

Tim Feest, Operations Director

Shieling House 30, Invincible Road Farnborough Hampshire GU14 7QU, UK
Tel: 44 (0) 1252 371022 E-mail: cope_opsdirector@publicationethics.org

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Mr Michael Pyshnov
E-mail address: uoftfraud@yahoo.ca

Dear Michael,

Thank you for your e-mail of 24 June 2009. I will respond as best I can to the points you have made, in order.

Interpretation of the term ‘plagiarism’

We probably did make a mistake with our interpretation of the term ‘plagiarism’ by regarding this restrictively as the deliberate use, and representation as one’s work, of *published* material in part or in whole produced by others, without proper acknowledgement of the source. We do accept that plagiarism can occur when *unpublished* material (unpublished in the sense of not having been made available to the general public by means of media such as, but not limited to, learned journals, books, trade and technical magazines, newspapers and on-line) is used.

However, the fact that we chose not to debate this particular issue with you earlier was based on our conclusion that the matter was not one with which COPE could become formally involved: as such, considerations of the definition of ‘plagiarism’ became irrelevant.

Let me state for the record that COPE was not motivated by any desire to keep secret our interpretation of the term plagiarism. COPE has never attempted detailed definitions of different forms of misconduct. The point we were trying to make (although we admit we did not state this sufficiently clearly) is that, although your case can be viewed as plagiarism, we felt that, because it involved people from the same department, it was more helpful to consider it an authorship dispute.

Editor’s obligations and COPE’s obligations

COPE is quite clear about its obligations.

COPE provides formal guidance, advice and recommendations to authors, editors, publishers and anyone else wishing to make a complaint, or raise an issue, with regard to the actions of editors and the journals they edit, provided:

- (a) the editor was registered with COPE before the complaint is submitted to COPE;
- (b) the complaint or issue falls within the remit of COPE, that is it relates to an ethical matter.

You ask whether COPE will never ever consider any complaint against the Editor in question, that is Dr Reynolds. COPE will consider any future case against Dr Reynolds that is first submitted to COPE *after* the date on which he was formally registered with COPE.

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It is clear that your first complaint to Dr Reynolds, and your request to him to retract the article concerned, was made before Dr Reynolds was registered with COPE. If we failed to make this point clear when you first brought the complaint against Dr Reynolds to the attention of COPE then we are at fault. However, we did apologise if we had raised your hopes too highly with our initial response: see my letter of 28 May 2009 and below.

You have selectively quoted from my letter to you dated 28 May 2009 thus (my words are in italics):

[you have admitted that I] “...*appeared to have just cause for submitting a formal complaint to COPE...*”

For the record let us put that phrase in the context of the sentences I wrote, quoted here in full: from my letter to you of 28 May 2009:

“Our initial appraisal, that you appeared to have just cause for submitting a formal complaint to COPE, proved to have been unhelpful in this instance. If with our initial response to you we raised too highly your hopes that COPE could be formally involved; and if we failed to explain fully the policy regarding dates of submission of a complaint and dates of registration with COPE then we are at fault and apologise for that.”

The use of the word ‘appeared’ was deliberate. We did *not* state categorically and unequivocally that in our view you did have just cause for making a formal complaint to COPE. The OED definition used for ‘appear’ is “seem; have the appearance of being” and ‘appearance’ is defined as “an outward form as perceived (whether correctly or not)”. Using the word ‘appeared’ left open the option, implicit perhaps, that there might not be just cause; and thus it proved.

I do not think I could have made plainer the fact that our *initial* appraisal proved ‘unhelpful’; nor do I think I could have made plainer the fact that I apologised if that initial appraisal had raised in you false expectations that COPE would be able to deal formally with the issue.

Our subsequent, more detailed examination of your complaint resulted in our finding that the Editor concerned, Dr Reynolds, was not registered with COPE when you first raised the matter with him: hence our conclusion that COPE could not formally be involved; and hence my apology if the preliminary response was, unintentionally, misleading.

You state and ask,

“There is no reason why I can not ask the Editor now, when he has to follow the [COPE] Code of Conduct, to retract the fraudulent, plagiarised paper...I can insist on returning the important discovery under my name and insist on correcting the academic and scientific record, provided that COPE will have a full and formal involvement if the Editor violates the Code of Conduct now. Why are you preventing all of this?”.

To repeat ourselves, our response is that the Editor concerned, Dr Reynolds, was not registered with COPE at the date on which you first raised this particular matter with this particular Editor. You have chosen to persist with your demand that Dr Reynolds retracts the article in question.

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As far as COPE is concerned, this is a continuation of the same complaint brought to Dr Reynold's attention before he was registered with COPE. It remains our view that COPE's rules of engagement cannot be applied retrospectively to Dr Reynolds for this particular complaint.

With regard to *any* Editor's obligations, where the Editor is registered with COPE, our position and status are quite clear. COPE offers advice, guidance and recommendations as part of the process of attempting to resolve ethical issues brought to COPE's attention and which COPE considers fall within COPE's remit. COPE does not offer adjudication; nor does COPE have any authority to demand and insist that any party in a dispute falling within COPE's remit follows a course of action that COPE might offer; nor indeed to impose penalties or sanctions if a recommended course of action is not followed.

Has your Committee done this deliberately?

The question is yours.

You express bewilderment that "...so far you [COPE] are trying to avoid any involvement in this case while, in fact, (sic) you have admitted that I "...appeared to have just cause for submitting a formal complaint to COPE...".

As we have already noted above, you have quoted me selectively. Our initial appraisal suggested that there might be 'just cause'; our subsequent, more detailed investigation resulted in our finding that your initial complaint was made against Dr Reynolds before he was registered with COPE; and I apologised for the possibility that our initial appraisal may have raised too highly your hopes regarding COPE's formal involvement with this issue.

We note with interest your view that, "A year ago your Committee assumed the position of czar of ethics in scientific publications in the entire world, adopting 5000 journals that must obey your Committee's Code of Conduct and listen to the Committee's advice."

Let us put the record straight about COPE, its history and development. COPE was established in 1997 as a small, informal network of biomedical journal editors having a shared interest in ethical issues and the best way of dealing with them under a set of agreed policy guidelines. That initial small network developed to include some 350 editors, up to the year 2007. In 2007 several large publishing companies chose to join COPE, resulting in the number of journals (and hence their editors) registered as members rising to something like the 5000 that you quote. However, COPE did not 'adopt' these journals: the publishers concerned chose to subscribe to COPE and were thus entitled to register the journals, and their editors, as members of COPE.

COPE did not [a year ago] assume the position of czar of ethics in scientific publications in the entire world. To revert to dictionary definitions, a czar (or tsar) is defined by the OED as 'a person with great authority'. As we have explained, COPE does not hold authority over editors, journals, publishers, authors or any other party involved in a dispute with which COPE becomes formally involved.

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COPE can neither insist that any party follows a course of action recommended by COPE nor impose sanctions or penalties for failing to do so. COPE's role is to offer advice and guidance to its members.

I am saddened that you feel COPE's stated position in this particular instance has, in some way, "only helped the efforts by the University of Toronto to leave the academic and scientific record permanently falsified". For the record we have had no contact whatsoever with the University of Toronto with regard to this case. Equally, I am saddened by, and take exception to, your suggestion that "If you do this in other cases, your Committee on Publication Ethics becomes a disaster for science, scientists and the public health".

For the record, COPE *has* been asked to consider cases where the journal editor concerned was not registered before the formal complaint was made to COPE; and, as with your present case, we have been obliged to advise the parties concerned that COPE does not become formally involved in such circumstances, even if the editor concerned is subsequently registered as a member of COPE. Other authors, editors, publishers and complainants seem to find this acceptable. The rule is there for good reason: we do not subscribe to the retrospective application of legislation or, in this instance, stated rules of engagement.

You conclude with a question: "...will you apologise for making the impossible misinterpretations, or did you do this deliberately to reject any complaints against the Editor because, for some improper reason, COPE wanted to leave the academic and scientific record permanently falsified". We will respond thus:

- We have apologised for the unintended restricted interpretation we placed on the term 'plagiarism' and for any confusion this may have caused ;
- However, even had the wider interpretation been used, the fact remains that in this instance COPE could not become formally involved with the issue, that is the complaint made by you against Dr Reynolds in his capacity as the present Editor of the journal *Invertebrate Biology* (formally *Transactions of the American Microscopical Society*), because your initial complaint against Dr Reynolds was formally recorded on a date before Dr Reynolds and the journal were registered with COPE. That is a function of COPE abiding by its rules of engagement
- I have apologised, in my letter to you dated 28 May 2009, and again in this present letter, about the possibility that the wording of our initial response raised in you false expectations of COPE's potential for becoming involved in the case.
- For the record let me state that neither Dr Reynolds, nor Wiley-Blackwell (publishers of *Invertebrate Biology*) has been singled out for special consideration or treatment with regard to this complaint. If anyone has benefited from special treatment it has been you. We in COPE have spent considerable time and put in considerable effort in studying all aspects of the history of the case and in dealing with your correspondence. I make no complaint about that: it is our duty to do so and to deal with each case as best we can and as we see fit within our remit and rules of engagement.

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- The answer to your question, "...did [COPE] do this deliberately to reject any complaints against the Editor because, for some improper reason, COPE wanted to leave the academic and scientific record permanently falsified" is unequivocally 'no'. Our decision was based solely on application of our rules of engagement. It would have been wrong of us to proceed with your complaint because of the matter of the timing of your complaint to, and the registration of the Editor as a member of, COPE. The same rule would have applied, and will apply, to any other complaint about ethical matters submitted to COPE against an editor.
- You place great stress throughout your correspondence on the need for editors to follow COPE's Code of Conduct. We welcome your endorsement of the Code. We hope that you can come to accept that COPE equally has its own internal code of conduct represented in its rules of engagement for dealing with complaints, as clearly stated in the COPE website thus:

"[COPE] also publishes a Code of Conduct for Editors who are members of the organisation and will investigate complaints against them."

I am forced to the conclusion that we have reached a state of impasse. It would appear that you are unlikely to accept COPE's position in this instance, that is that we are unable to become formally involved with your complaint against Dr Reynolds and the journal *Invertebrate Biology*. Equally, we cannot ignore our rules of engagement for one particular case.

Yours sincerely,

Tim Feest
Operations Director
