



**AI Providers as Criminal
Essay Mills?** Large
Language Models meet
Contract Cheating Law

Noëlle Gaumann, Michael Veale

September 2023

Noëlle Gaumann is Research Assistant at, and LLB graduate (2023) of, the Faculty of Laws, University College London.

Dr Michael Veale is Associate Professor in Digital Rights and Regulation, and Vice-Dean (Education Innovation) at the Faculty of Laws, University College London.

Both authors contributed equally to the production of this work.

Citation: Noëlle Gaumann and Michael Veale, *AI Providers as Criminal Essay Mills? Large Language Models meet Contract Cheating Law* (UCL Faculty of Laws, 2023) doi:10.31235/osf.io/cpbfd.

© 2023 Noëlle Gaumann & Michael Veale
Published by UCL Faculty of Laws, 2023.

Project supported by funding from the UCL Changemakers programme and from EPSRC grant number EP/V00784X/1 (UKRI TAS: Trustworthy Autonomous Systems Hub).



Text licensed CC BY-NC-ND 4.0

Executive Summary	4
Chapter 1: Introduction	6
Background: Contract cheating and essay mills	6
Emergence of contract cheating law	7
Chapter 2: Analysis of Legislation	9
England and Wales	9
Ireland	11
Australia	12
New Zealand	13
USA	14
Austria	15
Germany	16
France	18
Montenegro	18
Chapter 3: AI and Essay Mills, Intertwined	19
Companies facilitating AI academic cheating services	21
AI Essay Writing Services	21
Plagiarism Camouflage Services	23
Writing and Referencing Services	25
Interim conclusions	27
Chapter 4: Tensions	29
Scope of relevant services	29
Support or Assignment Production?	30
Availability exemptions	32
Knowledge and intent	33
Legislation without knowledge or intent elements	33
Legislation with knowledge or intent elements	34
Commercial nature	35
Extraterritoriality	36
Advertising	36
Enforcement	39
Private enforcement and platform law	39
Proceeds of Crime	41
Essay mills themselves using AI systems	41
Interim conclusions	42
Chapter 5: Recommendations	44
Takedown requests	44
Internalisation of responsibility	44
Clarification and enforcement	45
How to earn a safe harbour?	46
Integration of watermarking	46
Detection and retention of essay querying	47
Due diligence and cooperation	47
Open source models	47
Concluding remarks	48
Annex: Relevant legislative provisions	50
Annex 1: England and Wales, Skills and Post-16 Education Act 2022, s. 26-30	50
Annex 2: Ireland, Qualifications and Quality Assurance (Education and Training) Act 2012, s 43A (as amended in 2019)	52
Annex 3: New Zealand, Education and Training Act 2020	53
Annex 4: Australia, Tertiary Education Quality and Standards Agency Act 2011, s 114A-C (as amended in 2019)	53
Annex 5: Florida (US), 2018 Florida Statutes, § 877.17, § 775.082-083	57
Annex 6: California, California Education Code, Chapter 6, Academic Materials, § 66400-66405	58
Annex 7: Austria, Universitätsgesetznovelle BGBl I 2021/93, §116a	59

Executive Summary

Academic integrity has been a constant issue for higher education, already heightened by the easy availability of essay mill and contract cheating services over the Internet. Jurisdictions across the world have passed a range of laws making it an offence to offer or advertise such services. Because of the nature of these services, which may make students agree to not submit work they create or support, some of these offences have been drafted extremely broadly, without intent or knowledge requirements. The consequence of this is that there sit on statute books a range of very wide offences covering the support of, partial or complete authoring of assignments or work.

At the same time, AI systems have become part of public consciousness, particularly since the launch of *chatGPT* from OpenAI. These large language models have quickly become part of workflows in many areas, and are widely used by students. These have concerned higher education institutions as they highly resemble essay mills in their functioning and result.

This paper attempts to unravel the intersection between essay mills, general purpose AI services, and emerging academic cheating law. We:

- Analyse, in context, academic cheating legislation from jurisdictions including England and Wales, Ireland, Australia, New Zealand, US States, and Austria in light of how it applies to both essay mills, AI-enhanced essay mills, and general purpose AI providers. (**Chapter 2**)
- Examine and document currently available services by new AI-enhanced essay mills, characterising them and examining the way they present themselves both on their own websites and apps, and in advertising on major social media platforms including Instagram and TikTok. These include systems which both write entire essays as well as those designed to reference AI-created work, provide outlines, and to deliberately 'humanise' text as to avoid nascent AI detectors. (**Chapter 3**)
- Outline the tensions between academic cheating legal regimes and both AI-enhanced essay mills and general purpose AI systems, which can allow students to cheat in much the same way. (**Chapter 4**)
- Provide recommendations to legislators and regulators about how to design regimes which both effectively limit AI powered contract cheating without, as in some current jurisdictions, accidentally bringing bona fide general purpose AI systems into scope unnecessarily. (**Chapter 5**)

We make some important findings.

Firstly, there is already a significant market of AI-enhanced essay mills, many of which are developing features directly designed to frustrate education providers' current attempts to detect and mitigate the academic integrity implications of AI generated work.

Secondly, some jurisdictions have scoped their laws so widely, that it is hard to see how 'general purpose' large language models such as Open AI's *GPT-4* or Google's *Bard* would not fall into their provisions, and thus be committing a criminal offence. This is particularly the case in England and Wales and in Australia.

Thirdly, the boundaries between assistance and cheating are being directly blurred by essay mills utilizing AI tools. Most enforcement, given the nature of the academic cheating regimes, we suspect will result from *private enforcement*, rather than prosecutions. These regimes interact in important and until now unexplored ways with other legal regimes, such as the EU's Digital Services Act, the UK's proposed Online Safety Bill, and contractual governance mechanisms such as the terms of service of AI API providers, and the licensing terms of open source models.

We conclude with recommendations for policymakers and HE providers. These include that:

- Jurisdictions should explore creating obligations for AI-as-a-service providers to enforce their own terms and conditions, similar to obligations placed on intermediaries under the Digital Services Act and the Online Safety Bill. This would create an avenue to cut off professionalised essay mills using these services when notified or investigated.
- Jurisdictions should name a regulator and provide them with investigation and enforcement powers. If they are unwilling to do this, giving formal ability to higher education institutions to refer matters to prosecuting authorities would be a start.
- Regulators should issue guidelines on the boundaries of essay mills in the context of AI, considering general purpose systems and systems that allow co-writing, outlining or research.
- Regulators, when established, should have a formal, international forum to create shared guidance, which they should have regard to when enforcing. Legislation should be amended to give formal powers of joint investigation and cooperation through this forum.
- Legislation should be amended to give general-purpose AI systems a safe harbour from criminal consideration as an essay mill, insofar as they meet a series of criteria designed to lower their risk in this regard. We propose watermarking, regulatory co-operation, and time-limited data retention and querying capacity based on queries provided by educational institutions, as mechanisms to consider.
- Higher education institutions share funding to organise individuals to monitor advertising archives and other services for essay mills, and report these to prosecutors in relevant jurisdictions as well as take down adverts for these services rapidly. Reporting should be wide, including to payment service providers, who may be able to stop profit from these regimes, and to AI service providers.

Chapter 1: Introduction

Providing or advertising essay mills and contract cheating has been a criminal offence in England and Wales since the Skills and Post-16 Education Act 2022 (the Skills Act). It follows varying legislation with similar aims in multiple jurisdictions passed in the last two decades, and calls from organisations such as the Council of Europe to implement such legislation.¹

Soon after the passing of this legislation, OpenAI released *chatGPT*, a large language model which has led to significant concerns around academic integrity, followed by other providers such as Google (Bard), Anthropic AI (Claude), and Meta (LLAMA). These technologies are able to provide a variety of assistance to individuals completing assignments, ranging from research, structuring, and editing, to entire or substantial authorship of the work to be submitted.² This has created concerns across the education sector, and has led to the rapid creation and revision of policies in institutions across the world.

This paper does not seek to propose new rules, but instead to understand how essay mill law, and AI system providers, interact. The reason why this is both salient and interesting stems from the breadth of both essay mill law and 'general purpose' AI systems.

Essay mills and contract cheating services do not always explicitly advertise as such, instead claiming to offer general educational support. In response, legislative frameworks both in England and Wales and in other jurisdictions, have passed laws which cast offences often much wider than services explicitly branded as the production of examination scripts. They have limited or removed intent requirements behind these offences, and augmented them with offences relating to advertising. The challenge of casting such a wide net is delimiting its scope.

AI providers may be caught within these laws' large scope. 'General purpose' language models do not make claims to specific functionality but can be deployed in a wide variety of ways by end users, including for the creation of assessment materials. Like essay mills, their providers typically have commercial motivations.

The interaction between these new services and this set of offences both in England and Wales and around the world has been underexplored. Which jurisdictions have written their laws such that AI providers might find themselves in scope of criminal offences, and under what conditions? And if so, what are the consequences of this classification?

We first provide a background on contract cheating and essay mills. We then review the legislation in several jurisdictions relating to offences for providing essay mills or contract cheating services, and characterise it. Moving to AI, we outline briefly the nature of the current AI industry around large language models, and consider it in light of the laws discussed. We draw out a number of elements creating tensions between AI systems and these laws, and discuss them further. We conclude with directions for policymakers and thoughts on the future of these two developing trends. We enclose an annex of relevant legal provisions so that readers can refer to them easily.

Background: Contract cheating and essay mills

Contract cheating can be defined as students submitting work for academic credit, which a third party completed for them often for payment, where such assistance is not permitted.³ This can be for a multiplicity of reasons, from academic pressure to a lack of capacity for full-time

¹ Platform on Ethics, Transparency and Integrity in Education (ETINED), *South-East European Project on Policies for Academic Integrity* (Council of Europe 2018) 56.

² See generally Jürgen Rudolph, Samson Tan and Shannon Tan, 'ChatGPT: Bullshit Spewer or the End of Traditional Assessments in

Higher Education?' (2023) 6 *Journal of Applied Learning and Teaching* 342.

³ The Quality Assurance Agency for Higher Education, 'Contracting to Cheat in Higher Education' (QAA, 20 September 2022) <<https://www.qaa.ac.uk/docs/qaa/guidance/contracting-to-cheat-in-higher-education-third-edition.pdf>> 3.

study due to financial needs.⁴ Cheating is a threat to nationally agreed standards for degrees and more generally academic integrity within the higher education sector.⁵ Academic misconduct is likely to proliferate further because of increased opportunities through online take-home assessments post Covid-19⁶ and the advent of AI. With AI, similarly to essay mills, students can pay a third party, in this case, a language model provider like *chatGPT*, to 'create' academic work, without any intellectual engagement on their part. Free services also currently exist which support this, including services provided as part of platform business models which monetise users' attention, data or future subscriptions.

With traditional essay mills and contract cheating providers, students are recruited on campus as influencers to offer essay mill services. Reports also emerged of students who used essay mills and were blackmailed by providers with the threat that they would be reported to their universities or employers.⁷ There is research to suggest that international students with inadequate language skills are vulnerable targets on social media platforms to sign up to self-described 'academic support services'.⁸ Essay mills could capitalise on the uncertainty and anxiety of students during Covid-19.⁹

To escape liability, essay mills often state in their terms and conditions that work should only be used as a point of reference and not submitted as students' own work.¹⁰ As AI language models become more adept at answering exam-type questions, it is likely going to become the preferred option for students, because there is no risk of blackmail and many language models are available without payment.¹¹

Emergence of contract cheating law

The state of California in the US already addressed essay mills in its Education Code in 1976, and other states followed this early legislation. Now, 17 out of 50 states penalise essay mills and for some states also advertisers of such services.¹² Many of these laws are decades old.¹³

In other common law jurisdictions, legal regimes were implemented much later. New Zealand adopted legislation in 2017. Ireland and Australia both enacted legislation respectively in 2019 and 2011. Some jurisdictions, such as Canada, have seen legislation proposed, as early as 50 years ago, but failed to be passed.¹⁴

Some countries address essay mills in their code of education and do not criminalise the acts, instead just treating it as an administrative offence. This is the case for Austria. Civil law jurisdictions seemingly tend to only create offences for acts by students in terms of academic cheating, not providers. France and Germany are examples of this. Austria, seemingly an exception to this tendency, passed legislation penalising service providers in 2021. These initial tendencies may be up in the air however — England and Wales only criminalised essay mills in 2022.

⁴ QAA (n 3) 10-11.

⁵ QAA (n 3) 9-10.

⁶ Guzyal Hill, Jon Mason and Alex Dunn, 'Contract Cheating: An Increasing Challenge for Global Academic Community Arising from COVID-19' (2021) 16 *Research and Practice in Technology Enhanced Learning* 1; HM Government, 'Skills and Post-16 Education Bill: Policy Summary Notes' (November 2021) 56.

⁷ *HC Deb 10 February 2021, vol 689, col 350*; QAA (n 3) 9.

⁸ *HC Deb 10 February 2021, vol 689, col 350*; Tracey Bretag and others, 'Contract Cheating: A Survey of Australian University Students' (2019) 44 *Studies in Higher Education* 1837.

⁹ QAA (n 3) 2.

¹⁰ Michael Draper and Philip M Newton, 'Using the Law to Tackle Essay Mills' (*HEPI*, 26 September 2018)

<<https://www.hepi.ac.uk/2018/09/26/using-law-tackle-essay-mills/>> accessed 2 September 2023.

¹¹ Pablo Arredondo, Sharon Driscoll and Monica Schreiber, 'GPT-4 Passes the Bar Exam: What That Means for Artificial Intelligence Tools in the Legal Profession' (*Stanford Law School*, 19 April 2023)

<<https://law.stanford.edu/2023/04/19/gpt-4-passes-the-bar-exam-what-that-means-for-artificial-intelligence-tools-in-the-legal-industry/>> accessed 2 September 2023.

¹² An overview can be found in the database maintained by Mary McCormick and Hunter Whaley, *Term Paper Mills: Statutes and Legislative Information* (Florida State University College of Law Research Center, 2019)

<<https://guides.law.fsu.edu/termpapermills/statutesandlegislativeinformation/>>, accessed 2 September 2023.

¹³ Dates where they passed can be found in the database maintained by Mary McCormick and Hunter Whaley, *Term Paper Mills: Statutes and Legislative Information* (Florida State University College of Law Research Center, 2019)

<<https://guides.law.fsu.edu/termpapermills/statutesandlegislativeinformation/>>, accessed 2 September 2023.

¹⁴ Sarah Elaine Eaton, 'Contract Cheating in Canada: A Comprehensive Overview' in Sarah Elaine Eaton and Julia Christensen Hughes (eds), *Academic Integrity in Canada: An Enduring and Essential Challenge* (Springer 2022).

We will begin by discussing the relevant legal regimes and subsequently look at emerging tensions when applied to AI.

Chapter 2: Analysis of Legislation

England and Wales

The policy line in England and Wales has been to criminalise the *provision and advertisement of relevant services*, i.e. essay mills and contract cheating providers, under the Skills and Post-16 Education Act 2022 (the Skills Act). Students are not personally liable under criminal law for the use of such mills under this act.¹⁵ The policy aim was to help safeguard the academic integrity of post-16 and higher education and to clamp down on deceiving marketing techniques.¹⁶

The Government amended the Skills Bill as it was passing through the Lords in the Report Stage to incorporate the provisions on academic cheating, raised first in a Private Member's Bill by Lord Storey.¹⁷ Separately, Chris Skidmore, previously Universities Minister, also introduced a Private Member's Bill seeking to criminalise essay mills and contract cheating providers.¹⁸ However, it was Lord Storey's provisions that were finally included in the Skills Act, seemingly by concession after debate.

The passing of this aspect of the Skills Act followed long-term campaigning by the Quality Assurance Agency for Higher Education (QAA), the UK Academic Integrity Advisory Group and the wider higher education sector.¹⁹ The QAA in particular had campaigned for the criminalisation of essay mills since 2017,²⁰ while approximately 40 UK universities called for a ban in a letter to ministers in 2019.²¹ The proposal received cross-party support in both Houses of Parliament.

It is an offence to provide or arrange a relevant service in commercial circumstances to a student enrolled at a higher education institution in England.²² The jurisdictional scope might initially seem a little bizarre — the Act extends to England and Wales, but for reasons of devolution, the relevant providers of education are only English institutions. Offences can be committed in England and Wales in relation to students at English institutions.²³

Liability will be imposed for an individual or body under the offence if they provide relevant services, in essence meaning that they completed all or some of the student's work such that the work cannot be considered the student's work in the ordinary meaning of the term.²⁴ The Skills Act does not define academic cheating services as other legislation we discuss in this paper does, but describes 'relevant services'. These include providing material to students in connection with the assignment where the

¹⁵ Skills Act, s 27(6).

¹⁶ Department for Education, Skills and Post-16 Education Act 2022, Impact Assessment July 2022, 167.

¹⁷ Thomas Brown, 'Higher Education Cheating Services Prohibition Bill [HL]' (*House of Lords Library*, 16 June 2021) <<https://lordslibrary.parliament.uk/higher-education-cheating-services-prohibition-bill-hl/>> accessed 3 September 2023; Anna McKie, 'Peer Sniffs "Real Chance" of Success on UK Contract Cheating Law' (*Times Higher Education (THE)*, 2 July 2021) <<https://www.timeshighereducation.com/news/peer-sniffs-real-chance-success-uk-contract-cheating-law>> accessed 3 September 2023.

¹⁸ HC Deb 10 Feb 2021 vol 689 col 349.

¹⁹ The Quality Assurance Agency for Higher Education, 'QAA Welcomes Ban on Essay Mills in England' (QAA, 28 April 2022) <<https://www.qaa.ac.uk/news-events/news/qaa-welcomes-ban-on-essay-mills-in-england>> accessed 3 September 2023.

²⁰ The Quality Assurance Agency for Higher Education, 'Proposed Ban on Essay Mills in England - a Welcome Move in Tackling Contract Cheating' (QAA, 6 October 2021)

<<https://www.qaa.ac.uk/news-events/news/proposed-ban-on-essay-mills-in-england-a-welcome-move-in-tackling-contract-cheating>> accessed 3 September 2023.

²¹ Letter from Vice Chancellors to the Rt Hon Damien Hinds MP (27 September 2018) <<https://perma.cc/294N-UKHS>> accessed 3 September 2023.

²² Skills Act, s 27(1).

²³ HM Government, 'Skills and Post-16 Education Bill: Policy Summary Notes' (November 2021) 57–58.

²⁴ Skills Act s 26(2); Explanatory Notes to the Skills and Post-16 Education Bill (as brought from the House of Lords on 26 October 2021, Bill 176), para 156.

material could be used to complete a part of or the whole assignment.²⁵ This material must either have been prepared in connection with the assignment or not previously published generally.²⁶ Generally means generally available without payment, or available in general published educational material.²⁷ This is aimed at excluding tutoring services and other legitimate educational support.²⁸ Relevant assignments to which relevant services relate are both those which need to be completed as part of the student's course or those needed to receive a qualification of the course.²⁹

The relevant service has to be provided in commercial circumstances, meaning a person acting in the course of business.³⁰ Subject to conviction liability will lead to a fine.³¹

It may be a defence to prove that the provider of relevant services did not and could not have known with reasonable due diligence that the student would either use the material, had to complete the assignment personally or that assistance was not permitted.³² However, such due diligence cannot be proven simply by a statement in a contract or similar that the student will not submit the work.³³ This means blanket exclusion of liability clauses in terms and services may not apply.

Advertising a relevant service, even if the advert is also shown to persons other than students, is a separate offence.³⁴ If an incorporated company is seen to engage in these services and it is evident that a director or manager has consented to these acts, they will be liable.

An enforcement body is not specified on the face of the Act. Any investigations and prosecutions fall to the police and the CPS.³⁵ Prosecutions are unlikely because the incentive for the CPS to bring prosecutions against essay mills is lower than for an education regulator.³⁶ Relevant providers have no special powers to refer a relevant service to the police. One of the most active bodies lobbying for regulation in this area, and one that could have taken a role in informal referrals, the QAA, has recently stepped away from being the Designated Quality Body (DQB) for higher education assessment in England, as it lost its status as an internationally accredited regulator due to applying England's lower standards of assessment and transparency to English institutions, and claims that following higher standards in the jurisdiction is not 'sustainable'.³⁷ The role is falling currently to the Office for Students, as there is no statutory requirement for independence.³⁸ This loss of a further actor will be unlikely to help the prospects for enforcement. It also contrasts with other jurisdictions with similar legislation with designated regulatory bodies equipped with prosecuting powers.³⁹

The essay mill aspects of the Act are regarded by some as mostly symbolic. It was designed as a supporting element to any pre-existing measures of policing essay mills and contract cheating by universities or otherwise.⁴⁰ It clarifies the ethical problems of

²⁵ Skills Act s 26(3)(a).

²⁶ Ibid s 26(3)(b)(i).

²⁷ Ibid s 26(4)(b)(ii).

²⁸ Explanatory Notes to the Skills and Post-16 Education Bill (as brought from the House of Lords on 26 October 2021, Bill 176), para 156.

²⁹ Skills Act s 26(7)(a–b).

³⁰ Ibid s 26(5)(a).

³¹ Ibid s 27(2).

³² Ibid s 27(4).

³³ Ibid s 27(5).

³⁴ Ibid s 28(1–2).

³⁵ Policy Summary 57

³⁶ Tom Williams, 'Judge Contract Cheating Law "on Culture Change, Not Prosecutions"' (*Times Higher Education (THE)*, 26 April 2022)

<https://www.timeshighereducation.com/news/judge-contract-cheating-law-culture-change-not-prosecutions> accessed 3 September 2023.

³⁷ The Quality Assurance Agency for Higher Education, 'QAA Demits DQB Status to Focus on Sector and Students in England' (QAA, 20 July 2022) <https://www.qaa.ac.uk/news-events/news/qaa-demits-dqb-status-to-focus-on-sector-and-students-in-england> accessed 3 September 2023.

³⁸ Jack Grove, 'OfS Takes England's Quality Role after QAA Delisted' (*Times Higher Education (THE)*, 30 March 2023) <https://www.timeshighereducation.com/news/ofs-takes-englands-quality-role-after-qaa-delisted> accessed 3 September 2023.

³⁹ See e.g. the TEQSA in Australia, below.

⁴⁰ Department for Education, Skills and Post-16 Education Bill, Policy Summary Notes, November 2021, 56, 58

cheating to students.⁴¹ It makes it apparent to students that they are engaging in criminal activities, and prevents essay mills claiming they are not illegal to use, which may act as a further deterrent.⁴² The advertising aspects of the Skills Act may be more influential, as such entities might be easier to identify and prosecute. However, large scale prosecutions seem unlikely, and the issue of providing services from abroad is not dealt with.

In terms of the effect of the prohibition on advertising, since 2018 the QAA had previously engaged in efforts to ban essay mills and contract cheating providers from using services like Facebook, YouTube, and Google or advertising through them.⁴³ The QAA successfully lobbied PayPal to establish plans to remove essay mills from using its site.⁴⁴ Consequently, intermediaries may find themselves more explicitly steered to avoid serving such content, and may be liable themselves, particularly if they are made aware of such advertisements online, and thus lose their liability shielding under the UK intermediary liability regime.

Ireland

In Ireland, the relevant legislation criminalising essay mills and contract cheating is the Qualifications and Quality Assurance (Education and Training) Act 2012, s 43A. The amendment was inserted in November 2019 by the Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019 (32/2019), s 15, S.I. No. 540 of 2019. It is modelled on the framework from New Zealand, described below.⁴⁵ There are two variations of the offence, one with and one without a knowledge requirement.

It is an offence to undertake in whole or in part an assignment or any other piece of work that an enrolled learner is required to undertake as part of a programme, without authorisation from the person making the requirement (i.e. module convenor).⁴⁶ This means the offence applies to any assignment or piece of work part of the programme, not limited to examinations. It is also an offence to sit an examination for a student who is undertaking a programme.⁴⁷ If a third party provides or arranges the provision of answers for the examination during the examination this too is an offence.⁴⁸ There is no intent requirement for these offences.

The second set of offences has an intent requirement to cause an unfair advantage over other learners. There is some overlap in content to the first set of offences, which lack an intent requirement. The addition is that it is an offence if you provide or arrange the provision of an assignment that must be completed as part of a programme.⁴⁹ Further, the section also criminalises the providing or arranging of answers, with the difference that those must have been provided before the exam as opposed to during.⁵⁰

Finally, it is illegal to advertise or to publish an advertisement relating to offering any of the acts above. Intermediaries may be liable, subject to any liability shielding, being disapplied, for example by their specific awareness.

⁴¹ QAA (n 3) 6.

⁴² Williams (n 36).

⁴³ The Quality Assurance Agency for Higher Education, 'QAA Calls for Online Companies to Stop Essay Mills in Their Tracks' (QAA, 6 December 2018) <<https://www.qaa.ac.uk/news-events/news/qaa-calls-for-online-companies-to-stop-essay-mills-in-their-tracks>> accessed 3 September 2023.

⁴⁴ The Quality Assurance Agency for Higher Education, 'PayPal Says No to Essay Mills' (QAA, 3 April 2019)

<<https://www.qaa.ac.uk/news-events/news/paypal-says-no-to-essay-mills>> accessed 3 September 2023.

⁴⁵ Dáil Deb 12 June 2019, vol 983 col 5.

⁴⁶ QQA(ET) Act 2012 (Ireland) s 43A(2)(a).

⁴⁷ Ibid s 43A(2)(b)

⁴⁸ Ibid s 43A(2)(c).

⁴⁹ Ibid s 43A(4)(a).

⁵⁰ Ibid s 43A(4)(b).

Unlike in England and Wales, Quality and Qualifications Ireland (QQI), the country's quality assurance agency, can initiate the prosecution of essay mills and contract cheating providers.⁵¹ QQI may bring prosecutions under and can be contacted via email about relevant essay mills.⁵² Those convicted of an offence can be fined up to 100,000 EUR and/or be imprisoned for a term of up to five years.⁵³ It is merely required to complete a relevant piece of work in whole or in part. There need not be a commercial arrangement.

In December 2019, QQI signed a Memorandum of Understanding with the Australian Tertiary Education Quality and Standards Agency (TEQSA) to share relevant information about academic fraud and contract cheating.⁵⁴ The Irish Times reported that about 1,500 cases of cheating, plagiarism or use of 'essay mills' were reported at Irish universities between 2020 and 2022, one of the highest numbers.⁵⁵ This indicates that essay mills did not decrease as a result of the legislation.

Australia

In Australia, the Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019 amended the Tertiary Education Quality and Standards Agency Act 2011. New criminal offences were to provide or advertise an academic cheating service on a commercial basis. This came after the Higher Education Standards Panel recommended introducing deterrents to third-party academic cheating services in higher education.⁵⁶

An academic cheating service is defined as the provision of work for students, in circumstances where the work forms or could reasonably be seen to form a substantial part of an assessment task that students are required to personally undertake.⁵⁷

An offence is committed if a person provides, offers to provide or arranges for a third person to provide an academic cheating service to a student undertaking an Australian course of study.⁵⁸ The penalty is 2 years imprisonment or 500 penalty units, or both.⁵⁹ Imprisonment is not an available penalty if the arrangement did not have a commercial purpose.⁶⁰ Proof of provision to a specific student is not necessary making this a low evidential threshold to meet.⁶¹

Advertising academic cheating services is prohibited.⁶² Similarly to the provision offence, the penalty is imprisonment for two years (only available if the service is commercial) or 500 penalty points.

The Tertiary Education Quality and Standards Agency (TEQSA) is responsible for administering the law and can take out injunctions against overseas cheating websites

⁵¹ Anna McKie, 'Irish Law to Clamp down on Essay Mills "Could Be Model for UK"' (*Times Higher Education (THE)*, 9 August 2018) <<https://www.timeshighereducation.com/news/irish-law-clamp-down-essay-mills-could-be-model-uk>> accessed 3 September 2023.

⁵² QQI, 'Prosecution of Contract Cheating' (*Quality and Qualifications Ireland*, 8 July 2021) <<https://www.qqi.ie/what-we-do/quality-assurance-of-education-and-training/prosecution-of-contract-cheating>> accessed 3 September 2023.

⁵³ *Ibid.*

⁵⁴ QQI, 'Clamping down on Academic Cheating in Ireland' (*EOLAS*, December 2019) <<https://www.eolasmagazine.ie/clamping-down-on-academic-cheating-in-ireland/>> accessed 3 September 2023.

⁵⁵ Ken Foxe, 'Some 1,500 Cases of Cheating, Plagiarism or Use of "Essay Mills" Reported at Irish Universities in Last Three Years' (*The Irish Times*, 27 September 2022) <<https://www.irishtimes.com/ireland/education/2022/09/27/some->

[1500-cases-of-cheating-plagiarism-or-use-of-essay-mills-reported-at-irish-universities-in-last-three-years/](https://www.irishtimes.com/ireland/education/2022/09/27/some-1500-cases-of-cheating-plagiarism-or-use-of-essay-mills-reported-at-irish-universities-in-last-three-years/)> accessed 3 September 2023.

⁵⁶ Tertiary Education Quality and Standards Agency, 'Legislation' (*TEQSA*, 13 October 2022) <<https://www.teqsa.gov.au/preventing-contract-cheating/legislation>> accessed 3 September 2023.

⁵⁷ Tertiary Education Quality and Standards Agency Act (Australia) 2011 s 5 (hereafter *TEQSA Act*).

⁵⁸ *Ibid* s 114A(1).

⁵⁹ A penalty unit describes a financial penalty, with the units themselves set to increase with inflation. As of July 2023, a penalty unit was 313 AUD. They are indexed following a formula in the Crimes Act 1914 (Australia) s 4AA.

⁶⁰ *TEQSA Act* 2011 (Australia) s 144A(3).

⁶¹ *Ibid* s 114A(5).

⁶² *Ibid* s 114B.

and pursue prosecutions. It is also responsible for gathering intelligence.⁶³ In the 2018-19 budget, the government provided the TEQSA with one-off funding of 1.1m AUD and 660,000 AUD in ongoing annual funding to respond to cheating activity.⁶⁴ The authors could find no other jurisdiction where a dedicated budget was provided to combat academic cheating activity.

Australia has been effective by blocking access to the websites attracting the most traffic.⁶⁵ TEQSA monitors about 600 websites and blocked access from Australia to 40 websites which commanded about half a million visits every month in 2022. Even though the legislation was enacted in 2019, compliance action by TEQSA increased immensely in 2022. TEQSA was able to block websites without court action because of protocols negotiated with Australia's major internet service providers (ISPs) through their representative association.⁶⁶ This made blocking more effective and quicker, than by means of court orders. In October 2021, there was one federal court injunction against a foreign essay mill, likely located in India.⁶⁷ The injunction applies for five years until 2026, is binding on many internet service providers in Australia and requires them to block access to the domain names, internet protocol (IP) addresses or uniform resource locators (URLs).⁶⁸

New Zealand

In New Zealand it is an offence under the Education and Training Act 2020 to provide or advertise cheating services. This offence was first stated in similar form as part of the now-repealed Education Act 1989, on the basis of an amendment in 2011.⁶⁹ There are no substantial differences between the two versions other than drafting choices.

Any relevant act, except for the advertisement publishing offence, must be done with the intention of giving a student an unfair advantage over other students, meaning there is a general intent requirement.

It is illegal to complete, provide or arrange an assignment or other piece of work required as part of the programme or training scheme.⁷⁰ It is also illegal to provide or arrange the provision of answers for an examination or sit in their stead.⁷¹ Advertising any such service knowing the service would give an unfair advantage also leads to liability.⁷² Further, publishing an advert for any of the relevant services without a reasonable excuse will also incur liability.⁷³ Liability on conviction incurs a fine not exceeding 10,000 NZD.⁷⁴

The New Zealand Qualifications Authority (NZQA) has the power to enter premises, access and copy information, and question people about compliance issues.⁷⁵ In addition, it can issue compliance notices.⁷⁶ However, there are no direct prosecuting powers.

⁶³ Australian Government, Department of Education, The Higher Education Standards Panel (HESP), Tackling contract cheating <<https://www.education.gov.au/higher-education-standards-panel-hesp/tackling-contract-cheating>> accessed 7 September 2023

⁶⁴ Australian Government Response, More support for academic integrity in higher education Australian Government response to recommendations of the Higher Education Standards Panel

⁶⁵ John Ross, 'Australia Blocks Access to Biggest Contract Cheating Websites' (*Times Higher Education (THE)*, 5 August 2022) <<https://www.timeshighereducation.com/news/australian-regulator-forces-mass-blocking-cheating-websites>> accessed 3 September 2023.

⁶⁶ Ibid.

⁶⁷ John Ross, 'First Blood for Australian Contract Cheating Law' (*Times Higher Education (THE)*, 8 October 2021)

<<https://www.timeshighereducation.com/news/first-blood-australian-contract-cheating-law>> accessed 3 September 2023.

⁶⁸ Ibid.

⁶⁹ Education Amendment Act 2011 (New Zealand) s 42, inserting Education Act 1989 (New Zealand) s 292E (repealed).

⁷⁰ Education and Training Act 2020 (New Zealand) s 393(1)(a).

⁷¹ Ibid s 393(1)(a), s 393(3)(d).

⁷² Ibid s 393(1)(b).

⁷³ Ibid s 393(1)(c).

⁷⁴ Ibid s 393(2).

⁷⁵ New Zealand Qualifications Authority, 'Factsheet - Education Amendment Act 2011' (NZQA, December 2011)

<<https://www.nzqa.govt.nz/assets/About-us/Our-role/factsheet-education-amendment-act-2011.pdf>> accessed 3 September 2023.

⁷⁶ Ibid.

This provision, in its previous but substantively identical iteration, has seemingly been applied only once in a published case, in 2014.⁷⁷ Proceedings were initiated after the NZQA received information alleging that a company called Ateama Limited, was selling assignments to Chinese students. The case was resolved through a court confiscation order under the Criminal Proceeds (Recovery) Act 2009 to seize the property of a contract cheating company for further investigation. This was deemed to have sufficiently closed the case.

NZQA works with other organisations, including the TEQSA in Australia, to raise awareness of contract cheating.⁷⁸ While NZQA monitors the issue, Eve McMahon, NZQA's Deputy Chief Executive, made a statement encouraging those aware of contract cheating to talk to their school or tertiary provider in 2022.⁷⁹ This indicates that the offence is more symbolic, similar to the situation in England and Wales.

The New Zealand law led to an unsuccessful UK law proposal in early 2017.⁸⁰ In the UK House of Lords, Baroness Goldie found difficulties with defining the intent element of the crime due to potential difficulties proving that there was an intent to give an unfair advantage, or that an advertiser knew that an unfair advantage would take effect.⁸¹

USA

In the US states have different approaches to penalising essay mills, as education is not a federal matter. In total, 17 out of 50 states address contract cheating as part of a legal regime.⁸² These states are Massachusetts,⁸³ Pennsylvania,⁸⁴ Nevada,⁸⁵ New Jersey,⁸⁶ Colorado,⁸⁷ Connecticut,⁸⁸ Maryland,⁸⁹ Oregon,⁹⁰ Washington,⁹¹ Virginia,⁹² Texas,⁹³ New York,⁹⁴ Florida,⁹⁵ California,⁹⁶ North Carolina,⁹⁷ Illinois,⁹⁸ and Maine.⁹⁹

As examples, we will look at the states of California, Maryland and Florida. We draw on select components of the remaining laws later in the analysis where they are of relevance.

The California Education Code enacted sections prohibiting contract cheating. The relevant provision prohibits the preparation, offering to prepare, causing to prepare, selling or otherwise distributing any terms paper, thesis, dissertation, or other written material for another person. This must be done for a fee or another kind of compensation. As for the knowledge requirement, the person must have had knowledge or under circumstances in which he should have reasonably known that the material would be submitted by any other person for academic credit. It appears that there is no necessity to prove that services were provided to a specific individual (any other person). It applies to private colleges, universities and other institutions of higher

⁷⁷ Commissioner of Police v Li [2014] NZHC 479.

⁷⁸ New Zealand Qualifications Authority, 'NZQA Marks the International Day of Action Against Contract Cheating' (NZQA, 19 October 2022) <<https://www2.nzqa.govt.nz/about-us/news/international-day-of-action-against-contract-cheating/>> accessed 3 September 2023.

⁷⁹ *ibid.*

⁸⁰ Michael J Draper and Philip M Newton, 'A Legal Approach to Tackling Contract Cheating?' (2017) 13 *International Journal for Educational Integrity* 1.

⁸¹ *ibid.*; Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018, 17; HL Deb 25 January 2017, vol 778 col. 776.

⁸² Philip M Newton and Christopher Lang, 'Custom Essay Writers, Freelancers, and Other Paid Third Parties' in Tracey Bretag (ed), *Handbook of Academic Integrity* (Springer 2016).

⁸³ Mass. Gen. Laws ch 271, § 50 (current through 2022).

⁸⁴ 18 Pa. Cons. Stat. § 7324 (current through 2022).

⁸⁵ NV Rev. Stat. § 207.320 (current through 2022).

⁸⁶ NJ Rev. Stat. § 18A:2-3 (current through 2022).

⁸⁷ CO Code § 23-4-101 *et seq* (current through 2022).

⁸⁸ Conn. Gen. Stat. § 53-392a *et seq* (current through 2022).

⁸⁹ Md. Code, Education § 26-201 (current through 2022).

⁹⁰ Or. Rev. Stat. § 165.114 (current through 2022).

⁹¹ Wash. Rev. Code § 28B.10.580(1) *et seq* (current through 2022).

⁹² Va. Code Ann. § 18.2-505 (current through 2022).

⁹³ Tex. Penal Code § 32.50 (current through 2022).

⁹⁴ N.Y. Educ. Law § 213-b (McKinney current through 2022).

⁹⁵ Fla. Stat. Ann. § 877.17 (West current through 2022).

⁹⁶ Cal. Educ. Code § 66400 *et seq* (West current through 2022).

⁹⁷ N.C. Gen. Stat. § 14-118.2 (current through 2022).

⁹⁸ 110 Ill. Comp. Stat. Ann. 5/1 (current through 2022).

⁹⁹ Me. Rev. Stat. tit. 17-A, § 705 (current through 2022).

learning in California.¹⁰⁰ Further, if a person makes or disseminates, with the intent to induce any other person to enter into any obligation relating thereto, any statement, written or oral, that he will prepare, cause to be prepared, sell, or otherwise distribute any relevant written material, liability follows.¹⁰¹ Any court is authorised to grant adequate relief including an injunction.¹⁰² Anyone can bring a complaint in the name of the people of the state of California or in the name of a higher education institution.¹⁰³ This includes corporations, as the code was amended to permit in 1994.¹⁰⁴

The offence in Maryland is similar, but is of interest as it has a somewhat significantly wider scope. Its base offence states that '[a] person may not sell or offer for sale any assistance in the preparation, research, or writing of an academic paper if he knows that the buyer intends to submit the academic paper substantially unchanged'.¹⁰⁵ This breadth, which includes preparation and research, rather than just writing, will be explored more later in this paper.

The offence in the state of Florida is similar, however, it is not to be found in an education code, instead, it is treated as a second-class misdemeanour in the Florida Statutes which can be punished with a prison sentence of up to sixty days (or a fine of up to 500 USD).¹⁰⁶ It adds further offences of advertising, where the seller or advertiser knew or reasonably should have known the assignment was intended for submission by a student, and explicitly excludes assistance.¹⁰⁷

Austria

Austria introduced an offence for 'ghostwriting' in higher education in 2021 as part of an amendment to the university law BGBl.¹⁰⁸ The offence is split up into different levels and contains substantial differences from the England and Wales offences.

It is an offence to produce a work for another person, whether for a fee or free of charge or to make it available to another person, if he or she knows or can assume based on the circumstances that it will be used in part or in full as a seminar, examination, or final thesis (bachelor thesis, scientific or artistic work). In effect, the offence contains a knowledge requirement with a low threshold. It is enough if the provider can assume based on the circumstances, that it will be used to prove independent achievements that have not been rendered by the relevant student. This is to be punished with a fine of up to 25,000 EUR.¹⁰⁹ A higher fine of up to 60,000 EUR will be imposed if the perpetrators act with the intention of generating ongoing income by repeatedly committing such acts. In addition to the higher fine, a prison sentence of up to four weeks can be imposed. This particularly targets 'professional' service providers.¹¹⁰

An exclusion applies to freely given assistance which does not affect the intellectual and technical independence of the student's or designated author's work on the seminar paper, examination paper or final paper (bachelor thesis, scientific or artistic work) and does not lead to liability.¹¹¹

Similar to the offence for England and Wales one element creates liability for anyone who publicly offers to produce such a work for another person or to make it available to another person under the circumstances specified in paragraph 1.

¹⁰⁰ Cal. Educ. Code § 66400.

¹⁰¹ Ibid § 66401.

¹⁰² Ibid § 66402.

¹⁰³ Ibid § 66403.

¹⁰⁴ Ibid § 66405.

¹⁰⁵ Md. Code, Education § 26-201(2).

¹⁰⁶ Fla. Stat. Ann. § 775.082(4)(b), 775.083(1)(e).

¹⁰⁷ Ibid § 877.17(1-2)

¹⁰⁸ *Universitätsgesetz 2002 (UG)*, Bundesgesetz über die Organisation der Universitäten und ihre Studien, BGBl I Nr 120/2002, amended by BGBl I Nr 93/2021 (Austria) § 116a.

¹⁰⁹ Ibid § 116a(1).

¹¹⁰ Ibid § 116a(4).

¹¹¹ Ibid § 116a(2).

The payment received or any other benefit that the perpetrator has received must be declared forfeited.¹¹² If the payment or benefit is not a physical thing, or if the perpetrator no longer owns the payment or benefit, the payment of an additional sum of money that corresponds to the original value must be made (forfeiture penalty). Liability expires through the statute of limitations after 30 years from the moment benefit of the act is received by the perpetrator.¹¹³ Unless the act falls within the definition of a more serious criminal offence, the acts classify as a *Verwaltungsübertretung*, an administrative offence. The relevant prosecuting authority is the local district administrative authority (*örtlich zuständige Bezirksverwaltungsbehörde*).¹¹⁴

The offences apply to commercial and non-commercial arrangements and include a more serious sanction if the act is used to generate ongoing income. They also include a knowledge requirement with a low threshold — whether or not they can assume, based on the circumstances, that this may be used as part or in full in an assignment.¹¹⁵

It has been criticised that the law only applies to the universities that are explicitly listed (22 public universities). At the universities of applied sciences (*Fachhochschulen*), private universities and teacher training colleges (PHs), the penal provision would not take effect.¹¹⁶ This is contrary to New Zealand which also applies to training schemes and even ‘micro-credentials’.

As of 2023, the same ghostwriter agencies still appear in Austrian Google search results, so the UG amendment has not brought any changes so far.¹¹⁷ After the new law was passed, some ghostwriting agencies placed disclaimers on their websites stating that they will no longer work for Austrian students to avoid fines. However, it has been reported that Austrian students quickly circumvented this by emailing agencies from German or international emails.¹¹⁸

Germany

In Germany, education is a matter decided at the state level, as opposed to the federal level. There is no centralised decision making about education policy or funding.¹¹⁹ Each of the sixteen states has a *Hochschulgesetz*, a code for universities, which regulates conduct at universities located within that state. Each state enjoys a wide level of discretion for sanctioning academic misconduct, making it impossible to implement coherent national policies.¹²⁰ Similarly, there is no federal quality assurance agency like in the UK or in Australia, which could ensure a consolidated oversight of academic integrity. Professorial autonomy in German higher education may also lead to a lack of transparency around academic misconduct.¹²¹

In the state of Hessen, an individual had published work written by someone else for him in a scientific magazine. No liability was found. This means that at least outside of the

¹¹² VStG (*Verfallsgesetz*), BGBl No 52/1991, amended by BGBl I No 58/2018 (version dated 19 December 2019) (Austria) § 17.

¹¹³ *Universitätsgesetz* 2002 (UG), Bundesgesetz über die Organisation der Universitäten und ihre Studien, BGBl I Nr 120/2002, amended by BGBl I Nr 93/2021 (Austria) § 116a(6).

¹¹⁴ *Ibid* § 116a(7).

¹¹⁵ *Ibid* § 116a(1).

¹¹⁶ Theo Anders, ‘Schlupfloch für Ghostwriter: Faßmann will trotz Warnungen nichts ändern’ (*Der Standard*, 23 March 2021) <<https://www.derstandard.at/story/2000125235403/schlupfloch-fuer-ghostwriter-fassmann-will-trotz-warnungen-nichts-aendern>> accessed 3 September 2023.

¹¹⁷ Aschendorff Medien, ‘Ist ein Ghostwriter-Verbot sinnvoll?’ (*Westfalen-Blatt*, 6 March 2023) <<https://www.westfalen->

[blatt.de/freizeit/ratgeber/ist-ein-ghostwriter-verbot-sinnvoll-2718027](https://www.westfalen-blatt.de/freizeit/ratgeber/ist-ein-ghostwriter-verbot-sinnvoll-2718027)> accessed 3 September 2023.

¹¹⁸ ‘So umgehen Ghostwriter-Agenturen die UG-Novelle’ (*Kronen Zeitung*, 29 September 2021) <<https://www.krone.at/2518166>> accessed 3 September 2023.

¹¹⁹ Irene Glendinning, Anna Michalska and Stella-Maris Orim, ‘Plagiarism Policies in Germany’ (*Impact of Policies for Plagiarism in Higher Education Across Europe (IPPHEAE)*, October 2013) <<https://perma.cc/W3XF-6AXN>> 2.

¹²⁰ *Ibid* 2.

¹²¹ Irene Glendinning and others, ‘Comparison of Policies for Academic Integrity in Higher Education across the European Union’ (*Impact of Policies for Plagiarism in Higher Education Across Europe (IPPHEAE)*, October 2013) <<https://perma.cc/Q28J-4QFF>> 19.

higher education sector in scientific journals, the circumstances of the individual case can mean that a so-called 'ghostwriter agreement', with which the author undertakes to conceal his own authorship and allows the namesake to publish the work as his own, is not considered a *Sittenwidrigkeit*. A *Sittenwidrigkeit* is not part of the criminal law, it is part of the civil code and means behaviour that offends against the sense of decency of those who think fairly and justly. It offends a common sense of morality shared at the societal level.¹²² This means, in the state of Hessen whether an act of ghostwriting in the academic context will count as a *Sittenwidrigkeit* depends on the context. A fine would usually ensue, but no sanction as part of the criminal law.

Under normal circumstances, in higher education, any civil sanction is usually faced by students, not providers.¹²³ For example, in Nordrhein-Westfalen the state university law (*Hochschulgesetz*) specifies a fine of up to 50,000 EUR for students using someone else's work as their own.¹²⁴

Universities and state examination offices can require an affidavit from the examinees that the examination was completed independently and without the help of third parties. Affidavits, which universities increasingly require when students submit their work are penalized if they are false and were submitted to a relevant authority.¹²⁵ If a student premeditates against a university examination regulation relating to cheating on examinations this is classified as an *Ordnungswidrigkeit*. This is an administrative offence distinct from the criminal law, and often used for e.g. minor traffic offences. The relevant authority for the prosecution and punishment of administrative offences at higher education institutions is the chancellor and the state examination office.

The fraud offence is unsuitable as it requires financial loss, and the material enrichment must be equal to the loss caused. In practice, this represents a high evidential threshold.¹²⁶

Relevant service providers face little to no risk. On the contrary to many common law jurisdictions, and to neighbouring Austria, no policy choice to criminalise the industry behind the service providers has been made.

In 2012 and 2013, the German University Association (*Hochschulverband*) advocated for a law against academic ghostwriting.¹²⁷ They hoped to introduce a new criminal offence of 'scientific fraud' (*Wissenschaftsbetrug*). Accordingly, writing a relevant piece of work for a third party or presenting someone else's work as your own could be punished with a fine or imprisonment of up to two years.¹²⁸ However, the Ministry of Education was of the opinion that universities have sufficient opportunities to take action against academic misconduct, referring to the option to prosecute students on the basis of their affidavit if the work was not their own.¹²⁹

¹²² OLG Frankfurt, Urteil vom 01.09.2009 - 11 U 51/08, juris (unter Verweis auf § 13 UrhG, § 138 Abs 1 BGB).

¹²³ 'Wenn Geister schreiben' (*FOCUS online*, 9 June 2023) <https://www.focus.de/magazin/archiv/hochschulen-wenn-geister-schreiben_id_195936431.html> accessed 3 September 2023.

¹²⁴ *Hochschulgesetz 2004 - HG 2004* (NRW) vom 14.03.2000, in der Fassung vom 1.9.2023 (Nordrhein-Westfalen, Germany) § 92(7)(a)(b).

¹²⁵ Miloš Vec, '„Wissenschaftsbetrug“ als Straftat: Mangel an Originalität ist kein Verbrechen' (*Frankfurter Allgemeine*, 12 September 2013) <[https://www.faz.net/aktuell/feuilleton/forschung-](https://www.faz.net/aktuell/feuilleton/forschung-und-lehre/wissenschaftsbetrug-als-straftat-mangel-an-originalitaet-ist-kein-verbrechen-12566760.html)

[und-lehre/wissenschaftsbetrug-als-straftat-mangel-an-originalitaet-ist-kein-verbrechen-12566760.html](https://www.faz.net/aktuell/feuilleton/forschung-und-lehre/wissenschaftsbetrug-als-straftat-mangel-an-originalitaet-ist-kein-verbrechen-12566760.html)> accessed 3 September 2023.

¹²⁶ Ibid.

¹²⁷ LTO, 'Hochschulverband will Ghostwriting unter Strafe stellen' (*Legal Tribune Online*, 13 August 2012)

<<https://www.lto.de/recht/nachrichten/n/dhv-fordert-strafen-fuer-ghostwriting-plagiate-wissenschaftsbetrug/>> accessed 3 September 2023.

¹²⁸ Ibid.

¹²⁹ Ibid.

France

In France, academic fraud, such as cheating in an examination, is considered to be an offence (*un délit*). *Un délit* is an act prohibited by law and punishable by a fine and/or imprisonment for less than 10 years.¹³⁰ In this particular case, if a student is caught in a situation of attempted or flagrant fraud, the student and relevant accomplices may incur a criminal sanction of a fine of 9,000 EUR and/or imprisonment for up to 3 years.¹³¹ However, this offence does not apply to service providers, and so we will not outline it further here.

Montenegro

Montenegro enacted the Law on Academic Integrity in 2019.¹³² This law focusses on those committing plagiarism and academic integrity, although it does incorporate mention of providing work for others. However, the provisions for such actors are not distinct and specific from those committing plagiarism and other academic integrity issues as offences, and we will leave analysis of them to further work.

¹³⁰ République française, 'Que risque-t-on en cas de fraude au bac?' (*Service Public*, 13 September 2022) <<https://www.service-public.fr/particuliers/vosdroits/F22211>> accessed 3 September 2023.

¹³¹ République française, 'Quelles sont les règles à respecter pendant un examen ou concours public?' (*Service Public*, 24

January 2023) <<https://www.service-public.fr/particuliers/vosdroits/F622>> accessed 3 September 2023.

¹³² Law on Academic Integrity (*Zakona o Akademskom Integritetu*) (Official Gazette of Montenegro, 17/2019).

Chapter 3: AI and Essay Mills, Intertwined

Capabilities of large language models post a range of challenges to academic integrity. Models can create plausible text relating to a variety of disciplines, some of which are able to pass examinations in those fields.¹³³ Furthermore, students can use language models as a form of ‘cognitive offloading’¹³⁴, which may autocomplete, check, suggest or structure substantive content of their work in a way which may breach academic integrity policies — or make it difficult to know where to draw the line.¹³⁵

There are many ways students might access these models. Algorithms for AI models exist within a supply chain framework, where multiple actors share responsibility for the outcome. Determining accountability is at times challenging because of distributed responsibility between actors often working together cross-border within different regulatory frameworks.¹³⁶ Below, we identify some of these interactions and dynamics.

Students may seek direct access to underlying, base models. Some have branded these models ‘foundation models’.¹³⁷ Such models are often trained to have general purpose, non-specialised capabilities. Some are made available publicly, described as ‘open’, although in practice are often still capable of expanding specific market power.¹³⁸ These include language models such as Meta’s *LLAMA 2*,¹³⁹ and BigScience’s *BLOOM*.¹⁴⁰ Such models could, in theory, be downloaded by students and run on their own hardware or hardware rented from cloud providers (although at the time of writing this is in practice quite difficult to do for the largest models). This may become easier over time as models become more compatible with consumer-grade hardware, or methods to deploy them privately become more seamless.

Most students will interact with models either directly or indirectly through an application programming interface (API) to a service hosted by another organisation. All major cloud providers now host language models on their cloud systems, and these in turn are integrated into the services run by others. These services include Amazon Bedrock, Google PaLM API, OpenAI Platform, Hugging Face Inference Endpoints, or Microsoft Azure AI. Students can directly create accounts with these services and query a wide array of models at a low per-query or per-hour cost. These services often also allow fine-tuning of models on particular types of text, either raw text or question–answer pairs, which allows them to be tailored to certain use cases, such as by adding material on reading lists.

¹³³ For a review, see Rui Mao and others, ‘GPTeval: A Survey on Assessments of ChatGPT and GPT-4’ (arXiv, 23 August 2023) <<http://arxiv.org/abs/2308.12488>> accessed 4 September 2023.

¹³⁴ Tricia Bertram Gallant, ‘Navigating the Era of Outsourcing: Rethinking Higher Education in the Age of GenAI and Contract Cheating’ (International Center for Academic Integrity, 16 May 2023) <<https://academicintegrity.org/resources/blog/113-2023/may-2023/437-navigating-the-era-of-outsourcing-rethinking-higher-education-in-the-age-of-genai-and-contract-cheating>> accessed 7 September 2023

¹³⁵ Mike Perkins, ‘Academic Integrity Considerations of AI Large Language Models in the Post-Pandemic Era: ChatGPT and Beyond’ (2023) 20 *Journal of University Teaching & Learning Practice* <<https://ro.uow.edu.au/jutlp/vol20/iss2/07>>.

¹³⁶ Jennifer Cobbe, Michael Veale and Jatinder Singh, ‘Understanding Accountability in Algorithmic Supply Chains’, *Proceedings of the 2023 ACM Conference on Fairness,*

Accountability, and Transparency (Association for Computing Machinery 2023) <<https://doi.org/qs98p>> accessed 14 June 2023.

¹³⁷ Rishi Bommasani and others, ‘On the Opportunities and Risks of Foundation Models’ [2021] arXiv:2108.07258 [cs] <<http://arxiv.org/abs/2108.07258>> accessed 13 October 2021.

¹³⁸ David Gray Widder, Sarah West and Meredith Whittaker, ‘Open (For Business): Big Tech, Concentrated Power, and the Political Economy of Open AI’ (17 August 2023) <<https://papers.ssrn.com/abstract=4543807>> accessed 29 August 2023.

¹³⁹ Hugo Touvron and others, ‘Llama 2: Open Foundation and Fine-Tuned Chat Models’ (arXiv, 19 July 2023) <<http://arxiv.org/abs/2307.09288>> accessed 4 September 2023.

¹⁴⁰ BigScience Workshop and others, ‘BLOOM: A 176B-Parameter Open-Access Multilingual Language Model’ (arXiv, 27 June 2023) <<http://arxiv.org/abs/2211.05100>> accessed 4 September 2023.

These APIs can typically be accessed directly by the public, but in practice, are often resold by intermediaries who provide apps or websites which query versions of these models they maintain and develop. Sometimes these intermediaries are the same as the cloud providers — *chatGPT* queries GPT-4, which is also available through the OpenAI Platform. Sometimes intermediaries have privileged access to higher performing or closed models, as is currently the case with Google’s Bard model, which is not available via APIs to the public. Other providers offer tailored or resold versions of these APIs, which might, for example, be designed to write essays or answer exam questions in easier and more tailored ways than the ‘raw’ service alone. These systems may even combine multiple systems and APIs together for different parts of a service. Some models look to be integrated directly into office software; Microsoft has announced its intention to integrate OpenAI services into its Office 365 suite.

As a result, there is a range of actors and intermediaries present. Figure 1 illustrates some of the data flows we might expect between an individual (on the left) querying a model, and an individual getting a response to their query (right). When we talk of an ‘AI provider’, we might be talking about the services that provide the mode, that finetune and deploy it, that provide an interface to it alongside multiple models and services, or a mixture of the above.

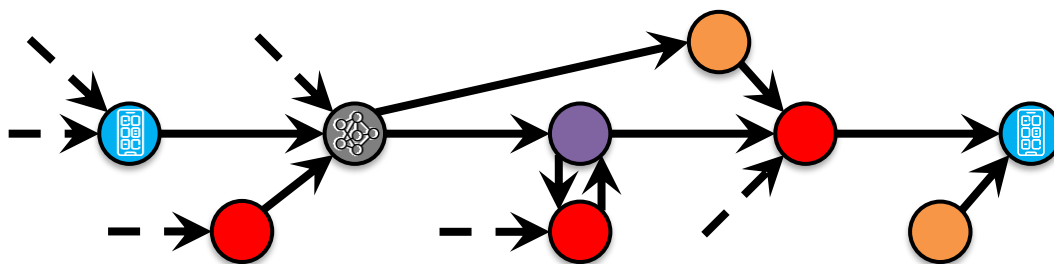


Figure 1: Diagram illustrating the networked nature of data flows and actors within the AI supply chain. Adapted from Cobbe, Veale and Singh (2023).¹⁴¹

In the coming years, we might expect tools, both legitimate and illegitimate to become available. Essay mills may themselves be AI providers, pretending to sell essays that are written by humans, but effectively writing them using AI tools. Plugins and software designed to allow students to cheat on at-home exams proctored or invigilated using ‘lockdown browsers’ or webcams may emerge (although effective methods which defeat these techniques, such as running browsers within virtual machines, already exist). Specialised models and interfaces which accept documents, PDFs, presentations and similar to make writing reference and integrate with the content uploaded more may exist. These technologies may be available through apps or web interfaces for a cost, or may be downloadable, even through free and open source software, and interface directly with the APIs of model providers, such as using Amazon, Microsoft, OpenAI or Google credentials.

In order to help us look forwards, we can look at what is being advertised and offered today. In the following section, we review a wide array of companies that offer services online that seemingly integrate the essay mill business model within an AI business model.

¹⁴¹ Cobbe and others (n 136).

Companies facilitating AI academic cheating services

A staggering array of services, both free and paid-for, claiming to use AI currently present themselves to students seeking essay-writing or support. We researched and categorized an array of existing services and describe them below.

AI Essay Writing Services

Some firms operate very similarly to existing contract cheating or essay mills, but claim to use AI to do so. This may seem surprising, and potentially a downside rather than an obvious selling point. However, they seem to focus on speed as a selling point, to set themselves apart from other essay mills. **EssayAid** claims to write an essay 'in 24 hours with the power of AI'. There is scarce information on its website, although it advertises on TikTok and is registered in the United Kingdom. Its domain name is registered by Kirkland Wholesale Ltd, a company constituted under English law in Preston, Lancashire (14477707). It would be quite clearly in breach of both the relevant service provision and advertising provisions of the Skills Act.

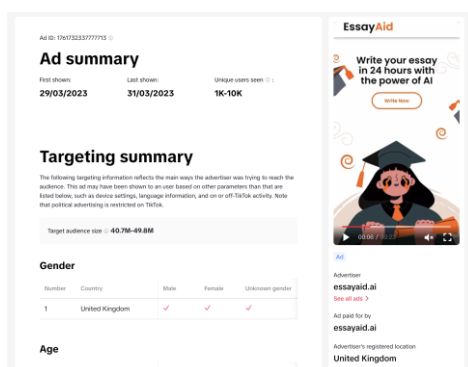


Figure 2: EssayAid claims to be registered in the United Kingdom, and advertises on TikTok.¹⁴²

Some services are more interactive. **EssayGenius** (Figure 3) offers an interface which allows individuals to enter a prompt and receive an essay in return, and to restructure and rephrase parts of the essay. The firm does not state an address or location in its terms of service, and uses a masking service to protect its identity from being revealed by its WHOIS domain registry.

¹⁴² TikTok Ad Library
<https://library.tiktok.com/ads/detail/?ad_id=1761732337777713>
accessed 4 September 2023.

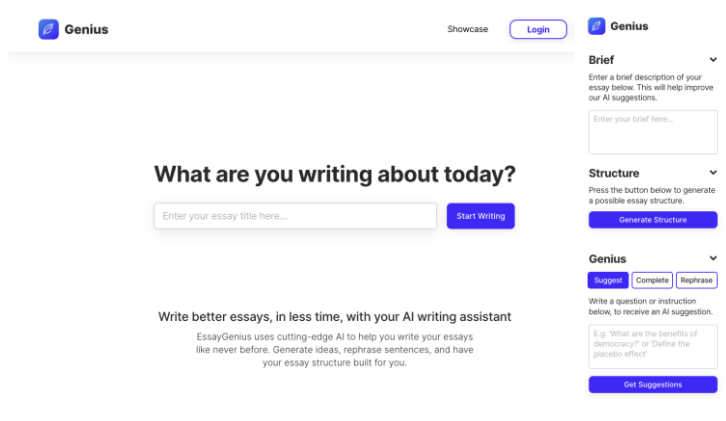


Figure 3: EssayGenius asks individuals for a prompt, and writes a short essay on the basis of this. It offers more functionality to paying members, including the ability to suggest, complete and rephrase terms.

AITaskWizard is a similar service, advertising itself as ‘perfect for A-level and GCSE students’. It promises an ‘inbuilt humanizer’ which ‘can be useful for avoiding plagiarism’. It charges 3.99 USD/month for a premium plan. It does not have terms and conditions, a location, and privacy shields its WHOIS entry. However, it does advertise to the UK on TikTok, where it claims to be registered in the United Kingdom. The website is simplistic and has several idiosyncratic features, suggesting that this is not a corporate effort, but may be an individual simply placing a wrapper around a large firm’s AI API and repurposing it with a user interface, and potentially some post-processing.

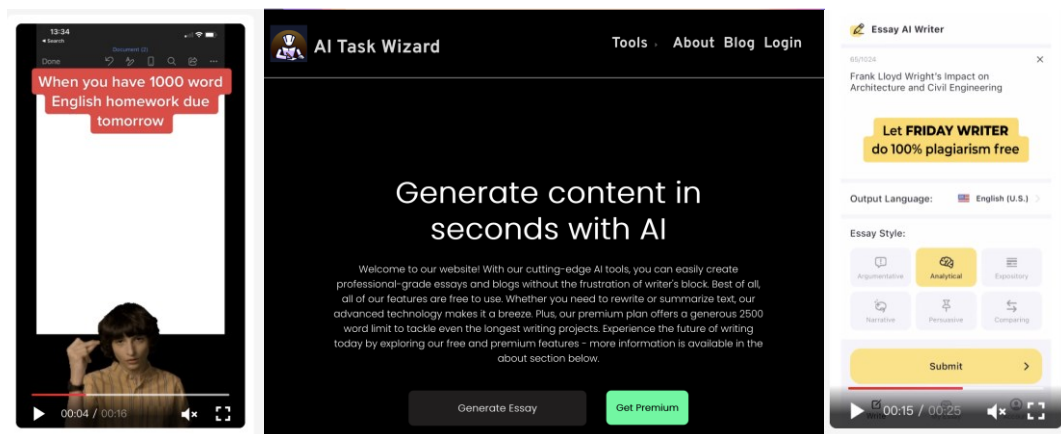


Figure 4: AI Task Wizard’s simplistic website, centre, with one of several advertisements that ran on TikTok, left.¹⁴³ Right: an advert for Friday: AI Essay Writer.¹⁴⁴

While all aforementioned are websites, several apps also exist. This introduces a new intermediary, the app store, which plays a significant role as a de facto contemporary regulator.¹⁴⁵

One app is **Friday: AI Essay Writing**, produced by the Swiss company Sekterra GmbH. This firm heavily advertises on TikTok (Figure 4), mainly to indicate that its texts passes plagiarism detection that others do not. The adverts of this firm heavily use

¹⁴³ TikTok Ad Library
 <https://library.tiktok.com/ads/detail/?ad_id=1758267600437297>
 accessed 4 September 2023.

¹⁴⁴ TikTok Ad Library
 <https://library.tiktok.com/ads/detail/?ad_id=1768865302800401>
 accessed 4 September 2023.

¹⁴⁵ Joris van Hoboken and RÓ Fathaigh, ‘Smartphone Platforms as Privacy Regulators’ (2021) 41 Computer Law & Security Review 105557; Josh Cows and Jessica Morley, ‘App Store Governance: The Implications and Limitations of Duopolistic Dominance’ in Jakob Mökander and Marta Ziosi (eds), *The 2021 Yearbook of the Digital Ethics Lab* (Springer 2022).

images of classrooms, assignments, and teachers detecting *chatGPT*-written scripts as methods of communication.

Plagiarism Camouflage Services

Some services advertise primarily that they help students copy text from other sources, or from other AI systems, and rephrase it in a way that will confound detectors such as *Turnitin*, rather than firms which claim their AI-generated texts are resistant to detection by default.

Quillbot, a company owned by Course Hero (known as Learneo Inc., which also owns CliffNotes), sells a service with which students can use AI re-write text in other styles. This service, it appears, is designed to help students avoid plagiarism detectors — their premium version (100 USD a year) resells the services of *CopyLeaks*, which is a plagiarism detector like *Turnitin*, allowing students to check whether their text would trigger a detector or not. The service is based in Illinois, and advertises in the United Kingdom.

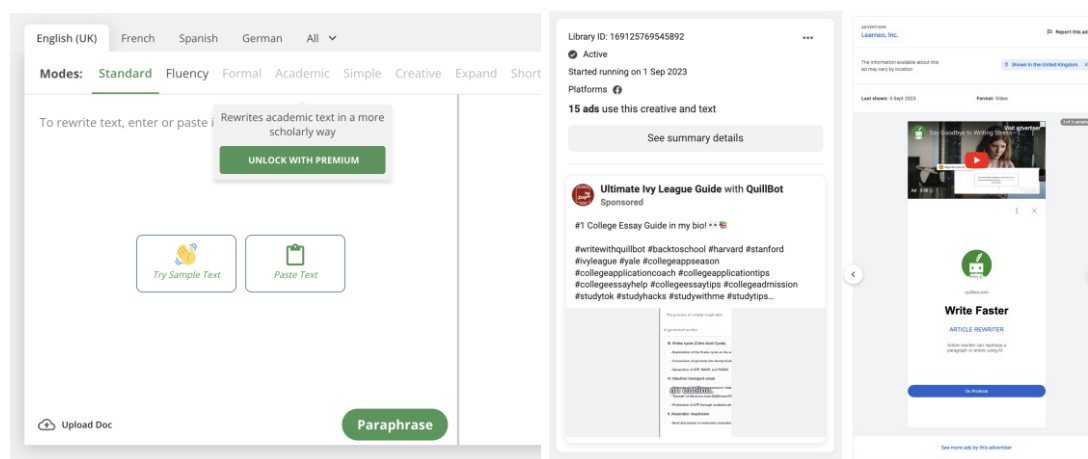


Figure 5: Left: Quillbot allows individuals to paste text and have it rewritten, in a ‘more scholarly way’. It offers a premium service for 100 USD a year. Centre: Quillbot advertising on Meta services with a ‘smart start’ feature to ‘create an outline’ that is AI generated, allowing you to write essays in ‘under an hour’.¹⁴⁶ Right: Quillbot advertising on Google services as an ‘article rewriter’.¹⁴⁷

Illinois law creates an offence for an advertiser, preparer or seller to purposefully engage ‘in a course of conduct which he reasonably should have known would result in the submission of such academic papers, substantially unchanged’ to accredited higher education institution in the state.¹⁴⁸ While English law only applies if the offence is committed in England or Wales, it would appear both Facebook and Google are engaged in the advertising offence in this case, particularly because, as discussed, the scope of the potential activities to support students is so much broader in English law than most other jurisdictions. While Quillbot offers entire writing services, including services to rewrite and cite sources, the re-writing feature is worth considering. Neither English nor Illinois law explicitly contemplates services which attempt to fool attempts to detect plagiarism. However, under English law, this service can be conceived as completing ‘part’ of an assignment in a way that ‘could not reasonably be considered’ to have been completed by the student, as students needing to rephrase to avoid

¹⁴⁶ Meta Ads Library
<https://www.facebook.com/ads/library/?id=169125769545892>
accessed 4 September 2023.

¹⁴⁷ Google Ads Transparency Center,
<https://adstransparency.google.com/advertiser/AR15286630488773>

[492737/creative/CR18265641898590863361?region=GB](https://www.facebook.com/ads/library/?id=492737/creative/CR18265641898590863361?region=GB) accessed
4 September 2023.

¹⁴⁸ 110 Ill. Comp. Stat. Ann. 5/1 (current through 2022).

plagiarism detectors are unlikely to be able to be considered that they are completing the work independently.

If Quillbot avoided saying exactly what it was to be used for, **Phrasly.ai** (Figure 6) has no such qualms. They have published blogs with the names 'How to Bypass Turnitin'¹⁴⁹ and 'How to Write an AI-resistant essay'.¹⁵⁰ The latter claims, somewhat confusingly, that such essays, which they recommend generating by creating them using AI and then running them through their own AI system to rephrase them, 'represent academic integrity, assuring authenticity and originality'. The firm even offers a refund if their content is detected by a detector such as Turnitin.

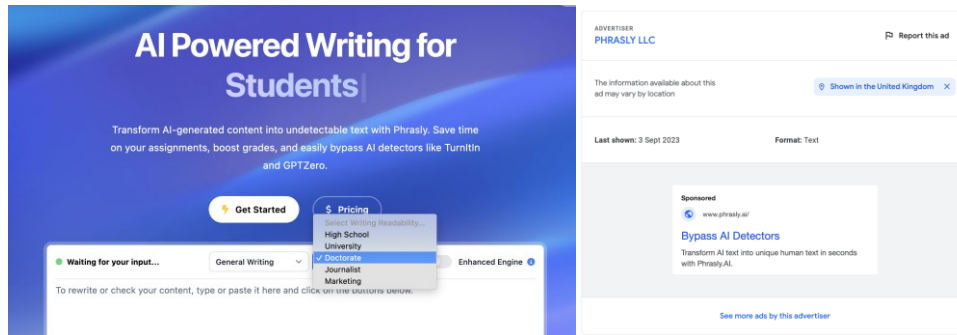


Figure 6: Right: Phrasly.ai states that it is designed to 'transform AI-generated content', 'boost grades', and cites the specific assessment of a 'Doctorate' in its writing style menu. Left: Phrasly advertising on Google.¹⁵¹

The firm Phrasly LLC is based in Delaware, which to our knowledge does not have an academic integrity or essay mill law. However, they advertise in the United Kingdom using Google (Figure 6), claiming to 'Bypass AI Detectors', triggering English law in the same way as stated above.

As similar company to Phrasly, EasyEssay.ai (Figure 7), offers similar generation and plagiarism detection services, and offers citation services within its generation tool. It claims to be operated by a Hong Kong company, ShannonAI Technology HK Limited (2772858). No adverts could be found for this firm.

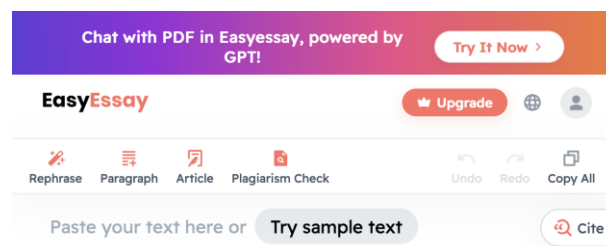


Figure 7: EasyEssay.ai's interface.

Interestingly, all the above firms have relatively generic, boilerplate terms and conditions, and do not even attempt to legally disclaim the use of their services for the submission of assessments.

¹⁴⁹ Phrasly, 'How to Bypass Turnitin' (15 July 2023) <<https://blog.phrasly.ai/blog/how-to-bypass-turnitin>> accessed 4 September 2023.

¹⁵⁰ Phrasly, 'How To Write An AI Proof Essay?' (22 August 2023) <<https://blog.phrasly.ai/blog/how-to-write-an-ai-proof-essay>> accessed 4 September 2023.

¹⁵¹ Google Ads Transparency Center <<http://adstransparency.google.com/advertiser/AR06266791351438802945>> accessed 7th September 2023.

Writing and Referencing Services

Several services encountered placed a premium on being able to integrate genuine sources, citations and references into their essays. This is important as many educators anecdotally believe that AI systems are incapable of detecting accurate references, or that this is a point where real work can be distinguished from fully generated work.

Words and Paper is an app that claims to integrate web searches with generation to create referenced essays that pass plagiarism checks. Interestingly, it specifically namechecks Quillbot, discussed above, as a service that does not avoid detectors successfully as a marketing campaign on TikTok. TikTok notes its registered location as the United Kingdom, although its privacy policy and terms and condition on the Apple App Store link to a shared Google Doc. It advertises itself as being able to generate an outline, which users then edit, and then it expands further using another round of AI generated text. It further emphasizes its ability to use 'real sources' and online research. To that end, it appears to be similar to systems like *AutoGPT*, which integrate the querying of large language models with the introduction of new text as a result of the language model itself directing a Web search.¹⁵²

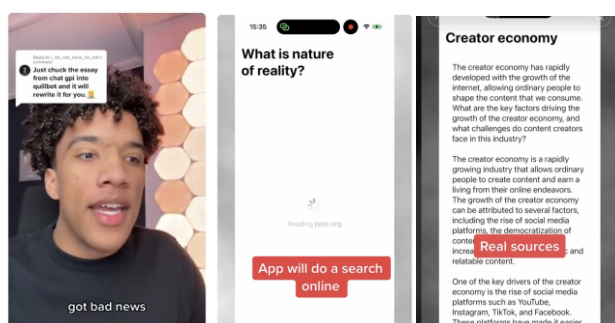


Figure 8: TikTok advertisements for Words and Paper.¹⁵³

Scite (Figure 9) is a firm that sells a tool that claims to allow researchers to see more about the context in which certain work was cited. However, its 'Assistant' tool, similarly to Words and Paper, claims to check a wide range of academic sources by generating search terms, then querying papers, and generating a reference list and in-essay citations to match. The firm advertises explicitly to students on Meta¹⁵⁴ and on Google,¹⁵⁵ although with no explicit mentions of essays in those adverts.

¹⁵² 'Significant-Gravitas/Auto-GPT' (GitHub, n.d.) <<https://github.com/Significant-Gravitas/Auto-GPT>> accessed 4 September 2024.

¹⁵³ TikTok Ad Library <https://library.tiktok.com/ads/detail/?ad_id=1763589432655922> accessed 4 September 2023.

¹⁵⁴ Meta Ads Library <<https://www.facebook.com/ads/library/?id=950153349388736>> accessed 4 September 2023.

¹⁵⁵ Google Ad Transparency <<https://adstransparency.google.com/advertiser/AR17899575067084324865/creative/CR08035784511172116481?region=GB>> accessed 4 September 2023.

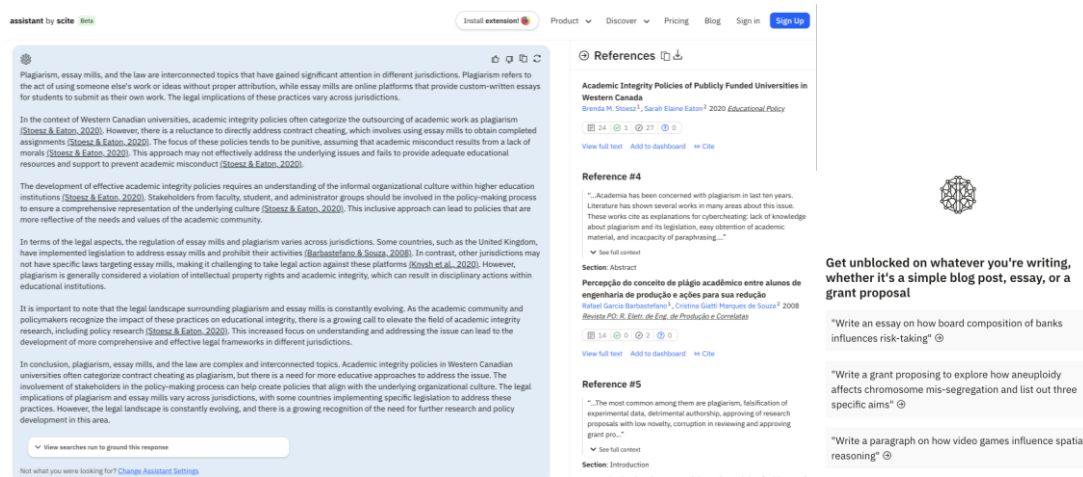


Figure 9: Left: the interface of Scite Assistant, with output to the prompt 'Write an essay on plagiarism, essay mills and the law in different jurisdictions', featuring references that can be examined in context on the right hand side. Right: advertising copy from Scite on its website, suggesting its use in writing an essay.

BrainstormGPT is a Singaporean company (Cyberspace Imagination Pte. Ltd.) which on their website, offers meeting summarisation and reporting tools. From their website, they would not seem to be specialized in essay writing. However, their advertisements tell a different story (Figure 10), claiming to 'get an essay in 20 minutes' and provide 'reliable sources' and 'fresh ideas', providing 'more than just essay structure'.

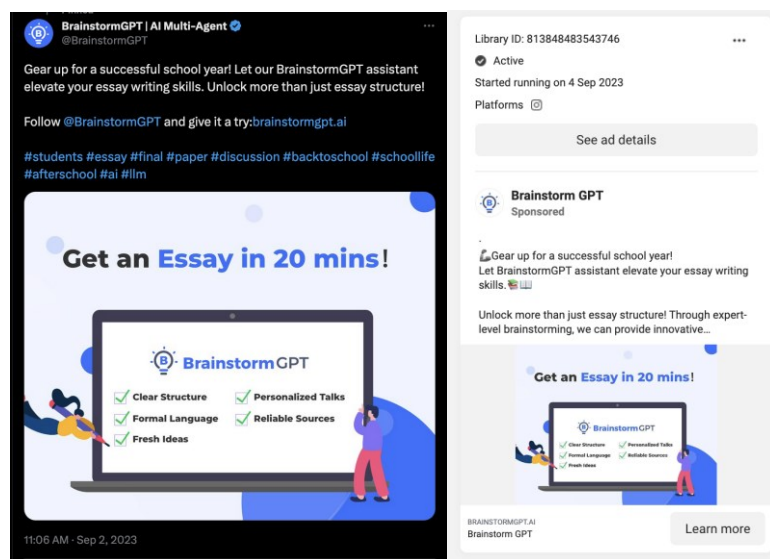


Figure 10: Advertisements for BrainstormGPT on Twitter and on Meta (Instagram).

Finally, **Source.ly** presents a different offering. 'Looking for a way to easily reference your Chat GPT written work?', it advertises. Users are invited to copy and paste work they have generated using AI tools into the Source.ly system, which will return a list of references that exist online that they can paste in to make it appear that they have referenced those works to obtain the information they wrote about. They state on their website that their 'mission' is to 'save students hours of research'.¹⁵⁶ Their service, like many others, features a plagiarism checker with a report score that can be viewed before an assignment is submitted. Their firm lists their location as New York on their LinkedIn profile, and their website lists the logos of many universities as users.

¹⁵⁶ 'About' (Source.ly) <<https://www.source.ly/about>> accessed 4 September 2023.

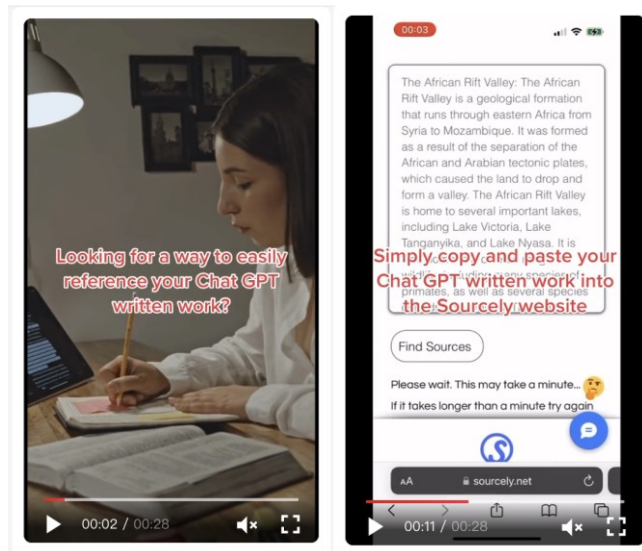


Figure 11: Advertisement on TikTok for Source.ly.¹⁵⁷

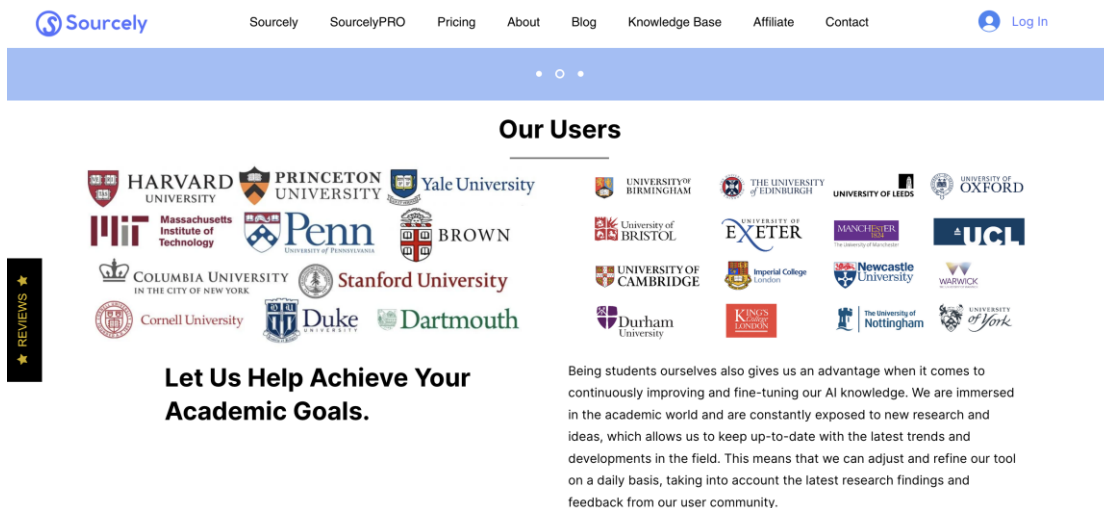


Figure 12: Page listing Source.ly's users.¹⁵⁸

Interim conclusions

In essence, we see a significant number of providers of AI assisted services that could be considered contract cheating or essay mills. Many of these explicitly advertise and market themselves in this fashion, although not all do. Some services explicitly offer essays, and even advertise themselves as being able to dodge AI detectors (e.g. Source.ly, Words and Paper, Phrasly, Friday or AI Task Wizard). Some, such as Quillbot or EasyEssay, are a little more subtle, offering plagiarism detection checks, and in the case of Quillbot, advertising to create outlines, write in a scholarly manner and write faster, but do not go so far as saying they are designed to avoid such checks. However, they offer the same service. Others (e.g. Scite, BrainstormGPT) advertise to students, and showcase their capabilities at writing an 'essay', but seem to aim themselves at a

¹⁵⁷ TikTok Ad Library
https://library.tiktok.com/ads/detail/?ad_id=1757088495907889
 accessed 4 September 2023.

¹⁵⁸ Source.ly <<https://www.source.ly/old>> accessed 4 September 2023.

research or enterprise market, and do not engage with the misuse of their tool, even though they design the system to reference in the style of an academic paper.

However, it is worth noting that most of these tools appear to be wrappers around the language models trained by others. It appears they pass or rephrase prompts, or use chains of prompts to get different results, but these are all techniques that users can do with general purpose providers alone, particularly with the help of prompting guides and similar. As we will see below, given the intent requirements are loose in some jurisdictions' laws, this raises a challenging question. If these tools should be considered academic cheating service providers — then where is the line exactly drawn?

Chapter 4: Tensions

It is likely that students will increasingly use AI for academic cheating rather than essay mills, because of the lack of risk for blackmailing as well as the free availability of many increasingly sophisticated AI models. Commentators have argued that in the future essay mills may seek to differentiate themselves against AI, machine written services, as students may only be willing to pay for higher quality services.¹⁵⁹ However, as we have seen, it also seems likely that essay mills may make use of AI services, and in some ways, the two may become more blurred than distinct. While essay mill legislation may not become irrelevant, cheating by means of AI models may become the predominant form of third-party cheating.

We will analyse the issues of addressing academic cheating by means of AI through current essay mill legislation, keeping in mind there remains an ongoing discussion about what extent the use of AI should be classified as academic cheating. We focus examples therefore on times where the use of AI for substantive purposes was forbidden by a course convenor.

This section will contain a categorisation of the main tensions between AI systems and the various legal regimes. It will indicate in which jurisdictions of those elaborated above each tension emerges.

The main tensions which emerge are:

- | | |
|---------------------------|-------------------------------------|
| (1) relevant services; | (4) extraterritoriality; |
| (2) knowledge and intent; | (5) intermediaries/advertising; and |
| (3) commercial nature; | (6) enforcement. |

These tensions will inform the proposed policy recommendations.

Scope of relevant services

The different legislative approaches set out in the first part of this article have different definitions for what classifies as the provision of a relevant service. In this section, we will outline the differences in the material scope of these provisions in the context of the AI services outlined in the previous section.

Students may use AI models in many different ways to create assessed material. They may use an AI model to receive an outline for an assignment or to search for source material, i.e. for very high-level tasks associated with the assignment. They may use an AI model to write the entire assignment by giving some input with desirable information (collated by the student themselves) or even just the assignment prompt, letting the language model write everything. A student may co-write an essay with the AI model. This may take the form of the student continuously amending each output of the language model and the student writing many elements of the assignment themselves. A student may use an AI model merely to improve the clarity of an assignment by cross-checking whether the essay accurately corresponds to the essay prompt. On the least substantive end of the scale, they may simply use systems or to improve phrasing,

¹⁵⁹ Thomas Williams, 'Essay Mills "under Threat from Rise of ChatGPT"' (*Times Higher Education (THE)*, 2 March 2023) <<https://www.timeshighereducation.com/news/essay-mills-under-threat-rise-chatgpt>> accessed 5 September 2023; Thomas

Lancaster, 'Cheating with Artificial Intelligence – Addressing The Consequences' <<https://thomaslancaster.co.uk/blog/cheating-with-artificial-intelligence-addressing-the-consequences/>> accessed 5 September 2023.

grammar and style, much as spell-checkers built into word processors have long facilitated.

AI systems may be promoted according to these capabilities, or have different capacity for each. Under what conditions, if any, could this fall into scope of the legislation outlined above? As we will see, this differs widely.

Support or Assignment Production?

It appears to be the case that even the most high-level assistance provided by the AI model, could at first glance fall under the definition of relevant services in some jurisdictions. This is relevant for all general purpose AI systems, which are capable to some degree of providing that assistance, but also to many of the AI-supported essay mills above which claim to offer outlines, sources, rephrasing or other capabilities.

Preparation, research or assistance. Maryland specifically prohibits sale of assistance in ‘preparation, research, or writing’.¹⁶⁰ Oregon widens this to ‘any assistance’.¹⁶¹ Massachusetts includes in the concept of the work that could be submitted ‘research results’ or ‘substantial material therefrom’.¹⁶² All of these imply an extremely wide scope explicitly, however they are tempered by all having a knowledge requirement (discussed below). Florida has a potentially wide scope, although parts of the provision seem internally contradictory. The offence itself states that the scope should be offering work that the seller or advertiser should have known was intended for submission without substantial alteration, however, the provision then goes on to clarify that exempt services do not include those which include ‘*the preparation, research or writing*’ of work (emphasis added) — appearing to clarify that the scope is wider than simply the creation of final or near-final content.¹⁶³

Reasonably considered to constitute part of. In England and Wales, the first definition is the provision of a relevant service of completing ‘all or part of an assignment of behalf of a student’ where an assignment in that way ‘could not reasonably be considered to have been completed personally’ by that student. Australia has a similar test, although requires at a minimum the material able to ‘reasonably be regarded as being, or forming a substantial part’ of that assessment ‘task’.¹⁶⁴

Partial assignment. Jurisdictions where the scope covers the partial completion of the assignment, without an explicit test of reasonable consideration, may also incorporate AI systems even when they are used in a certain supporting capacity. This support could be understood in a literal way, as a ‘part’ of a document, such as a chapter or section. However, another interpretation that can be read into some of the provisions is as a ‘part’ of a task, rather than of a finished product. Australia’s legislation, described above, explicitly uses the term ‘task’, but assignments as a whole can be understood this way. The task being assessed often is around the process rather than the final piece alone: evidence of research, critical thinking, wider reading, or similar. Ireland’s legislation could be construed widely, as where a person is ‘undertaking in whole or in part’ an assignment or other work. Austria’s legislation talks of achievements rather than tasks, but insofar as process is considered an achievement, it may also lend itself to a wide scope. However, it is unclear if the provision of material related to the assignment by an AI model will fall within the Austrian legislation, as Austria’s legislation appears to be limited to producing or making available an entire piece of work (*ein Werk*) for another person — although that work may be part, rather than all, of an assignment.

¹⁶⁰ Md. Code, Education § 26-201(b) (current through 2022).

¹⁶¹ Or. Rev. Stat. § 165.114(2) (current through 2022).

¹⁶² Mass. Gen. Laws ch 271, § 50 (current through 2022).

¹⁶³ Fla. Stat. Ann. § 877.17 (West current through 2022).

¹⁶⁴ TEQSA Act 2011 (Australia) s 5.

Connecticut, New Jersey and Pennsylvania explicitly include occurrences where a ‘substantial part’ of the assignment has been obtained.

Both reasonably considered partial assignments, and partial assignments without such explicit tests, might therefore incorporate a range of the services we have seen above, such as outlining, referencing, research and the like, as these are parts of the assignment task. Marking schemes and rubrics often grade these separately, requiring achievement in these areas.

Submittable, full assignments. However, other legislation seems to rule out such high level guidance or components, at least on their face. While California includes any ‘written material’, it must be able to be submitted as the assignment itself. Colorado, New York, Texas, Virginia and Washington have similar constructions. In New Zealand, the services are limited to those where assignments are ‘completed’, ‘provided’ or ‘arranged’. The limit to, in varying wording, it being the whole assignment can also be found in Maine, North Carolina and Nevada. This does not rule out AI-created assignments, but does narrow the scope to where systems produce finished or near finished pieces, rather than are used iteratively and potentially interactively, such as ‘co-writing’ tools or outlines. Florida, if read restrictively without reference to the exemptions mentioned above, and Illinois also require the creation of work not substantially altered. While judicial interpretation may choose to include components of the work, these statutes appear the more restrictive on their face of those we examined.

Metaphor	Most broad nature of the work implicated	Jurisdiction
Preparation, research or assistance	research results or substantial material [...] will be used	Massachusetts
	any assistance in the preparation of an assignment	Oregon
	preparation, research, or writing	Florida (see discussion), Maryland
Reasonably considered to constitute part of	reasonably regarded to be or form part of a task	England and Wales, Australia
Partial assignment	work undertaken in whole or in part	Ireland
	used in part or in full to prove achievements	Austria
	in whole or substantial part	Connecticut, New Jersey, Pennsylvania
Full assignment	(whole) assignment, answers, papers, dissertations	New Zealand, Maine, North Carolina, Nevada
	work not substantially altered	Florida (see discussion), Illinois.
	work able to be/intended to be submitted	California, Colorado, New York, Texas, Virginia, Washington

Table 1: Maximal material scope of the legislation considered

Availability exemptions

In cases where the scope is wide, legislation often includes exemptions concerning the availability of work. Exempting a mass-produced study guide is one obvious logic behind such an exemption. However, we need to consider whether, and under what conditions, such exemptions might exempt AI systems, for example, those that are available freely on a website.

In England and Wales, it would need to be considered whether the material has been *published generally* or *available generally without payment*. The structure of the offence is unusual, as not being generally published material is a condition of an example, rather than a clear exception to the definition of service — however it seems designed to narrow the offence (and exempt, for example, those selling study revision guides). However, while AI systems themselves may be available generally, it is not easy to say the content they produce is. Such language models produce different output even based on the same prompt, due to different versions, initial ‘seeds’ and their stochastic nature. It could be argued that in principle, the material was ‘available generally without payment’, in the sense that an individual did obtain it, without exclusivity, and without payment. The explanatory notes to the bill indicate that ‘[t]he offering of a menu of available essays which must be paid for, for example, would not be considered material published generally since it does not include other educational or training material’ — this would seem to analogize to an AI system capable of creating many different essays without accompanying educational or training material.¹⁶⁵

Considering paid-for AI-models though, the only relevant exemption is that it would be ‘included in a publication’. While it could be argued that an AI model could make content ‘available’ without payment, it would be unlikely to be considered a ‘publication’. As a result, paid-for models are not precluded, and free models are not precluded insofar as the specific content obtained could be argued to not have been available ‘generally’. The importance of commercial nature to the law in England and Wales is outlined further below.

Florida clarifies the law does not stop ‘any person or educational institution from providing [...] information [...] unless this service includes the preparation, research or writing of a report or paper as [outlined in the offence].’ This exemption is a little circular in nature, but the intention seems to be clear. It does not appear to limit the scope of AI in the law significantly, as it does not consider the availability of this information to third parties.

In sum, some legislation, such as that in England and Wales, has a very wide material scope, covering material that could even be useful for assessment; some legislation is more contested, covering partial completion of assessment, and will likely require judicial interpretation; and some is more limited, covering only full or near-full completion of assignments. None of these definitions seem themselves as a barrier to including AI services in principle within these definitions, as current AI systems are capable of providing full, partial and support roles in the context of academic misconduct.

¹⁶⁵ Explanatory Notes to the Skills and Post-16 Education Bill (as brought from the House of Lords on 26 October 2021, Bill 176), para 159.

Knowledge and intent

As indicated in the discussion in the House of Lords in 2017¹⁶⁶, proving intent to provide an unfair advantage or any other intent or knowledge requirement is already difficult for essay mills and contract cheating providers. A knowledge requirement makes it easier for essay mills to hide behind a contractual clause stating that provided services should never be handed in as original academic work. A 2017 study analysing 26 websites offering such services found these types of clauses or disclaimers present on all websites studied.¹⁶⁷

Such clauses are similarly common in AI providers' contracts. For example, OpenAI's usage policy includes a prohibition against '[f]raudulent or deceptive activity, including: [...] academic dishonesty'.¹⁶⁸ These clauses are part of broader attempts to govern AI systems and APIs through contractual means.¹⁶⁹ Interestingly, we have not seen evidence of them in the providers of AI essay mills reviewed above — most of these services contain only boilerplate terms of service.

Even if difficult in practice, it may be able to understand the intent for essay mills and contract cheating providers through investigative methods, disclosure of correspondence, and testimony from employees. It will be difficult to assess whether intent is present with AI services.

The business model of AI providers is typically one that is distant from the user, with the primary interaction being programmatic, through APIs. Unlike essay mills, language model providers are aiming in practice at a very wide variety of users, with some likely to be using the system for illegitimate or illegal ends. For general purpose providers with contractual exemptions, under standard factual conditions reflecting the AI-as-a-service industry today, an intent element will likely shield them from falling within the scope of this offence.

Legislation without knowledge or intent elements

The offence in England and Wales lacks an intent element, is purely a strict liability offence and avoids any issues of proof around the offence.¹⁷⁰ This means that if the relevant services element is satisfied AI services could likely fall within the Skills Act offence on academic cheating.

In Australia, strict liability applies to the physical element of circumstance for the first two offences outlined, in relation to the definition of academic cheating service.¹⁷¹ This means there is no intent element that needs to be proven for the physical element of circumstance for academic cheating services. Provision of work for students, in circumstances where the work forms or could *reasonably be seen* to form a substantial part of an assessment task that students are required to personally undertake will lead to liability. This subjective test tethers the definition to one that relates to the role of AI in writing more generally, which will be of interest to those speculating around the future of content creation and education.

¹⁶⁶ HL Deb 25 January 2017, vol 778 col. 776.

¹⁶⁷ Michael J Draper, Victoria Ibezim and Philip M Newton, 'Are Essay Mills Committing Fraud? An Analysis of Their Behaviours vs the 2006 Fraud Act (UK)' (2017) 13 International Journal for Educational Integrity 1.

¹⁶⁸ OpenAI, 'Usage Policies' (23 March 2023) <<https://openai.com/policies/usage-policies>> accessed 2 September 2023.

¹⁶⁹ Danish Contractor and others, 'Behavioral Use Licensing for Responsible AI', 2022 ACM Conference on Fairness, Accountability, and Transparency (ACM 2022)

<<https://dl.acm.org/doi/10.1145/3531146.3533143>> accessed 23 June 2022.

¹⁷⁰ Skills and Post-16 Education Act 2022 (England and Wales) s 26–30.

¹⁷¹ TEQSA Act 2011, s 114(2)(a), 5.

Both instruments make it difficult to distinguish between general purpose AI providers and AI services advertising as essay mills, as there is no need to demonstrate that intent. Given that AI essay mills seen above typically are a loose wrapper around general purpose AI APIs such as those in the algorithmic supply chain, this creates significant problems for the law's scope.

In Ireland as discussed, the provision has two sections on academic cheating, one with an intent element and one without. The section without an intent element applies primarily to undertaking 'an assignment or any other work' or 'sitting an examination' in 'the enrolled learner's stead', or providing 'answers for the examination'. Considering AI in this context, most applications would still see the learner 'undertaking' the assignment, simply with material from an AI system. AI might provide 'answers for the examination', however, this seems more applicable to times when answers are leaked or stolen than when they are provided by a computer — else we could make the argument that a provider of an online calculator or equation solver like *Wolfram Alpha* would fall within scope during a mathematics test. If a firm provided an AI system that would stand in for a user in an online test in their entirety, perhaps even in their absence, then this would seem a candidate for being in scope, however, this is more science fiction than reality at the present moment.

Legislation with knowledge or intent elements

Some legislation requires the provider to intend to give students an unfair advantage. This will be difficult to prove in relation to AI providers. Both Ireland¹⁷² and New Zealand¹⁷³ have such intent elements in parts of their legislation — not surprising, as the Irish act was modelled after the New Zealand legislation.¹⁷⁴ This might be able to be established with essay mills that promise students that they will be able to achieve a first, but it will be difficult to prove with general purpose AI providers, although may be possible if they are specified resellers and advertise their services as such. The difficulty in proving this with essay mills in general however contributed to the removal of the intent requirement in England and Wales, as discussed.

Knowledge requirements are easier for AI providers to meet in principle, but still pose challenges. Austrian law contains a knowledge element. It is required that you know or can assume based on the circumstances that a piece of work will be used in part or in full as a seminar, examination, or final thesis (bachelor thesis, scientific or artistic work). This is also the case for California and Florida, among other US states, including those with the wide scopes described above such as Maryland, Massachusetts and Oregon. However, AI provider receive prompts as inputs, and would presumably argue that they have no way of knowing whether this was just a prompt to do genuine research in authorised ways, to produce practice essays to study or examine (for example, on previous years' questions), or whether what was being created was in order to submit to an assessment illegitimately. Cost seems to play an indirect part here. It may be reasonable to 'assume based on the circumstances', as Austrian law indicates, that an essay will be for submission where a student is paying a significant sum for it. Where that sum is small, because the activity is fully automated, it seems plausible that they are just doing so for research, information or knowledge.

¹⁷² QQA(ET) Act 2012 (Ireland) s 43A(3).

¹⁷³ Education and Training Act 2020 (New Zealand) s 393(1)(a).

¹⁷⁴ Dáil Deb 12 June 2019, vol 983 col 5.

In sum, so far England and Wales and Australia look to have constructions that are amenable to application to general purpose AI providers, based on scope and the lack of intent or knowledge elements. The section of Ireland's offence without intent elements seems too specifically aimed at individuals fraudulently sitting exams. Austria and several US states have a knowledge, rather than an intent requirement, which could be met by AI providers, but will likely to prove difficult.

Commercial nature

The Skills Act in England and Wales has the requirement that services must be provided in commercial circumstances. This means it excludes any free help from family members. This could be understood to exclude freely available AI language models like *chatGPT* and only apply to paid versions. However, it could also be that because OpenAI is a company, the threshold for commercial circumstances is already reached. Indeed, even 'open' models are deeply enmeshed with business strategies and interests.¹⁷⁵ The history of online platforms has often seen them free at the point of usage for consumers, where 'payment' is taken in the form of data, attention, or access. Legal regimes have commonly understood platforms as commercial entities. For example, UK (and EU) law also defines information society services as 'normally provided for remuneration', in recognition of this type of business model.¹⁷⁶ While there may be arrangements that can be envisaged where AI models fall out of being considered in 'commercial circumstances', as it stands they cost extraordinarily high amounts to train, update, and even to deliver as services, all of which are absorbed by companies such as OpenAI in finance and investment arrangements in an attempt to become more durable and expansive platform businesses in this area in the future.

Ireland and New Zealand law lack the requirements for commercial circumstances and would therefore apply to both paid-for and freely available AI models, thus fundamentally widening the reach of the legislation to a range of AI models without debate. In Australia, the same act will lead to different penalties depending on whether it was done for commercial purposes or not. Commercial purposes will lead to a criminal sanction of 2 years imprisonment or 500 penalty units, or both. On the contrary, the same act without commercial purposes will lead to a civil penalty of 500 penalty units — currently up to 156,500 AUD. California includes both provision for a fee and without, whereas Florida only applies to sellers.

In Austria, the applicable offence of providing or making available a piece of work will lead to liability irrespective of whether services are offered for free or for a fee. Nevertheless, if assistance is given for free (without monetary compensation, *unentgeltlich*) and does not affect the intellectual, technical and independent execution of the seminar paper, examination paper or final thesis (bachelor thesis, scientific or artistic work) by the designated author no liability will ensue. However, a higher fine will be imposed if the perpetrators act with the intention of generating ongoing income.¹⁷⁷ As AI providers seem to contractually prohibit such work, and insofar as they can evidence enforcement of these terms, it seems unlikely they will easily be caught under this higher fine in any case.

¹⁷⁵ David Gray Widder, Sarah West and Meredith Whittaker, 'Open (For Business): Big Tech, Concentrated Power, and the Political Economy of Open AI' (17 August 2023) <<https://papers.ssrn.com/abstract=4543807>> accessed 29 August 2023.

¹⁷⁶ The Electronic Commerce (EC Directive) Regulations 2002, reg 2.

¹⁷⁷ *Universitätsgesetz* 2002 (UG), Bundesgesetz über die Organisation der Universitäten und ihre Studien, BGBl I Nr 120/2002, amended by BGBl I Nr 93/2021 (Austria) § 116a(4).

France and Germany criminalise students no matter whether they get free or paid assistance. Commercial cheating services are not targeted.

In sum, constraints on the services being provided commercially do not seem to fully exclude free-to-access AI services in any jurisdiction examined, given their current business models, and in any case continue to include paid-for AI services.

Extraterritoriality

After Australia and Ireland criminalised essay mills, it has been reported that many left and closed down services.¹⁷⁸ In Austria similarly many essay mills stopped offering services to Austrian students, although they did not seem to shut down, and such provisions are practically circumvented by students with non-Austrian emails.¹⁷⁹

Injunctions and other legal mechanisms can be used to stop essay mills from operating in the relevant jurisdiction or at least make their website inaccessible in the relevant country. The Australian legislation is unique insofar as it includes specific powers to issue such injunctions in the context of academic cheating services; although other jurisdictions have more general injunction powers that may be applicable in these cases.

Most AI model companies are located in the United States. It would be politically difficult to block such services, and such a block could be challenged on grounds including freedom of expression, or freedom to conduct a business. However, *de facto* restrictions on AI models are not unprecedented. The Italian Data Protection Authority issued an order to OpenAI to stop it providing a model to Italy until data protection issues were resolved; the firm complied with this for a time until the regulator agreed it could be lifted; although it is unclear the underlying legal issues have been fully remedied.¹⁸⁰

Some regimes seem to limit the area of the offence. In England and Wales, the offences have to be committed in England and Wales in relation to English educational institutions.¹⁸¹ No explicit statement of extraterritorial effect is made in the laws of Ireland, New Zealand or Austria. However, Australia applies 'category D' extended geographic jurisdiction, meaning that this offence applies whether or not the result of the conduct occurs in Australia.¹⁸²

Australia has the widest extraterritorial effect, while the law in England and Wales applies only for offences committed there. Other jurisdictions do not explicitly lay out extraterritorial effect.

Advertising

Several jurisdictions analysed above include an offence criminalising the advertisement of relevant academic cheating services, as defined in their respective acts. This may mean that intermediaries, like Google, other search engines and other platforms commit a criminal offence if they have an advertisement for essay mills and other relevant

¹⁷⁸ Anna McKie, 'Essay Mills Quit Australia as UK Falls behind but Covid a Threat' (*Times Higher Education (THE)*, 18 November 2020) <<https://www.timeshighereducation.com/news/essay-mills-quit-australia-uk-falls-behind-covid-threat>> accessed 4 September 2023.

¹⁷⁹ 'So umgehen Ghostwriter-Agenturen die UG-Novelle' (*Kronen Zeitung*, 29 September 2021) <<https://www.krone.at/2518166>> accessed 3 September 2023.

¹⁸⁰ Pier Giorgio Chiara, 'Italian DPA v. OpenAI's ChatGPT: The Reasons Behind the Investigation and the Temporary Limitation to Processing' (2023) 9 *European Data Protection Law Review* 68.

¹⁸¹ HM Government, 'Skills and Post-16 Education Bill: Policy Summary Notes' (November 2021) 57–58.

¹⁸² TEQSA Act 2011(Australia) s 12; Criminal Code Act 1995 (Australia) s 15.4.

services on their platform, particularly if they are made aware of it and do not remove it.¹⁸³

Many of these platforms now make some form of ‘ad archive’ available, particularly following the requirements on Very Large Online Platforms now in force following the passage of the Digital Services Act.¹⁸⁴ These can be useful for research and accountability purposes.¹⁸⁵ A cursory look through these ad archives with relevant search terms shows adverts for a wide array of traditional essay mills, in addition to the adverts for AI-powered mills described in the previous section (Figure 13).

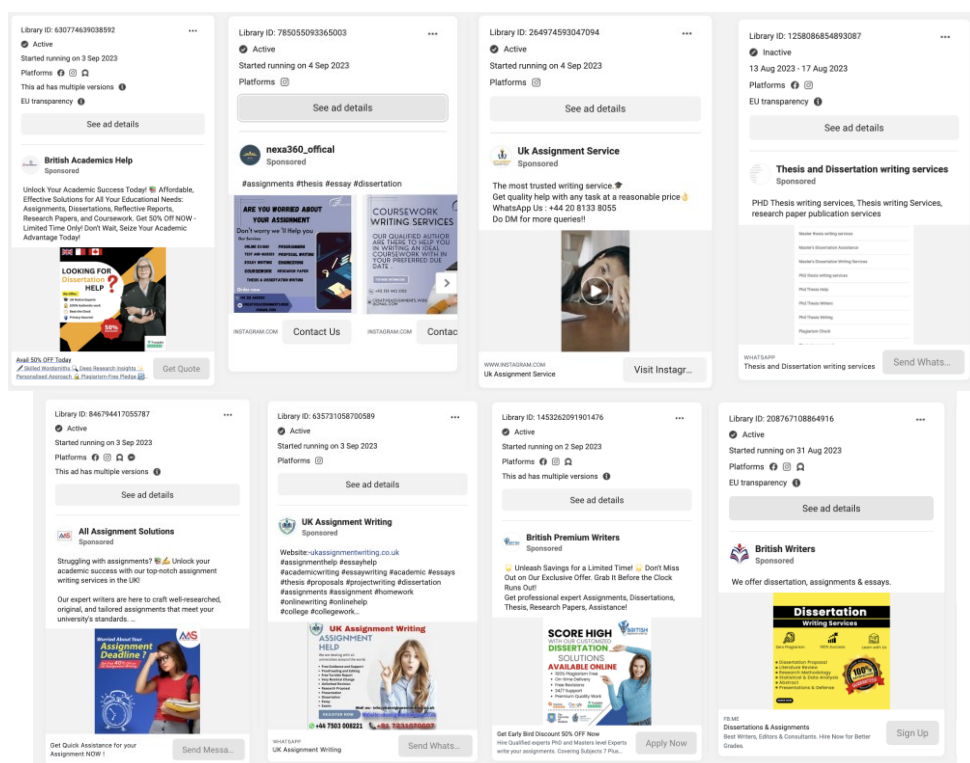


Figure 13: A wide array of adverts from the Meta Ad Library advertising ‘classic’ essay mills.

In England, after the passing of the Skills Act, the Skills Minister called on search platforms to crack down on the illegal advertisement of essay mills.¹⁸⁶ In reality, it appears to be the Advertising Standards Authority that has been the most active in investigating essay mill ads under the Committees of Advertising Practice (CAP), Advertising Code. Before the passing of the Skills Act 2022, the ASA investigated essay mill ads in 2019, for being misleading. Websites proclaimed that students could submit work as their own without risks. As such, the ad breached CAP Code (Edition 12) rules 3.1 and 3.3, misleading advertising.¹⁸⁷ Similarly, in February 2023 the ASA challenged

¹⁸³ In some cases, platforms may benefit from liability shielding due to unawareness of hosting such adverts, even where they have done so for remuneration. See e.g., in relation to the EU and the UK, Joined Cases C-236/08 and C-238/08 *Google France* ECLI:EU:C:2010:159 (where Google was found to benefit from liability shielding in relation to advertising on their AdWords service, as long as they were not drafting the message themselves and met the other conditions of the liability shielding, such as taking down rapidly upon being notified).

¹⁸⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) OJ L 277/1, art 39.

¹⁸⁵ Paddy Leerssen and others, ‘News from the Ad Archive: How Journalists Use the Facebook Ad Library to Hold Online Advertising Accountable’ (2023) 26 *Information, Communication & Society* 1381.

¹⁸⁶ Alex Burghart, ‘Essay Mills Are Now Illegal - Skills Minister Calls on Internet Service Platforms to Crack down on Advertising’ (*Department for Education: The Education Hub*, 28 April 2022) <<https://educationhub.blog.gov.uk/2022/04/28/essay-mills-are-now-illegal-skills-minister-calls-on-internet-service-providers-to-crack-down-on-advertising/>> accessed 4 September 2023.

¹⁸⁷ Advertising Standards Authority, Committee of Advertising Practice, ‘ASA Ruling on Person(s) Unknown t/a

whether an ad by BrilliantMinds, an essay mill, misled students by implying they could submit an essay they had bought as their own.¹⁸⁸ A similar ad was pursued against British Dissertation Help in April 2023.¹⁸⁹ Any ASA rulings have the result that the ads may not appear again in the form complained against. Usually, no fines result and services typically agree to amend the ads. No prosecutions against intermediaries were pursued by the Crown Prosecution Services under the Skills Act, though this may have been because the companies were in Scotland and offering services to Scottish students.¹⁹⁰

Australia implemented an integrity unit to implement the new legislation by means of prosecutions and the use of federal injunction powers to block advertising.¹⁹¹ Australia has successfully focused on blocking sites by working with Internet Service Providers, instead of just blocking relevant ads.¹⁹²

Under the Skills Act in England and Wales, intermediaries technically have to take down ads for relevant services, because advertising is a criminal offence (s. 28(1)), even if the advert is also shown to persons other than students (s. 28(2)). Arranging for an advertisement which states that a person is available or competent to provide or arrange for another person to provide a relevant service (s. 28(3)) is sufficient.

In Ireland, it is illegal to advertise or to publish an advertisement relating to offering any of the relevant offences. A similar offence exists in Australia and New Zealand with the addition of a knowledge requirement regarding unfair advantage. In Austria, liability appears to be limited to those publicly offering such services, i.e. it would not extend to intermediaries such as OpenAI or chatGPT. The issue with AI services is that there would never be a direct advertisement by AI models offering to provide academic cheating services. As a result, it is unlikely that liability would extend to such intermediaries.

This would significantly undermine the effectiveness of the legislation regarding AI services because the main source of effectiveness of the relevant legal regimes appears to be the ability to block advertising and block websites offering relevant services. In the case of England and Wales, a symbolic statement could be made to intermediaries about the advertisement of essay mills.¹⁹³

Conceptually, applying the rules on advertising with this legislation is complex. That is because the often broadly drafted nature of these offences makes the service provided contingent on how it is being used, particularly because some jurisdictions, as discussed above, loosen or remove intent requirements. Yet advertising is all about intent — describing a service such that individuals wish to use or purchase it. This creates a difficult legal question — should an advertiser who advertises for a general purpose service be held liable for it? Intuitively, the answer should be yes — these provisions were typically designed to capture essay mills even if they were advertising (as they do, and as they contractually seek assurance of) services which were different from what

Proacademichelp.co.uk (A19-564582)' (ASA, 11 September 2019) <<https://www.asa.org.uk/rulings/person-s-unknown-A19-564582.html>> accessed 4 September 2023.

¹⁸⁸ Advertising Standards Authority, 'ASA Ruling on Brilliant Minds Ltd t/a EssayMills (A23-1188070 Brilliant Minds Ltd)' (ASA, 19 April 2023) <<https://www.asa.org.uk/rulings/brilliant-minds-ltd-a23-1188070-brilliant-minds-ltd.html>> accessed 4 September 2023.

¹⁸⁹ Advertising Standards Authority, 'ASA Ruling on British Dissertation Help (A23-1190248)' (ASA, 19 April 2023) <<https://www.asa.org.uk/rulings/british-dissertation-help-a23-1190248-british-dissertation-help.html>> accessed 5 September 2023.

¹⁹⁰ Advertising Standards Authority, 'ASA Ruling on Home of Dissertations' (ASA, 19 April 2023)

<<https://www.asa.org.uk/rulings/home-of-dissertations-a23-1188078-home-of-dissertations.html>> accessed 4 September 2023.

¹⁹¹ McKie (n 178)

¹⁹² John Ross, 'Australia Blocks Access to Biggest Contract Cheating Websites' (*Times Higher Education (THE)*, 5 August 2022) <<https://www.timeshighereducation.com/news/australian-regulator-forces-mass-blocking-cheating-websites>> accessed 5 September 2023.

¹⁹³ Burghart (n 186).

the student was actually intending to use, such as practice essays, or study notes, rather than submittable work.

In sum, if relevant services in such laws encompass general purpose AI systems, insofar as they do, they would seem to also prohibit advertising of such systems, regardless of how they were advertised. This could present a challenge for commercial activity of these firms, and the intermediaries involved in publicising them.

Enforcement

Direct enforcement action, as discussed above in the sections relating to each jurisdiction, is rare. It appears to be the most active in Australia, where TEQSA, the relevant education regulator has a dedicated yearly budget for enforcement action (660,000 AUD).¹⁹⁴ Particularly their partnership with Internet Service Providers, allowing them to block websites of essay mill providers, has proven effective in driving out essay mills.¹⁹⁵ In England and Wales, the CPS has not engaged in enforcement action, although other regulators have attempted to have advertising taken down in the past.

The majority of regimes are only directly enforceable by normal prosecuting bodies. Some of them allow direct referral by universities (e.g. Illinois), but this too is rare. Given the nature of the offence, it would appear that this will lead to questionable levels of enforcement, particularly without dedicated enforcement bodies with knowledge of the higher education sector.

Private enforcement and platform law

Other laws, however, may interact with the above provisions to create surprising consequences for the AI ecosystem. Emerging legal regimes, such as the EU's Digital Services Act and the UK's proposed Online Safety Bill place obligations on certain internet services. Not all internet services are in scope, as these laws predominantly take aim at *intermediaries*, where some users share content with other users by means of an online service. An actor like OpenAI providing an API to their model would not initially seem to be an intermediary, as they are publishing a service to be used, and that service does not originate from another user (despite it being full of other content from elsewhere). However, it might be considered as a search service, a category of service also regulated by both instruments, particularly insofar as it allows the effective retrieval of data from multiple databases. Some AI generation tools, such as Bing Chat, which uses OpenAI's GPT family of models, or Google Bard, are explicitly attached to search databases. Under both regimes, the firms need not be located in the home jurisdiction. For example, under the Online Safety Bill, the AI company need not be located in the United Kingdom as long as users in the UK can use it and there is a material risk of significant harm.¹⁹⁶

Two main categories of obligation are relevant for the interaction between essay mill law and platform law. The first concerns direct obligations that relate to illegal content. The two regimes differ a little in this respect; the proposed Online Safety Bill has obligations to use proportionate measures to detect and remove 'priority illegal content', and provides a notice and takedown regime for 'illegal content'. However, in the current

¹⁹⁴ Australian Government, 'Australian Government response to the advice of the HESP on student academic integrity and cheating' (18 December 2018) <[https://www.education.gov.au/higher-education-](https://www.education.gov.au/higher-education-standards-panel-hesp/resources/australian-government-response)

[standards-panel-hesp/resources/australian-government-response](https://www.education.gov.au/higher-education-standards-panel-hesp/resources/australian-government-response)> accessed 5 September 2023.

¹⁹⁵ Ross (n 192).

¹⁹⁶ Online Safety Bill, cl. 6(a),(b).

draft, it seems unlikely that the offences in the Skills Bill will qualify as a model for consideration even as base-level illegal content, as the offence does not have individual victim(s) or intended victim(s).¹⁹⁷ The advertising offence might be understood this way, as the ‘victim’ is the individual being advertised to. The Digital Services Act, in contrast, has a much wider concept of ‘illegal content’, and national law essay mill law such as the Irish law examined above would seem to fall within its remit.¹⁹⁸

The Digital Services Act however has a somewhat lower set of obligations that relate to such content, and we will focus on these alone due to the scope of the Online Safety Bill. It provides that platforms must create a mechanism by which they can be notified of suspected illegal activity, which in turn, if confirmed, would remove their liability shielding and mean that they may become liable for hosting this content, where the offence allows. Unlike the Online Safety Bill, intermediaries do not find themselves directly liable under the DSA for failing to remove content upon request; their liability continues to flow from the underlying law that would make the content illegal. If they are unafraid of prosecution for hosting a general-purpose AI system that may be illegal under the above regime, then they are unlikely to remove it on these grounds due to the legal risk seeming acceptable. This is particularly the case given that general purpose AI systems have not yet been targeted by the regimes outlined above. It is also not particularly new, as the main innovation of the DSA in this space is to require an effective way to provide notice to platforms in order to lead their liability shield to fail — notice and takedown regimes have been around for over two decades in the EU, and are the norm around the world. It is worth noting that at least two of the regimes described above, in Florida and in California, would not have these problems in relation to intermediaries hosting models. The US’s ‘Section 230’ intermediary liability regime would not protect the deployers of AI services directly, it would protect intermediaries regardless of whether or not they received notice.¹⁹⁹

Another set of obligations creates challenges however, and these do come, in theory, with direct obligations under the Digital Services Act and the Online Safety Bill. Both regimes contain provisions which in effect oblige (some) intermediaries to proportionately enforce their terms and conditions.²⁰⁰ AI providers often use contractual terms to try and govern downstream use.²⁰¹ This is a typical legal technique to manage supply chain risk. OpenAI, the producer of *chatGPT*, state that it is disallowed to use its services for illegal activity in their *Usage Policies*.²⁰² Other AI actors include model market places (e.g. *Hugging Face*), which store models uploaded by others and provide them as a service, or systems such as Google’s *AutoML*, which allows third parties to customise and tailor models with their own datasets. Model marketplaces like Hugging Face are the main location for the distribution of open source, powerful language models such as Meta’s *LLAMA* and Eleuther’s *GPT-J*, and in turn, are clear examples of internet intermediaries. Marketplaces such as Hugging Face have their own content moderation policies, which also forbid the use of their services for the hosting of illegal content.

Typically and historically, terms of service have been sporadically and inconsistently enforced. However, intermediaries can be directly liable for failing to enforce terms in a proportionate manner, including terms which state that they forbid illegal content. It is

¹⁹⁷ Online Safety Bill, cl. 59(5)(b).

¹⁹⁸ Digital Services Act, recital 18.

¹⁹⁹ Matt Perault, ‘Section 230 Won’t Protect ChatGPT’ (2023) 3 *Journal of Free Speech Law* 363.

²⁰⁰ Digital Services Act, art 14(4); Online Safety Bill (23 July 2023) HL Bill 164 (as amended on Report) cl. 73(3)). The Online Safety Bill only requires this of ‘category 1’ services; the DSA requires it

regardless of size (i.e. not just for the Very Large Online Platforms (VLOPs) or Very Large Online Search Engines (VLOSEs).

²⁰¹ Michael Veale, Kira Matus and Robert Gorwa, ‘AI and Global Governance: Modalities, Rationales, Tensions’ (2023) 19 *Annual Review of Law and Social Science*.

²⁰² OpenAI, ‘Usage Policies’ (23 March 2023)

<<https://openai.com/policies/usage-policies>> accessed 2 September 2023.

possible — at least theoretically — that action could be taken against such intermediaries in relation to essay mill law. Such intermediaries will in any case have to interpret some of the laws above. This is likely to prove difficult due to their wide scope, and limited application. Yet in interpreting these laws, platforms will not have recourse to courts to aid their interpretation. Nor, typically, will model providers have recourse to courts to challenge any interpretation made by firms, were they to make decisions to take down this content. This illustrates how vague law with symbolic purposes may create real, unchallengeable and difficult-to-clarify legal effects.

It is worth noting that, as indicated above, intermediaries have been targets of action in relation to essay mills, in particular in relation to advertising them (on services such as Facebook) or enabling transactions by them (PayPal). It seems that intermediaries may, again, be a place where these skirmishes play out, particularly due to their cross-jurisdictional nature.

Proceeds of Crime

The consequences of this offence may be more severe than the penalties within the acts themselves when considered in combination with laws on the proceeds of criminal activity.

Consider England and Wales. The Proceeds of Crime Act 2002 is the relevant legislation penalising any gains made through criminal activity. Relevant authorities like the CPS, can confiscate assets, taking out the profits that fund crime. Such legislation is complex, and highly fact dependent, but has been used to target essay mills before, as was the case in New Zealand when an essay mill was convicted and prosecuted under the Criminal Proceeds (Recovery) Act 2009.²⁰³ Advertising providers may similarly find themselves subject to these provisions. While this legislation is complex and fact-dependent, there may be situations where AI providers providing services to essay mills could also be targeted for asset recovery in this way. As a consequence, even where penalties are low, the options for recovery could be more significant.

Essay mills themselves using AI systems

In most cases, essay mills will allocate an individual employee who will write an original piece of work for the student in exchange for payment. As mentioned in the parliamentary debates by Lord Lucas, essay mills and contract cheating services also make use of AI.²⁰⁴ In that context, he referred to the use of artificial intelligence to disguise what essay mills “are creating based on existing sources” to evade detection by cheating software. This practice is clearly evident in user-facing services reviewed earlier in this paper.

However, essay mills may also use AI to conceal that they have badly plagiarised an original piece of work. A second alternative sees essay mills using AI to co-write essays. Perhaps they might provide the essay prompt to the AI model which the student referred to them and amend the given answer with a few tweaks — a practice known as *prompt engineering* — and then edit and refine the result. Finally, it could be that an essay mill feeds in a large set of information (for example info contained in the student’s syllabus) and the essay prompt and sends the output to the student. In three out of these four scenarios, AI would have been used to provide an answer to the student.

²⁰³ Commissioner of Police v Li [2014] NZHC 479.

²⁰⁴ HL Deb 19 July 2021 vol 814 col 61.

For England and Wales, it is likely that any of the three outlined scenarios involving AI would fall within the definition of relevant services. Two elements must be considered. A service was provided which included completing all or part of an assignment on behalf of a student. In all three scenarios, the assignment was completed in a way that could not reasonably be considered to have been completed personally by the student. The student played no part, and the assistance was not permitted.

However, in these cases, it seems unlikely that the upstream AI provider themselves would be the first point of liability, unless they were well-aware of the nature of the service being provided to the downstream user. Given that the structure of such services is typically to remain ignorant of the detailed activities of their users, and to deal with them at arms-length through automated systems, there does not appear to be a significant legal consequence of essay mills using AI services directly under the laws outlined above. This analysis may change however if students use these upstream AI services directly, without a further intermediary between them.

In sum, direct enforcement has been rare, and may continue to be without more significant political will. However, indirect enforcement of these provisions seems likely, particularly through platform law, which will create significant legal uncertainty and come with potential cross-jurisdictional effects.

Interim conclusions

Australia's and England and Wales' legal regimes are most likely to apply to general purpose AI services which do not explicitly advertise as contract cheating or essay mill services, because they have at least one in-scope offence with strict liability, without a knowledge or intent requirement. It becomes hard to distinguish between firms that advertise as being able to write essays, and firms, such as OpenAI, Google and similar, that provide services that in practice have the same or similar functionality, but do not advertise in this way. This is made more challenging still as these regimes do not care whether the use of their technologies in this way is contractually forbidden through terms of service. As a result, it is clearly arguable that general purpose AI providers seem incompatible with some jurisdictions' contract cheating laws.

In the bulk of the jurisdictions, the rules would apply to services that seem to advertise to students, claim to be able to write essays, or similar, depending on the scope of the assistance in the legal regime. Some providers simply look like high-tech essay mills, making it natural for them to fall under laws designed to target essay mills. But this is interesting because some tools go beyond essay mills or contract cheating to provide technical tools and services, and the distinction between research, outlining, co-writing and other functions is blurred. This is in effect can be thought of as the consequences of familiar tools like spelling or grammar checkers expanding to the *substance* of the work being undertaken. Where that line is to be drawn however, between form and substance, is an ongoing task. Some regimes delegate that boundary management to the educational institutions; some to the legal system. Either way, the location of that boundary is unclear.

On top of this, enforcement regimes differ. The majority of regimes only allow prosecution by a normal prosecuting body such as a state attorney, or the Crown Prosecution Service, although some regimes give some prosecution or investigative ability to regulators, or referral ability to institutions. The law in these areas may be understood as more symbolic than coming with the rigorous expectation of enforcement. However, making something a criminal offence interacts with other

regimes, particularly online. In particular, it interacts with 1) the terms of service of general purpose AI APIs; 2) the contractual licenses attached to 'open-source' models, such as the OpenRAIL licenses; and 3) obligations placed on platforms under laws such as the Online Safety Bill and Digital Services Act, among others. These may prove to be an impactful set of interactions, even if direct enforcement remains infrequent.

Chapter 5: Recommendations

In a wider context, we will briefly discuss issues of attaching responsibility to tech companies more generally and offer a possible explanation for doing so. We will briefly explore why intermediary liability and recommender systems failed to attract liability for content on their platforms and compare why AI services' liability for offering contract cheating on their platforms is different to that factual scenario. This may change the assessment of liability under the legal regimes. With these considerations in mind, several amendments are suggested to existing legal regimes which could make contract cheating legislation more effective in addressing AI. Because of the differences between AI and essay mills, limitations remain.

Takedown requests

Many of the AI essay mills outlined, and their advertisements, are simply illegal, in many jurisdictions. It is important not to underestimate the role of advertising in driving the use of these tools. Takedown requests can be made by any organisation under most intermediary liability laws. This is even more clear in jurisdictions where advertising is an offence in itself. Yet there are no actors we are aware of systemically organising these takedown requests, as there are in other areas (such as child sexual abuse material). Higher education institutions and their representative bodies are candidates to take this action, as are regulators.

Takedown requests might be directed at advertising intermediaries, social media companies, payment processors, upstream AI providers or other online organisations.

Recommendation: *Higher education institutions share funding to organise individuals to monitor advertising archives and other services for essay mills, and report these to prosecutors in relevant jurisdictions as well as take down adverts for these services rapidly. Reporting should be wide, including to payment service providers, who may be able to stop profit from these regimes, and to AI service providers.*

Internalisation of responsibility

Policy discussions around the responsibility of technology companies necessitate determining what we base responsibility on, and what level of control, awareness and agency we link to liability. For long periods, intermediaries like search engines broadly escaped liability for activities which they may have had technical control to curtail or monitor.²⁰⁵ That norm has been changing in recent years, both in the case law relating to existing bodies of law, as well as in new legislative proposals and statutes.²⁰⁶

General purpose AI services may not qualify as intermediaries under existing regimes such as the Digital Services Act.²⁰⁷ This means they may not benefit from immunities,

²⁰⁵ See generally Lilian Edwards, "With Great Power Comes Great Responsibility?": The Rise of Platform Liability' in Lilian Edwards (ed), *Law, Policy, and the Internet* (Hart Publishing 2019); Uta Kohl, 'Google: The Rise and Rise of Online Intermediaries in the Governance of the Internet and beyond (Part 2)' (2013) 21 *International Journal of Law and Information Technology* 187.

²⁰⁶ Daithí Mac Sithigh, 'The Road to Responsibilities: New Attitudes Towards Internet Intermediaries' (2020) 29 *Information & Communications Technology Law* 1.

²⁰⁷ Philipp Hacker, Andreas Engel and Marco Mauer, 'Regulating ChatGPT and Other Large Generative AI Models', *Proceedings of the 2023 ACM Conference on Fairness, Accountability, and*

but also will not be subject to new proactive obligations in these instruments, as other intermediaries have been. Despite this, scholars have noted the importance of misuse monitoring obligations to the governance of AI-as-a-service more generally.²⁰⁸ Trends in law towards enforcing terms and conditions seem like they will be of importance, especially as the governance of AI through private law, such as licensing and contractual obligations, is becoming a main pillar of global governance.²⁰⁹ Insofar as essay mills operate illegally, they are likely in breach of standard API terms of service and model licensing.

However, the effectiveness of this as a governance mechanism is questionable. As essay mills already operate in the shadows, and operate illegally, they will be difficult to find and drag to court for misuse of model IP out of step with the terms specified in the license — although their access to APIs may be more easily cut off.

Recommendation: *Jurisdictions should explore creating obligations for AI-as-a-service providers to enforce their own terms and conditions, similar to obligations placed on intermediaries under the Digital Services Act and the Online Safety Bill. This would create an avenue to cut off professionalised essay mills using these services when notified or investigated.*

Clarification and enforcement

More generally though, the blurred lines we have highlighted between legal and illegal services under academic cheating laws are unlikely to get much clarification by a court. Determination of this illegality is likely to be left primarily to platform companies to determine, with limited clarity and accountability. This is far from ideal. It is even less ideal because such platforms themselves would not support a broad reading of a law which could capture their primary services as illegal, if read that way. There is significant moral hazard in allowing a platform to define the scope of regulation in practice, where that regulation may, if defined broadly, encompass their own firms.

It is therefore essential that there are avenues for judicial clarification of these rules, or further statutory elaboration by regulators. Amending the laws to give regulators explicit powers to both prosecute and to provide guidelines on the changing and uncertain boundaries is the first step. Australia and New Zealand are the furthest ahead in this regard. England and Wales has no statutory body who can take on this role, and after the QAA has left an official role in the jurisdiction, only the Office for Students is available to potentially, voluntarily, take up this role.

More regulators create the potential for an international regulatory forum, for coalescing around standards, joint investigations across borders and shared enforcement and capacity on cross-border cases.

Recommendation: *Jurisdictions should name a regulator and provide them with investigation and enforcement powers. If they are unwilling to do this, giving formal ability to higher education institutions to refer matters to prosecution would be a start.*

Transparency (Association for Computing Machinery 2023)
<<https://dl.acm.org/doi/10.1145/3593013.3594067>> accessed 14 June 2023.

²⁰⁸ Seyyed Ahmad Javadi and others, 'Monitoring Misuse for Accountable "Artificial Intelligence as a Service"', *Proceedings of*

the AAAI/ACM Conference on AI, Ethics, and Society (Association for Computing Machinery 2020)

<<https://doi.org/10.1145/3375627.3375873>> accessed 29 August 2022.

²⁰⁹ Veale and others (n 209).

Recommendation: *Regulators should issue guidelines on the boundaries of essay mills in the context of AI, considering general purpose systems and systems that allow co-writing, outlining or research.*

Recommendation: *Regulators, when established, should have a formal, international forum to create shared guidance, which they should have regard to when enforcing. Legislation should be amended to give formal powers of joint investigation and cooperation through this forum.*

How to earn a safe harbour?

Essay mills and contract cheating are companies whose sole purpose is to facilitate academic cheating. The legislation addressing such services works because it targets services that only fulfil that purpose. General purpose AI providers are different. They fulfil multiple purposes and have not been designed with the objective of facilitating academic misconduct. It is therefore questionable, whether it is desirable to criminalise the acts of a service that only inadvertently facilitates academic cheating. The strict liability approach of many jurisdictions, like Australia, is appropriate for purpose-specific essay mills and contract cheating. It is less so for AI services.

In many jurisdictions analysed in this policy paper, the legislation around essay mills and contract cheating is largely not enforced. The symbolic element of legal regimes was successful because it targeted a specific industry and made a strong public policy statement against such services. Liability of general purpose AI services will not deter students from using AI for academic cheating, because AI services are unlikely to be treated as criminal entities like essay mills. If anything, governments are eager to court these entities, hoping — often with real little evidence — for national investment and economic prosperity related to facilitating their services. The message, if anything, is not criminalisation, but the reverse.

However, drawing the line is difficult. Adding intent or knowledge requirements allows bona fide essay mills to flourish — hence their removal in recent laws, such as those in England and Wales.

In those cases, it may be worth considering whether certain due diligence requirements on general purpose AI services could exempt them from consideration as essay mills, and the liability that may result. Essay mills would be unlikely to co-operate in this manner, and so this could effectively draw a line between the services. This could include technologies and obligations such as the following:

Integration of watermarking

Watermarking is a technique designed to place a difficult to remove signal within generated content that it was artificial. For example, these signals might be statistical, relating to the frequency of words. The hallmark of a good watermark is that it is easy to detect but difficult to remove. Watermarking is likely to be more effective than general ‘AI detection’ tools working with unwatermarked material, which have been shown to disadvantage students for whom their language of instruction is their second language.²¹⁰ No watermark in text will be perfect, as text can be stylistically rewritten while maintaining the same ideas. At best, this will capture low hanging fruit, but it may

²¹⁰ Weixin Liang and others, ‘GPT Detectors Are Biased against Non-Native English Writers’ (arXiv, 18 April 2023) <<http://arxiv.org/abs/2304.02819>> accessed 6 July 2023.

be useful. Care should be taken however that the creation of watermarking standards does not entrench the power of a small number of plagiarism detector companies, such as Turnitin or Copyleaks. As it stands, these tools are often even built into the latest array of AI-powered essay mills, and as a result, there may be a need for due diligence for these organisations to *not* provide tools to entities that only exist to defeat their protections.

Detection and retention of essay querying

While more hands-on, there may be a possibility for collaboration between AI providers, educational institutions, and plagiarism checkers. Providing examination questions securely to AI providers through a consortium may allow them to retain the result to queries that relate to those questions on their own servers for a certain limited time period. Those materials could in turn be securely queried by educational institutions, running their submitted assignments through them, and retrieve results if any similar content was detected. Firms already retain data on queries for certain of their services. OpenAI retains query and response data to *chatGPT*, although it claims not to retain data for the same models queried professionally through its API, as essay mills relying on it will likely use. Such arrangements will be intricate, but may be worth exploring. Given that the queries would remain on the AI firms' servers, this would also frustrate students' abilities to run their text through commercial plagiarism detectors to understand usage. However, it may place a significant infrastructural on cost burden on AI providers, and this may require statutory intervention to incentivise.

Due diligence and cooperation

AI service providers could be obliged to provide practical assistance with enforcement. For example, when an AI essay mill is discovered by a regulator, they may wish to enter an example question, and put AI providers on notice to monitor their servers for this question, so they can understand which model(s) are behind the intermediary, and inform them so they can disable the relevant account(s).

Open source models

A challenge with all of these concerns relates to open source models. The above provisions assume an AI essay mill is querying a service live, through an API, and can then be monitored or cut off. Where models are released by firms, and able to run on third party hardware, or on virtual machines on the cloud, such monitoring becomes much more difficult. Even though it may not seem like it, there is a significant technical difference in invasiveness between monitoring a query sent to a model API run by OpenAI, and monitoring a query sent to a virtual machine, set up by a third party, on a cloud service like Amazon AWS or Google Cloud, into which an open source model like Meta's LLAMA 2 is loaded. That query is likely to be sent to that machine via an encrypted web connection, and therefore cannot be intercepted at the communications layer of the network. To understand what query is being run and returned would require the cloud service provider to insert code and monitor the actual code running *within* the virtual machine, which would need to be customised, and would imply general monitoring of all virtual machines across its entire network — an expensive task and one which would come with very significant privacy and security concerns.

Open source models are and will be an enduring feature of the landscape, and one which there are very good arguments, often in terms of power and digital dominance, not to restrict in their entirety. As they are already performant in writing text, to some

extent, the genie is out of the bottle. They emphasise the need for regulators with a range of powers and approaches. Considering the role of AI-as-a-service providers is one, but for more sophisticated essay mills, they may have opted to use fewer intermediaries, with a more limited chance of being shut down or interrupted. Nevertheless, running these open source models, especially the largest ones which are the most effective at text generation, comes with significant specialised hardware cost as it stands. In particular, they require the use of graphical processing units (GPUs) with significant memory which can cost tens of thousands of pounds, and are typically only economically viable when rented from cloud providers, who can make use of them efficiently by leaving them with very little downtime and filling them with jobs. This is another point of potential disintermediation, even for open source models, as it is very difficult to run even these models without the help of cloud intermediaries. Detecting the exact systems used can be difficult however if essay mills operate in a sophisticated manner, as they can query these cloud virtual machines indirectly through another server (which need not be from a large provider, or even one in a cooperative jurisdiction), masking their IP address and the ultimate company ownership. It further seems likely that if AI-facilitated crime is to increase, out-of-jurisdiction datacentres and computational facilities will operate in countries with limited interest in cooperation, extradition or the execution of warrants, such as Russia.

Recommendation: *Legislation should be amended to give general-purpose AI systems a safe harbour from criminal consideration as an essay mill, insofar as they meet a series of criteria designed to lower their risk in this regard. We propose watermarking, regulatory co-operation, and time-limited data retention and querying capacity based on queries provided by educational institutions, as mechanisms to consider.*

Concluding remarks

Legal tensions around AI-facilitated academic cheating illustrate crucial insights into the intricacies of holding technology companies liable through legal frameworks not intended for novel technologies. These tensions are also part of a larger conversation around imposing liability on corporate actors. Academic integrity is crucial for successful higher education institutions. AI — perhaps even more so than essay mills — throws into doubt both our original conceptions of academic integrity and our ability to combat illegal services.

Essay mills are increasingly turning to AI systems, and selling tools directly to students. While these are likely covered by existing law, they also stress it, blurring the lines between digital support tools and the completion of an assignment further. Enforcement against essay mills using these tools will require co-operation with AI providers, and the lack of regulators or associated powers currently scuppers this. Instead, the wide criminalisation of essay mills risks delegating this law to private enforcement, including by AI providers themselves, who are unlikely to define the scope of these laws widely as to avoid being implicated themselves. Regulation specifically shaping the private enforcement of AI-as-a-service firms is likely to be needed in order to limit misuse in this sector and beyond. However, not all enforcement should be delegated — there remains an important role for regulators here, yet few jurisdictions have named them or given them appropriate powers to enforce these laws.

In sum, essay mill and contract cheating law is not a good way to regulate general purpose AI systems, but as it stands, it *is* regulating them, at least in some jurisdictions, and on paper. Australia and England and Wales stand out most in this regard.

Legislation in all jurisdictions needs updating to draw clearer boundaries, provide capacity for ongoing navigation and negotiation and support real, rather than symbolic, enforcement. Consideration should be given to how to both exempt general purpose AI providers from these regimes while obliging them to co-operate and mitigate the damage to academic integrity that their tools are facilitating. Safe harbours may be one way to achieve this.

Annex: Relevant legislative provisions

Annex 1: England and Wales, Skills and Post-16 Education Act 2022, s. 26-30

26 Meaning of “relevant service” and other key expressions

- (1) This section applies for the purposes of this Chapter.
- (2) “Relevant service” means a service of completing all or part of an assignment on behalf of a student where the assignment completed in that way could not reasonably be considered to have been completed personally by the student.
- (3) References to completing all or part of an assignment on behalf of a student include references to providing material to the student in connection with the assignment where—
- (a) the student could use the material in completing the assignment or part, and
 - (b) the material—
 - (i) is prepared in connection with the assignment, or
 - (ii) has not been published generally.
- (4) For this purpose—
- (a) where, in connection with an assignment, a student seeks the provision of a relevant service, any material provided as a result is to be regarded as provided in connection with the assignment;
 - (b) material is published generally if it—
 - (i) is available generally without payment, or
 - (ii) is included in a publication that contains other educational or training material and is available generally (such as a text book or study guide).
- (5) A person who provides, or arranges the provision of, a relevant service does so “in commercial circumstances” if—
- (a) the person is acting in the course of business, or
 - (b) in the case of a person who provides a relevant service, its provision was arranged by another person acting in the course of business, whether the person’s own business or that of the person’s employer.
- (6) “Student” means—
- (a) a person who is undertaking a relevant course at a post-16 institution or sixth form in England, or
 - (b) any other person over compulsory school age who has been entered to take an examination relating to a regulated qualification at a place in England.
- (7) A “relevant assignment”, in relation to a student, is an assignment (which may have been chosen by the student) which the student is required to complete personally—
- (a) as part of the relevant course which the student is undertaking, or

(b) in order to obtain the qualification to which the course leads or for which the student has been entered.

(8) In relation to an assignment that is a relevant assignment—

(a) “personally” includes with any assistance permitted as part of the requirement (whether or not the assignment, if completed with that assistance, would otherwise be considered to be completed personally), and

(b) that assistance is “permitted assistance”.

(9) Section 30 sets out the meanings of other terms used in this Chapter (including in this section).

27 Offence of providing or arranging a relevant service

(1) It is an offence for a person to provide, or arrange for another person to provide, in commercial circumstances, a relevant service for a student in relation to a relevant assignment.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine.

(3) In proceedings for an offence under subsection (1) it is a defence for the defendant to prove, in relation to any of the matters mentioned in subsection (4), that the defendant did not know, and could not with reasonable diligence have known, the matter.

(4) Those matters are—

(a) if material is provided to the student as a result of the relevant service, that the student would or might use the material in completing all or part of the assignment;

(b) that the student was required to complete the assignment personally;

(c) that the relevant service was not permitted assistance.

(5) A statement in the form of a written standard term of the contract or arrangement under which the relevant service was provided or arranged—

(a) that the student would not use any material provided as a result of the relevant service in completing all or part of the assignment,

(b) that the student was not required to complete the assignment personally, or

(c) that the relevant service was permitted assistance, is not, of itself, to be taken as sufficient evidence of a matter to be proved under subsection (3).

(6) A student does not commit either of the following merely by making use of a relevant service to complete all or part of an assignment—

(a) an offence under Part 2 of the Serious Crime Act 2007 where the offence that the student intended or believed would be committed is an offence under this section;

(b) an offence under this section committed by aiding, abetting, counselling or procuring the commission of an offence under this section.

28 Offence of advertising a relevant service

(1) A person who advertises a relevant service to students commits an offence.

(2) It does not matter for the purposes of subsection (1) whether the persons to whom the relevant service is advertised are only students, or only a particular category of students, or include persons other than students.

(3) For this purpose a person advertises a relevant service if, and only if, the person makes arrangements for an advertisement in which the person—

(a) offers, or

(b) is described or presented as available or competent, to provide or arrange for another person to provide a relevant service.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine.

Annex 2: Ireland, [Qualifications and Quality Assurance \(Education and Training\) Act 2012, s 43A \(as amended in 2019\)](#)

Offence to provide or advertise cheating services

43A. (1) A person who does any of the acts specified in subsection (2) commits an offence.

(2) Each of the following is an act referred to in subsection (1):

(a) undertaking in whole or in part, in the enrolled learner's stead, an assignment or any other work that an enrolled learner is required to undertake as part of a programme, without authorisation from the person making the requirement;

(b) sitting an examination that an enrolled learner is required to sit as part of a programme, in the enrolled learner's stead, or providing another person to sit the examination in place of the enrolled learner, without authorisation from the person setting the examination;

(c) during the course of an examination that an enrolled learner is required to undertake as part of a programme, either—

(i) providing to the enrolled learner, or

(ii) arranging the provision, to him or her, of,

answers for the examination, without authorisation from the person setting the examination.

(3) A person who does either of the acts specified in subsection (4) with the intention of giving an enrolled learner an unfair advantage over other similarly enrolled learners commits an offence.

(4) Each of the following is an act referred to in subsection (3):

(a) providing or arranging the provision of an assignment that an enrolled learner is required to undertake as part of a programme, without authorisation from the person making the requirement;

(b) at any time before the beginning of an examination that an enrolled learner is required to undertake as part of a programme, either—

(i) providing to the enrolled learner, or

(ii) arranging the provision, to him or her, of,

answers for the examination, without authorisation from the person setting the examination.

(5) A person commits an offence if the person advertises that the person will perform—

- (a) any service consisting of the doing of any act specified in subsection (2), or
- (b) any service consisting of the doing of either act specified in subsection (4) knowing that the service has or would have the effect of giving an enrolled learner an unfair advantage over other similarly enrolled learners.

(6) A person commits an offence who publishes—

(a) an advertisement for any service consisting of the doing of any act specified in subsection (2), or

(b) an advertisement for any service consisting of the doing of either act specified in subsection (4) knowing that the service has or would have the effect of giving an enrolled learner an unfair advantage over other similarly enrolled learners.

(7) In this section ‘programme’ does not include post-primary schooling leading to the sitting of the Junior Certificate or Leaving Certificate examination or any examination prescribed under section 50(2) of the Education Act 1998.]

Annex 3: New Zealand, Education and Training Act 2020

393 Offence to provide or advertise cheating services

(1) A person commits an offence if the person—

(a) provides a specified service with the intention of giving a student an unfair advantage over other students; or

(b) advertises a specified service knowing that the service has or is to have the effect of giving a student an unfair advantage over other students; or

(c) publishes, without reasonable excuse, an advertisement for a specified service.

(2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$10,000.

(3) In this section,—

specified service, in relation to a student, means—

(a) completing an assignment or any other work that the student is required to complete as part of a programme or micro-credential:

(b) providing or arranging the provision of an assignment that the student is required to complete as part of a programme or micro-credential:

(c) providing or arranging the provision of answers for an examination that the student is required to sit as part of a programme or micro-credential:

(d) sitting an examination that the student is required to sit as part of a programme or micro-credential or providing another person to sit the examination in place of the student

Annex 4: Australia, Tertiary Education Quality and Standards Agency Act 2011, s 114A-C (as amended in 2019)

5 Definitions

In this Act:

academic cheating service means the provision of work to or the undertaking of work for students, in circumstances where the work:

(a) is, or forms a substantial part of, an assessment task that students are required to personally undertake; or

(b) could reasonably be regarded as being, or forming a substantial part of, an assessment task that students are required to personally undertake.

academic cheating services information means information that:

(a) was obtained under, or for the purposes of, this Act; and

(b) relates to the use or provision of an academic cheating service by a person; and

(c) identifies, or is reasonably capable of being used to identify, the person.

114A Prohibition on providing etc. academic cheating services

Providing etc. an academic cheating service for a commercial purpose

(1) A person commits an offence if the person provides, offers to provide or arranges for a third person to provide an academic cheating service:

(a) to a student undertaking, with a higher education provider:

(i) an Australian course of study; or

(ii) an overseas course of study provided at Australian premises; and

(b) for a commercial purpose.

Penalty: 2 years imprisonment or 500 penalty units, or both.

(2) Strict liability applies to:

(a) paragraph (1)(a); and

(b) the physical element of circumstance in paragraphs (a) and (b) of the definition of academic cheating service in section 5.

Providing etc. an academic cheating service

(3) A person contravenes this subsection if the person provides, offers to provide or arranges for a third person to provide an academic cheating service to a student undertaking, with a higher education provider:

(a) an Australian course of study; or

(b) an overseas course of study provided at Australian premises.

Civil penalty: 500 penalty units.

Generally not necessary to prove provision etc. of an academic cheating service to a particular student

(4) In proceedings for a contravention of subsection (1) or (3), it is not necessary to prove that the person provided, offered to provide or arranged for a third person to provide an academic cheating service to a particular student.

(5) Subsection (4) does not apply in relation to proceedings for a contravention of subsection (1) or (3) (as that provision is given effect by paragraph 114C(4)(c)) if the

student referred to in that subsection is an alien (within the meaning of paragraph 51(xix) of the Constitution).

114B Prohibition on advertising academic cheating services

(1) A person commits an offence if:

(a) the person advertises, or publishes or broadcasts an advertisement for, an academic cheating service to students undertaking, with a higher education provider:

(i) an Australian course of study; or

(ii) an overseas course of study provided at Australian premises; and

(b) either:

(i) the person does so for a commercial purpose; or

(ii) the academic cheating service has a commercial purpose.

Penalty: 2 years imprisonment or 500 penalty units, or both.

(2) A person contravenes this subsection if the person advertises, or publishes or broadcasts an advertisement for, an academic cheating service to students undertaking, with a higher education provider:

(a) an Australian course of study; or

(b) an overseas course of study provided at Australian premises.

Civil penalty: 500 penalty units.

127A Injunctions relating to online locations that facilitate provision of, or advertising of, academic cheating services

Application for an injunction

(1) TEQSA may apply, on behalf of the Commonwealth, to the Federal Court to grant an injunction that requires a carriage service provider to take such steps as the Court considers reasonable to disable access to an online location that contravenes, or facilitates a contravention of, section 114A or 114B.

(2) The application under subsection (1) may also request that the injunction require an online search engine provider (other than a provider that is covered by a declaration under subsection (11)) to take such steps as the Court considers reasonable so as not to provide a search result that refers users to the online location.

Granting the injunction

(3) The Court may grant the injunction in the terms, and subject to the conditions, that the Court considers appropriate.

Note 1: For the matters that the Court may take into account when determining whether to grant the injunction, see subsection (7).

Note 2: The terms and conditions of the injunction that apply to a carriage service provider under subsection (1) may be different from those that apply to an online search engine provider under subsection (2).

(4) Without limiting subsection (3), the injunction may:

(a) require the carriage service provider to take reasonable steps to do either or both of the following:

(i) block domain names, URLs and IP addresses that provide access to the online location and that are specified in the injunction;

(ii) block domain names, URLs and IP addresses that the carriage service provider and TEQSA agree, in writing, have started to provide access to the online location after the injunction is made; and

(b) require the online search engine provider to take reasonable steps to do either or both of the following:

(i) not provide search results that include domain names, URLs and IP addresses that provide access to the online location and that are specified in the injunction;

(ii) not provide search results that include domain names, URLs and IP addresses that the online search engine provider and TEQSA agree, in writing, have started to provide access to the online location after the injunction is made.

Parties

(5) The parties to an action under subsection (1) are:

(a) TEQSA; and

(b) the carriage service provider; and

(c) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—the online search engine provider; and

(d) the person who operates the online location if, but only if, that person makes an application to be joined as a party to the proceedings.

Service

(6) TEQSA must notify:

(a) the carriage service provider; and

(b) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—the online search engine provider; and

(c) the person who operates the online location;

of the making of an application under subsection (1), but the Court may dispense, on such terms as it sees fit, with the notice required to be sent under paragraph (c) if the Court is satisfied that TEQSA is unable, despite reasonable efforts, to determine the identity or address of the person who operates the online location, or to send notices to that person.

Matters to be taken into account

(7) In determining whether to grant the injunction, the Court may take the following matters into account:

(a) whether disabling access to the online location is a proportionate response in the circumstances;

(b) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—whether not providing search results that refer users to the online location is a proportionate response in the circumstances;

(c) the impact on any person, or class of persons, likely to be affected by the grant of the injunction;

(d) whether it is in the public interest to disable access to the online location;

(e) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—whether it is in the public interest not to provide search results that refer users to the online location;

(f) whether TEQSA complied with subsection (6);

(g) any other remedies available under this Act;

(h) any other matter prescribed by the regulations;

(i) any other relevant matter.

Rescinding and varying injunctions

(8) The Court may:

(a) limit the duration of; or

(b) upon application, rescind or vary;

an injunction granted under this section.

(9) An application under subsection (8) may be made by:

(a) any of the persons referred to in subsection (5); or

(b) any other person prescribed by the regulations.

(10) An application under subsection (8) must not request the Court to vary the injunction so that it applies to an online search engine provider that is covered by a declaration under subsection (11).

Declarations excluding online search engine providers

(11) The Minister may, by legislative instrument, declare that:

(a) a particular online search engine provider; or

(b) an online search engine provider that is a member of a particular class;

must not be specified in an application under subsection (1) or (8).

Costs

(12) A carriage service provider or, if applicable, an online search engine provider is not liable for any costs in relation to the proceedings unless the provider enters an appearance and takes part in the proceedings.

Application of the Regulatory Powers Act

(13) Sections 122 to 125 of the Regulatory Powers Act apply in relation to an application under this section for the grant of an injunction, or to the grant of an injunction under this section, in a corresponding way to the way in which they apply to an application under section 121 of that Act for the grant of an injunction or to the grant of an injunction under section 121 of that Act.

Annex 5: Florida (US), 2018 Florida Statutes, § 877.17, § 775.082-083

§ 877.17 Works to be submitted by students without substantial alteration.—

(1) It shall be unlawful for any person or business entity to sell, offer to sell, or advertise for sale any term paper, thesis, dissertation, essay, or report or any written, recorded, pictorial, artistic, or other assignment which the seller or advertiser knew or reasonably should have known was intended for submission by a student, unaltered to any substantial degree, in fulfillment of the requirements for a degree, diploma, certificate, or course of study at a university, college, academy, school, or other educational institution in the state.

(2) This section shall not prevent any person or educational institution from providing tutorial assistance, research material, information, or courses in research or writing unless this service includes the preparation, research, or writing of a report or paper as outlined in subsection (1). No person shall be prevented by this section from selling or offering to sell services which include the typing, assembling, transcription, reproduction, or editing of a manuscript or other assignment prepared by the purchaser.

(3) Any person violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

s. 775.082

(4)(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

s. 775.083

(1)(e) \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.

[Annex 6: California, California Education Code, Chapter 6, Academic Materials, § 66400-66405](#)

CHAPTER 6. Academic Materials [66400 - 66410] (Chapter 6 enacted by Stats. 1976, Ch. 1010.)

§ 66400. No person shall prepare, offer to prepare, cause to be prepared, sell, or otherwise distribute any term paper, thesis, dissertation, or other written material for another person, for a fee or other compensation, with the knowledge, or under circumstances in which he should reasonably have known, that such term paper, thesis, dissertation, or other written material is to be submitted by any other person for academic credit at any public or private college, university, or other institution of higher learning in this state.

(Enacted by Stats. 1976, Ch. 1010.)

§ 66401. No person shall make or disseminate, with the intent to induce any other person to enter into any obligation relating thereto, any statement, written or oral, that he will prepare, cause to be prepared, sell, or otherwise distribute any term paper, thesis, dissertation, or other written material, for a fee or other compensation, for or on behalf of any person who has been assigned the written preparation of such term paper, thesis, dissertation, or other written material for academic credit at any public or private college, university, or other institution of higher learning in this state.

(Enacted by Stats. 1976, Ch. 1010.)

§ 66402. Any court of competent jurisdiction is hereby authorized to grant such relief as is necessary to enforce the provisions of this chapter, including the issuance of an injunction.

(Enacted by Stats. 1976, Ch. 1010.)

§ 66403. Actions for injunction under the provisions of this chapter may be brought in the name of the people of the State of California upon their own complaint or upon the complaint of any person, or in the name of any public or private college, university, or other institution of higher learning, acting for the interest of itself, its students, or the general public.

(Enacted by Stats. 1976, Ch. 1010.)

§ 66404. The provisions of this chapter are not exclusive. Nothing in this chapter shall be construed to preempt or in any other way limit, diminish, or imply the absence of rights of any party, public or private, against any person in connection with any of the acts described in Section 66400 or Section 66401.

(Enacted by Stats. 1976, Ch. 1010.)

§ 66405. As used in this chapter, "person" means any individual, partnership, corporation, limited liability company, or association.

As used in this chapter, "prepare" means to put into condition for intended use. "Prepare" does not include the mere typing or assembling of papers, nor the mere furnishing of information or research.

(Amended by Stats. 1994, Ch. 1010, Sec. 97. Effective January 1, 1995.)

Annex 7: Austria, Universitätsgesetznovelle BGBl I 2021/93, §116a

(1) Anyone who produces an assignment (*ein Werk*) for another person, whether for a fee or free of charge, or makes it available to another person, is if he or she knows or can assume based on the circumstances that this work will subsequently be used in part or in full as a seminar, examination or final work (bachelor thesis, scientific or artistic work) to prove independent academic achievements that have not been personally completed, to be punished with a fine of up to 25,000 euros.

(2) Freely given assistance that does not negatively affect the intellectual and technical independence of the seminar paper, examination paper or final paper (bachelor thesis, scientific or artistic work) of the designated author shall not be punished.

(3) Anyone who publicly offers to produce such work for another person or to make it available to another person under the circumstances specified in paragraph 1 shall also be punished.

(4) If the perpetrator acts with the intention of generating ongoing income by repeatedly committing such acts, he or she shall be punished with a fine of up to 60,000 euros. If the offence is repeatedly committed, a prison sentence of up to four weeks can be imposed.

(5) The payment received or any other benefit that the perpetrator has received must be declared forfeited (Section 17 of the VStG). If the payment or benefit is not a physical thing or if the perpetrator no longer owns the payment or benefit, he or she is to be punished with the payment of an additional sum of money corresponding to the value of the received payment or benefit (forfeiture penalty).

(6) Criminal liability lapses through the statute of limitations. The statute of limitations is 30 years and begins when the criminal act was completed or the criminal behaviour

ceased. If the success that is part of the facts of the case only occurs later, the time limit only starts from this point in time.

(7) Any person who commits an act pursuant to paragraphs 1, 3 or 4 commits an administrative offence if the act does not constitute a criminal offence within the jurisdiction of the courts or is subject to a more severe penalty under other administrative provisions must be punished by the locally competent administrative district authority (*Bezirksverwaltungsbehörde*).

ucl.ac.uk/laws