Copyright

Preservation and Curation of ETD Research Data and Complex Digital Objects

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Copyright

You have successfully defended your dissertation and are ready to submit it to your institution. Your research findings depend heavily on a range of materials – including a master dataset – that you want to submit and store with your text-based dissertation. You find yourself worrying about copyright – first, about whether you may have infringed on someone else's copyright within your dissertation, and second, about whether someone may infringe on yours after it is submitted. You wonder what your options and responsibilities are. You also wonder what you need to do to ensure that your work is both shareable and protected. ■

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Rationale and Motivations – Why

As a researcher in an academic environment, understanding copyright basics can help you to share and protect your work effectively and purposefully. The decisions you make now about copyright will have implications for your work, including how it can be built upon in the future.

As you work on your thesis or dissertation, it is useful to build a basic understanding of two key aspects of copyright:

1. **How copyright impacts your ability to include others' works within your own (including works you have collaborated to produce or even those that you have published previously);**

2. **How decisions you make about your own copyright may impact the future of your own research outputs.**

In other words, you need to know how to recognize and use copyrighted materials produced by others *and* how to register and manage copyright for your own work. There are many guides and resources available to students regarding copyright that can help you to evaluate and select from a range of options available to you, many of which we reference herein.

This guide focuses specifically on some of the decisions you may need to make regarding the materials you have created or used in your research process, including drawings and photographs, tables and charts, lab notes and datasets, interviews and newscasts, software and digital artworks. It describes in non-legal language the basics of a few important terms, including "fair use," "public domain," "Creative Commons," and "patent" as they may apply to these materials.

Failure to consider the implications of different copyright and patent approaches for your own work can limit the impact of your work. Failure to adequately review, vet, and seek permission to use others' work can, in a worst-case scenario, prevent your work from getting published or (in rare cases) lead to legal actions.

The Basics – How to Do It

Copyright is a legal tool authors and creators use to signal what other people can – or cannot – do with their works. There is no single or "right" approach to protecting a researcher's interests in the copyright realm. For some, restricting access and use is critical to prevent the misuse or appropriation of a work. For example, a computer science student may create a code-base that has potential for commercial release; the protection of that student's interests may include both registering copyright for the code and patenting that invention. For others, copyright may be used to signal to others that they may safely use a research output. For example, a political science student may produce a dataset that would benefit other researchers, including journalists. Releasing the dataset with a license that clearly explains how and when it may be used will enable others to replicate or build upon it without concern.

Legal terminology can often be confusing. Following are brief outlines of a few key and often-used terms, with references to documents that offer more nuanced explanation.

- **Public Domain.** Works fall into the public domain once a defined period of copyright protection has lapsed, at which point they are no longer governed by copyright and can be freely used by anyone. That said, the time frames governing just when copyright ceases to apply are defined by a series of laws and rulings that make the content landscape look like a patchwork. It is worth reviewing a good, short framework of what those boundaries are as a first step to seeing if the work in question may be in the public domain.[1] Also, most federal documents in the U.S. context are in the public domain.

- **Fair Use.** Many scholarly uses are, ultimately, "fair use." Fair use is codified in Section 107 of the U.S. Copyright Act, Title 17 of the U.S. Code. It provides legal protection for

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1 Kenneth D. Crews, "Copyright and Your Dissertation or Thesis: Ownership, Fair Use, and Your Rights and Responsibilities," ProQuest, 2013, http://media2.proquest.com/documents/copyright_dissthesis_ownership.pdf.

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an author's inclusion of copyrighted materials within a new work if those materials are essential to a scholarly argument or are being evaluated or critiqued in that work. If you are using a work that is within copyright, but meets certain "fair use" criteria, courts have found that no formal permission is needed. The criteria that are taken into account include the purpose of the work (e.g., educational and research uses favor fair use while commercial uses generally do not); the nature of the work (e.g., factual or nonfiction-based information may favor fair use; highly creative work likely will not); the amount of the work to be used (e.g., small quantities vs. a significant portion of the original work); and the effect of using the work (e.g., not having a negative impact on the copyright holder).[2]

- **Creative Commons.** Creative Commons (CC) is a set of licenses that are available to copyright owners to designate what uses are permitted for a copyrighted work. These licenses put into plain language a set of legal constraints, including when a user needs to seek permission from the copyright holder, how to credit the original copyright holder, and what types of uses (including commercial/non-commercial) are permissible.[3]

- **Patent.** Patents are another form of protection that can be important for particular types of works. In scholarly environments, patents are most often sought when university policy and/or funder requirements require or necessitate it. Students rarely need patents; those who do (or whose university plans to claim a patent on her/his research outputs) will usually discuss these obligations in advance with their advisors and/or funders.

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2 See Center for Media and Social Impact (CMSI)'s "Code of Best Practices in Fair Use for Academic and Research Libraries" (http://cmsimpact.org/code/code-best-practices-fair-use-academic-research-libraries/) and College Art Association, "Code of Best Practices in Fair Use for the Visual Arts." http://www.collegeart.org/pdf/fair-use/best-practices-fair-use-visual-arts.pdf. See also Kenneth D. Crews and Dwayne K. Buttler, "Fair Use Checklist," Copyright Advisory Office, Columbia University Libraries, last updated May 14, 2008, https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html; and Michael Brewer and the ALA Office for Information Technology, "Fair Use Evaluator," Librarycopyright. net, 2008, http://www.librarycopyright.net/resources/fairuse/.

3 More information about CC licenses and what they cover.

Using Copyrighted Works

As an author, your first step is to consider the appropriate way to recognize others' work in your own creations. You may be quoting from books and articles, inserting images or a few bars of printed music or lyrics; you may be including film clips or other audio-visual material, architectural drawings, or examples of someone's computer code.

There are three core options to consider when building upon or referencing someone else's work: (1) the work may already be in the public domain or licensed to allow it to be used freely. In this case, good practice still suggests a proper citation. If the work is not in the public domain, either (2) the way in which you use it may qualify as "fair use," in which case, once it is properly cited, no other action is needed; or (3) you will need to obtain permission from the copyright holder.

If a work that you want to reference or reuse is under copyright, you need to know if you have the right to reuse it the way you want to. Official statements (e.g., a "CC" license, or an institutional licensing agreement) can provide you with this information in some cases. However, if the work you wish to use contains no obvious statement permitting reuse, and if you cannot assert fair use, you will need to seek the copyright holder's written permission or find an alternative work to use that is allowed by license or is in the public domain.

How and where to do that depends on the works involved. Some aggregators, like the Copyright Clearance Center, may facilitate the process for you if they manage the copyright of the work you want to cite. Otherwise, you may find yourself needing to track down and contact an author or artist, or their publisher/agent/label or estate, to seek permission. Your campus library may be able to help you accomplish this step. If there are fees associated with using content, they tend to be based on the intended uses. Commercial uses intended for large audiences (such as licensing a photograph to use on the cover of a new CD by a major recording artist) are likely to command higher fees than non-profit uses for scholarly audiences (such as reproducing a small copy of an artwork in a book with a projected print run of 500 copies). As mentioned above, the majority of scholarly uses are covered under fair use.

Managing Copyright for Your Works

Once you complete your thesis or dissertation, you will deposit it with your university, and/or perhaps with one of your university's partners (such as ProQuest). As the author of the work, copyright for most parts of this work automatically belongs to you, whether or not you have chosen to officially register it with the U.S. Copyright Office. There are additional benefits that you will gain by registering your copyright, though, as documented by the U.S. Copyright Office.

Copyright may or may not extend to the research outputs you have produced and want to include with your thesis or dissertation. For example, data is only thinly protected by copyright; specifically designating a CC license to accompany a dataset (e.g., CC0) is a good approach for simultaneously sharing and protecting your data.

On occasion, there may be reasons to want to relay or restrict access to a thesis or dissertation. These may include that there is a patent pending, a publication pending, that the work contains material under copyright (and not cleared), or that the work includes material of a sensitive nature. Note that while some graduate students have raised concerns that making dissertations publicly available hinders chances at publication by a publisher, recent studies have shown that this is generally not the case.[4]

If, in the course of creating your dissertation, you have created a work falling into the category of industrial property, such as an invention you may wish to patent, you may wish to consult with your campus legal office or technology office.

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4 See e.g., Josh Brown and Kathy Sadler, "E-Theses Best Practice Summaries," http://www.rsp.ac.uk/documents/etheses-briefing-papers/ImpactOnFuturePublication.pdf; Ramirez et. al. "Do Open Access Electronic Theses and Dissertations Effect Publishing Opportunities in the Sciences," http://vtechworks.lib.vt.edu/handle/10919/23910?show=full; and Ramirez et. al, "Do Open Access Electronic Theses and Dissertations Diminish Publishing Opportunities in the Social Sciences and Humanities?" http://vtechworks.lib.vt.edu/handle/10919/23911.

Tools – What to Use

As you prepare your research for submission as a thesis or dissertation, you likely will grapple with questions about copyright (and perhaps patents), both for managing your own work and for including other works within your work.

Several important tools have been produced recently, including the Center for Media and Social Impact (CMSI)'s "Code of Best Practices in Fair Use for Academic and Research Libraries" and the College Art Association's "Code of Best Practices in Fair Use for the Visual Arts." Both provide solid guidance that is relevant across the range of disciplines.

Another tool that has been influential across U.S. scholarly communities is Kenneth Crew's "Copyright and your Dissertation or Thesis," in which the author offers two major categories of considerations that we summarize briefly below.

Decision Group One: Managing Your Copyright

- **Do you own the copyright in your work?**
- **Should you register your copyright?**
- **Should you use a Creative Commons license?**
- **Should you make your dissertation Open Access?**

There is no "right" pathway for managing your own copyright; there is a spectrum of options, all of which may make sense to different individuals in different scenarios. You already hold copyright when you create something in tangible form. Registering that copyright is necessary in order to defend that right against unapproved use (e.g., filing a lawsuit to collect statutory damages). Making your thesis or dissertation "Open Access" (depositing it with your institution where others may find and use it without encountering a paywall), and using a CC license to designate how and when others may use the work, will maximize your scholarly visibility. In rare cases (such as when your thesis or dissertation has commercial potential), you may want to embargo your work for a period of time or apply a more restrictive CC license.

Photo by Chris Leggat on Unsplash

Decision Group Two: Using Other Copyrights

- **Have you identified all third-party materials?**
- **Are any of them in the public domain?**
- **Are your activities within fair use?**
- **Do any materials have CC licenses?**
- **Do you have permissions (where needed)?**
- **Are you including any of your own materials that have been previously published?**
- **Can you avoid some of these issues?**

Identifying all materials used in your thesis or dissertation that were created by other people is a crucial first step. Once you have an inventory of the works you are using, you can take that inventory with you to your campus library and ask a reference librarian if your institution can provide guidance requesting usage permissions. At the least, your library should be able to help you track down publisher names and addresses. In some cases, your library can also advise you about "fair use" and how it applies (or doesn't apply) within your thesis or dissertation.

Deciding If a Patent Is Needed

Universities often have designated offices to deal with questions arising about new inventions or innovations. Some examples of different ways campuses handle this are offered here, but because these questions involve the intellectual property policy of the university, and its policy on ownership, understanding your institution's policies is a must. Some example policies are listed below:

- Columbia University Technology Ventures
- Stanford University's Office of Technology Licensing
- Indiana University's Research and Technology Corporation

Resources

All links provided were last checked 10/3/2017, and the content we reference here was saved on that date in the Internet Archive's Wayback Machine. For links that no longer work, please visit the Wayback Machine and enter the url to surface the resource.

The United States Copyright Office website has a series of circulars on specific topics. The full list is available here. Some that may be of special interest include:

- "Copyright Basics"
- "How to Investigate the Copyright Status of a Work"
- "Ideas, Methods, or Systems"

Many individual institutions offer generalizable guidance online for students who are engaged in the thesis/dissertation process. These include the following:

- "How to make your own work open access," The Berkman Center at Harvard University
- "Fair Use Checklist," Cornell University
- "Copyright Term and The Public Domain in the United States," Cornell University (Peter B. Hirtle)
- "Copyright for Dissertations," University of Michigan

There are also guides specifically on the application of "Fair Use" available from several scholarly associations:

- "Code of Best Practices in Fair Use for Academic and Research Libraries," Center for Media and Social Impact (CMSI)
- "Code of Best Practices in Fair Use for the Visual Arts," College Art Association

World Intellectual Property Organization (WIPO) has produced a series of overviews on intellectual property:

- "Understanding Industrial Property"
- "Understanding Copyright and Related Rights"

Additional resources include:

- Brewer, Michael, and the ALA Office for Information Technology. "Fair Use Evaluator." Librarycopyright.net. 2008.

- Brewer, Michael, and ALA Office for Information Technology. "Is it protected by copyright?" Librarycopyright.net. 2012.

- Crews, Kenneth D. "Copyright and Your Dissertation or Thesis: Ownership, Fair Use, and Your Rights and Responsibilities." ProQuest. 2013.

- Crews, Kenneth D., and Dwayne Buttler. "Fair Use Checklist." Copyright Advisory Office, Columbia University Libraries. Last updated May 14, 2008.

- Henry, Geneva. "Guide to Access Levels and Embargoes of ETDs." In "Guidance Documents for Lifecycle Management of ETDs." Educopia. Last updated March 2014.

- Hswe, Patricia. "Briefing on Copyright and Fair Use Issues in ETDs." In "Guidance Documents for Lifecycle Management of ETDs." Educopia. Last updated March 2014.

- ProQuest. "Copyright and your Dissertation or Thesis." Proquest.com. Last updated 2014.

Activities

1. Start with a chapter from your dissertation, at whatever stage it's in now, and identify all the other works you cite, reference, or borrow from.

2. Using Cornell University's "Checklist for Conducting a Fair Use Analysis Before Using Copyrighted Materials," the "Code of Best Practices in Fair Use for Academic and Research Libraries," and the "Code of Best Practices in Fair Use for the Visual Arts," determine which (if any) works may require additional research to determine if permission is needed.

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