

POSTGRAD GUIDE TO IP, COPYRIGHT, & AUTHORSHIP

INTELLECTUAL PROPERTY

'Intellectual Property', or IP, refers to "creations of the mind": ideas and the expression of those ideas - literary and artistic works, symbols and names, and designs and inventions.

The term covers 2 separate categories –

- **Copyright:** copyright protection applies to material expressions of an idea in works such as novels, journal articles, research papers, plays, films, musical works, paintings, maps, diagrams and sculptures, software, and architectural designs – as well as a performer's rights in their performance
 - 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's protection is free, automatic, and lasts for the author's life plus 70 years
 - there is a very low threshold of originality in copyright: almost anything that you write down, draw, photograph, etc. automatically qualifies as a protected work
 - copyright protects the *expression* of an idea or concept - it does not protect the actual idea or concept itself

what does this mean for you?

- *you (usually) own copyright in your thesis and any content that you create to include in it: maps, photographs, diagrams, etc (more detail later)*
- *almost anything that someone else has created – 'third party works' – is protected by their copyright, so you will probably need their permission if you want to include it in your thesis (more detail later)*

and

- **'Industrial' IP:** including trademarks, plant breeders' rights, and patents; 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; 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 incremental development of invention

what does this mean for you?

- *if your research may result in patentable outcomes you should talk – very early on – to the [Graduate Research Office](#); the procedures around patents are both strict and complex, and you need to observe them from the beginning of your candidature*
- *one of the criteria for obtaining a patent is confidentiality: you should not discuss the details of your work in public forums such as seminars and conferences, or in publications, blogs, etc.*

USING COPYRIGHT PROTECTED WORKS IN THE RESEARCH PROCESS

In broad terms, the most important elements of copyright legislation that are relevant to you as a candidate are the **Fair Dealing provisions** and their **Reasonable Portions**.

Fair Dealing for the purpose of research and study (s.40) – allows you to make a copy of a ‘reasonable portion’ of a copyrighted work for your own research and study without seeking permission or making any royalty payment.

The ‘**reasonable portion**’ of a work that you can copy for your own research consists of, for instance: 1 chapter/10% of a monograph; 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.

You may copy more than a ‘reasonable portion’ for research & study if:

- the work is out of print or ‘otherwise unobtainable’ (for at least 30 days) 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 does this mean for you?

- *you can make an extra copy of a third party work for your supervisor(s) or members of a study group, for instance, but*
 - *you must not share a copy on an open website, blog, etc.*
- *‘fair dealing for research and study’ does not extend its protection to the online environment, so you will not be able to include 3rd party works in your thesis based on this provision – you will usually need the copyright owner’s permission*

USING COPYRIGHT PROTECTED WORKS IN YOUR THESIS

It is University policy that a copy of your thesis will be made public in the University’s online [Research Repository](#), which raises some possibly complex copyright issues when using 3rd party works because, in almost all cases, redistributing 3rd party works online requires permission from the copyright owner.

Fair Dealing for the purpose of criticism or review (s.41) does not require the copyright owner’s permission, and is the exemption that you can potentially rely on if you are reproducing copyright material in your thesis because it forms an intrinsic part of your argument, and/or you are engaging with the work rather than simply using it as illustrative.

No ‘reasonable portion’ is defined in this section of the Act - 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).

Artistic Works and **AV Works** are covered by the Fair Dealing provisions: however – because it is difficult to define either a reasonable or an insubstantial portion of an artistic work (e.g. a diagram, photo, painting, map, or graph) or an AV work – you must have the copyright owner’s permission, in writing, to reproduce it in your thesis.

Brief Quotations – or ‘insubstantial portions’ of a work – may be used in your thesis, but it is often difficult to define what is meant by (in)substantial as the concept doesn’t only 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 thesis is use not more than 1% of the work, or to seek permission from the copyright owner.

what does this mean 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; **it is your responsibility to obtain permission where necessary** (see below for some more information about acquiring permission)*
- *it is repository policy that any copyright protected material, beyond brief quotations or an ‘insubstantial’ amount, for which you do not have permission (or that is not appropriately licensed) must be removed or suppressed before your thesis can be uploaded to the Research Repository*
- *from the start of your candidature, be aware of the copyright status of any third party content that you copy with a view to using it in your thesis: consider that you will probably need permission from the copyright owner to include it in your thesis – this may take some time if you have to make a direct request so don’t leave it to the last minute*
- *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*
- *if you use third party content for which you don’t have permission, and Fair Dealing for the purpose of criticism or review (s.41) does not apply, you will be required to deposit two digital copies of your thesis with the Library; the first, as examined, will be retained by the University as the ‘version of record’; you will have to remove any third party content from the second copy so that it can be made available online*

Seeking Permission to Use Copyright Protected Materials in Your Thesis

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. Ask the addressee if they are the sole owner, or if there are others from whom permission is required. Copies of any permissions granted should be lodged with your thesis.

Apart from making a direct request to the copyright owner, permission may be granted on a website in its terms of use or copyright information: look for statements such as ‘you may use this content for educational purposes’ or for ‘non-commercial purposes’ or an equivalent phrase

- ‘for your personal, non-commercial purpose’ is not sufficient

Look for a [Creative Commons](#) licence logo (e.g.  - see below for more detail about Creative Commons) – these licences give you permission to copy and distribute the content they’re attached to without having to seek further permission which is especially useful for images such as diagrams, photos, etc. that you want to include in your own works.

(See below for **ALTERNATIVES TO THE USE OF ‘all rights reserved’ COPYRIGHT PROTECTED WORKS**)

what does this mean for you?

- *you may want to create a log of 3rd party copyright material and the circumstances under which you are using it (with permission, under licences such as Creative Commons, etc); this is not a requirement under the regulations, simply a tool to help you manage the material*
- *if you have received specific permission to use 3rd party content you should attach a copy to your thesis when you deposit it with the Library; if your use is based on a website’s terms of use you should reproduce the wording and provide a link to the statement; if you are relying on a Creative Commons licence you will need to cite the specific licence and attribute the creator*

- *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 thesis you should add a note acknowledging that you have not been able to find the copyright owner to request their permission to use their work, and that, if someone believes they do own the copyright, they should contact you.*

MORE ABOUT THE UNIVERSITY'S RESEARCH REPOSITORY

Does deposit in the Research Repository count as 'publishing' the thesis? and why does it matter?

it depends ...

- **Yes, it counts as publishing** when considering the use of 3rd party works without permission or appropriate licensing
 - by 'communicating' another person's work online you may be infringing their exclusive right to do so, as granted by the Copyright Act
 - if your thesis is to include articles that you have already had published, you may need to check the journal publishers' approach to their reuse: many, Elsevier and SAGE amongst them, will permit the inclusion of your article as it appeared in the journal i.e. the 'version of record' – others may only permit the inclusion of the peer-reviewed and corrected manuscript version
- **No, it doesn't count as publishing** in terms of your own work
 - depositing your thesis in the repository is considered to be 'self-archiving', not publishing
 - if your thesis is to be published as a book, it will usually need sufficient adaptation to count as a separate work anyway
 - however, an unpublished creative component of your thesis – such as a novel – should be embargoed at the time of deposit whilst you seek a publisher

A temporary embargo (usually of up to 12 months) restricting access to your thesis can be applied if necessary e.g. in the case of key findings that you may wish to keep confidential until formal publication or commercialisation under patent. You will need the permission of the Dean of Graduate Studies to apply an embargo to all or part of your thesis; the process is managed by the [Graduate Research Office](#).

Extended or permanent restrictions on access to theses is usually considered to be incompatible with the principle of making contributions to scholarship available to other researchers, but there are some circumstances in which theses, or sections of them, must be permanently embargoed e.g. sacred or confidential content, or that dealing with national security. Discuss these matters with your supervisor, and seek the Dean's approval for an embargo.

It is best practice to place sections that need to be restricted in an appendix as a separate file wherever possible so that access to the main argument and findings is preserved while protecting other material.

what does this mean for you?

- *management and suppression of third party content is your responsibility*
- *seek permission from the Dean of Graduate studies if you need an embargo on all or part of your thesis*

Other Open Access & Institutional Repositories – beyond your thesis

Another reason for learning how to deal with 3rd party material in a professional manner is that more and more funding organisations have mandated the release of research data and scholarly output according to Open Access conditions.

For instance, 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 Open Access Repositories (e.g. their university repository) within 12 months of completion.

In turn, most academic publishers – even when they may have copyright ownership in an article – now allow the archiving of a version in the author’s institutional repository.

All institutional repositories require the author’s guarantee that any substantial amount of third party material included in deposits is there with the copyright owner’s permission.

Be aware that some external agencies may impose their own restrictions on works they have funded, for instance they may specify their ownership of copyright in your thesis, 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 progression as this depends greatly upon your record of publication.

COPYRIGHT OWNERSHIP IN YOUR THESIS

Copyright is generally owned by the original author of a work. However, whilst the University’s Intellectual Property Regulations acknowledge that students own the IP they create, they also specify conditions under which the University may exploit your IP where there is a commercial benefit – the terms include the ways in which the originator of the IP will receive ‘equitable returns’ in such a case.

The University or others may also own student-generated IP where:

- the university provides resources beyond those normally available to students in that discipline
- the student was part of a team that created the IP, and the other team members also have a claim
- the student has signed over the IP to another party (e.g. under a funding agreement)

If you think your research may have commercial potential, talk to the [Graduate Research Office](#) – Murdoch may be prepared to pay for patents, and pay for and help exploit the commercial potential in return for a share in ownership of the IP.

Remember also to read carefully the terms of ownership, publication, etc in any funding agreement that you are considering accepting.

AUTHORSHIP AND YOUR THESIS – or ‘Who should be named as an author’ (and who shouldn’t)

You are the author of your thesis. Whilst it is appropriate to acknowledge anyone who has made a substantial contribution in facilitating your work, acquisition of funding and the provision of technical services, patents, or materials, while they may be essential to the work, are not in themselves sufficient contributions to justify being included as an author of your thesis. Nor should your supervisor be acknowledged as an ‘honorary author’ simply because of their professional relationship to you/your work – see the University’s [author attribution policy](#) here.

You can contact the office of [Research and Innovation](#) if you have any concerns or queries about these matters.

USING COPYRIGHT PROTECTED WORKS IN A CONFERENCE PAPER OR JOURNAL ARTICLE

You can usually rely on **Fair Dealing for Criticism and Review** 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 recorded for online distribution.

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 below) – especially if the papers are to be published, or the proceedings broadcast.

ALTERNATIVES TO THE USE OF 'all rights reserved' COPYRIGHT PROTECTED WORKS: 'some rights reserved'

Many authors, artists, musicians, and other creators 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 such as diagrams, photographs, maps, etc. – in your thesis as the owner has already licensed them for such use i.e. you do not have to seek permission to include them. They can often, also, be used in journal articles, conference papers, and monographs.

Creative Commons (<http://creativecommons.org/>; see also [Creative Commons and Open Access](#) on the University's Copyright Matters site) is probably the best known 'some rights reserved' licensing system used by creators to license their works in less restrictive ways than those automatically imposed by copyright's 'all rights reserved' legislation.

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 – [Wikimedia](#) especially is a huge repository of CC licensed images, sound, and AV. More specialised collections can be found at, for instance,

- Wellcome - biomedical science and its history: <https://wellcomeimages.org/>
- PLOS – peer-reviewed Open Access scientific journals: <https://www.plos.org/>
- ccmixer – instrumental and vocal sampling and remix: <http://ccmixter.org/>
- Free Music Archive – many different genres: <http://freemusicarchive.org/>

Or you can use a search engine to find images

- Google Images: <http://images.google.com.au/> add 'Creative Commons' to your search term(s)
- Flickr: <https://www.flickr.com/creativecommons/>

what does this mean for you?

- you don't have to ask permission to include a CC licensed image or other work in your thesis or conference presentation – even if it is made available online – because the creator has already granted at least these uses, on condition of attribution
 - however, you will need to check the terms of any specific licence if you want to, for instance, alter the work, or commercialise it

SOME USEFUL LINKS

University Copyright Coordinator: copyright@murdoch.edu.au

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

University Research Repository: researchrepository.murdoch.edu.au/

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

University Graduate Research Office: our.murdoch.edu.au/Research-and-Innovation/Contact-us/Graduate-research/

University 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