

POSTGRAD GUIDE TO IP, COPYRIGHT, & AUTHORSHIP

At almost every point during your candidature you will need to consider issues of intellectual property, especially copyright, both in your own work and in third party materials that have been created by others.

You will, usually, own the initial copyright in your thesis and in other works, such as journal articles and conference papers, that you create; the University's IP regulations, funding arrangements, publisher agreements, and other circumstances may affect that ownership in various ways.

Your re-use of third party works – journal articles, books, illustrations, diagrams, maps, online content, multi-media content, and so on – in your thesis and other scholarly output takes a fair amount of management; nearly all will be protected by copyright, so you will have to rely on the Copyright Act or the copyright owner's permission – given in various ways – to include them in works that you intend to make public.

From the beginning of your candidature you should be aware that, when you deposit your thesis with the University's Research Repository, you will be asked to sign a statement that you have not infringed anyone's copyright: this means that you must have used any third party material either with the copyright owner's permission or licence, or in reliance on the Copyright Act.

There are a number of suggestions in this guide to help you manage your use of copyright protected third party works, and to understand some related issues that may arise in your research and writing.

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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, or a fact, 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, concept, or fact - it does not protect the actual idea, concept, or fact 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 copyright, so you will probably need some form of 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
 - unlike copyright, which is automatic, 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.*
- *see IP Australia's website <https://www.ipaustralia.gov.au/> for information about patents, trademarks, and other forms of industrial IP*

USING THIRD PARTY WORKS IN THE RESEARCH PROCESS

In broad terms, the most important elements of copyright legislation that are relevant to you during your candidature are the **Fair Dealing provisions** at ss.40 and 41 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 covers your use of third party works for the assessment of your thesis, but does not extend its protection to the online environment, so you will not be able to include 3rd party works in the Repository version of your thesis in reliance on this provision – you will usually need the copyright owner’s permission*

USING THIRD PARTY 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 or an AV work – it may be best to use a work that is licensed for use under, for instance Creative Commons, or have the copyright owner's permission, in writing, to reproduce it in your thesis.

(The Copyright Act's use of 'artistic' in this context simply refers to any non-textual content e.g. a diagram, photo, painting, map, graph, or any other illustration or image.)

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?

From the start of your candidature, be aware that you will probably need permission from the copyright owner to include a third party work, or part of it, in your thesis. Particularly in the case of images, see if you can find a more copyright-friendly equivalent work that does not require specific permission but is already licensed, for instance with Creative Commons, for the use that you require.


If you use 3rd party works – including images, whether found online or from any other source – that are not covered by Fair Dealing for Criticism or Review, or by some form of appropriate licence

- *you must submit evidence of the copyright owner's permission for you to use the work*
 - ***it is your responsibility to obtain permission where necessary***
- *it is University policy that any copyright protected material, beyond brief quotations or an 'insubstantial' amount – up to 600 words from a full length book, for instance – for which you do not have permission (or that is not appropriately licensed) must be removed before your thesis can be uploaded to the Research Repository*
 - *in this case, you will be required to deposit two digital copies (rather than one) 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*

Permission to Use Third Party Materials in Your Thesis

Copyright may be held by more than one person; when seeking permission to reproduce or communicate a work, or a portion of a work, 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 NB 'for your *personal*, non-commercial purpose' is not sufficient.

Look for a [Creative Commons](#) licence logo e.g.  (See below for **CREATIVE COMMONS AND OTHER COPYRIGHT-FRIENDLY ALTERNATIVES**) – 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 that you want to include in your own work.

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
 - see the appendix for templates of a copyright permission letter, log, and check list
- 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.

USING YOUR OWN, PUBLISHED, JOURNAL ARTICLES IN YOUR THESIS

Some of your thesis may consist of journal articles – or book chapters – that you have published during your candidature.

As a condition of publication, you will often have to assign copyright in the work to the publisher. Before you sign their agreement or contract check the terms to make sure that you may still use the work in your thesis; if in doubt, look for more information on the publisher's website.

what does this mean for you?

- most publishers permit you to use your 'accepted manuscript' (sometime known as a 'post-print') in the body of your thesis – this is the version that has been peer-reviewed and amended, ready for publication, but not yet formatted in the publisher's style
 - you still retain copyright in the original manuscript of your article – before it has been peer-reviewed – so it is always an option to use that version in your thesis
 - the University's theses guidelines suggest that you use a word document version anyway, so that the formatting, referencing, and so on is consistent throughout your thesis http://our.murdoch.edu.au/Research-and-Innovation/_document/HDR/Policies/Guidelines-procedures/GRDThesisbyPublicationGuideline.pdf .
- you can also add a copy of the published version of your article as an appendix to the thesis, and/or link to the publication itself using its DOI

USING THIRD PARTY WORKS IN A JOURNAL ARTICLE

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

You may be able to rely on this provision 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.

what does this mean 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 in your article*
- *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 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.

what does this mean 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 below) – especially if the papers are to be published, or the proceedings broadcast.*

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

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: because the owner has already licensed them for such uses 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](#) (see also [Creative Commons & other copyright-friendly materials](#) on the University's Copyright Matters website 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 online or in print; 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.


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/>

Or more specialised collections can be found at, for instance:

- Wellcome: <https://wellcomeimages.org/> biomedical science and its history
- PLOS: <https://www.plos.org/> peer-reviewed Open Access scientific journals
- ccmixer : <http://ccmixter.org/> instrumental and vocal sampling and remix
- Free Music Archive: <http://freemusicarchive.org/> many different genres
- find YouTube videos with CC licences: <https://www.youtube.com/watch?v=RoK-wHJPf3w>

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 to be 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*
- *look for icons or logos similar to this  which may appear on a printed document, in a website's terms of use/copyright info, or on a specific webpage (see [Wikimedia](#) for instance)*

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)

what does this mean for you?

- *if you think your research may have commercial potential, talk to the [Graduate Research Office](#) – the University 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, requirements for publication or embargo, etc. in any funding agreement, especially from external agencies and organisations, 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. It is appropriate to acknowledge anyone who has made a substantial contribution in facilitating your work, such as the acquisition of funding or patents, the provision of technical services or materials, and other supportive activities; but these are not in themselves sufficient contributions to justify a person's inclusion 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.

what does this mean for you?

- *see the University's [author attribution and dispute resolution policy](#) for more information*
- *you must contact the office of [Research and Innovation](#) for their help if you have any concerns or queries about these matters; for instance if you feel that you are being pressured to add someone's name as an author to your thesis*

MORE ABOUT RESEARCH REPOSITORIES

Does deposit in the University's 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
 - because, 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
 - remember, if you have included 3rd party works without permission, you will need to submit two copies of your thesis to the Repository: one with the works removed, so that it can be made available online
- **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, or 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 of third party content in your thesis 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.

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.

SOME USEFUL LINKS

Murdoch University

Copyright Coordinator: copyright@murdoch.edu.au

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

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

IP regulations: <https://goto.murdoch.edu.au/IntellectualPropertyRegulations> (public)

Authorship Attribution Policy: <https://goto.murdoch.edu.au/policy/AuthorshipAttribution> (public)

Authorship Attribution & Dispute Resolution: <https://policy.murdoch.edu.au/docview/?docid=1533>

Research Repository: researchrepository.murdoch.edu.au/

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

IP Australia: <https://www.ipaustralia.gov.au/>

Australian Copyright Council: <https://www.copyright.org.au/>

Creative Commons Australia: <https://creativecommons.org.au/>

Creative Commons licensed image collections


Wikimedia: https://commons.wikimedia.org/wiki/Main_Page

Photos for Work: <http://www.photosforwork.com/> downloads automatically cite attribution and licence

Photos for Class: <http://www.photosforclass.com/> downloads automatically cite attribution and licence

Atlas of Living Australia: <https://www.ala.org.au/> biodiversity data, images, datasets, and more

Encyclopaedia of Life: <http://eol.org/> over 2.9 million images depicting life on Earth

These three templates are based on those given in *Copyright Guide for Research Students : What you need to know about copyright before depositing your electronic thesis in an online repository*. Damien O'Brien and Dr Anne Fitzgerald <https://eprints.qut.edu.au/9994/1/9994.pdf> and are licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 Licence  creativecommons.org/licenses/by-nc-sa/4.0/

Template for a Copyright Permission Letter

<p>[date]</p> <p>[title, name, etc of addressee]</p> <p>Dear [name of copyright owner],</p> <p>I am a candidate for a(n) [Honours/Masters/PhD] degree at Murdoch University, in Perth, Western Australia, undertaking research in [your topic].</p> <p>I am writing to request your permission, in the form of a limited non-exclusive licence, to include [extracts of] your work in my thesis, which will be made publicly available online in the University's Research Repository (http://researchrepository.murdoch.edu.au/). Your work will, of course, be fully and correctly referenced.</p> <p>The material I would like to include, in which I understand you own the copyright, is as follows:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <tr> <td style="width: 25%; padding: 5px;">Author</td> <td style="width: 75%;"></td> </tr> <tr> <td style="padding: 5px;">Title of Work</td> <td></td> </tr> <tr> <td style="padding: 5px;">Publisher</td> <td></td> </tr> <tr> <td style="padding: 5px;">Date published</td> <td></td> </tr> <tr> <td style="padding: 5px;">Page references</td> <td>[+ attach copies of the extracts you wish to reproduce]</td> </tr> </table>	Author		Title of Work		Publisher		Date published		Page references	[+ attach copies of the extracts you wish to reproduce]	<p>[candidate's contact details]</p>
Author											
Title of Work											
Publisher											
Date published											
Page references	[+ attach copies of the extracts you wish to reproduce]										

If you agree to my use of this material, please sign the statement below and return a copy to me.

Should you wish not to grant permission, or if you are not the copyright owner of this work, I would be grateful if you could let me know.

Thank you.

Yours sincerely,
[candidate's signature]

[candidate's name]

Permission to use material in a thesis

I, _____, grant you, [candidate's name], a non-exclusive licence for an indefinite period to include in your thesis the above materials, in which I own the copyright. I understand that this thesis will be made available on the internet for online public access in Murdoch University's Research Repository.

Signature: _____ Date: _____

Template for a Log of Third Party Copyright Materials in a Thesis

When you submit your thesis to the University’s Research Repository you will sign a declaration stating that you have not infringed anyone’s copyright by using their work without their permission or licence to make it available online.

If you have included, for instance, illustrations or a ‘substantial amount’ of copyright protected text in your thesis you will be required **either** to show permission or other licensing documentation allowing its inclusion **or** to suppress the material in the public version of your thesis.

The log is not in any way a submission requirement; it is simply a resource that may be useful. *You should, however, keep all correspondence with copyright owners and include copies of permissions granted to you with your thesis.*

date	page # (in thesis)	3 rd party copyright material (author, source, pages, etc.)	permission required? (yes/no*)	permission requested? (yes/no)	permission obtained? (yes/no)
		...and so on...			
		...and so on...			
*if specific permission is not required, it’s a good idea to note why, e.g.: its Creative Commons licence; it’s in the Public Domain (i.e. out of copyright); website licence permitting its use with URL ; etc.					

Template for a Copyright Checklist

When you submit your thesis to the Research Repository you will sign a declaration that you have not infringed anyone’s copyright by using their work in your thesis without their permission. Here is a final checklist that is useful to go through before submitting your thesis.

NB if you do not have permission to use a third party work (or part of it) online, you should submit one complete copy of your thesis (i.e. including third party content) and one copy that has the third party content removed; the first copy will be kept as the version of record, and the second one will be made publicly available in the Repository.

Have you:	Yes	No
...ensured that all copyright material included in the thesis is in accordance with the terms of either: <ul style="list-style-type: none"> the express permission as granted by the copyright holder; or the particular licence or contractual agreement; or the applicable provision of the Copyright Act 		
...obtained written permission from copyright holders? (and used the material within the terms that you have been granted)		
...appropriately acknowledged the copyright material in the thesis? (author attribution, publication or source citation details, etc.)		
... observed the Moral Rights of the authors? The Rights of Attribution, not to be Falsely Attributed, and of Integrity		
... acknowledged the permission to use any copyright material in your thesis and kept a record of any permissions or licences? (you must attach permission and/or licence details to your thesis deposit)		