This work is adapted from JOHNSON, G.J., ROWLETT, T. & MELOCHA, R. (2011), ‘Dealing with Copyright for Your Doctoral eThesis’, available under a Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Unported Licence.

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Introduction

University regulations include the requirement to submit two copies of your thesis: one bound copy for the department and one in electronic form that will be openly accessible on Sussex Research Online (SRO) and on the British Library’s Electronic Theses Online Service (EThOS). Before submitting your thesis, you should check that you are allowed to use any third party copyright material included in your thesis.

What are the benefits of putting your thesis online?
- Personal reward – knowing your research is being read
- E-theses submission will make a hidden body of knowledge accessible
- Increased visibility as a researcher
- Gain new skills for the digital age
- Global accessibility – representing the scholarship produced at Sussex

What are the key issues arising from e-theses?
- Confidentiality – including sensitive personal information, obtained under a promise of confidentiality, may be allowed for examination purposes but not for open access.
- Commercially sensitive material – agreements with sponsors or a patent pending, may prohibit research being made openly available for a certain period of time.
- Pre-publication – publishers may advise against making a thesis available electronically prior to publication.
- Third party copyright material - inclusion of material by other authors, such as; long quotes, images, photographs, tables and maps from published or unpublished works. Traditionally accepted in a thesis for examination purposes, but may require permission from the rights holder for e-theses submission. Making material openly available online is considered a form of ‘publishing’.

Including third party copyright material in your thesis

In most cases, the issues of confidentiality, commercially sensitive material or pre-publication can be dealt with by requesting an embargo prior to submission, following discussion with your supervisor and authorisation from the Director of Doctoral Studies for your school. However, University regulations do not allow an embargo to cover the inclusion of third party copyright material in your thesis. You are required to
Copyright Essentials: What is Copyright?

- Copyright is one of a group of rights known as Intellectual Property Rights (IPR)
- Copyright is an exclusive property right that may be owned, sold and bequeathed. Permission may be given to others to use it.
- Copyright subsists in a work from the time of creation. It does so automatically in all countries that have signed or that observe the Berne Convention.
- The work must be original.
- Copyright does not protect ‘insubstantial’ parts of a work.
- The law governing copyright is the Copyright, Designs and Patents Act (CDPA) 1988.

What does it protect and for how long?

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Duration</th>
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<tr>
<td>Dramatic</td>
<td>70 yrs after author's death</td>
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<td>Literary</td>
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<td>Artistic</td>
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<td>Music</td>
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<td>Films</td>
<td>70 yrs after death of principal director, author of screenplay, author of dialogue &amp; composer of music specially created for the film: last to die</td>
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<tr>
<td>Broadcasts</td>
<td>50 yrs from first broadcast</td>
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<tr>
<td>Sound Recording</td>
<td>70 yrs from the year it was first published</td>
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<tr>
<td>Typographical</td>
<td>25 yrs after publication</td>
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Copyright duration is calculated from the end of the year in which the death of the author occurs, or the last to die, if joint authors.

Orphaned works (Unknown authorship) – copyright expires 70 years after the end of the calendar year in which the work was made.

Unpublished works - most unpublished works, where the author is known will be in copyright until 2039. Until the 1988 Copyright Act, unpublished works (archival material, private letters or photographs) enjoyed perpetual copyright. The duration varies for different types of material.
Authors Exclusive Rights

Economic rights give the author exclusive rights to make a commercial gain from the exploitation made of their work. It allows the author to take action to claim compensation for and prevent infringing acts. The author of a work has the right to control the:

- Copying of the work in any way
- Issuing copies to the public
- Renting or lending copies of the work to the public
- Performing, showing or playing the work in public – ‘performance right’
- Communication of the work to the public by electronic transmission – ‘communication to the public right’
- Making of an adaptation of the work

Moral rights protect the non-economic interests of the author for a literary, dramatic, musical, artistic work and for films:

- Right to be identified as the author – ‘right of attribution’
- Right to object to derogatory treatment of a work – ‘right of integrity’
- Right to object to false attribution

The first owner of copyright for an item is usually the author, but for academic articles and books, the economic rights are often assigned to the publisher. In the case of work created by an employee, the employer is usually the rights owner.

Despite these exclusive rights, the law specifies a number of permitted acts in relation to the use of published copyright works (generally referred to as third party material), and one of these, fair dealing for criticism, review and quotation may be applicable to material included in your thesis.

Fair Dealing for Criticism, Review, Quotation and News Reporting

Using less than a ‘substantial’ part of a work does not infringe copyright, although what is ‘substantial’ can be difficult to determine and depends on ‘quality’ as well as ‘quantity’.

If you have used a short extract of text or an illustration or table from a published work, and it is integral to your argument, then this may be allowed under the fair dealing exception of criticism, review and quotation. If this is the case, it may not be necessary to seek permission. However, this form of fair dealing does not apply to works that have not been made available to the public, on the grounds that it would be unfair to the author. If you are including long quotes from unpublished material or photographs from a private collection, then you should seek permission from the rights holder to use them in your thesis.

Fair Dealing for Criticism, Review and Quotation: Fair dealing with any type of work, for criticism or review of that work is not an infringement, provided sufficient acknowledgment is made and that the work has previously been made available to the public. In deciding what is fair, courts would consider what proportion of the work consists of quotation and what proportion consists of comment and analysis.
Particular types of material

Illustrations, figures and tables

If you have used an illustration purely as decoration, then this would need to have permission, as it falls out of the bounds of fair use. However, if you have used an image or a figure as part of your argument, then this may count as criticism, and you may not need permission if it is a single instance. If you have used multiple figures from the same source, then it may well be considered as harming the commercial interests of the rights holder, in which case you would need to obtain permission.

Maps and charts

If you have used a map from organisations such as the Ordnance Survey or Digimap, check the relevant licence to see if the use is permitted. It should be noted that the OS is particularly protective of its rights and that reuse of its maps without express permission is a high risk approach. 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 in a list of figures at the beginning of the book. Some older maps or charts may be out of copyright (for example, copyright in Ordnance Survey Maps lasts for 50 years from the end of the year in which the map was published).

Photographs and images

These can be an especially tricky area of copyright, as even if you were the original photographer, you may be taking photographs of materials in which someone else holds rights – for example in a museum or art gallery. 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.

Using Images

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

- If the image is a photograph of people
  - You need formal permission to use the photo in the digital thesis, unless they are incidental to the photo.
  - If the people are deceased, it is likely you will need to ask someone else for permission, but please use caution if the photographs are of a sensitive nature or used in a manner that could cause distress to friends or 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
Checklist for identifying 3rd party copyright issues:

- Identify any material that is not created by you. What type of work is it?
- Who is the author of the work? An individual, joint authors, unknown, employer, government (Crown copyright).
- Is the work published or unpublished?
- What is the date of publication or creation?
- Who was the first owner of copyright and who is the owner now?
- Is the work still in copyright? If the work was published 70 or more years ago, find out if the author is still alive.
- Is what is being used allowed without permission? a) it’s out of copyright, b) it’s insubstantial, c) the exception of ‘Fair Dealing for criticism, review and quotation’ applies.
- If c), is including this material likely to be a low-risk, medium risk or high risk? High profile works or authors are likely to be ‘high risk’.
- Are you including any of your own material that has been previously published? Check your agreement with the publisher as you may need to approach the publisher for permissions.

Examples of 3rd Party Copyright Material

**A doctoral researcher, Jane, wants to include two verses from a short poem by Edward Lear also using an image associated with the poem. The poem is published in an edited work (Jackson ed.) dated 1949. Will Jane need to seek copyright permissions to include this published material in her e-thesis?**

There are a few key points here to consider – the date of the publication, the work is edited, the year the author died. The author (Edward Lear) died in 1888, at which time copyright ownership would have passed to his estate, however, it is more than 70 years since the death of the author therefore the poem is out of copyright. The poem has been re-published in an edited work by Jackson in 1949, therefore additional ‘typographical copyright’ existed in the publication for 25 years from the date of publication – until 1974. Therefore it is not necessary to seek copyright permission as the work is out of copyright.

**Andy would like to include several short quotes (totalling less than 800 words) from George Orwell’s “The Lion and the Unicorn”. The extracts are integral to the point Andy is making in chapter 2 of his thesis. Does he need to seek copyright permissions to include this material?**

The work was published in 1941 and the author died in 1950, therefore the work is still in copyright. The word count is within the accepted range (one quote of up to 400 words or several short quotes of less than 800 words in total). Additionally, the exception of ‘fair dealing for criticism and review’ would apply therefore formal copyright permission is not required to include these quotes.
Seeking Copyright Permissions

If, having followed through the checklist for identifying copyright issues, you find you do need to seek copyright permission, it is advisable to do so as early as possible, as it may take several weeks to obtain a reply. All permission should be obtained in writing and copies of all correspondence should be kept for reference.

1. Identify the rights holder/s:
   - The author is the first owner, but if deceased, ownership will pass to the estate
   - In academic publishing, rights are often assigned to the publisher
   - The photographer is the copyright owner in photographs
   - The production company is usually the rights holder for film stills
   - Copyright in work created by an employee is owned by the employer
   - Documents created by civil servants, ministers and government departments and agencies are Crown copyright (licensed through the Open Government Licence)
   - An Orphan work is the term used to describe a work where the rights holder cannot be ascertained or contacted. See p.8 ‘Dealing with Orphaned Works’.

2. Locate rights holders
   - Use the WATCH file (Writer, Artists and Their Copyright Holders) – a joint project of the University of Reading in the UK and the University of Austin, Texas, USA to find contact details for rightsholders.
   - Search the BUVFC federated search environment to trace copyright owners for media and film.
   - For permissions to use material from US publishers, see the CCC RightsLink - online request service
   - Contact the author’s publisher - follow links to ‘Permissions’ on the publisher’s website. Can usually be done online.
   - Check the terms of use for online material – you may not need permission for non-commercial use – e.g. Creative Commons licences.

3. Formally request permission to include the item
   - Include your contact information
   - Item details - include the full citation for extracts from a book or a journal
   - Title of a figure, table or image and page number
   - Explain how and where the material will be used, including that your thesis will be openly available on the University’s Institutional Repository as well as on the British Library’s Electronic Theses Online System (EThOS) for non-commercial use.

4. Keep all correspondence
   - Keep all correspondence for several years after you graduate as you may need to refer to it in the event that inclusion of third party material is challenged by the rights holder.
5. Repeat attempts to contact rights holder
   - If you haven’t had a response from a rights holder after six weeks, check contact details and re-send permissions request letter / email.

6. Give Attribution in your thesis
   - Give attribution in your thesis to all 3rd party material used and include any permission statement given by the rights holder.

Sample Permissions Letter

[Return address]
[Date]
[Name and address of copyright owner]

Dear [ ],

I am completing [or have completed] my doctoral dissertation at the University of Sussex entitled ['Insert full title of dissertation'].

I am seeking permission to reprint the following extract in my dissertation: [Insert full citation of the original work.]

The extract to be reproduced is: [Insert details and/or attach copy of extract if possible].

The University of Sussex requires their students to submit an electronic copy of their doctoral thesis to their digital archival repository. This request is for non-commercial use and extends to uploading an electronic copy of my thesis to Sussex Research Online (SRO) and to the British Library Electronic Thesis Online Service (EthOS). By submitting my thesis to SRO it will be openly available in full, to anyone, free of charge.

The rights you provide me will in no way restrict your use of your work or by others authorised by you. Your signing of this letter will also confirm that you own [or your company owns] the copyright to the above-described material. I agree to fully reference your work and include any acknowledgement you require.

If you are agreeable to this arrangement, I would be most grateful if you would please sign this letter below and return it to me in the enclosed return envelope.

Yours sincerely,
[Name and signature of dissertation author]

Permission granted for the use requested above:

Signed:

Please print your name and title
and company name (if applicable):

Date:
Dealing with Orphan Works

In some cases the author of a work may be unknown or cannot be traced. This is known as an ‘orphan work’. This often occurs with unpublished material, as copyright can last until 31st December 2039 for unpublished text-based works. If you find you are dealing with an ‘orphan work’, you may need to assess the risk of including the material without obtaining permission. See guidance on using Orphan Works on the JISC Strategic Content Alliance (SCA) IPR Toolkit - http://www.web2rights.com/SCAIPRModule/.
Useful Online Resources

JISC Strategic Content Alliance ‘IPR and Licensing module’  [http://www.web2rights.com/SCAIPRModule/]

WATCH: Writers, Artists and their Copyright Holders  [http://tyler.hrc.utexas.edu/]

CCC : US Copyright Clearance Center  [http://www.copyright.com/content/cc3/en.html]

Museums Copyright Group Resources – Duration of Copyright Flowchart :  [http://www.museumscopyright.org.uk/otherres.htm]

Where can I go to for help?

- Your Supervisor
- Library Copyright Guide:  [http://guides.lib.sussex.ac.uk/copyright]
- Email: library.copyright@sussex.ac.uk for advice on a specific query or to arrange a 1-to-1 session
- Research Student Administration Office, for information on the submissions process  [http://www.sussex.ac.uk/rsao/]
- Directors of Doctoral Studies within each School, if considering an embargo on your thesis.

References:


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