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Keeping Your Thesis Legal



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Legal Disclaimer

Copyright is an incredibly complicated area of law. None of the authors of this work are intellectual property lawyers, and while advice given is from a best professional understanding standpoint it should not be regarded or construed as legal advice. If you need to seek specific legal advice with respect to copyright you are advised to speak to the institutional legal representative in the first instance or consult a specialist lawyer.

Introduction

This booklet accompanies workshops presented by Loughborough University Library Service, focussed on theses and rights risk management. It gives you more information on the copyright implications of making your thesis available on the web, as required by the University. While its focus is primarily on digital theses (**eTheses**) rather than traditional printed versions, there is some coverage of the copyright law differences between the two different formats.

What is an eThesis?

An eThesis is an electronic or digital copy of the finally accepted print thesis, which at Loughborough we store as a PDF document. An eThesis is as close as possible in appearance and layout to the printed version, but may have some elements removed for copyright reasons. eTheses are accessed many more times by readers around the world than the printed thesis, benefiting the author's professional career and recognition.

Many UK and major international universities have mandates for thesis similar to Loughborough. As well as being deposited into the **Institutional Repository** (the **IR**) your eThesis will also go into the British Library's **EThOS** national online thesis scheme site as well (providing it is available via Open Access).

Questions and answers

If you do have any questions, please do get in touch with the *Copyright or Institutional Repository Team*, but remember to see the **Frequently Asked Questions** at the end of this booklet first. Scholarly publication and open access use a wide variety of terms with which you may not be familiar. While we have endeavoured to keep their use to a minimum, a glossary of key terms is provided towards the end of this booklet.

Benefits of eTheses

Loughborough University research students are required by the University's Regulations to provide a licensed digital copy of their completed, accepted thesis into the Institutional Repository (IR).

Theses are an often untapped and underutilised source of unique research and information. Print copies are usually hidden away in library stacks and rarely consulted locally, and yet around the world researchers are keen to read them. This is why eTheses are an important step forward in getting your research widely read and respected. eTheses are more easily found as well through search tools like Google and because they are made available through open access, anyone around the world can read them.

For you the benefits are a combination of gaining more readers, developing your professional reputation and visibility as a researcher within your field. The IR also collects statistical information on how many times your eThesis has been accessed. This can be very useful when approaching an academic publisher in convincing them that work based on your thesis is worth considering for publication as a book.

International schemes

The UK is not alone in creating extensive online collections of electronic theses. Many places like the US, Australia and the Scandinavian countries in particular have been doing this longer and on a much greater scale than the UK to date.

- **Australasia**, Australasian Digital Theses Program
- **Europe**, DART-Europe E-theses Portal
- **Sweden**, Dissertations.Se
- **USA**, Networked Digital Library of Theses and Dissertations

In 2015 eTheses appeared in the top 5 downloads from the Institutional Repository, showing they are highly accessed items.

Including copyrighted materials

In your thesis you will want to include material by other authors (generally referred to as **third party material**), and this material will be copyrighted. An author automatically has copyright in anything they write or otherwise create, under UK law they do not need to apply for it or mark their work with the © mark for it to apply. Ideas and facts are not copyrighted, although presentation of ideas and facts may be. In addition to content copyright, the format or layout (typography) of an item may have rights associated with it. Images within a work, e.g. book illustrations, may also have copyright over and above that embodied by the book as a whole. Finally authors can assign parts of their copyright to someone else, for example, a publisher. Therefore any individual or corporate entity that currently holds the rights to exploit and reuse an item is known as the **rights holder**.

Third party copyright relates to any material that is not your own creation, or where you are no longer the rights holder (e.g. a published article).

If the published item (and this includes periodical articles) is from an EEA¹ country, copyright in that item lasts until 70 years after the end of the calendar year in which the author (or the last surviving author, if there is more than one author) dies. If the item is published outside the EEA, it gets the same protection as it would get in its home country. If you are not sure whether an item is in copyright, ask the Library for advice.

Table 1. What exactly is a rights holder?

The owner of the copyright for an item is usually referred to as the rights holder. This may be the author but for academic articles and books is probably the publisher. Only the current rights holder has the exclusive right to:

- | | |
|----------------------------------|-------------------------|
| • Copy the work | • Broadcast the work |
| • Issue copies to the public | • Adapt the work |
| • Perform, show or play the work | • Rent or lend the work |

If you are not the rights holder and you want to do any of these things, you need the rights holder's permission.

Using third party copyright material

General considerations

The law says that less than a **substantial part** of a third party work may be copied or quoted without permission or infringement of copyright. Unfortunately as *substantial* is not defined it will depend on the significance of the passage within the whole item. Graham Cornish (2009 pp.18) cites the copying of a report's recommendations and conclusions - even if these constitute only three paragraphs of an 80 page report - as potentially being classed a substantial.

Table 2. Have I used substantial third party items in my thesis?

- | | |
|--|---|
| • Long extracts of text from works by other people | • Maps & charts, even those you have redrawn yourself |
| • Illustrations or images | • Material of your own that has been previously published |
| • Figures or tables | |

If you have included any of these items in your thesis, then permission from the rights holder **may** be required if you cannot claim the criticism or review defence, or if its inclusion may harm the commercial interests of the rights holder.

If you think you are using a substantial amount of material then you may still be able to include it, as the law specifies a number of permitted acts in relation to the use of published copyright works. Two of these, Criticism or Review, and the Quotation exception, may be applicable to material in your thesis.

¹EEA = European Economic Area, which comprises the countries of the EU plus Iceland, Liechtenstein and Norway.

Criticism or review

For example, if you use a long extract of text or an illustration or figure, and it is integral to your argument, then this might count as criticism, providing the use is fair. However, this is not clear cut! For instance, Tim Padfield (2007, p. 116) reports that *a court will consider what proportion of the user's work consists of quotation, and what proportion consists of comment and analysis.*

Quotation

You can quote from any type of work, for example you can reproduce an extract of text, or an excerpt from a performance or recording, providing the use is fair. Unlike criticism and review this allows for illustrative use of extracts.

Fair dealing and other considerations

Both the Criticism or Review and Quotation exceptions above state that any reuse must be 'fair'. JISC (June 2014) advise that 'the law does not give specific guidelines on what constitutes 'fair dealing'; but it may be relevant to take into account the following:

- the length and importance of the extract
- the amount used in relation to the commentary
- the extent to which the work competes with or rivals the work quoted
- the extent to which the use is commercial rather than academic²

UK copyright does however, specify that for reuse to qualify for either of the exceptions:

- the work has been made available to the public,
- the extent of the extract is no more than is required by the specific purpose for which it is used, and
- the extract is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise)

So, if you are using a substantial amount of a third party work in your thesis and are unable to claim the Criticism or Review or Quotation defence detailed above, you will need to seek permission for its inclusion.

Practical steps

Check the copyright of the item in question to see what you are allowed to do with it. You may be allowed to reproduce the material in your eThesis without asking permission. Alternatively, the material may be licensed under a **Creative Commons** licence, allowing non commercial re-use.

If permission is required, you will need to **ask** the rights holder's permission. This may be the author, or, more likely, the publisher. **Be specific** about exactly what material you want to include and about what is going to happen to your eThesis. **Keep copies** of all the letters or emails you send, and of all replies.

² JISC, Copyright Law Overview (12 June 2014)

Table 3. How would I check for copyright and permissions?

For items on the web

- There may be a copyright notice at the top or bottom of the main page.
- If not, check for terms and conditions on the site.

For items from a book or journal

- Check the publisher's site for their permissions department.
- Sometimes this can be located under the **Contact Us** information.
- If the journal or book was accessed electronically, you should check the licence terms associated with gaining or purchasing access to the item.

For material from archives, galleries, museums or other similar locations

- Check their terms and conditions of access.
- These may be on your entry ticket otherwise contact the relevant organisation.

Remember, copyright does not have to be claimed, it is automatically owned by the rights holder. Although an item may be on the Web without a copyright notice this **does not mean** it is copyrightfree.

Creative Commons Licenses

Creative Commons (often abbreviated to CC) is one of the most popular alternatives to absolute copyright. It allows the rights holder, generally the original creator, to detail certain circumstances under which work can be reused and shared by others without the need for seeking permission. In this way items shared under one of the Creative Commons licenses will allow you to include it within your eThesis without the need to seek formal permission. Licenses are generally selected by combining one or more elements from the CC license mix.

Table 4. Creative Commons License mix

- **BY – By Attribution** (original source and author must be cited)
- **SA – Share Alike** (the work this is included in must also be shared under the same CC license)
- **NC – Non-Commercial** (the material cannot be republished or shared in an item that is sold or otherwise used in any commercial work)
- **ND – No Derivatives** (the material cannot be changed, paraphrased, built upon or incorporated in any way to other publications)

For example this booklet is shared under a **BY-SA-NC license** which means that others can rework and develop the material in this booklet, so long as they credit its authors and license their new creations under the identical terms. It should be noted that if an item is shared under a license with a NC element then you would not be permitted to include it in a commercial publication such as a book; but you would be allowed to include it in your eThesis. Creative Commons licenses can be applied to all forms of media and are not solely limited to text based works.

Particular material types

In this section we will look at some of the differences between making use of different kinds of media within your eThesis, other than purely text based items.

Illustrations, figures and tables

If you have used an illustration purely as decoration, then this would certainly need to have express permission. However, if you have used an image or figure as part of your argument, or to illustrate a point, then this may

count under one of the exceptions detailed above, and you may not need permission if it is a single instance. If you have reused multiple figures from the same source then this may well be considered as harming the commercial interests of the rights holder, in which case you would almost certainly need to obtain permission. As always if you are in any doubt as to the rights or license situation for images, always seek permission for inclusion from the rights holder.

Maps and charts

If you have used a map from organisations like the *Ordnance Survey* or *Digimap*, check the relevant licence to see if the use is permitted. If you have obtained the map from a book, check who owns the copyright in the map, this should be indicated either with the map, or at the beginning or end of the book.

Some older maps or charts may be out of copyright (for instance, Ordnance Survey maps over 50 years old are out of copyright), but never assume this is the case for all items, and always fully acknowledge the source of the material. If the rights are unclear it is usually better practice to take the steps towards seeking permission than risk inclusion of items that may still potentially breach copyright. Remember, if you have exercised due diligence in seeking permission, then you may take the low risk option of including it in your thesis, provided you keep documentation of your efforts.

Where a map's copyright owner is no longer in existence or unable to be traced, then you may wish to include it as an orphan work (see below).

Photographs and images

These can be an especially tricky area of copyright, as even if you were the original photographer, you maybe taking photographs of materials in which someone else holds rights (e.g. artworks in a museum). It is also important to remember that a photograph on the Internet or a website is likely to be copyrighted even if it doesn't explicitly state this fact. However, in terms of including images in your eThesis the following general rules apply.

Table 5. Using images – rules of thumb

If someone else created the original image or photo,

- You need to seek permission from the photographer or rights holder.

If you created the original image or photo, you are the rightsholder

- Unless you have assigned it to someone else or
- You have photographed something in which the rights are owned by someone else (e.g. a pages in a published book).

If the image is a photograph of people

- You need their formal permission to use the photo in the digital thesis, unless they are incidental to the photo (e.g. a picture of a building with people passing by)
- If the people are deceased, it is unlikely you will need to ask anyone else for permission, but please use caution if the photographs are of a sensitive nature or used in a manner which could cause distress to friends and relatives.
- If the photograph is of minors or of an otherwise sensitive nature you may need to discuss the ethics of its inclusion as well as seeking permission.

If the image is of other images (e.g. portraits in a museum)

- You would need to seek permission of the gallery or painter.
- This applies even if you took the picture yourself, as most galleries have terms and conditions associated with the reproduction of their works.

If the image is from a photosharing site like Flickr or on a blog

- Reuse may depend on the specific licenses attached to the image. If none are given assume reuse in your eThesis requires formal permission.
- Some people share images for which they are not the rights holder. Reusing these, even with permission, is a higher risk approach!

As this is not a straightforward area, if you are considering using a significant number of pictures which involve third party copyright considerations then it is advisable to contact the Copyright Advisors.

Internet material

Although material on the web is freely accessible, this does not mean it can be freely re-used without permission. Check the top or bottom of the main site page for links to copyright information, terms and conditions or terms of access to see what is allowed. In some cases, e.g. databases, the rights to reuse the material might even be held by rights holders external to the site owners.

Other types of material

Contact the Copyright Advisors to ask advice if you are using musical scores, audiovisual material, multimedia, or anything not mentioned above. These items may well include multiple sources of copyright (e.g. music inside a video), and may need a meticulous permissions approach to several different rights holders for each item. As always be prepared to factor in a number of weeks to ensure clearance of items where you think there may well be multiple copyright issues.

Adaptation

You cannot adapt portions of any published literary, dramatic, or musical work (including scores, films and soundtracks) without the permission of the rights holder. Adaptation of an artistic work is not an infringement.

If you have demonstrated a significant degree of skill and judgment in creating a new work this could be classified as an adaptation. Such works may then qualify for copyright protection in their own right. However, the end product may or may not be sufficiently distinct enough to be a new item free from the original rights, and it is usually advisable to seek formal permission for inclusion all the same.

Adaptation in this context means to take an original object and then add significant information to it or rework it in some way to create a 'new' object.

As this is quite a complex area, you are strongly suggested to discuss this matter with the Copyright Advisors if you are including such adapted objects in your eThesis.

Seeking permission

Start asking for permission as soon as you realise that you need to!

While an examination exception applies for the items you have included in your printed thesis, this rule does not apply to the same material in the eThesis version. You **MUST** have permission for all substantial third party copyrighted items in your eThesis, unless you can satisfactorily apply the criticism or review exceptions. If you are in doubt over whether you need to have formal permission to include Third Party material in your eThesis or not the safest course is to ask permission.

Table 6. Seeking copyright permissions - protocol

1. Identify the rights holder
2. Formally request permission to include item
3. Keep records of all correspondence
4. Repeat request after 6 weeks if you haven't heard anything (twice)
5. Leave plenty of time to get all permissions

When you submit your thesis you will sign an agreement which states that all appropriate copyright permissions have been sought and obtained, so the responsibility for seeking permission is **YOURS**.

Formal permission

While gaining formal written permission may sound a daunting task, in truth it is little more than ensuring you have some documentary evidence that an agreement has been made to allow inclusion of a work in your thesis. During your research you may find it easiest to seek permission as soon as you are sure you will be including a third party item in your work. Note if you decide at a later point not to include an item you can simply remove it from the thesis, you don't need to inform the rights holder that you have changed your mind.

However, a verbal agreement is not sufficient and would certainly be difficult legally to prove at a later date. If, for example, during a telephone conversation with a fellow researcher they grant you permission to reuse portions of their work, then it is good practice to ensure you follow this up with a written formal request as soon as possible.

Written permission does not need to be in print, a dated email is likely to be sufficiently attributable for your purposes. However, some rights holders do not have readily locatable email addresses and in all eventualities you will probably send a letter or two as well. Remember postal replies will take longer than email, and you will need to factor this into your permissions seeking timescale.

Sample permission request

There is no absolute format that a permissions request must take, but a good practice example is shown below (Table 7). Permission to adapt and make use of this permission request template for the purposes of your own copyright clearances, as per the Creative Commons license for this whole booklet.

Table 7. Permissions request template message

Dear [NAME],

Subject: Copyright permission request

I am writing for permission to make a copy of an extract of the item referred to below, for inclusion in the digital version of my PhD thesis, which is being submitted for examination at Loughborough University.

Digital versions of Loughborough University PhD theses are made available for download from the University's Institutional Repository available at <http://dspace.lboro.ac.uk/>

Bibliographic information: *Slot in bibliographic details of item, including title of image, graph etc if appropriate and page number(s)*

Yours faithfully,

The key points that you should always highlight are:

- The item for which you are seeking permission to reuse
- Where you are seeking to reuse it (your thesis)
- A short background to your need (the Loughborough regulations, scholastic reasoning)

As in all communication of this kind be specific, be polite and wherever possible be brief; a rights holder may have limited time to read extensive communications and in some cases may simply not feel they have the time to respond to a longer request. You can always expand on any requirements in subsequent correspondence.

Locating rights holders

In many cases the rights holders you will be approaching will be academic publishers; for whom the details will be easily locatable on the Internet. However, you may well wish to include materials for which you need to seek out a specific individual or entity whom are not as easy to locate. While you may spend some time tracking them down yourself, or decide to treat materials as an orphan work (see below) there are agencies that exist to aid in their location, such as WATCH and the Society of Authors websites.

Previously published work

Publishing a portion of your thesis prior to its submission is a common and well established academic practice. However, you may need to consider carefully your rights to re-use your own work within your thesis at this point, if any rights have been gifted or otherwise assigned to a publisher.

Remember, you must **clearly attribute** any portion of your work that has appeared elsewhere prior to your thesis submission, simply to avoid charges of **self-plagiarism** by your examiners.

If any portion of your **thesis has been already published**, perhaps as a journal article, you must check the agreement that you signed with the publisher. Even if you assigned copyright to the publisher, the agreement may still allow you to use the material in your thesis, so look for any educational exemption clause. If it does not expressly note this or you are unable to find the agreement then you must directly approach the publisher for permission.

On the other hand you may wish to include a **complete published version** of an article written by you within the thesis. Normally when these articles are included they appear in the appendices of the thesis print version, but are commonly removed from the eThesis due to copyright restrictions. Ideally you should seek permission from the publisher to include them, as they will contain significant elements of third party material such as your publisher's type-setting, logo and branding.

If you edit or remove any elements from your eThesis that appear in your printed version, then you must let the IR team know, so they can highlight this in the online record.

However, many publishers will be disinclined to grant permission for these full articles to be made available within an institutional repository, and your time may be better spent elsewhere in your research. In this case just remember to notify the library at the time of eThesis submission where there are any elements of the thesis that do not appear in the electronic version, for reasons of copyright.

Including 3rd party materials in commercial publications

Throughout this booklet we are considering gaining permission to use materials within your eThesis. If subsequent to your doctorate you wish to publish an article or a book using material from your thesis, then you would need to seek permission again from any third party rights holders; unless you specifically state in your original request that you will also be seeking to publish using the materials as well. It is not unknown in these eventualities for a rights holder to request or expect a fee to be paid. Permission is normally granted to reuse an item **ONLY** under the circumstances originally requested.

Managing permissions

Dealing with rights holder responses

If you are able to gain a response from the rights holder, there are a number of common outcomes:

1. Yes, permission granted

- a. At the relevant place in the thesis, make sure you fully reference the item and acknowledge that permission has been granted.

E.g. Picture reproduced with permission of Mr T.C. Smith.

2. Yes, permission granted but with conditions

- a. These will vary between different rights holders.
- b. They may require a link to the published material, or a more formally worded acknowledgement in the text.
- c. They might even request that the eThesis not be made available immediately. You can request a embargo (delay) when you submit your thesis to address this.

3. Fee required for permission

- a. Some rights holders will request a fee to include their item in your thesis.
- b. You and your supervisor will have to discuss ways in which this fee can be paid.
- c. If you decline to pay the fee, then permission is not granted and you will have to proceed as below.

Fees, and the amounts rights holders charge are an uncertain science. While it is not uncommon to encounter one of the order £7 to £50, higher and lower fees are not unknown. In some rare cases rights holders have been known to even ask the requestor what they consider an appropriate fee.

4. No, permission not granted

- a. If the copyright holder declines permission, then you could remove the material from your eThesis (see *submitting an edited thesis below*).
- b. The examination exception will let you keep the item in the print thesis.

5. Unclear

- a. You may have been in touch with a rights holder, but at the point of thesis submission they may not have granted nor declined permissions to include their items.
- b. If it looks likely that they may (eventually) grant permission, place an embargo on your thesis. You can always request this to be lifted once the rights holder grants permission.
- c. Alternatively you can deposit an **edited thesis** (see below) with the item removed. If at a later date the rights holder gives permission, the IR Team will happily update the version of your thesis available online.

Ensure you keep copies of the correspondence between you and the rights holders for some years after you graduate, you may need to refer to them again in the unlikely event of a challenge to your inclusion of the material.

Orphan works

Orphan works is the term used to describe works where the rights holder cannot either be identified, or contacted. This can happen if the publisher has gone out of business (the FOB website may be of use), or repeated attempts to contact them have failed. It may also be that the rights holder has predeceased your request, and you have been unable to establish to whom the rights have passed.

The UK Government has introduced an Orphan Work licensing scheme for reuse of all works for commercial or non-commercial use. A licence can be granted by the UK Intellectual Property Office (IPO) for seven years (upon payment of a fee) provided you can be shown to have exercised **due diligence**. Check lists for performing **due diligence** for different types of works can be found on the IPO website (detailed at the end of this booklet).³

If you do not wish to apply for a licence, as you will see below, you can opt to remove the potentially risky item from your eThesis. However, it may be that the removal will cause structural or scholarly problems with your research narrative. In this eventuality you will need to decide whether to accept the modicum of risk you are exposing yourself to contrasted with the benefit to retaining the integrity of your eThesis as a whole.

If you need advice over seeking permission, or interpreting the responses of a rights holder, then remember to contact the Library's **Copyright Advisors** for further advice.

Copyright Transfer Agreements

Publishers' copyright transfer agreements (CTA) for journals can be complex, lengthy, confusing or in some cases impossible to even locate. If you have ever formally published a journal article or a book chapter then you will probably have been asked to sign one prior to publication. Upon signing one an author will likely have transferred the economic rights for reproduction and reuse of their work to the publisher; although their moral rights will have been retained. While some more cunning authors might have made use of something like the SPARC Authors Addendum to retain their rights the vast majority of them will have complied with the publisher's standard terms and conditions.

Thus if you are reusing portions of journal articles in your thesis you will probably need to examine the CTAs for the journals in question. Thankfully the **SHERPA/RoMEO** site allows you to search by publisher or journal, and provides links to publisher copyright transfer agreements, which can be much quicker than simply searching Google. However, the majority of

Moral rights are the right of the author to be identified as the originator of a work, and cannot be transferred. It also includes the right for their work not to be subject to derogatory treatment.

Economic rights allow for the control of the reproduction and reuse of a piece of work. These can be sold, transferred or gifted to another entity.

³ Orphan works diligent search guidance for applicants, Intellectual Property Office, 17 September 2014

information on the SHERPA/RoMEO site itself is aimed at archiving papers in open access repositories, rather than including items in thesis, so for the latter you will need to visit the publisher's sites directly.

Remember, if you do run into any difficulty in understanding what rights a CTA does or doesn't transfer to a publisher, then speak to the **Copyright Advisors** or **IR team** for more help.

Unable to contact the rights holder

If you are unable to trace a rights holder and do not obtain an orphan works licence, if you do not receive a response from a rights holder to repeated requests for permission, you have two options open to you.

1. Submit an edited eThesis to the IR (no risk)

- a. Remove any items/sections where you were unable to locate the right's holders, or obtain permission.
- b. You will need to notify the IR team that this is an incomplete copy of your work so they can add the information to your thesis record.
- c. An unedited copy of the full final eThesis will also need to be deposited but will not be made available online.
- d. If taking the third party material out renders the thesis unusable, then you will need to speak to the IR team about the possible options available. There is no **legal risk** associated with this approach.

2. Submit with the items still included (potential risk)

- a. Where you have made a number of repeated and documented efforts to contact a rights holder, and have received no response, then you could choose to include the item.
- b. You must be able to show the lengths to which you went to contact a rights holder for some years afterwards on request.

There is **some risk** associated with this second approach. The rights holder may at some point object to items being used and ask for the IR to take down the thesis and potentially threaten legal action. At this point you will need to demonstrate that you used all **due diligence** in trying to obtain permission.

The only 100% risk free approach to dealing with third party copyright items is to have clear permission granted for each one or to remove any items with uncertain permissions status from your eThesis.

Publishing from your thesis

If you think you might want to publish part of your thesis in its current form and you have a publisher in mind, you should check the publisher's policy. If you think that your chances of publication will be harmed, or you have not yet identified a suitable publisher, request a thesis embargo. It should be noted that a number of recent studies (see References) have indicated that the risk of publisher rejection of a manuscript that has been previously shared as an eThesis is negligible.

If you think you will be publishing it after significant revisions or changes, then this may not be an issue, but it is worth discussing it with your supervisor and the prospective publisher if possible.

Remember, you are still required to submit an electronic copy to the IR; Even with an embargo!

Embargoes

An embargo means that access is restricted to your thesis and it will not be available online. The embargo period is defined by your supervisor and by yourself as the author of the thesis. During the embargo period only restricted metadata is available on the IR record.

When is an embargo needed?

Occasionally there are circumstances which mean that open access is not appropriate. To protect this type of material, access to these research outputs can be restricted where there are good reasons for doing so.

A thesis embargo may be appropriate where the thesis contains material that is:

- commercially sensitive - in these cases an embargo can provide time for a concept to be brought to market or for more formal protection, such as a patent, to be applied for;

- ethically sensitive - in these cases an embargo can provide time for ethical sensitivities to lessen where the thesis includes material relating to an identifiable individual, though situations of this type should be avoided as far as possible and issues relating to publication of results considered as part of the original ethical approval of the research.

Research students who think that they may need to request an embargo are encouraged to discuss this with their supervisory team as early as possible.

Funding bodies

If you are externally funded, check the conditions of the grant. For example, the grant making body may own the research you produce, or apply certain conditions to its reuse. If those appear to clash with the University mandate, seek advice from your funding body. The funder may agree to allow re-use of the material subject to an embargo on the eThesis only. Some funders may however, insist on commercial secrecy of their funded work and may require that you seek a full embargo. In this case it is best to discuss this matter with your supervisor and the Research Student Office as soon as possible.

Final thoughts

- If you are in doubt about an item's copyright and reuse status, ask permission from the rights holder.
- Don't leave seeking permission until the last minute, it can take weeks to arrange.
- Remember if permission is still outstanding on the day that you submit your print and electronic theses, you can place an embargo on the eThesis. You can always request its removal once permission is granted. (A replacement Certificate of Originality, Thesis Access Conditions and Deposit Agreement may be needed).
- Keep copies of all correspondence, for at least 5 years after you graduate. You may need to refer to them again.
- Reference and acknowledge everything, even if you have not had to ask permission. This is good academic practice.
- Ask for help if you need it: the Library is here to help.

Getting help

Remember, you are not alone. There are a lot of people around the University who will be able to support you with this process.

Institutional Repository team

- Can help with matters relating to the mandate, copyright policies of publishers or journals, submitting digitally, and any possible clashes with grant making bodies. They are also happy to discuss practical issues relating to embargoes.

Email: repository@lboro.ac.uk

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Copyright advisors

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Web: <http://copyright.lboro.ac.uk/copyright>

Your supervisor

- Can help by advising on how publication timescales relate to embargos, about setting up embargoes, and assist you in discussions with rights holders.

Hopefully now you have a better idea about how to seek permission for items in your thesis where other people have rights. If you're not sure or would like more details about anything please ask.

Glossary of terms

Copyright – (simply) is legal protection for an author/ creator which restricts the copying and reuse of an original work they have created. Often shortened to simply rights.

Copyright transfer agreement (CTA) – legal form commonly signed by authors transferring reproduction and reuse rights in a work to a publisher for the purposes of publication.

Creative Commons – a form of open licensing that permits certain categories of reuse chosen by the rights holder.

Dark archive – a term commonly used to refer to an offline store for electronic or physical information where content is safely maintained but is not made accessible.

Embargo – a permanent or semi-permanent restriction in an electronic and printed thesis' availability; only grantable upon application to Senate and the Graduate Dean.

eThesis – electronic digital facsimile of the print doctoral thesis

Fair dealing, criticism and review – a poorly defined right to reuse substantial portions of a work without seeking formal permission.

Formal permission – written or emailed correspondence with a rights holder granting permission to reuse/include a work in your thesis.

The Institutional Repository (IR) – the University's online open access institutional repository.

Mandate – a Senate and VC approved university requirement with respect to deposition of research in the institutional repository (IR)

Open access – making a publication or a thesis available without placing any kind of fee based restriction on accessing it.

Rights holder – an individual or corporate entity who owns the rights for reuse of any materials.

Third party copyright – material in which others hold rights.

References and further reading

Australasian Digital Theses Program <http://adt.caul.edu.au>

Brown, J. & Sadler, J. (2010). ETheses: Impact on future publication: RSP Briefing Paper, Online at: www.rsp.ac.uk/documents/eTheses-briefing-papers/ImpactOnFuturePublication.pdf

Business Link, Sample internet policies and notices: Sample website terms and conditions www.businesslink.gov.uk/bdotg/action/detail?itemId=1076142035&type=RESOURCES

CAIRSS (CAUL Australian Institutional Repository Support Service) www.caul.edu.au/caul-programs/cairss

Cornish, G. (2009). Copyright: interpreting the law for libraries, archives and information services. 5th ed. London, Facet Publishing.

Creative Commons (2011) About the licenses <http://creativecommons.org/licenses>

ETHOS - Electronic Theses Online Service <http://ethos.bl.uk>

Intellectual Property Office, Due Diligence checklists <https://www.gov.uk/government/publications/orphan-works-diligent-search-guidance-for-applicants>

JISC, Copyright Law Overview (12 June 2014) www.jisclegal.ac.uk/ManageContent/ViewDetail/ID/3588/Copyright-Law-Overview-12-June-2014.aspx

Library, Submitting an electronic thesis www2.le.ac.uk/library/find/lra/submittingtheses

Networked Digital Library of Theses and Dissertations www.ndltd.org

McCutcheon, A. M. (2010). Impact of Publishers' Policy on Electronic Thesis and Dissertation (ETD) Distribution Options within the United States (PhD thesis), Ohio University <http://etd.ohiolink.edu/send-pdf.cgi/McCutcheon%20Angela%20M.pdf?ohiou1273584209>

McMillan, G. (2001). Do ETDs Deter Publishers?, College and Research Libraries News, 62(6), 620-621, online at: <http://scholar.lib.vt.edu/staff/gailmac/publications/pubrsETD2001.html>

Orphan works diligent search guidance for applicants, Intellectual Property Office, 17 September 2014, <https://www.gov.uk/government/publications/orphan-works-diligent-search-guidance-for-applicants>

Owen, T.M. et al. (2009). ETDs in lock down: Trends, analyses and faculty perspectives on ETD embargoes, online at: <http://drum.lib.umd.edu/handle/1903/9087>

Padfield, T. (2007) Copyright for Archivists and Managers , 3rd ed. London, Facet Publishing The Society of Authors, www.societyofauthors.org

SHERPA/RoMEO www.sherpa.ac.uk/romeo

SHERPA, Glossary of open access abbreviations, acronyms and terms www.sherpa.ac.uk/glossary.html

SPARC (2006) Using the SPARC Author Addendum to secure your rights as the author of a journal article www.arl.org/sparc/author/addendum.shtml

The Copyright and Rights in Performances (Quotation and Parody) Regulations 2014 www.legislation.gov.uk/uksi/2014/2356/pdfs/uksi_20142356_en.pdf

Loughborough University eTheses can be found in the IR at: <https://dspace.lboro.ac.uk>

University of Loughborough, Copyright support: <http://copyright.lboro.ac.uk/copyright>

University of Texas at Austin: FOB: Firms out of Business database <http://tyler.hrc.utexas.edu/fob.cfm>

University of Texas at Austin, WATCH: Writers, Artists and their copyright holders <http://tyler.hrc.utexas.edu>

Appendix: frequently asked questions and answers

If I redraw a map from an original, do I need permission of the copyright holder of the original to include my map?	This is a substantial reuse of an object so permission would be required unless the reuse fell under the criticism and review defence
If there is an object in my photo, (e.g. a Coke can) do I need permission of the copyright holder of the object?	Probably not, as long as its inclusion is either incidental (i.e. not the primary reason for the photo) or, in terms of the print copy of your thesis only, is for the purpose of criticism and review.
Can a permanent embargo be lifted by me?	Yes, but it would need consultation with the School/ department.
I want to place a copy of my thesis in the local record office. Is this a problem?	You would need third party copyright permission as for the digital copy.
Does copyright last for 70 years after death of author even if someone else is the copyright holder?	Yes
Can we take no reply to our request as a “yes” – or make statement to that effect in letter (that is, “if I do not hear from you within one month, I will assume you are granting permission”)?	Again, this is a judgment of risk, but our advice is not to include any work for which you do not have permission to use.
Within what timescale do I need to submit the digital copy?	You should submit your eThesis after it has been passed. Depositing your eThesis in the IR is a required in order for the award to be granted and graduation to take place.
Are there any requirements about the format/ settings of the eThesis file?	The preferred format is PDF (although a Word document is acceptable on the understanding that it is likely to be converted to a PDF document by the IR Team). The eThesis should consist of one file only. Files should not be secured or locked down.
Is the IR a source for Turnitin?	Potentially yes, like any well organised and indexed resource. However, this is not currently done on a systematic basis.
Do I need permission to include an item from the local record office?	Yes, if the item was not freely accessible or your use doesn't fall under the criticism and review defence. You may have had to sign some terms and conditions of use when you accessed the records, so it is worth checking what they say.
If I have quoted a line from an article, and referenced it correctly – can I use that without permission?	Yes, this is probably ok. If it is a more substantial section, like a number of paragraphs then it is less clear and it would be advisable to seek permission from the rights holder.
Do we add DOIs in the IR for theses?	No, we don't add DOIs, but what we do is create unique web addresses (URIs) or handles for each item and these can be referred to directly.
Does the IR link to already published articles from the thesis?	No, unless they are archived in the IR as well – which we would be happy to do. Potentially we could add a citation to the metadata, but not a link if requested.

<p>What are the terms under which my eThesis is distributed?</p>	<p>The default licence of the IR is the Creative Commons Attribution-NonCommercial- NoDerivatives 4.0 (CC BY-NC-ND 4.0). This licence allows re-distribution of the work in its original form only. It allows others to download and share the work on the condition that they credit the original author(s), don't change the material in any way and don't use it commercially. Please ensure that you have permission from third party rights holders to make their material available in this manner.</p>
<p>Can images from sites containing Creative Commons licensed (or similar) material, such as Flickr, be used in a thesis</p>	<p>This would depend on the specific licence conditions attached to the image. You should also be aware that some people may make content available for which they do not have permission, therefore if the image is unlike any of their other postings it may not be theirs.</p>
<p>What format should permissions be in?</p>	<p>Written form, either by letter, e-mail or fax. Verbal permission is unlikely to be sufficient.</p>
<p>How can I find out more information?</p>	<p>It is available on the Copyright website.</p>
<p>How do I get access to theses to view style/how they are set out etc?</p>	<p>Your supervisor can help, but look at those on the IR and Ethos for examples.</p>
<p>Will the University take legal action on my behalf?</p>	<p>The eThesis form specifically states that "The administrators of Loughborough University Institutional Repository do not hold any obligation to take legal action on behalf of the Depositor, or other rights holders, in the event of breach of Intellectual Property Rights, or any other right, in the material deposited."</p>
<p>How long is a 'substantial' or 'fair' piece of text?</p>	<p>The law makes no definition of substantial but it is important to remember that it relates to quantity and quality. A general rule of thumb is that if you are asking the question, then it probably is a substantial extract.</p>
<p>Is only work with a © on it copyrighted?</p>	<p>No, in the UK copyright automatically applies unless otherwise stated. You always need to check the items terms and conditions of use/copyright information. However, in the USA you are required to register your copyright and use this symbol, it is not a requirement in other countries.</p>

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