be on-site.
- *Viper*. Free software used to detect plagiarism.

Besides, it is important to note that new techniques are currently contemplated, such as that of Cabedo (2010), who based on Forensic Linguistics, proposes a methodology for text analysis addressed to plagiarism detection.

Table 1. Aspects in plagiarism detection.

Number of pages, paragraphs, lines, words and characters with and without space	
Typography information	Underlining, bold, italics, upper case, small caps...
Paratextual elements	Titles, subtitles, appendices, attachments...
Textual typology	Descriptive, argumentative, prescriptive... Record (formal/informal).
Structural arrangement	Absence or presence of structural division marks. For example: I. Introduction II. State of the question... Order of the entered information.

Text contentes	Subject Argument Narrative perspective. For example: an argumentative text can defend a position or attack it.
Morphosyntactic level	Grammatical categories: number of nouns, verbs, adjectives and predominant category. Indicative/subjunctive forms of verbs. Order of words. Abnormal constructions and errors ( <i>*me se</i> , <i>*la digo...</i> ) (reflexive use, passive use).
Lexico-semantic level	Semantics: concrete/abstract nouns, adjectives, among others.

Source: Cabedo, 2010: 12.

As can be seen, Table 1 shows a set of aspects divided in sub-aspects, such as typography, text type, contents, morphosyntax and others, to be thoroughly applied when comparing documents suspected of plagiarism.

In the Computer Engineering context, Alva develops in his thesis a method and original technique for plagiarism detection in digital documents.

One of the methods used, Document Fingerprinting, is an algorithm to extract a set of numeric values from the document representing several parts thereof. The set of values is named document fingerprint. Through the comparison of the fingerprints from several documents, it is possible to detect if these present common sections, thus, identifying plagiarism. In this project, an information system is implemented using a specific instance of the algorithm Document Fingerprinting, called Winnowing, to obtain a better result in the comparison. Likewise, the system has a suitable user interface for document analysis searching for plagiarism (2009: 2).

In the following table, the author compares a series of attributes of specific and alternative tools for plagiarism detection.

Table 2. Comparison of tools attributes for plagiarism detection.

Attributes	Detection tools							
	Specific tools							Alternative tools
	<i>Turnitin</i>	<i>Eve2</i>	<i>Copy Catch Gold</i>	<i>Word Check</i>	<i>Glatt</i>	<i>Moss</i>	<i>Jplag</i>	<i>Google</i> <i>Yahoo</i> <i>Altavista</i>
Type of text tool on which it operates								
Type of text tool on which it operates	-	-	-	-	-	X	X	-
Verifies source code?	X	X	X	X	X	-	-	X
Verifies free text?								

Type of corpus tool on which it operates	x	-	x	x	-	x	x	-
Operates inside the corpus?	x	x	-	-	-	-	-	x
Operates outside the corpus?								
Other attributes	x	-	-	-	-	-	-	x
Designed for students?	x	x	x	x	x	x	x	x
Designed for teachers?	-	x	-	x	-	-	-	x
Automatic response?	-	-	-	-	-	x	x	x
Free?								

Source: Alva, 2009: 29.

### *Plagiarism: infringement of copyright*

Copyright is the part of intellectual property dealing with mind creations, either literary, artistic or scientific works. “ ‘Intellectual property’ is, in general terms, any human intellect creation. The intellectual property rights protect creators’ interests by offering privileges in relation to their creations” (WIPO, n.y.: 3). Copyright is a branch of private law that protects and regulates the author’s creation, who is an individual with moral and economic rights over his/her work. Guinchat and Menou state: “Copyright is a legal instrument guaranteeing the material and moral protection of the author of a work, or his/her assigns, for a determined period of time” (1992: 361). Several international treaties and rules signed by Peru guarantee the protection of the author’s moral and economic rights, recognize that the author has the right to own his/her creation, which by being part of the fundamental rights must be acknowledged without demanding any formality.

In this regard, Antequera and Ferreyros state:

A trend of almost unanimous universal acceptance grants the protection to the works of inventiveness by the mere fact of its creation, without requiring the fulfillment of any formal requirement, so work registry has only declarative nature and gives rise to rights (1996: 72).

The following are the most important international legal bases:

- a) Universal Declaration of Human Rights. Article 27. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. (In <http://www.un.org/Overview/rights.html#a27> (Consulted: May 18, 2015)). (In <http://www.un.org/Overview/rights.html#a27> (Consulted: May 18, 2015))

- b) Berne Convention. Article 6 bis. Paragraph 1. Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation. (In [http://www.wipo.int/treaties/en/text.jsp?file\\_id=283698#P123\\_20726](http://www.wipo.int/treaties/en/text.jsp?file_id=283698#P123_20726) (Consulted: May 18, 2015)).
- c) Decision 351 of the Andean Nations Community. Article 11. The author has the inalienable, non-attachable, imprescriptible and unre-nounceable right of: a) Keep the work unedited or disclose it; b) Claim the right of attribution of the work at any time; and, c) Object to any deformation, mutilation or modification that is against the work propriety or the author's reputation. On the death of the author, the exercise of the moral rights shall accrue to the rightful claimants, for the period of time referred in Chapter VI of the present Decision. Once the economic rights elapse, the State or other designated institutions will assume the defense of the author's right of attribution and of the integrity of his/her work.

In Peru, the legal base is set out in the following rules:

- a) Political Constitution of Peru of 1993. Article 2. Everybody has the right to: [...] 8. Freedom of intellectual, artistic, technical and scientific creation, as well as the ownership over these creations and their products. The State favors access to culture and promotes its development and dissemination.
- b) Criminal Code (2007). Article 219. An imprisonment of four to eight years and a fine of ninety to one hundred and eighty days will be applied to the person that, regarding a work, diffuse it as own, wholly or partially, copying or reproducing it textually, or trying to dissimulate the copy through certain alterations, attributing to himself/herself or to another the authorship or ownership.
- c) Civil Code (2008). Article 18. Protection of the author and inventor rights. The author's or inventor's rights, regardless the form or mode of expression of his/her work, have legal protection pursuant to the respective law.
- d) Legislative Decree No. 822. Copyright Act.

As such, the legally protected property is the exclusive right that the author has for legal protection of his/her moral and economic rights.

*Protection to moral rights*

Moral rights are a set of powers that the law grants to the author due to authorship; accordingly, to protect his/her name and the authority to demand the respect to the rights over the product of his/her creation. “Moral rights are: a) the right of disclosure; b) the right of attribution; c) the right of integrity; d) the right of modification or variation; e) the right of removing the work from commerce; f) the right of access” (Leg. Dec. No. 822 Article 22). These are perpetual, inalienable, non-attachable, unrenounceable and imprescriptible. On the death of the author, moral rights will be exercised by his/her heirs, while the work remains in the private domain, unless otherwise provided for (Article 21).

Considering such characteristics, the author can dispose of, publish, perform, transfer, translate or adapt his/her work preventing any action lacking authorization to third parties. The close relationship between plagiarism and copyright is that one of the main features of the plagiarist’s conduct is precisely the infringement upon the author’s moral rights, usually substituting the original author’s name, infringing the right of attribution and preventing the recognition of work attribution without giving proper credit.

In this regard, the Court of Indecopi in Peru states, in Order No. 2855-2010/TPI- p. 5:

Moral faculties are aimed to protect the author’s personal sphere in relation to the creation; that is, “protect the author’s personality in relation to his/her work” (Lipszyc, 1993: 62). These are characterized by being absolute, since can be opposed to everybody—even to the work owner; perpetual, since the author’s right of attribution and the respect to the work integrity do not become public domain; inalienable, since these cannot be transferred or assigned by any act or contract; non-attachable and unexpropriable. Since no patrimonial nature is present, rights are unrenounceable, due to their inalienable, individual and personal features, and are imprescriptible because these are not acquired or lost over time (Lipszyc, 1993: 154). These rights are included in Articles 11 of Decision 351 of the Andean Nations Community and 22 of Legislative Decree No. 822.

*Protection to economic rights*

Economic rights are the faculty that authors have to obtain economic benefits for their creation. “Economic rights protect the economic value of the work produced by inventiveness, and as such, the author can take advantage of it economically and obtain an income through commercialization. On the author’s death, economic rights correspond to the rightful claimants”

(Quiroz, 2003: 59). Authors can authorize the exploitation of their work by any means known or to be known to obtain these benefits as the rule sets out. Thus, third parties can take advantage of it economically without breaking the law, acting in exercise of a power called assignment of rights, which means that the new holder of the economic rights on the work will be the assignee. Leg. Dec. No. 822 states:

Article 31. Economic rights comprise, especially, the exclusive right to perform, authorize or prohibit:

- a) The reproduction of the work by any means or procedure.
- b) Public communication of the work by any means.
- c) Public distribution of the work.
- d) The translation, adaptation, arrangement or other transformation of the work.
- e) The import into domestic territory of work copies produced without authorization of the copyright owner by any means including transmission.
- f) Any other form of use of the work not referred in the law as an exception to the economic rights, being the preceding list merely illustrative and not limiting.

However, the law establishes a set of exceptions called “limits to the right of communication and reproduction” allowing society to access others’ works, provided that the source is cited, resolving the dichotomy of copyright protection and the right to culture and access to information, which are people’s fundamental rights.

Castillo refers:

This antagonist position between the authors’ right to receive remuneration for their work and the right to access to culture has already been mentioned by Antequera Parilli, Ph.D. who states that facing this position, the author’s material individual interest must be sacrificed before the collective interest of enjoying cultural goods (2012: 127).

### *Penalty to plagiarism in Peru*

In the legal context, the term “plagiarism” has not been explicitly incorporated in the Peruvian law; however, we found it in several doctrinal studies, in the contents of multiple jurisprudences by the Indecopi and in different researches carried out in the academic world. Thus, doctrine considers plagiarism a crime, always classified as an unlawful conduct, if and when several conditions occur. A list by Lipszyc includes:

- a) The work is protected [...];
- b) The use has not been under the protection of a limitation to the right [...];

- c) The protection period is in force [...];
- d) The agent's conduct is in accordance with a typically incriminated figure [...];
- e) The existence of deceit in the agent [...] (cited in Balbuena, n.y.: 8).

The author adds:

Regarding the crime of plagiarism, the doctrine states that the type perfection requires the coincidence of the following conditions:

1. Appropriation of the right of attribution;
2. Absence of author's consent;
3. Disclosure; and
4. The intentional element or deceit (cited in Balbuena, n.y.: 9).

In Peru, the infringement of the author's moral rights is penalized administratively (Indecopi) and criminally (Judiciary). Administratively, the procedure is carried out in two instances; in the first, it is competency of the Copyright Office to accept the complaint and resolve it, and in the second and last instance, in avenue of appeal, corresponds to the Intellectual Property Chamber to confirm the order in whole or in part or repeal it, wherewith the process is exhausted. Criminally, the plagiarist is prosecuted according to the Criminal Code, which typifies the unlawful conduct as "False attribution of work authorship", and Judiciary initiates the criminal complaint *ex officio* or upon request of the interested party before the Public Prosecutor when notified of the act.

Article 219 of the Criminal Code (2007) indicates:

False attribution of work authorship. An imprisonment of two to eight years and a fine of sixty to one hundred and eighty days will be applied to the person that, regarding a work, diffuse it as own, wholly or partially, copying or reproducing it textually, or trying to dissimulate the copy through certain alterations, attributing to himself/herself or to another the authorship or ownership.

However in the academic world, particularly in the universities comprising the Peruvian University System, the University Law (No. 23733) and the statutes do not consider this type of infringements, most of the time are ignored. When plagiarism occur, universities appear reluctant to penalize it, except for some that separately have incorporated in their internal rulings actions and penalties to prevent and suppress these conducts. The *Pontificia Universidad Católica del Perú* (PUCP) states in its Code of Disciplinary Punishment:

Article 4. Serious infringements. [...] c) Commit plagiarism or any other act intended to alter or distort the academic evaluation objectivity [...].

Article 5. Applicable penalties. [...] Those committing more serious infringements, considered in Article 4 of these rulings, can be penalized with academic suspension up to twenty-four months or expulsion of the University.

We refer a case which at the time (2009) provoked rejection in the academic world. Applying the Rulings and according to the internal rules, the PUCP penalized two students who committed plagiarism. As expected, the penalized students appealed before the highest instance in the University, the National Assembly of Rectors, which through the *Consejo de Asuntos Contenciosos Universitarios* (Codacun) (Council of University Litigation Matters), annulled the penalty imposed by the University, proceeding only with a simple “warning” with arguments lacking any logical basis and common sense. Such decision was heavily criticized by different sectors of society and the University itself, which published a statement indicating this type of orders generates an unfortunate precedent against ethics and values, and demoralizes the university community. Below is an extract of the statement:

“[...] In March 2009, two students were penalized by the University Council of the PUCP with suspension since they committed plagiarism in the elaboration of research works, by using paragraphs of works without citing the authors; that is, they pretended to present other’s ideas as own [...] an act contravening the main task of the university: think and reflect; not the sole transmission and repetition of knowledge.” The penalized students appealed this penalty at the National Assembly of Rectors. The Council of University Litigation Matters (Codacun), which is the highest national instance in this type of cases, annulled the penalty imposed by the PUCP and proceeded only with a warning. Arguments were that “students behave naturally by imitating and copying too much without indicating the sources” and that “teaching consists fundamentally in the constant repetition of other’s ideas and formulations, omitting many times, trying to economize, the sources.” (<http://blog.pucp.edu.pe/archive/774/2010-4-19>)

In July 2012, the *Universidad Nacional Mayor de San Marcos* approved the Rulings of Disciplinary Process for Students of the *Universidad Nacional Mayor de San Marcos*, which states: “Chapter III. Offenses. Article 6. The following are offenses subject to disciplinary penalty: Partial or total plagiarism of research works.” This constitutes an important step in penalizing dishonest conducts that evidently are increasing in the academic world and might serve as a precedent so other higher education institutions approve this type of regulatory instruments to preserve ethics and academic honesty among university community members.

Finally, the quote of Morató is illustrative, who reproduces the following text from the web page of the University of Navarra:

It would be a mistake to describe plagiarism just as a minor offense, or as an academic formality issue. On the contrary, plagiarism is a serious offense of academic honesty. It is a principle of intellectual honesty that all members of the scientific community recognize their debt with the authors of the ideas, works and information in which their work is based on. To present other's work as own is not only a lack of comradeship, but also means a failure in the learning process. Deliberate plagiarism is an unethical conduct and can entail serious consequences for your future professional career, while it breaks the bases of the institution and studies carried out there (2012: 364).

## RESEARCH METHOD

This is a descriptive research, based on bibliographic review, transversal observation and documental analysis of the orders issued by the Intellectual Property Chamber of the Court of Indecopi in Peru, which establish jurisprudence in intellectual property matters. The research quantifies in a frequency table the percentage incidence of each one of the variables and indicators of the research.

- Data was obtained from bibliographic and printed documentary sources: books, theses, reference material, journal articles, newsletters, among others.
- Electronic sources. The main information source was official: orders of the Court of Indecopi in the institution's web page. In turn, internet allowed the access to information, both domestic and international, of public and private agencies and non-governmental organizations, among others. These sources included official publications, essays, journal articles in full text and databases.
- Data collection. An analytical and interpretative study was carried out with the orders issued by the Intellectual Property Chamber of Indecopi, published in the institution's web page, about the infringement of author's moral rights. For this purpose, an ad hoc instrument was elaborated, a two-way table with data matching each of the indicators.
- Temporal scope. The study period was 2008 to 2011, including the records on infringement of author's moral rights, particularly those relating to the right of attribution.
- Analysis units. Each of the orders issued by the Intellectual Property Chamber of the Court of Indecopi.

- Applicable Tax Unit (ATU). This is a reference value for any type of taxes. It is also applied to set out penalties and other accounting obligations. The Ministry of Economy and Finances is in charge of fixing the amount of this unit on an annual basis.
- Data treatment and analysis. After the identification of the records concerning the subject matter, these were summarized based on the table of variables and indicators previously determined, to finally quantify frequencies and generate tables using Microsoft Excel software based on the results of each indicator and using Microsoft Word software for the final report.
- Theoretical-conceptual references. The concepts developed based on the review of the literature supporting the information description, analysis and interpretation were: plagiarism, copyright, and author's moral and economic rights.
- Population and sample. The population included all the records processed before the Copyright Office of Indecopi, from 2008 to 2011, relating to infringement of author's moral rights; the sample consisted in 43 records located in the institution's web page.
- Study variables. The significant issues to meet the proposed objectives were determined in eight variables, each one divided in respective indicators, as the following table depicts:

Table 3. Variables and indicators.

Variables	Indicators
1. Subject of the complaint (infringement of the author's moral rights)	<ul style="list-style-type: none"> <li>• Right of attribution</li> <li>• Integrity</li> <li>• Modification</li> <li>• Disclosure</li> </ul>
2. Type of plagiarism	<ul style="list-style-type: none"> <li>• Intelligent plagiarism</li> <li>• Direct plagiarism</li> </ul>
3. Type of complaint	<ul style="list-style-type: none"> <li>• Complaint ex officio</li> <li>• Complaint upon request of a third party</li> </ul>
4. Type of work subject of the complaint	<ul style="list-style-type: none"> <li>• Literary text</li> <li>• Encyclopedias</li> <li>• Projects</li> <li>• Theses</li> </ul>

5. Number of authors accused	<ul style="list-style-type: none"> <li>· Single author</li> <li>· Various authors</li> <li>· Corporate authors</li> </ul>
6. Penalty in the first instance (Copyright Office)	<ul style="list-style-type: none"> <li>· Fine of more than 5 ATU</li> <li>· Fine of less than 5 ATU</li> <li>· Complaint before the Public Prosecutor</li> </ul>
7. Judgment in second instance (Intellectual Property Chamber)	<ul style="list-style-type: none"> <li>· Fine reduced</li> <li>· Complaint before the Public Prosecutor</li> </ul>
8. Justification	<ul style="list-style-type: none"> <li>· Considered a mistake</li> <li>· Does not accept the charges</li> <li>· Does not know how to cite</li> </ul>

## RESULTS

Previously to data description and analysis, it is important to know the conceptual definitions of the indicators analyzed in the study, which are contained in the doctrine and in Legislative Decree No. 822, legal rule approved in Peru protecting copyright.

- Complaint ex officio. The administrative or legal entity, as called for its powers provided by law, initiates the complaint considering that the rule has been infringed.
- Complaint upon request of a third party. The author or his/her assignees set a demand for infringement of their rights.
- Inadmissible complaint. This occurs when the background requirements are not met when initiating the complaint.
- Right of attribution. This gives the author the right to be recognized as such, to determine that the work has the corresponding indications and to decide if disclosure will be done under his/her name, a pseudonymous or sign, or anonymously (Leg. Dec. No. 822 Article 24.).
- Disclosure. According to the right of disclosure, the author has the faculty to decide if his/her work is to be disclosed and in which way. In the event of keeping the work unpublished, the author may dispose, by will or other written indication, that the work will not be published while

being in the private domain [...] (Leg. Dec. No. 822 Article 23).

- Integrity. According to the right of integrity, the author has the faculty, even before the purchaser of the material object containing the work, to oppose to any deformation, modification, mutilation or alteration of the work (Leg. Dec. No. 822 Article 25).
- Modification. According to the right of modification or variation, the author before or after the disclosure has the faculty to modify his/her work observing the rights acquired by third parties, who must previously be indemnified for any losses or damages caused (Leg. Dec. No. 822 Article 26).
- Intelligent plagiarism. To copy a work, altering or modifying it with words, phrases, or paragraphs, in order to hide the literal copy.
- Direct plagiarism. To partly or wholly copy a work textually, without major modifications, in such a way that it is very easy to distinguish the similarity.
- Original ownership. It results from the sole creation of the work (Leg. Dec. No. 822 Article 44).
- Derived ownership. It arises from circumstances different from the creation, whether by legal mandate or presumption, or by assignment *inter vivos* or *mortis causa* transmission (Leg. Dec. No. 822 Article 45).

*Attachment 1* indicates the number of records (43 in total) and orders issued by the Intellectual Property Chamber of Indecopi between 2008 and 2011, which establish jurisprudence in intellectual property matters in Peru and are available in the institution's web page.

Based on the variables and indicators of *Table 3*, the results of the observation and analysis of the orders (43 in total) are described below.

### *Subject of the complaint (infringement of author's moral rights)*

Author's moral rights include the right of attribution, integrity, disclosure, modification, withdrawal of the work from the market and the right of access (Leg. Dec. 822 Article 22). As such, the same offender can be denounced due to the infringement of multiple author's moral rights (for example, infringement of the right of attribution, integration and disclosure).

The review of the records (43) relating to the infringement of moral rights allows to conclude that a high percentage (95%) of administrative processes initiated in Indecopi between 2008 and 2011 were complaints for the infringement of the right of attribution of the work. At the same time, 19% were related to the infringement of integrity and in a lesser number to disclo-

sure, demonstrating that infringement of the right of attribution of the work, which mostly means plagiarism, is one of the most critical issues in author's rights protection.

Table 4. Subject of the complaint (2008-2011).

Subject of the complaint	Years				Total	%
	2008	2009	2010	2011		
Right of attribution	13	6	9	13	41	95
Integrity	-	4	3	1	8	19
Disclosure	2	2	-	1	5	12
Not precise	1	-	-	-	1	2

### *Type of plagiarism*

Plagiarism is the appropriation of the author's right of attribution. Complaints filed for infringement to moral rights (right of attribution) have been specifically classified in the record (direct plagiarism and intelligent plagiarism). According to the results obtained from the documental analysis, almost half of the complaints (39.5%) correspond to direct plagiarism, and slightly more than a fourth (25.5%) to intelligent plagiarism, while a significant percentage of the orders (35%) do not specify the type of infringement only indicating that the infringement to the right of attribution was denounced. This empirical evidence shows that offenders most frequently turn to direct plagiarism (which means to "copy and paste" the other's text) presenting the work as own, appropriating the right of attribution of the real author without any ethical consideration and even less any legal consideration.

Table 5. Type of plagiarism (2008-2011).

Type of plagiarism	Years				Total	%
	2008	2009	2010	2011		
Direct plagiarism	2	2	6	7	17	39.5
Intelligent plagiarism	7	1	1	2	11	25.5
Not specified	5	3	2	5	15	35
Total	14	6	9	14	43	100

*Type of complaint*

Administrative complaints before Indecopi can be formalized by two ways: complaint ex officio, when the entity protecting the copyright, by minutely evaluating the contents of the work and before granting the certificate of registry, detects the infringement of the law; and complaint upon request of a third party, when the author or his/her assignees denounce the infringement of his/her rights. Regarding this variable, results show that more than half of the processes (67%) were complaints formalized ex officio, while only 33% were initiated by direct action of those affected. This indicates that infringement of author's moral rights is mostly detected during qualification process, after the request for a work registry at the Copyright Office of Indecopi. This result reveals the serious moral problem of requesters, who knowingly have infringed the author's moral rights in the elaboration of their works and try to mislead the authorities applying for the registry.

Table 6. Type of complaint (2008-2011).

Type of complaint	Years				Total	%
	2008	2009	2010	2011		
Complaint ex officio	10	4	6	9	29	67
Complaint upon request of a third party	4	2	3	5	14	33
Total	14	6	9	14	43	100

*Type of work subject of complaint*

The types of works protected by copyright are diverse; Leg. Dec. No. 822 mentions more than a dozen, one of those is literary works, which, for the purposes of this study, include texts, encyclopedias, projects and theses. The results of the observation and documental analysis indicates most works subject of complaint for infringement to the author's moral rights are literary texts (86%), followed by encyclopedias, projects, theses and others, which jointly only represent 14%. This result reveals that most authors registering their works produce scientific, technical or literary texts (books), and fewer authors produce another type of works.

Table 7. Type of work subject of complaint.

Type of work	Years				Total	%
	2008	2009	2010	2011		
Literary text	13	6	7	11	37	86
Encyclopedias	1	-	-	-	1	2.3
Projects	-	-	1	2	3	7
Theses	-	-	1	-	1	2.3
Other	-	-	-	1	1	2.3
Total	14	6	9	14	43	100

### *Number of authors denounced*

Among all the formalized complaints, half (51%) are works with a single author, while 35% have multiple authors, and only 14% have corporate authors, such as publishers, municipalities or state institutions. This indicates that creation and elaboration of literary texts is, mostly, the effort of a single author, and puts aside co-authors collaboration.

Table 8. Number of authors denounced.

No. of authors denounced	Years				Total	%
	2008	2009	2010	2011		
Single author	6	4	4	8	22	51
Multiple authors	7	2	4	2	15	35
Corporate author	1	-	1	4	6	14
Total	14	6	9	14	43	100

### *Penalty in the first instance (Copyright Office)*

The penalizing administrative procedure is the means that Indecopi uses, through the Copyright Office, to impose a penalty to the denounced party when a complaint upon request of a third party or ex officio is admitted by detecting that the denounced party has infringed the law. Penalties usually are pecuniary (fine). Regarding the analyzed jurisprudences, penalties imposed in this instance to most of the denounced subjects (72%) were a heavy fine equal or greater than 5 ATU (more than 18,000 *nuevos soles*) and only 7% received a fine smaller than 5 ATU. Only one denounced party was penalized with a warning. On the other hand, almost half of the offenders (49%) were penalized, along with the pecuniary fine, with a notification to the Public Prosecutor of the intentional act. This office is in charge of the investigation and, if acts warrant, should denounce and process them in the

Judiciary, considering that plagiarism is classified as a crime in the Criminal Code in force.

Table 9. Penalty in the first instance.

Penalty in the first instance	Years				Total	%
	2008	2009	2010	2011		
Warning	-	1	-	-	1	2.3
Fine of more than 5 ATU	11	3	7	10	31	72
Fine of less than 5 ATU	1	1	1	-	3	7
Unfounded		1-	-	2	3	7
False	1	1	1	2	5	12
Notify the Public Prosecutor	4	3	7	7	21	49

### *Judgment in the second instance (Court of the Intellectual Property)*

Once completed the penalizing administrative procedure in the first instance, in avenue of appeal the penalized individual can take the cause to the Court of the second and last instance (Intellectual Property Chamber of Indecopi), whose order ends the administrative process. Among the reviewed orders, all 43 were appealed, and among the judgment issued in this instance, most penalized individuals (60%) obtained a reduction of fines well below those imposed in the first instance; in the event of several denounced individuals, payment was mutually. On the other hand, the Chamber decision of notifying the Public Prosecutor only reached a small percentage (26%) (11 complaints), less than half of those set out by the former instance.

Table 10. Judgment in the second instance

Judgment of the Court	Años				Total	%
	Years	Total	%	2011		
Confirm the order	1	-	2	-	3	7
Nullity	-	-	1	-	1	2.3
Reduce the fine	11	-	5	10	26	60
Unfounded	1	-	-	1	2	5
False	1	-	1	3	5	12
Notify the Public Prosecutor	2	1	5	3	11	26

### *Justification of the denounced individuals*

Once the complaint is taken and admitted, the penalizing administrative procedure allows the denounced individuals to file their proofs. Among all

the complaints admitted in the first instance (43), almost half (47%) explicitly stated as justification that they took and included other's texts in the works whose registry they were requesting, considering this fact just a mistake, due to ignorance of the requirements and lack of care in the elaboration of the text. While a third (37%) did not accept the charge and denied having committed an infringement to the right of attribution, even though the evidences found by the authority were conclusive. This suggests that authors creating or producing a text minimize copyright infringement not recognizing another person's property.

Table 11. Justification.

Justification	Years				Total	%
	2008	2009	2010	2011		
Consider it a mistake	11	-	3	6	20	47
Do not accept the charge	1	5	5	5	16	37
Ignorance of the right of quotation	-	-	1	3	4	9
No justification	2	1	-	-	3	7
Total	14	6	9	14	43	100

## DISCUSSION

Intellectual property is the right that authors, creators or inventors have on their work. According to the World Intellectual Property Organization, the intellectual property branches are two, copyright and industrial property, which are protected by the Peruvian State through Indecopi. Copyright "Is the branch of the law that regulates the authors' subjective rights on creations presented as the result of their intellectual activity, which usually are identified as literary, musical, theatrical, artistic, scientific and audiovisual works" (Cruz, 2007: 2). "The author of a work has by the sole fact of the creation, the original ownership of an exclusive right against third parties, which comprises, in turn, the moral and economic rights set out in this law" (Leg. Dec. No. 822 Article 18). This right is part of the fundamental rights of people, reflected in international agreements and standards that the Peruvian government has signed. Locally, there is a comprehensive legislation that safeguards these rights, which range from Article 2 of the Constitution —"Everyone has the right: [...] 8. To the freedom of intellectual, artistic, technical and scientific creation, as well as the ownership on such creations and its product. The State promotes the access to culture and encourages its development and dissemin-

nation”—to those with a lower status, being laws, legislative decrees, supreme decrees or others.

The objective of this research is to identify and analyze a set of orders (43) from the Court of Intellectual Property of Indecopi in Peru that administratively decides in last instance the complaints on infringement of author's moral rights, which can be: a) right of disclosure, b) right of attribution, c) right of integrity, d) right of modification or variation, e) right to withdraw the work from the market and f) right of access (Leg. Dec. No. 822 Article 22). These orders establish administrative jurisprudence and are generated during the penalizing administrative procedure held by the Indecopi competent bodies, which decide the causes in two instances. In the first instance, the Copyright Office “Is responsible of protecting copyright and related rights. It decides in the first instance the contentious and non-contentious cases under its jurisdiction, by complaint upon request of a third party or *ex officio*. It administrates the National Registry of Copyright and Related Rights [...]” (<http://www.indecopi.gob.pe>). In the second and last instance, “The Intellectual Property Chamber is the functional body ruling in appeal proceedings before the Indecopi Offices of Distinctive Signs, Inventions and New Technologies, and Copyright” (<http://www.indecopi.gob.pe>). With its order the administrative procedure is exhausted.

It should be noted that although the legal asset protected by copyright is the authors' and inventors' intellectual property, the infringement of the right of attribution of the work through plagiarism is more and more extended, particularly in the academic world. One reason is the influence of new information and communication technologies that make available an enormous amount of data and information, another is by using software that facilitate “copy and paste.” In this regard, researchers Saldaña, Quezada, Peña and Mayta reached an instructive conclusion while reviewing and analyzing “[...] the total number of theses submitted for the degree of Medical Doctor in 2008 in a public university in Peru” (2010: 64). They found a high frequency of plagiarism, being the most frequent word-for-word plagiarism (also known as direct plagiarism). However, it is evident the scarce number of administrative complaints filed before the entity responsible for protecting intellectual property (Indecopi), which function limits, in most cases, to formalize complaints *ex officio* resulting from the review of a work in the registry stage. As such, the administrative proceedings files before the state entity do not reflect the complexity of the problem, instead it reveals the ineffectiveness of higher education institutions, which do less or nothing to establish rules for these matters. Also, few higher education institutions have regulated and penalized this type of dishonest conducts. At Judiciary level,

despite plagiarism is an offense penalized with imprisonment, the persecution and penalty for this kind of crimes are almost null.

For the purposes of this research, the analysis of the contents of 43 orders issued between 2008 and 2011 by the Intellectual Property Chamber of Indecopi, related to the infringement of author's moral rights, identified eight variables and their respective indicators. From data collected during the documental analysis period and subsequent tabulation, it can be noted that almost all penalized cases correspond to the infringement of the right of attribution of the work, which "Is the right that authors have for the work to be recognized as theirs and to link or not their name to the work. Authors can disclose their work to the public with their own name, with a fictitious name (pseudonym) or anonymously" (Martínez and Robayo, 2006: 11). Such infringement manifests in the robbery or theft of others' works contents, known as plagiarism. Lipszyc (1993) classified it as direct plagiarism and intelligent plagiarism, the most used classification in the basis of Indecopi orders. So, most complaints filed before Indecopi have been for direct plagiarism, revealing the little respect to copyright, which is an intangible right with more ethical and moral components than criminal.

Regarding the types of complaints in the administrative procedure, these can be formalized in two ways: complaint *ex officio* and by request of a party. The first case occurs when the competent authority (Indecopi Copyright Office) knows of the act in the stage of work registry qualification, and by finding enough elements or evidence of infringement to the law files the respective complaint. The second is by the request of a party, the act is formalized when the affected party or his/her assignees denounce the alleged perpetrators of infringement of the author's moral or economic rights. Data show that a high percentage of the complaints originate *ex officio* as part of the functions performed by the Copyright Office.

Since protected works are of several types, the study has only focused on literary works, understood as: "Any intellectual creation, literary, scientific, technical or merely practical, expressed by means of a determined language" (Leg. Dec. No. 822 Article 2.23). Such category includes literary texts, encyclopedias, projects and theses, among which the majority of the works subject of complaint due to infringement of author's moral rights are literary texts.

Regarding the type of penalties imposed in last instance by the Court of Indecopi, these have been very mild in comparison with that set out in the Legislative Decree No. 822, Article 188: "The Copyright Office may impose jointly or independently, the following penalties: b) Fine up to 150 Applicable Tax Units" (ATU equals 3,750.00 *nuevos soles*. This fine is a very high pe-

cuniary penalty; however, orders issued by the Court show that for the vast majority of penalized individuals, fines are reduced to figures much smaller than those imposed in the first instance. Therefore, little can be done to stop the serious moral and legal issue of plagiarism and infringement of author's moral rights. It has to be mentioned that decisions adopted by the Chamber are controversial, since the Court acts with indulgence before the infringement of author's moral rights. Likewise, the law authorizes: "To file, if it considers pertinent, penal complaint, when it has knowledge of an act constituting the alleged Crime" (Leg. Dec. No. 822 Article 169.c). And the most unbelievable is the small number of penalties implying the notification of the act to the Public Prosecutor, since these are considered only an administrative infringement. Not believing these are a crime, results in the impunity of the criminal action.

Regarding the justification presented by the denounced individuals at the stage of discharge, the majority considers they have made a mistake and not committed an infringement, much less a crime. This type of justifications are not more than the reflection of what happens in the collective imagery concerning the protection of intellectual property. Respect to other's creation is minimized with the usual phrases: "Nihil novum sub solem — 'There is nothing new under the Sun', Ecclesiastes (I, 10) — [...] Nullum est jam dictum, quod (non) dictum sit prius (there is nothing now said, or spoken, which has not been said and spoken before, Eunuchus Prologue) [...]" (cited by Perromat, 2010: 13).

(In [https://books.google.com.mx/books?id=Mt9FAQAAMAAJ&pg=PA116&lpg=PA116&dq=%22Nullum+est+jam+dictum,+quod+%28non+%29+dictum+sit+prius%22&source=bl&ots=55Q39wg3gq&sig=3CDIzFmatBCXkPf\\_yRU5PjiHRN0&hl=es&sa=X&ei=s4V0VfOYMsPIsAWvy4PQDg&ved=0CDUQ6AEwBQ#v=onepage&q=%22Nullum%20est%20jam%20dictum%2C%20quod%20\(non\)%20dictum%20sit%20prius%22&f=false](https://books.google.com.mx/books?id=Mt9FAQAAMAAJ&pg=PA116&lpg=PA116&dq=%22Nullum+est+jam+dictum,+quod+%28non+%29+dictum+sit+prius%22&source=bl&ots=55Q39wg3gq&sig=3CDIzFmatBCXkPf_yRU5PjiHRN0&hl=es&sa=X&ei=s4V0VfOYMsPIsAWvy4PQDg&ved=0CDUQ6AEwBQ#v=onepage&q=%22Nullum%20est%20jam%20dictum%2C%20quod%20(non)%20dictum%20sit%20prius%22&f=false) (Consulted: June 7, 2015))

This situation demands from the institutions in charge of protecting intellectual property more severe penalties and a permanent dissemination of regulations, seeking that society interiorizes the importance of authors' and creators' intellectual work, an essential condition for the country development.

[...] it must be taken into consideration that copyright allows creators (writers, scientists, painters, sculptors, poets, software developers, directors, etc.) to have incentives to continue creating and such creative process is indispensable for the country development [...]. In fact, in countries having an effective protection system of copyright and, additionally, that established a culture of respect of such

rights in society, copyright stops being an obstacle, becoming a necessary mechanism for the access to culture and contributing in the creation of a social identity (with education) for progress (Kresalja, Marticorena, Roca and Unger, 2007: 69).

## CONCLUSIONS

Based on the study objectives on the role of Indecopi regarding the complaints of intellectual property infringement and penalties imposed by this entity, the following conclusions have been drawn.

- From all the records (43) subject of penalizing administrative procedure due to the infringement of author's moral rights, most cases (95%) are complaints due to the infringement of the author's right of attribution as direct plagiarism (39.5%). This means, the word-to-word copy without any modification, appropriating in this way the right of attribution of the work, which denotes the plagiarist's cunning and intentionality who takes the complete contents of a literary work, essentially without citing the source or crediting the author.
- Among the analyzed records, most (67%) were filed by complaints ex officio, after the author requested the registry of the work. The application of a work registry does not mean requesting the acknowledgement of copyright. Since it is included in the Human Rights, this is automatic without requiring any formality. Authors just demonstrate the work is product of their creation and the registry only serves as publicity and proof of priority.
- Regarding the type of works protected, a high percentage (86%) corresponds to literary texts, produced mostly (51%) by a single author, which indicates that the production of a text mainly relates to the action of a single person, who writes with a certain purpose, either for academic research, education or entertainment purposes. However, he/she steals or robs the contents of other's work, word-to-word or with some intentional alterations, so these go unnoticed. Then, he/she requests the registry, knowing full well that total or partial contents are not a result from his/her creation. Thus, by not recognizing or minimizing the control, qualification and review performed by the Copyright Office, he/she acts with absolute lack of moral, which is just the reflection of the deep crisis of values in our society.
- As regards to the penalties Indecopi imposes when confirming copyright infringement, the law authorizes among others: a) warning; b)

fine up to 180 Applicable Tax Units. The review of the orders indicates that in the first instance, almost three quarters of the denounced persons (72%) were penalized with fines greater or equal to 5 ATU (more than 18,000 *nuevos soles*). However, in the appeal process in the second instance, the Intellectual Property Chamber reduced the fine to more than half of the offenders (60%) to much less than 5 ATU. A fine that in practice is usually not paid due to the insufficient mechanisms compelling its compliance.

- Cases resolved in first instance that dispose, in addition to the pecuniary penalty, to notify the Public Prosecutor (to evaluate the penal complaint since it is considered a crime) represent in percentage terms almost half (49%) of the defendants. However, after the appeal, orders show that the Chamber rescinded the penalties or reduced these to insignificant amounts to 26% of all denounced individuals, which indicates permissiveness and tolerance for copyright infringement.
- Regarding the justification presented by offenders in the stage of discharge, almost half (47%) accepted they committed an infringement of the law; however, they qualified such conduct as a simple mistake, careless mistake or ignorance of the previous requirements for work registry application. Whereas others expressly considered themselves victims arguing that Indecopi also has certain responsibility by not performing a review before beginning the proceedings. A third (37%) of offenders stated explicitly they did not accept having infringed copyright and some individuals justified their conduct claiming ignorance of the right of quotation.
- Finally, it must be mentioned that the role of the Institute of Jurisdiction and Intellectual Property lacks effectiveness, given the results of the review and analysis of the orders issued by the Court, both in the first and second instance.

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## Attachment 1

Records on infringement of author's moral rights (2008-2011)

2008	2009	2010	2011
NO. 1266-2008/TPI-INDECOPI EX. NO. 81-2007/ODA	NO.1134-2009/TPI-RECORD NO. 099-2008/ODA	NO. 0569-2010/TPI-EX. NO. 093-2009/DDA	NO. 0115-2011 /TPI-Exp. NO. 2108-2009/DDA
NO. 2720-2008/TPI-INDECOPI EX. NO. 271-2008/ODA	NO. 1382-2009/TPI-RECORD NO. 390-2007/ODA	NO. 0570-2010/TPI-EX. NO. 075-2009/DDA	NO. 1782-2011/TPI-Exp. NO. 390-2007/DDA
NO. 0183-2008/TPI-INDECOPI EX. N° 80-2007/ODA	NO. 2131-2009/TPI-RECORD NO.741-2008/ODA	NO. 0601-2010/TPI-EX. NO. 1810-2008/DDA	NO. 1694-2011 /TPI-Exp. NO. 1418-2009/DDA
NO. 0207-2008/TPI-INDECOPIEX. NO. 555-2007/ODA	NO. 2345-2009/TPI-RECORD NO. 565-2008/ODA	NO. 1417-2010/TPI-EX. NO. 450-2009/DDA	NO.1506-2011 /TPI-Exp. NO.125-2010/DDA
NO. 1121-2008/TPI-INDECOPI EX. NO. 1538-2006/ODA	NO. 3002-2009/TPI-RECORD NO. 079-2009/DDA	NO. 2824-2010/TPI-EX. NO. 110-2010/DDA	NO.1285-2011 /TPI-Exp. NO.1616-2010 /DDA
NO. 1341-2008/TPI-INDECOPI EX. NO. 709-2007/ODA	NO. 3459-2009/TPI-RECORD NO. 1125-2008/ODA	NO. 2853-2010/TPI-EX. NO. 1310-2009/DDA	NO.1287-2011 /TPI-Exp. NO.1048-2010/DDA
NO. 1517-2008/TPI-INDECOPI EX. NO. 345-2007/ODA	-----	NO. 2855-2010/TPI-EX. NO. 106-2010/DDA	NO.0795-2011 /TPI-Exp. NO.2010-2009/DDA
NO. 1597-2008/TPI-INDECOPI EX. NO. 707-2007/ODA	-----	NO. 2941-2010/TPI-EX. NO. 1481-2008/DDA	NO.0853-2011/TPI-Exp. NO. 799-2010/DDA
NO. 0723-2008/TPI-INDECOPI EX. NO. 1241-2005/ODA Accumulated al 1590-2005/ODA	-----	NO. 2945-2010/TPI-EX. NO. 801-2010/DDA	NO. 572-2011/TPI-Exp. NO. 798-2010/DDA
NO. 1340-2008/TPI-INDECOPI EX. NO. 706-2007/ODA	-----	-----	NO.0370-2011 /TPI-Exp. NO.111-2011/DDA
NO. 1516-2008/TPI-INDECOPI EX. NO. 719-2007/ODA	-----	-----	NO.0365/TPI-Exp. NO.1937-2009/DDA
NO. 2006-2008/TPI-INDECOPI EX. NO. 1159-2007/ODA	-----	-----	NO.0274/TPI-Exp. NO.632-2010/DDA
NO. 2280-2008/TPI-INDECOPI EX. NO. 321-2007/ODA	-----	-----	NO. 0209-2011 /TPI-Exp. NO. 796-2010/DDA

NO. 2307-2008/TPI-IN-DECOP EX. NO. 960-2007/ODA	-----	-----	NO.0220-2011 /TPI-Exp. NO.107-2010/DDA
14	06	09	14
Total: 43 records			

Source: [www.indecopi.gob.pe](http://www.indecopi.gob.pe)  
Own elaboration

