

COPYRIGHT GUIDE FOR RESEARCHERS

As a researcher at Murdoch, you will need to consider issues of intellectual property, especially copyright, both in your own scholarly output and in your use of third party material created by others.

You will usually own the copyright in your scholarly output such as publications, research data, presentations etc. However, the University's Intellectual Property Regulations, publisher agreements, funding arrangements, and other situations may affect this in various ways.

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WHAT IS COPYRIGHT?

Copyright is a form of intellectual property law that gives copyright owners a set of exclusive rights over the works they create.

Copyright protects the expression of ideas or information in material form; for example, in works such as novels, journal articles, research papers, plays, films, musical works, paintings, maps, diagrams and sculptures, software, and architectural designs. It does not protect the ideas, facts, concepts, or information itself – only the expression of these.

Copyright gives authors and other copyright owners of original 'works' the exclusive right to reproduce, publish, communicate, and adapt their material; and to licence, transfer, or sell it to other people.

Copyright protection is free, there is no registration system in Australia, and it applies automatically when an original work, however rudimentary, is created.

INTELLECTUAL PROPERTY, COPYRIGHT AND OWNERSHIP

Intellectual Property (IP) refers to “creations of the mind”: ideas, and the expression of those ideas in literary and artistic works, symbols and names, and designs and inventions.

The original author or creator of a work usually owns copyright of that work; however, there are some exceptions:

- if the work created is during the course of employment, the employer (usually) owns the copyright. Murdoch University's [Intellectual Property Regulations](#) specify the rights and obligations of the University, its staff and students in relation to IP owned by, or created or developed at Murdoch
- funding arrangements, publisher agreements, contractual agreements, etc. may stipulate copyright ownership of the material
- creators can give away, sell, or license some or all of their rights to another person or company
- works may have multiple copyright owners, all of whom, usually, have equal rights in the material, unless there is some other agreement in place

As well as copyright, the term IP also covers trademarks, plant breeders' rights, and patents – or 'Industrial' IP: patent protection can apply to inventions such as appliances and machines, business methods, computer-related inventions, micro-organisms, and so on.

- patent protection must be applied for, and incurs costs both for registration and annual fees; its protection lasts from 20 to 25 years depending on the invention
- a patent will only be granted to a device, substance, method, or process that is new, inventive, and useful
- an 'innovation' patent covers an addition or adaptation to an already existing invention; the new and different step must make a 'substantial contribution' to the working of the original invention; protection is only available for 8 years, but can be used as an interim measure to protect your incremental development of an invention

what this means for you

- *you (usually) own the copyright in your "conventional scholarly output" – including articles, book chapters, conference papers, etc.*
 - *read any publisher contract/agreement to check if you are required to reassign your copyright ownership to the publisher*
 - *be aware that funding and other outside bodies may require copyright ownership or co-ownership of materials created with their support*
- *almost anything that someone else has created – a 'third party work' – is protected by their copyright, so you will probably need their permission if you want to include it in your own work*
- *if your research may result in patentable outcomes you should talk – very early on – to the [Research and Innovation Directorate](#); the procedures around patents are both strict and complex, and you need to consider them from the beginning of your research*

USING THIRD PARTY WORKS DURING THE RESEARCH PROCESS

Work created by others (*third party* works, such as journal articles, images, diagrams, online content etc.) will nearly all be protected by copyright, so you will have to rely on the Copyright Act or the copyright owner's permission to include them in any works you intend to make public.

During the research process you will often be able to rely on the **Fair Dealing provision for the purpose of research and study** (s.40) which allows you to make a copy of a 'reasonable portion' of a copyrighted work for your own research without having to seek permission or making any royalty payment.

The '**reasonable portion**' of a work that you can copy is: 1chapter/10% of a monograph or other book; 1 article from any one issue of a journal (more, if the subsequent articles are required for the same research as the first); or a work of up to 15 pages from an anthology.

It is also considered 'reasonable' to reproduce 'artistic works' (including maps, diagrams, graphs, etc.) that accompany and illustrate/explain a text being copied under Fair Dealing.

The Copyright Act doesn't define a reasonable portion for stand-alone graphics, or for AV works, so you must consider whether the amount you want to copy for your research is 'fair' to the copyright owner – this will usually be an extract of the work rather than the whole thing (especially AV works).

You may be able to copy more than a 'reasonable portion' if:

- the work is out of print or 'otherwise unobtainable,' and a new copy is unobtainable at an ordinary commercial price
- you have permission from the copyright owner
- the work is in the Public Domain

- 'Public Domain' is a legal term meaning either that copyright has expired – the author has been dead for more than 70 years – or it never existed – for instance, there is no copyright in US government works
- it does *not* mean 'freely available online': the net is not a copyright-free zone
- the work is published under one of the six Creative Commons licences; whichever of the licences the creator has applied to their work, you can always at least copy and share the whole work (with attribution); further terms of use apply to each specific licence (more detail about Creative Commons later)

what this means for you

- *under the Fair Dealing provision you can make an extra copy of a 'reasonable portion' of a third party work for research colleagues, for instance, but*
 - *you must not share a copy on an open website, blog, etc.*
- *Creative Commons licensed works can be shared without restriction*
- *'fair dealing for research and study' does not extend its protection to publishing in print or online, so you will not be able to include 3rd party works in your publications based on this provision*

USING THIRD PARTY WORKS IN YOUR SCHOLARLY OUTPUT AND OTHER PUBLICATIONS

Fair Dealing for the purpose of criticism or review (s.41) is the provision that you may be able rely on if you are analysing a work, or critiquing it, and your use is otherwise 'fair' – quoting shorter extracts rather than longer ones, for instance. You cannot rely on this provision simply to illustrate (literally or metaphorically) your own work with third party materials.

You do not need the copyright owner's permission to reproduce works used under this provision.

No '**reasonable portion**' is defined in this provision: it could be the whole or part of a work; what is relevant is that there is "a genuine attempt at criticism or review ...whether of that work or of another work; and that a sufficient acknowledgement of the work is made" (s. 41).

- as it is difficult to define either a reasonable or an insubstantial portion of an **artistic work** (the term covers any graphic material – including diagrams, maps, photos, etc.) or an **AV work**, it may be best to use a work licensed under Creative Commons (for instance), or to obtain written permission from the copyright owner in order to reproduce it.
- **brief quotations** – or 'insubstantial portions' of a work – may be used without obtaining the copyright owner's permission; however, it is often difficult to define what is meant by (in)substantial, as the concept doesn't only just refer to the number of words or pages of a book. If the quotation articulates a fundamental aspect of the work, it may be considered as substantial, even if brief. The general recommendation if reproducing 3rd party text in your own work is to not use more than 1% of the work, or to seek permission from the copyright owner.

what this means for you

- *if you have used 3rd party works – including images such as diagrams, maps, photos, etc., whether found online or from any other source – that are not covered by Fair Dealing for the purpose of criticism or review (s.41):*
 - *you must have evidence of permission from the copyright owner(s) to communicate a 'substantial portion' of any copyright works; publishers usually make it your responsibility to obtain permission where necessary (see below for some more information about acquiring permission)*
 - *see if you can find a more copyright-friendly equivalent that does not require specific permission but is already licensed, for instance with Creative Commons, for the use that you require*

Using third party works in a journal article/book chapter

Publisher agreements will ask you to warrant that you have permission to use any third party materials included in your work, or that your use falls under the Copyright Act's provision for Fair Dealing for criticism and review.

what this means for you

- *unless you are confident that your use of any third party material is protected by the Copyright Act, you should seek the copyright owner's permission to reproduce it*
- *Creative Commons licensed content is a good option for third party images, diagrams, photographs, etc. that you can use without further permission (see below for information about Creative Commons licensing)*

Using third party works in a conference paper

You can usually rely on **Fair Dealing** to deliver a 'live' paper containing third party copyright protected material. However, you may need the copyright owner's permission if the paper is to be published as part of conference proceedings or is streamed or recorded for online distribution.

what this means for you

- *if you need images (diagrams, photos, etc.) for a conference paper, the copyright issues will be much easier to manage if you use Creative Commons licensed works (see more later) – especially if the papers are to be published, or the proceedings recorded or streamed*

SEEKING PERMISSION TO USE THIRD PARTY WORKS

If the Fair Dealing provision for criticism and review does not apply to your use of a third party work, and you cannot substitute a Creative Commons licensed work, you will need to obtain written permission from the copyright holder. The copyright owner may charge you a fee or request you to sign a licence agreement before granting their permission.

Copyright may be held by more than one person; when asking for permission to reproduce or communicate a work, or a portion of a work, make sure that you receive permission from all the relevant parties.

Some commercial publishers may direct you to seek permission to use their works through [RightsLink](#), an online service of the Copyright Clearance Center in the U.S., brokering pay-per-use permissions.

- do not use RightsLink for permission to use materials for teaching at the University; the **Statutory Licence** covers these uses

what this means for you

- *you should keep copies of any permissions granted*
- *it may not be possible to find the copyright owner of a work because, for instance, a company has ceased trading, the work is anonymous, etc.; materials such as these are known as 'orphan works'. If you use an orphan work in your own work you should add a note acknowledging that you have not been able to find the copyright owner to request their permission to use the work, and that, if someone believes they do own the copyright, they should contact you*

PUBLISHING YOUR WORK

Publishing and disseminating your work is fundamental to the research process. As well as deciding where and when to publish your work, you must ensure that you have the rights to publish, and be aware of any restrictions on those rights.

Publisher Agreements/Licences

Once your work has been accepted for publication, the publisher will expect you to sign their agreement (sometimes referred to as an author agreement, licence agreement, or contract) outlining copyright ownership; date of publication; royalty payments; etc.

There are, broadly speaking, three ways that copyright may be dealt with under an agreement. In all cases an author will generally have to verify that they created the work; are the sole creator of the work (or they are the corresponding author, signing on behalf of the co-authors), and that any third-party material that has been used is with the copyright owner's permission, or complies with the Copyright Act.

1. Author assigns all of their rights as copyright owner to the publisher
 - o the publisher may assign some rights back to you specifying the uses, such as teaching, that you are able make of the work without seeking their permission
 - o the author usually retains the right to upload the 'accepted' version of their manuscript (i.e. the final refereed and edited manuscript) to their institutional repository, even though the published version may be under the publisher's embargo
2. The author retains their copyright and grants the publisher an exclusive licence for a limited term. During that time, the author must abide by the requirements of the licence – for instance, that they will not publish the work with another party.
3. The author retains their copyright and grants the publisher a non-exclusive licence, which may be articulated by a Creative Commons licence. The [Journal of the Association for the Study of Australian Literature](#) is an example of such a publication.

what this means for you

- *it is important that you understand all the requirements and conditions outlined in any publisher agreement or licence before accepting it*
- *try to retain as many rights as possible – especially the right to self-archive (more on this later)*
- *check the [Sherpa/Romeo](#) website for a summary of permissions that are usually given as part of each publisher's copyright transfer agreement*

OPEN ACCESS PUBLISHING AND THE RESEARCH REPOSITORY

Open Access (OA) publishing provides free and immediate online access to scholarly publications. The philosophy behind Open Access is to remove the barriers associated with commercial publishing that typically restricts access to this material to only those with the (often substantial) financial means to purchase it.

There are two types of Open Access publishing:

- 'green' OA - the author can deposit a version of their published work in a subject-based or institutional repository (also referred to as self-archiving); any user can then read, download, copy, distribute, print, or link to the full text of the work; and
- 'gold' OA - the author publishes in a journal that makes the article freely available online from the publisher's website
 - o many publishers charge an 'article processing charge' (APC) for gold access to a publication

See the [Australasian Open Access Strategy Group](#) (AOASG) website for more information about OA.

Be aware that many funding organisations have mandated the release of research data and scholarly output according to Open Access conditions: both the Australian Research Council (ARC) and the National Health & Medical Research Council (NHMRC) expect funded researchers to deposit their results (i.e. data and any publications) into an Open Access Repository such as their university repository, within 12 months of completion, unless there are reasons for not doing so.

Murdoch University's [Research Repository](#) is an open access digital collection that collects, preserves, and makes openly available the scholarly output created by Murdoch researchers and students.

The copyright of any material deposited in the Research Repository is retained by the copyright owner, usually the author or the publisher.

All institutional repositories require the author's guarantee that any substantial amount of third party material included in their deposits has been used with the copyright owner's permission.

what this means for you

- *OA publishers usually allow the author to retain all or most of their rights – it is important to be aware and understand the terms of any agreement you enter into*
- *there is no transfer of copyright ownership when a deposit is made into the Research Repository*
- *when depositing into the Research Repository, the management and suppression of any unauthorised third party content is your responsibility*
- *be aware that some external agencies may impose their own restrictions on research they have funded, for instance they may specify their ownership of copyright in your scholarly work, and/or impose a lengthy embargo on the publication of the outcomes of your research – be sure you understand the terms of any funding agreements you enter into; losing the right to publish your work promptly could severely affect your academic progress as this depends greatly upon your record of publication*

CREATIVE COMMONS and other copyright-friendly alternatives to using 'all rights reserved' works

Many authors, artists, and other creators, as well as institutions and government bodies, are releasing their works with fewer of their exclusive rights than those automatically imposed by copyright legislation.

You may find it useful to consider using these materials – especially images and other graphic works such as diagrams, photographs, maps, etc. – in your own work; depending on the terms of any specific licence, you may be able to use the work in journal articles, conference papers, and other publications.

Creative Commons (<http://creativecommons.org/>; see also [Creative Commons and other copyright friendly materials](#) on the University's Copyright Matters site) is probably the best known 'some rights reserved' licensing system used by creators to license their works with some uses already permitted.

Every CC licence allows licensees to, at least

- copy the work; distribute it; display or perform it publicly; make digital public performances of it; and shift the work into another format as a verbatim copy – on condition that the creator is attributed

Beyond this, some of the licences allow the creation of derivative works, others do not permit any alteration of the work; some allow commercial development, others permit only non-commercial uses; there is, actually, a seventh license by which the creator relinquishes all their rights, including that of attribution, and dedicates their work to the Public Domain.

Check the [Creative Commons search site](#) for links to search engines and websites that can find or that host CC licensed works – links for more sources and resources are located at [Creative Commons and other copyright friendly materials](#).

COPYRIGHT AND YOUR DATA

Data resulting from your research may well be of use to other researchers in its own right, and many private and public funding bodies now mandate the release of your research data as a condition of their funding.

Sharing your data for re-use is another way of increasing the impact and visibility of your research, as well as providing a public benefit.

What is research data?

The [Australian National Data Service](#) (ANDS) suggests that research 'data' can include not just datasets, but also analyses, measurements, questionnaires, interview transcripts, fieldwork notes, images, sound recordings, and artefacts.

Copyright and data

Because copyright protection automatically applies to any material expression of facts, [ANDS](#) recommends that you apply a licence, such as one of the [Creative Commons](#) options, to your data so that your intent to share it is made explicit.

As many funding bodies mandate the sharing of research data, applying a Creative Commons licence will also meet their requirements.

what this means for you

- *research data may comprise any material created during and/or needed to validate the conclusions of your research*
- *many funding bodies require the sharing of data as a pre-requisite of research funding*
- *consider the application of a Creative Commons licence to your data, to clarify the permitted uses of the material*
- *see [ANDS Guide to Copyright, data and licensing](#) and their [FAQ for research data licensing and copyright](#)*

SOME USEFUL LINKS

At Murdoch University:

Copyright Coordinator: copyright@murdoch.edu.au

Copyright Matters website: library.murdoch.edu.au/Copyright-matters/

Research Repository: researchrepository.murdoch.edu.au/

R&I: our.murdoch.edu.au/Research-and-Innovation/Contact-us/

IP regulations: policy.murdoch.edu.au/dotNet/documents/?docid=1089&LinkedFromInsertedLink=true&public=true

IP Australia: ipaustralia.gov.au/about-us/news-media-and-events/publications/publications-listing/patents_guide

Australian National Data Service (ANDS): <https://www.ands.org.au/>

Scholarly Publishing and Academic Resources Coalition (SPARC): <http://www.arl.org/sparc/about/index.shtml>

Australasian Open Access Strategy Group (AOASG): <https://aoasg.org.au/what-is-open-access/>

Please contact the University Copyright Coordinator if you have any queries about any of these matters
copyright@murdoch.edu.au