Keeping your thesis legal
Tim Riley, June 2022

UG GEN033 [https://www.abdn.ac.uk/library/documents/guides/uggen033.pdf]
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Introduction

When you write your thesis, you will need to consider copyright for any third-party material that you reproduce. This might be material such as quotes from other authors, images, or excerpts of films or music. This is particularly important because, as part of the submission process, the University requires you to submit an electronic version of your thesis which will be made publicly available online via our digital asset management system DigiTool.

You will also need to consider copyright and licensing if you are planning to publish all or part of your thesis in a future commercial publication.

This guide will take you through the various copyright issues involved. If you have any further questions after reading this guide, you can contact the Library for advice: library@abdn.ac.uk.
Copyright

Copyright is an intellectual property right which automatically subsists in original creative works. It applies to various works, including:

- original literary, dramatic, musical, or artistic works
- sound recordings, films, or broadcasts
- the typographical arrangement of published editions.

It gives the copyright holder the right to decide when and how their work is copied and shared with others.

Copyright has limited duration and expires after a set period of time.

There are ‘exceptions’ in UK copyright law which allow limited reproduction of protected material without requiring permission from the rightsholder, provided certain conditions are met. If your use of the material does not fall under an exception, you will need to obtain permission from the rightsholder.
Checklist for reusing third-party material
If you want to reproduce third-party material in your thesis, you will need to check the following.

1. Is the material still in copyright?
2. If it is in copyright, does your use fall under a copyright exception?
3. If an exception does not apply, has the material been released under an open licence?
4. If your use is not covered by an exception or an open licence, you will need to identify the rightsholder and contact them for permission.

Figure 1 Steps for checking third-party material in your thesis
Copyright duration and the public domain

Copyright expires after a set length of time. When this happens, the material is said to have entered the public domain and can be freely reused.

<table>
<thead>
<tr>
<th>Type of work</th>
<th>When copyright expires</th>
</tr>
</thead>
<tbody>
<tr>
<td>Written, dramatic, musical, or artistic works</td>
<td>70 years after the author’s death</td>
</tr>
<tr>
<td>Unpublished works where the author died before 1969</td>
<td>31 December 2039</td>
</tr>
<tr>
<td>Sound and music recordings</td>
<td>70 years after it’s first published</td>
</tr>
<tr>
<td>Films</td>
<td>70 years after the death of the director, screenplay author and composer</td>
</tr>
<tr>
<td>Broadcasts</td>
<td>50 years after it’s first broadcast</td>
</tr>
<tr>
<td>Layout of published editions of written, dramatic, or musical works</td>
<td>25 years after it’s first published</td>
</tr>
</tbody>
</table>

Table 1 Copyright duration in the UK

If a work has multiple authors, the expiry of the copyright is calculated from the death of the last surviving author.

Remember, copyright covers the layout of printed editions too. Even if the original author has been dead for over 70 years, the layout of an edition of their work that’s less than 25 years old will still be protected by copyright.

The UK Intellectual Property Office (IPO) has more detailed guidance on copyright duration.

If the material you want to use is no longer in copyright, you can reuse and reproduce it without any restrictions, but remember to follow academic best practice regarding referencing and plagiarism.

If the material is still protected by copyright, you will need to consider whether your use of the work can be justified under a copyright exception.
Copyright exceptions
If the material you want to reuse is still in copyright, you may be able to reproduce it under a copyright exception.

Exceptions are provisions in UK copyright law which allow limited reuse of copyright material in certain circumstances. The most relevant exception is Section 30 of the amended Copyright, Designs and Patents Act, 1988. This exception permits limited copying for the purposes of ‘criticism, review, quotation and news reporting’.

For your use to be covered, it should:

- Be for the criticism or review of the work or of another work (comparing two works for example) or of a performance of the work, or be for another purpose where a quotation is necessary.
- Be from a work which has already been made available to the public, for example by publication in print or online, or via a public broadcast, performance, or exhibition.
- Reproduce no more than the minimum required to make your point.
- Be accompanied by a suitable acknowledgement of the original wherever possible.
- Be ‘fair dealing’ to the copyright holder.

Fair dealing
There is no specific legal definition of ‘fair dealing’. What is ‘fair’ will depend on context and will vary from case to case.

However, you can consider the following questions to decide whether your use is fair to the copyright holder.

1. Will your actions negatively affect the original rightsholder’s ability to sell or use their work in the way they want to? Does your copying create a substitute which undermines sales of the original work? If so, your use is unlikely to be considered fair.
2. Is your use necessary and proportionate for your purpose? You should copy no more than the minimum necessary. Copying entire works is generally not seen as fair unless you have a good reason why the whole work must be used.
3. Have you provided an acknowledgement to the original author? You should always include an acknowledgement unless this is not possible for practical reasons.

Deciding whether your use is fair is a matter of informed judgement. Copyright decisions will often involve a risk management approach.

This exception not only covers quotations of text from written works but can also include excerpts from other media such as images, film, or music.

In some circumstances it may be arguable that the reproduction of an entire work is ‘fair’ if this is necessary for the purpose for which it is being used (for example, critiquing the overall visual composition of a painting). If you do need to reproduce an entire visual work, consider whether you can do this at a lower resolution. This is less likely to conflict with the market for the original and hence is more likely to be considered fair.

If your use does not satisfy the above conditions (if the material is unpublished, for example) you cannot rely on the exception: you will need to check whether the material has been released under an open licence or contact the rightsholder to ask for permission.
Open licences

Material may be licensed for reuse under an open licence. This is where the rightsholder releases their work with permission for copying and reuse subject to certain conditions. These conditions may include giving the original creator sufficient credit, not using the work for commercial purposes, or not creating derivative works.

The most well-known open licences are the Creative Commons licences. These come with various sets of conditions governing the reuse of the material. Some organisations also release material under their own bespoke licence conditions. Open licences are most typically associated with online resources and might be applied to various kinds of material including articles, images, or datasets.

If you reuse material under a Creative Commons or other open licence, make sure you observe the conditions stipulated in the licence.

If you cannot find any licensing conditions associated with the material you want to use, assume that the rightsholder has retained all their rights. If this is the case, you will need to contact them for permission if your use does not fall under a copyright exception.
**Rightsholder permission**

If your use is not covered by a copyright exception and the work does not have an appropriate open licence, you will need to contact the rightsholder for permission.

The rightsholder may be the original author or creator, or their estate if they are deceased. It is also common for rights to be sold or assigned to a publisher or other agent.

The key steps of the process are:

1. Identify the rightsholder
2. Contact them to ask for permission
3. Contact them again after a suitable period (e.g., 6 weeks) if they have not replied to you
4. Keep a record of all correspondence and make sure any permission is confirmed in writing.

**Locating the rightsholder**

Details of the copyright owner of a written work are usually given at the start of the work, often on the back of the title page. For other works you may need to check the final credits or acknowledgements, or any accompanying material provided alongside the work.

The copyright owner for images included in published works or webpages is often different to the rightsholder for the accompanying text. The copyright details are usually shown beside the image or listed separately elsewhere in the publication.

For books and articles, the copyright owner is often the publisher. Their website will normally advise you how to apply for permission to use their material.

If the publisher is no longer in business:

- You can search the [FOB (Firms out of Business)](http://www.firmsoutofbusiness.co.uk) database for publishers who have gone out of business.
- Consult the [British Library Catalogue](http://www.bl.uk), [JISC Library Hub Discover](http://www.jisc.ac.uk), or an online bookshop such as [Amazon](http://www.amazon.co.uk) to see whether there is a more recent edition of the book in print.
- Try to trace the author, as the rights may have reverted to them.

If you are trying to locate an individual author and cannot find their details via a simple online search, the following suggestions might help.

- A bibliographic database, such as Scopus, Web of Science or Google Scholar, may reveal more recent publications by the author with up-to-date contact details.
- The author may have a social media presence on a platform such as LinkedIn or Twitter.
- If the author did research or other work with a specific department or organisation, they may know the author’s current address and be able to forward correspondence.
- A publisher of other work by the same author may be able to assist.
- Libraries or archives that hold collections of the author’s work or private papers, or scholars who specialise in the author’s work may be able to help.
- Contact an authors’ or artists’ society such as the [Society of Authors](http://www.societyofauthors.org.uk) [UK] or the [Design and Artists Copyright Society](http://www.dacs.org.uk).
- You may be able to trace a copyright holder via the [WATCH database](http://www.watch.org.uk).
Asking for permission
When you have identified the copyright holder and found their details, contact them to ask for permission.

Remember to give them details of the work you want to use and how you are planning to use it. Keep your correspondence clear and polite.

Dear [NAME]

I am currently completing my PhD (or MSc. etc.) thesis on ……….. , which I am shortly due to submit to the University of Aberdeen.

During my research, I came across the following article (or image etc.) ……….. and would like to request your permission to include it in an electronic copy of my thesis.

The University of Aberdeen requires their students to submit an electronic copy to the Library which is subsequently made available via the Library catalogue http://digitool.abdn.ac.uk. By submitting my thesis to the Library, it will be available, in full, to anyone, free of charge (“open access”).

I believe that the inclusion of ……….. is integral to my thesis and would therefore be extremely grateful if you could grant permission for me to use this ……….. in the manner detailed above. Naturally, I would fully reference your work and include any acknowledgement you deem appropriate.

Please let me know if you require any further information, otherwise thank you in advance for your kind consideration.

Figure 2 Example permission request to send to a rightsholder

Be aware it may take some time for them to respond to you. You may need to send a follow up message after a suitable period of time (e.g. 6 weeks) to prompt them if they do not reply. There may be some back and forth to clarify things or negotiate acceptable terms. Remember to leave enough time for this in your pre-submission schedule.

Keep a record of all correspondence relating to permissions. You may speak directly to the copyright holder, but make sure that you always have everything you have agreed confirmed afterwards in writing.

Once permission to use the material has been granted, you should include an acknowledgement in your work to indicate that the copyright owner has given you their permission to reproduce the material.

The Strategic Content Alliance IPR Toolkit, particularly Section 3.1 Getting Permissions, gives further useful information.

No response or permission given
You may find that the copyright owner does not reply to you or that they refuse permission. It is good to have a back-up plan in case this happens. Here are some things to consider:

- Can you reduce the amount you reuse or how you use it so that it falls under a copyright exception?
- Can you use a link or reference to point to the original material rather than reproducing it directly in the thesis?
- Is there alternative material you can use instead?

If the copyright owner does not respond, this does not imply that they implicitly grant you permission. However, you might want to take a risk management approach and consider whether you could still go ahead and use the material.
**Works where you cannot contact the rightsholder**

There may be instances where you suspect a work you want to use is protected by copyright, but you either cannot identify the copyright owner or find a way to contact them. Such works are known as ‘orphan works’.

If your use of an orphan work does not fall under a copyright exception, there is an official process for requesting a licence to use the work. There is further information about this on the [Intellectual Property Office website](https://www.ipo.gov.uk). However, this process has its disadvantages, and you may wish to take a risk management approach and consider whether you could still go ahead and use the material without clearing the rights.
Other considerations

Photographs of in-copyright works
If you take photographs of works that are in-copyright, such as artworks, you do not own all the rights in your image. You will need permission to reproduce these images in your thesis unless your use is covered by a copyright exception, or the inclusion of the work in the image is incidental (for example, a photograph of a street scene which happens to have an advertising billboard in the background).

Copies of charts, diagrams etc.
Facts and raw data are not protected by copyright. However, charts, diagrams, and other illustrative images are protected in the same manner as other creative works. If you are reproducing a chart or diagram, you will need permission if your use is not covered by a copyright exception or open licence, even if you redraw the chart or diagram yourself.

Reusing your own previous work
If you have previously published work elsewhere, do not assume that you still retain all the rights to reproduce it. Check any copyright transfer agreement or publishing contract you made with the publisher as you may have assigned them some or all reproduction rights.
Publishing from your thesis
You might be considering publishing all or part of your thesis in another publication, such as a book or a journal article. If you wish to do this, it is wise to consider the implications of releasing your work as an e-thesis.

Most publishers will not have a problem with your work already being available as an e-thesis. However, if you have a particular journal or publisher in mind, check their policy regarding prior publication to ensure that they will still publish your work. If you think that your chances of publication will be harmed, or if you have not yet identified a suitable publisher, you can request a thesis embargo.

If you think you will be making significant revisions or changes to the text before publication, then this may not be such an issue, but it is worth discussing it with your supervisor and the prospective publisher.

Embargoes
An embargo means that the University will restrict access to your thesis for a set time period. The embargo will not normally exceed five years. During the embargo, your thesis will not be available for others to read or access. Once the embargo has ended, your thesis will automatically become publicly available.

When is an embargo needed?
Occasionally there are circumstances which mean that immediate open access to a thesis is not appropriate. Access can be restricted where the University accepts that there are good reasons for doing so. A thesis embargo may be appropriate where the thesis contains material that is:

- **Commercially sensitive** – 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** – an embargo can provide time for ethical sensitivities to lessen, such as where the thesis includes material relating to an identifiable individual. However, 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.
- **Pending commercial publication** with a publisher which does not permit pre-publication in a repository.

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

What does the embargo cover?
You may stipulate a period of time, up to a maximum of five years, during which the thesis, although still available for consultation, cannot be borrowed, sent on inter-library loan or made available through any institutional digital repository of the University of Aberdeen.

You may restrict all access to a thesis through consultation, borrowing, inter-library loan or any institutional digital repository of the University of Aberdeen only if the Librarian is requested in writing to do so by the Academic Standards Committee (Postgraduate). A copy of the request must accompany the thesis.
Funding bodies

If you are externally funded, check the conditions of your grant as there may be restrictions or requirements from your funder about how you publish and licence your work. For example, the funder may own the research you produce, or apply certain conditions to its reuse.

If your funder’s requirements 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 e-thesis.

Some funders may insist on commercial secrecy of their funded work. In this case, it is best to discuss this with your supervisor as soon as possible.

Further help

If you would like further advice, please contact library@abdn.ac.uk.