

Copyright Guide for Research Students : What you need to know about copyright before depositing your electronic thesis in an online repository

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Preface

This Guide has been undertaken as an initiative of the DEST funded Open Access to Knowledge (OAK) Law Project. The Guide implements the recommendations of the OAK Law Project Report No. 1: *Creating a Legal Framework for Copyright Management of Open Access within the Australian Academic and Research Sector* (2006).

It seeks to explain fundamental issues of copyright in higher degree research (HDR) student theses, including the use of third party copyright material. The Guide provides real life scenarios of when students will need to obtain permission to use third party copyright material, Model Third Party Copyright Request Letters for obtaining permissions from copyright owners and a Model Copyright Compliance Table for students to record and monitor copyright issues in relation to their thesis.

This handbook is a step towards:

- Ensuring that universities, HDR students, research coordinators and repository managers obtain a broad overview of copyright issues applicable to HDR students theses and the submission of those theses into university digital repositories;
- Providing a platform for HDR students to self-manage the use of copyright material in their theses and to be responsible for obtaining permissions from third party copyright owners to use copyright material before submission into repositories; and
- Lessening the risk for universities and HDR students that theses inadvertently contain material which infringes the copyright of third parties.

I am thankful to Damien and Anne for the enormous amount of work they have undertaken and the team of people who have contributed to this Guide. Special thanks goes to QUT library e-Research Access Coordinator Paula Callan and QUT Copyright Officer Margaret Robertson for their assistance and practical feedback. They have all made a very worthwhile and productive contribution.

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Copyright Guide for Research Students : What you need to know about copyright before depositing your electronic thesis in an online repository

A What is copyright?

Copyright is a branch of the area of law known as intellectual property.¹ It enables the copyright owner to control certain acts (such as copying and uploading to the Internet) and to prevent others from using copyright material without permission, unless an exception applies [See paragraph G ‘Are there any exceptions to copyright?’.² In Australia, the legislation which governs copyright law is the *Copyright Act 1968* (Cth) (*Copyright Act*).³

Copyright serves an economic function as well as protecting personal rights such as moral or performers’ rights. It enables the person who creates the work to receive the benefit of that work. This is achieved by granting the creator of the copyright work monopoly rights in their creation for a limited time, thereby enabling them to receive remuneration for certain uses of their creations.

B Why is copyright relevant to me?

It is important that you are aware of copyright issues when you are writing your thesis. You will most likely own copyright in your thesis as the thesis author, unless you have assigned or transferred the copyright to someone else, such as a funding organisation or scholarship provider. It is also important that you understand copyright as you may wish to include third party copyright material (that is copyright material owned by another party, other than yourself) in your thesis. As you do not own copyright in this third party material, it will be particularly important that you understand the copyright issues involved, in order to avoid infringing someone else’s copyright.

C How can I tell whether something is protected by copyright?

Copyright protection is automatic once the criteria outlined in the *Copyright Act* have been met [See paragraph C ‘What type of material does copyright protect?’. There is no requirement to register, deposit copies of the work with authorities, or pay a fee to

¹ For an overview of intellectual property see Anne Fitzgerald, *Intellectual Property* (2nd ed, 2002) 1-17; Anne Fitzgerald and Brian Fitzgerald *Intellectual Property in Principle* (2004) 1-27.

² Anne Fitzgerald, *Intellectual Property* (2nd ed, 2002) 57-58; Anne Fitzgerald and Brian Fitzgerald *Intellectual Property in Principle* (2004) 82-84.

³ For the text of the *Copyright Act 1968* (Cth) see http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/.

obtain copyright protection.⁴ Some materials have a copyright notice (©, name of copyright owner, year of publication) displayed on them to notify users that they are protected by copyright. However, it is not necessary to include a copyright notice on copyright material and its absence will not mean that the material is not protected.

D What type of material does copyright protect?

One of the fundamental principles of copyright law is that copyright does not protect ideas, information or facts. Instead copyright protects the form in which those ideas, information or facts are expressed. It follows that copyright is not infringed where the same idea is expressed in a substantially different way, that is, the way in which those ideas are expressed is original and is not copied from an existing work.

Accordingly, copyright protects a wide range of materials which:

- are original, that is, they are the work of the author and not simply a copy;
- involve the expression of ideas or information; and
- exist in a tangible or material form.

The *Copyright Act* divides the types of materials which are protected by copyright into two categories:

1. “works” – which include literary, dramatic, musical and artistic works; and
2. “subject matter other than works” (also known as “other subject matter”) – which include sound recordings, cinematograph films, and sound and television broadcasts.

literary works

The term “literary work” is taken to cover a broad category of materials which are expressed in printed or written form, regardless of literary style or merit.⁵ Examples of a “literary work” are books, articles, transcripts, tables, databases, computer program code and lyrics. Literary works are likely to be the most common type of material protected by copyright which you will encounter in writing your thesis.

dramatic works

The “dramatic works” category covers works which are intended to be performed or presented, such as a play, a choreographic show or the scenario or screenplay for a cinematograph film (but importantly, not the film itself).⁶

musical works

The term “musical work” is not defined, however, it is taken to extend to any composition of sound or noises provided they are fixed in some form. Examples include the musical score, composition, or sounds recorded on a tape, cassette, compact disk or other form of technology, including storage on a computer.

⁴ Note that in some jurisdictions (for example the United States) there are a number of advantages associated with copyright registration.

⁵ *Copyright Act 1968* (Cth) s 10(1)

http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/s10.html.

⁶ *Ibid.*

artistic works

The term “artistic work” is defined to include paintings, sculptures, drawings (for example diagrams, maps, charts or plans), engravings, photographs, buildings or models of buildings, regardless of artistic quality or merit, or any other work of artistic craftsmanship.⁷

sound recordings

The term “sound recording” is defined to include the aggregate of sounds embodied in a record, including a compact disc, record, audiotape, digital file or any other technology.⁸

cinematograph films

A “cinematograph film” extends to the protection of moving pictures and any associated sounds, in any form.⁹ Therefore, films, videos, television programs, commercials and multimedia works will all be protected by copyright.

sound and television broadcasts

The “sound and television broadcast” category provides protection for both sound and television broadcasts based on underlying copyright material, as well as live broadcasts of news, sports events and unscripted interviews which have no underlying copyright content.¹⁰

E Who owns copyright?

Generally, the person who has creates or makes the material will own the copyright in it. The person who makes or creates a work is generally called the author, for example the writer of text or the maker of a film or sound recording. Copyright ownership can be transferred, for example by assignment or by being bequeathed in a will. It is possible for copyright to be transferred to one or more individuals or companies. For example, often a publisher of a book or journal in which a chapter or article is published will have the author assign copyright in the material to the publisher.

F How long does copyright last?

Copyright lasts for a certain period, after which the material passes into the public domain. If copyright has expired, you can use the material without seeking the permission of the copyright owner. However, if the duration of copyright has not expired, the permission of the copyright owner will be required.

⁷ Ibid.

⁸ Ibid.

⁹ *Copyright Act 1968* (Cth) s 10(1)

http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/s10.html.

¹⁰ *Copyright Act 1968* (Cth) s 87

http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/s87.html.

Type of material	Length of copyright period
Literary, dramatic, musical and artistic works which have been published	70 years from the end of the calendar year in which the author died
Literary, dramatic, musical and artistic works (but not computer programs) which have not been published or made available to the public	70 years from the end of the calendar year in which the work is first published or made available to the public
Sound recordings and cinematograph films	70 years from the end of the calendar year in which the sound recording or cinematograph film was first published
Sound and television broadcasts	50 years from the end of the calendar year in which the sound or television broadcast was first broadcast ¹¹

G What can I not do with third party copyright material?

The copyright owner has a number of exclusive rights over their copyright material. These exclusive rights are dependent upon the various categories of material protected by the *Copyright Act* (See paragraph C ‘What type of material does copyright protect?’). However, the general rule is that if material is protected by copyright, you cannot do certain acts with it, unless you have been authorised by the copyright owner or one of the exceptions to copyright applies.

For **literary, dramatic and musical works**, you cannot:

- reproduce it in a material form;
- publish it, (make available to the public);
- perform it;
- communicate it to the public (make available in electronic form);
- make an adaptation of a work, for example write a screen-play (dramatic work) from a novel (literary work), translate a book into another language, or transform a novel into a cartoon strip; and
- control rental, where the work is a computer program or is reproduced in a sound recording.¹²

For **artistic works**, you cannot:

- reproduce it in a material form;
- publish it (make available to the public); and

¹¹ Note this is only an overview of the duration of copyright, for a more detailed discussion see your academic institution’s copyright guidelines. Note also that moral rights [See paragraph J] will run as long as the copyright. The protection period of a performance [See paragraph J] is the period beginning on the day when the performance was given and ending at the end of the period of 20 calendar years after the calendar year in which the performance was given (*Copyright Act 1968* (Cth) s 248CA) except under s 248QA where the protection period of a performance is the period beginning on the day when the performance was given and ending at the end of the period of 50 calendar years after the calendar year in which the performance was given. S 248QA applies to sound recordings of a performance and relates to criminal offences.

¹² *Copyright Act 1968* (Cth) s 31(1)

http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/s31.html.

- communicate it to the public (make available in electronic form).¹³

For **sound recordings**, you cannot

- make a copy;
- cause it to be heard in public;
- communicate it to the public (make available in electronic form); and
- control rental.¹⁴

For **cinematograph films**, you cannot:

- make a copy;
- cause it to be seen or heard in public; and
- communicate it to the public (make available in electronic form).¹⁵

For **television and sound broadcasts**, you cannot:

- make a sound recording of a television or sound broadcast and make a copy of the sound recording;
- make a film of a television broadcast or a copy of such film;
- re-broadcast the broadcast; and
- communicate it to the public (make available in electronic form).¹⁶

From the perspective of writing your thesis, the most common acts which you will be prevented from undertaking without the permission of the copyright owner, will be reproducing in a material form, and communicating the copyright owner's material to the public, unless one of the exceptions to copyright clearly applies.

The term “reproduce” means to make a copy of the copyright material. You can use ideas or the main purpose of another's work without seeking permission if you paraphrase it. However, you must still always reference the paraphrasing to the original source, and comply with your institution's academic dishonesty and plagiarism guidelines.

As many theses are now published online via databases like the Australasian Digital Theses Program, you need to be aware that you and/or your educational institution may “communicate” any text, diagrams or other material which is included in your thesis.¹⁷ You and/or your educational institution may also “reproduce” any text, diagrams or other materials included in your thesis when it becomes published in a print version, as well as when it is made available online, for example on the Australasian Digital Theses website.

¹³ Ibid.

¹⁴ *Copyright Act 1968* (Cth) s 85 http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/s85.html.

¹⁵ *Copyright Act 1968* (Cth) s 86 http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/s86.html.

¹⁶ *Copyright Act 1968* (Cth) s 87 http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/s87.html.

¹⁷ *Copyright Act 1968* (Cth) s 10(1) http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/s10.html.

H Are there any exceptions to copyright?

There are a number of circumstances in which certain dealings with material protected by copyright will be permitted, without the permission of the copyright owner. When considering the exceptions to copyright, you should take the following steps:

- 1. Where you are including third party material in your thesis, does the part you are including constitute a substantial part of the third party copyright material?**
 - a. If no, you are free to include it in your thesis.**
 - b. If yes, you will need to obtain the permission of the copyright owner, or consider whether any of the fair dealing provisions or other exceptions apply.**

- 2. Does your use of the material you are including in your thesis fall within any of the fair dealing provisions or other exceptions?**
 - a. If yes, you are free to include it in your thesis, even if it constitutes a substantial part.**
 - b. If no, you will need to obtain the permission of the copyright owner before including the third party material in your thesis.**

1 A substantial part

Importantly, copyright will not be infringed where an insubstantial part of the copyright material is dealt with, even if the act is undertaken without the permission of the copyright owner. The following is a short guide to assist you in determining what a substantial part is for some of the most common material protected by copyright, which you are likely to encounter when writing your thesis.

Diagrams/photographs

Each individual diagram or photograph will constitute an individual work in itself. Therefore, if you reproduce or copy a diagram or photograph in your thesis in its entirety, it is likely to be a substantial part and the permission of the copyright owner will be required in order to use the diagram or photograph in your thesis, unless one of the defences or other exceptions to copyright clearly applies.

If you are including a diagram or photograph which is not your own work in your thesis, you will need to obtain the permission of the copyright owner, unless one of the defences or other exceptions to copyright clearly applies.

Text

If you are including the whole text of a work (for example a whole article or conference paper) in your thesis, this will be a substantial part and you will require the permission of the copyright owner in order to use the material in your thesis, unless one of the defences or other exceptions to copyright clearly applies.

However, if you are including anything less than the whole of the text of a work, an assessment needs to be made as to whether this will constitute a substantial part of the

work. It is likely that such assessments will need to be determined upon a case by case basis. As a general rule, whether something is a substantial part or not is determined by taking into account the quality of the part taken, as opposed to its quantity and the importance the part taken bears in relation to the work as a whole, for example whether it is an essential or material part of the work.

Therefore, if you are in any doubt as to whether the part of the text you are including in your thesis is a substantial part or not, you should always seek the permission of the copyright owner before including the material in your thesis, unless one of the defences or other exceptions to copyright clearly applies.

If you are including the entire text of a work (for example a journal article or conference paper) in your thesis you will need to obtain the permission of the copyright owner, unless one of the defences or other exceptions to copyright clearly applies.

If you are including anything less than the whole of a work (for example a paragraph from a journal article), you need to determine whether the part taken constitutes a substantial part. However, it is advisable that you seek the permission of the copyright owner before including it in your thesis, if you are in any doubt as to whether it constitutes a substantial part, unless one of the defences or other exceptions to copyright clearly applies.

Sound recordings, cinematograph films and sound and television broadcasts

If you are including the whole sound recording, cinematograph film or sound and television broadcast in your thesis this will constitute a substantial part and you will require the permission of the copyright owner in order to use the material in your thesis, unless one of the defences or exceptions to copyright clearly applies.

However, if you are including something less than the whole of the sound recording, cinematograph film or sound and television broadcast, an assessment will need to be made as to whether this constitutes a substantial part of the work. The factors discussed above in relation to a substantial part of text should be applied. However, you should note that this is an uncertain area of the law and if you are in any doubt, you should consider obtaining the permission of the copyright owner before including the material in your thesis, unless one of the defences or other exceptions to copyright clearly applies.

If you are including the entire sound recording, film, or sound and television broadcast in your thesis you will need to obtain the permission of the copyright owner, unless one of the defences or other exceptions to copyright clearly applies.

If you are including anything less than the whole sound recording, film, or sound and television broadcast, you need to determine whether the part taken constitutes a substantial part. However, it is advisable that you seek the permission of the copyright owner before including it in your thesis, if you are in any doubt as to whether it constitutes a substantial part, unless one of the defences or other exceptions to copyright clearly applies.

2 Fair dealing and other exceptions

The fair dealing provisions permit the use of copyright material in certain circumstances, providing the dealing is fair. Accordingly, copyright will not be infringed – even where a substantial part is dealt with, without the permission of the copyright owner – if it is for the purposes of research or study, criticism or review, parody or satire, reporting news, or judicial proceedings or professional advice, and its use is deemed to be fair. The term “fair” is not defined in the *Copyright Act*, although it is defined for some purposes (for example for the purposes of research or study). However, “fair” is generally determined according to what will amount to a “fair” dealing in all of the circumstances, including the nature and purpose of the dealing. In this regard, you should carefully note that the potential application of these provisions remains somewhat uncertain, particularly in regard to research or study.

- 1. Have you used the material protected by copyright in your thesis for the purposes of:
 - a. research or study;
 - b. criticism or review;
 - c. parody or satire;
 - d. reporting news; or
 - e. judicial proceedings or professional advice.**
- 2. If you have, is its use fair?**
- 3. If it is for one of the above purposes and its use is fair, then you are free to include it in your thesis, even if it constitutes a substantial part.**
- 4. However, if your use of the material is not for one of the above purposes or your use is not deemed to be fair, then you will need to obtain the permission of the copyright owner before including it in your thesis, unless one of the other exceptions to copyright clearly applies.**

criticism or review

You will not infringe copyright in someone else’s material that you are including in your thesis if you are using it for the purposes of criticism or review and your use is deemed to be fair. Although, the *Copyright Act* does not define the terms “criticism” or “review”, they are generally held to have their ordinary literal meaning. That is for “criticism” – the act of analysing and judging the quality of the work or passing judgement as to its merits; and for “review” – a critical article or report on some literary work, commonly known as a critique. The “criticism or review” exception is likely to give you more protection if you are only including short extracts from the material and then reviewing their content, conclusions, analysis or process. However, you must be genuinely analysing their merit or reviewing them, not simply quoting them as illustrations and then writing your own opinion/conclusion and your use of the material must be fair.

parody or satire

Similarly, you will not infringe copyright in someone else’s material you are including in your thesis, if you are using it for the purposes of parody or satire and your use is deemed to be fair. However, the extent to which acts of parody or satire will be permitted under this provision is yet to be settled. Therefore, if you are in any

doubt as to whether your use of the material is for the purposes of parody or satire you should obtain the permission of the copyright owner before including the material in your thesis, unless one of the other fair dealing defences or other exceptions to copyright clearly applies.

research or study

The most common question you are likely to encounter when considering the issue of fair dealing is whether you have used the material for the purposes of research or study. Under the *Copyright Act* you will not infringe copyright in someone else's material you are including in your thesis, if you are using it for the purposes of research or study and your use of the material is fair. The terms "research" or "study" are not defined in the *Copyright Act*. However, they have been held to have their ordinary dictionary meaning – that is, a diligent and systematic enquiry or investigation into a subject in order to discover facts or principles.

In determining whether a dealing with material protected by copyright will constitute fair dealing for the purposes of research or study, it is necessary to have regard to the following factors:

- the purpose and character of the dealing;
- the nature of the work or adaptation;
- whether the work or adaptation can be obtained within a reasonable time at an ordinary commercial price;
- the impact of the dealing on the potential market for the work, the value of the work or its adaptation; and
- where only part of the work or adaptation had been reproduced, the amount and substantiality of the part copied in relation to the work or adaptation as a whole.¹⁸

You should note that the current fair dealing provisions relating to research or study are likely to only apply to research or study in its literal sense. For example, you will be permitted to photocopy a fair amount from a textbook or journal article for the purposes of researching your thesis. However, it is unlikely that this will extend to disseminating and communicating your research in the electronic version of your thesis.

In determining "fair" for the purposes of research or study in this sense, the reproduction of a literary, dramatic or musical work contained in an article in a periodical is taken to be a fair dealing, unless another article in the same publication has been reproduced for the purpose of different research or a different course of study. However, where the work being reproduced is not an article in a publication, the reproduction will only be taken to be a fair dealing if it does not involve the taking of more than a "reasonable portion". The term "reasonable portion" is defined as:

- (a) For literary, dramatic or musical works that are contained in a published edition of at least 10 pages:
- 10% of the number of pages in the edition; or

¹⁸ *Copyright Act 1968* (Cth) s 40(2)

http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/s40.html. See also s 103C

http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/s103c.html

- if the work is divided into chapters, a single chapter.
- (b) For a published literary work or dramatic work in electronic form:
- 10% of the number of words in the work; or
 - if the work is divided into chapters, a single chapter.¹⁹

However, it is unclear whether the fair dealing exception for the purposes of research or study will extend to the dissemination and communication of your research in your thesis when it subsequently becomes published in print or electronic format. Therefore, as a risk management strategy we suggest that you obtain permission to use all of the materials you wish to include in your thesis from the copyright owner, unless they do not constitute a substantial part or one of the other fair dealing defences or other exceptions to copyright clearly applies.

There are also a number of other specific exceptions to copyright which may enable you to include material protected by copyright in your thesis without seeking permission from the copyright owner. However, you should note that these exceptions only apply in specific circumstances.²⁰

If you are in any doubt as to whether any of the defences or other exceptions to copyright will apply, you should always first seek the permission of the copyright owner before including third party material protected by copyright in your thesis.

I Criminal provisions

You should also be aware that as a result of recent amendments to the *Copyright Act*, the criminal provisions regarding copyright infringement have been significantly strengthened. The *Copyright Act* now makes it a criminal offence for the infringement of copyright in a number of circumstances, with the imposition of on the spot fines and terms of imprisonment.²¹ This highlights the fact that copyright infringement is treated seriously in law. To avoid any issues of criminal liability for copyright infringement, you should obtain permission from the copyright owner to include the material in your thesis.

J Moral and performers' rights

When including material in your thesis it is also important to be aware of moral and performers' rights. Moral rights are personal rights which belong to the author or

¹⁹ *Copyright Act 1968* (Cth) s 40(2)

http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/s40.html.

²⁰ For a list of these exceptions please consult your academic institutions copyright guidelines. Also see Anne Fitzgerald, *Intellectual Property* (2nd ed, 2002) 98-102; Anne Fitzgerald and Brian Fitzgerald *Intellectual Property in Principle* (2004) 172-182. You should note that further exceptions to copyright were introduced by the recent amendments in the *Copyright Amendment Act 2006* (Cth), for example, see *Copyright Act 1968* (Cth) s 200AB.

²¹ *Copyright Act 1968* (Cth) s 132AA-132AO, 248PA-24QH.

creator of the work and exist independently from the exclusive rights already mentioned, which an author or creator may exercise over their work.²² There are three types of moral rights:

1. the right of attribution of authorship – which involves the right to be identified as the author of the work if any “attributable acts” are done in respect of the work;
2. the right not to have authorship falsely attributed; and
3. the right of integrity of authorship – which involves the right not to have the work subjected to derogatory treatment which would demean the creator’s reputation.

In this regard, you should note that the right of attribution and integrity only apply in relation to a substantial part of the material and therefore will not be infringed where the dealing is with an insubstantial part.²³ Furthermore, the right of attribution and integrity are interpreted on a basis of reasonableness and subsequently they will not be infringed where a person’s conduct is found to be reasonable in the circumstances.²⁴ When considering issues of moral rights, you should also note that it is possible to obtain the consent of the moral rights owner to do certain acts, which may otherwise infringe their moral rights.²⁵

Performers’ are also granted a number of rights in relation to their live performances, which will be of particular significance to students completing their thesis in the creative industries or performing arts disciplines. Under the category of performers’ rights, performers (for example theatrical performers, dancers and singers) have the right to take action against any unauthorised use of a performance - for example recording or communicating a performance to the public without the authority of the performer - during the protection period of a performance.²⁶ Recent amendments have also been made so that performers’ can now claim ownership of the copyright in the sound recordings of their performances.²⁷

You should note that since Australia’s accession to the *WIPO Performances and Phonograms Treaty*, performers have also been granted moral rights in their performances. However, the performers protected under these provisions will be limited to those whose performance consists of sounds, including the conductor of a musical work.

K Once I have permission, is there anything I cannot do with the material?

Once you have permission from the copyright owner to copy or reproduce the work in your thesis and subsequently communicate it online, you still must:

²² For a discussion of moral rights see Anne Fitzgerald, *Intellectual Property* (2nd ed, 2002) 77-83; Anne Fitzgerald and Brian Fitzgerald *Intellectual Property in Principle* (2004) 118-124.

²³ *Copyright Act 1968* (Cth) s 195AZH.

²⁴ *Copyright Act 1968* (Cth) s 195 AR, AS.

²⁵ *Copyright Act 1968* (Cth) s 195AW, AWA.

²⁶ *Copyright Act 1968* (Cth) Part XI Division 2 s 248G(1). See also 248G(2) and s 248CA.

²⁷ *Copyright Act 1968* (Cth) s 22 (3), 22 (3A), 85, 97(2A) and s 248J.

- credit the work to the original author and the source of the material used, for example through correct referencing in a footnote, endnote or in-text reference; and
- unless otherwise agreed state whether you have altered the work from what the author originally produced; and
- unless otherwise agreed not do anything which could damage the author's honour or reputation, for example altering, mutilating or distorting the work in a way that has an adverse effect on the author's honour or reputation; and
- not do anything with the copyright material which goes beyond the scope of the permission you have obtained from the copyright owner.

Remember you should also be guided by your academic institution's Academic Code of Conduct when including third party material in your electronic thesis.

L How should I go about obtaining the permission of the copyright owner in order to use their material?

We suggest you follow the following steps:

1. Check the source of the work (for example, a textbook or image) to see if there is a licence covering the work that authorises your use of the material; and if not
2. Determine who you think owns the copyright in the material that you want to include in your thesis; but
3. If you are unsure as to who owns the copyright, write to the publisher of the source of the material requesting the details of the copyright owner; and then
4. Check the website or other information of the copyright owner (ie the publisher's website) to see if there is a licence covering the work that authorises your use of the material; and if not
5. Write to the copyright owner stating the material that you want to use, how you intend to use it, and request their permission for that use, by using the Model Third Party Copyright Permission Request Letters (See Appendices 1, 2 and 3 which are explained in paragraph N). If the copyright owner does not reply within 6 weeks, write a follow up letter or make a follow up phone call. If you have difficulty in contacting the copyright owner, you should contact your supervisor, academic faculty and university copyright officer for assistance; and
6. Record the permission you have obtained from the copyright owner in your thesis, either under the image, diagram or text in your electronic thesis, or in a list of permissions for third party material in your electronic thesis; and
7. Keep a comprehensive record of all copyright material which you are incorporating into your thesis, by using the Copyright Compliance Table (See

Appendix 5). This Table records the amount of such material in relation to the whole thesis, the location of that material within the thesis, the nature of that material, whether a substantial part of the copyright material is used, any applicable copyright exceptions and any permissions sought and obtained from copyright owners; and

8. Decide on the type of end user licence you wish to use for your thesis;
9. You should note that some publishers may ask for a payment for the use of their material. If that happens, ask your supervisor or academic institution on the policy of paying for the use of copyright material. If you do not wish to pay for the use of the material, you should consider one of the following options:
 - Removing the material from your thesis; or
 - Paraphrasing it in your own words, ensuring you reference the original work correctly; or
 - Ensure your use of the material does not constitute a substantial part or clearly falls within one of the fair dealing defences or other exceptions.

M The types of copyright licences you need to be aware of

A licence is a permission or authorisation from the copyright owner to use their material by dealing with it in ways which fall within the copyright owner's exclusive rights. A licence can be exclusive (the licensee is the only person who can use the material in the ways covered by the licence) or non-exclusive (the right to exercise one or more of the copyright owner's rights in the material, but not to the exclusion of the copyright owner or other licensees); and may be granted in express terms by the copyright owner or arise by implication. The licensing of copyright in your thesis is something which you will need to be particularly aware of, as you will most likely be required by your academic institution to deposit an electronic copy of your thesis with the relevant repository. In this regard, there are four types of licences which you are likely to encounter.

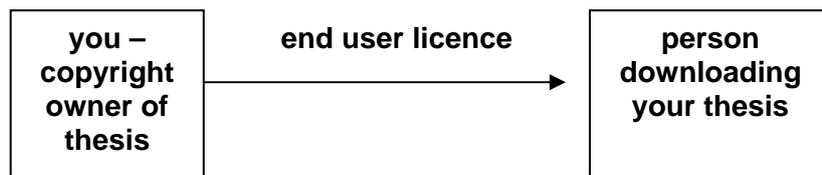
1 Deposit licence

Firstly, you as the copyright owner of your thesis will be required to enter into a deposit licence, with the online repository which stores the electronic theses. A deposit licence will be required by the relevant repository in order to clarify what rights they have to store, manage and organise your thesis while it is stored within the repository. In general, repositories will be seeking to rely on a non-exclusive licence from you, as the copyright owner of the thesis. You will need to ensure that all of the rights you wish to include in the end user licence are incorporated in the deposit licence between yourself and the repository.



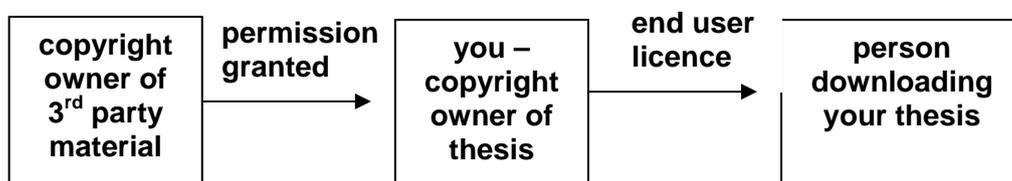
2 End user licence

The end user – the person who downloads your thesis – should be clearly informed about the specific activities of use and re-use that they are permitted to make with your thesis, through the end user licence. To ensure that end users are clearly informed about the uses they are permitted to make with your thesis, one option is to licence your thesis with one of the standard open content licences, such as a Creative Commons licence. However, if you are choosing one of the standard open content licences, you need to bear in mind whether you are intending to publish your thesis commercially at a later stage as applying such a licence may have an impact on your ability to secure a commercial publishing agreement. For an explanation of the different types of Creative Commons licences you may wish to licence your thesis under, see Appendix 4.



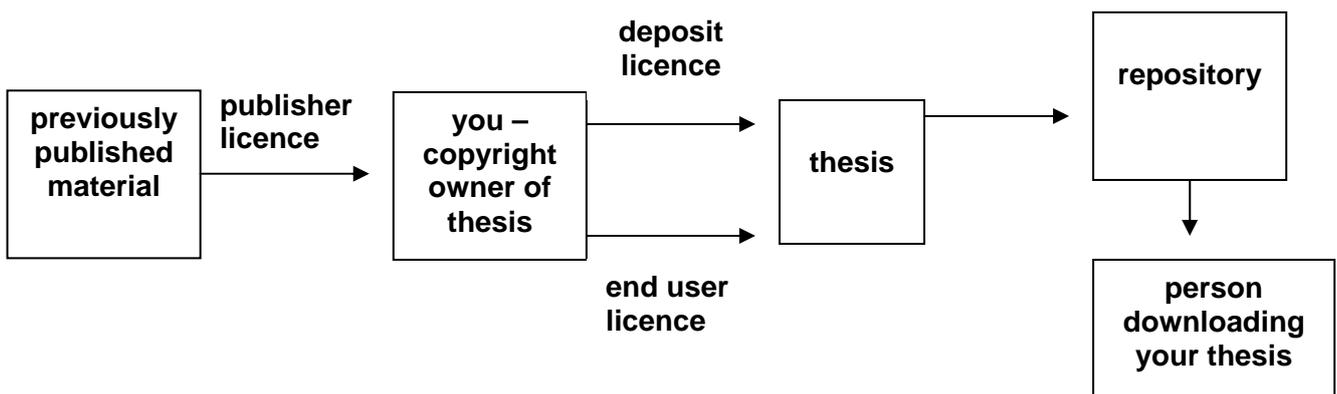
3 Third party licence

Where you have included third party copyright material in your thesis and obtained the permission of the copyright owner to deposit that material, it will be necessary to ensure that they have granted you a licence to use that material in accordance with the end user licence you are licensing your thesis under. (See Appendix 1 Model Third Party Copyright Permission Request Letters 1 for a third party licence, or Appendix 2 and 3 if you obtain a third party licence and also wish to licence your thesis under a Creative Commons licence)



4 Publisher licence

If you have previously published parts of your thesis as journal articles or in other publications, you will need to determine who owns the copyright in those publications. If you have assigned copyright to someone else, for example, the publisher of the journal, you will need to obtain the permission of the copyright owner before entering into the deposit licence and deciding upon an end user licence.



N Which Model Third Party Copyright Permission Request Letter to Use?

The Model Letters in Appendices 1, 2 and 3 are designed to apply to a variety of situations:

The Appendix 1 Letter

This Letter is used for obtaining a non-exclusive third party licence to permit you to use third party copyright material in the online digital version of your thesis. This permission will at least allow end users to view and read this material in your online thesis. However, it is unclear whether this permission would allow end users to download, print out, copy, disseminate or re-use this material (although downloading and printing out a copy of this material might be permitted under the fair dealing exceptions of the *Copyright Act*).

If you want to ensure that your end-users have permission from the copyright owner to download, print, copy, disseminate and re-use this material, it is recommended that you use the Appendix 2 or the Appendix 3 Letters.

The Appendix 2 and Appendix 3 Letters

These Letters are used for obtaining a non-exclusive licence to use third party copyright material in the online digital version of your thesis (as under the Appendix 1 Letter) and to also obtain permission from the copyright owner to licence the material to end users under a Creative Commons licence, allowing end users to download, print, copy, disseminate this material. Both Letters enclose the attachment on Creative Commons licences (see Appendix 4).

The Appendix 2 Letter is shorter and is designed for you to insert which Creative Commons licence you want for end users. This will require you to choose a Creative Commons licence from the attachment and insert it into the Letter.

The Appendix 3 Letter is longer and is designed to give the copyright owner the freedom to choose which Creative Commons Licence will be used for end users. You can influence the copyright owner's decision by indicating in the appropriate circle which Creative Commons licence you would like to apply, however the final decision rests with the copyright owner.

You may have to use your best judgement in deciding which Letter to use. Some copyright owners may be more likely to sign a one page request (the Appendix 2 Letter) rather than having to read through a longer document. Other copyright owners may want the freedom to select which Creative Commons licence will apply to their work (the Appendix 3 Letter), even though they may agree with the Creative Commons licence that you have selected.

O Common scenarios you may encounter

Scenario 1

Peter reproduces four diagrams from a textbook in order to illustrate a chapter in his electronic thesis which is made available online. Has Peter infringed copyright?

In this scenario the diagrams which Peter has reproduced will be classified as an “artistic work” and thus will be protected by copyright. Therefore, Peter will be prevented from exercising a number of rights in relation to the diagrams, including reproducing them in his electronic thesis, unless he has first obtained the permission of the copyright owner or one of the defences or other exceptions to copyright applies. The fair dealing defences, for example for research and study, have potential but uncertain application when the electronic thesis is communicated online.

However, as Peter has reproduced each diagram in its entirety and given that each diagram constitutes a work in itself, Peter will have reproduced/communicated a whole or substantial part of the diagram. Therefore, to avoid any risk of infringement, we suggest that Peter seeks the permission of the copyright owner before including the diagrams in his electronic thesis.

Scenario 2

Jane reproduces a photograph which she has found on the internet for the purposes of illustrating one of her chapters of her electronic thesis which is made available online. Has Jane infringed copyright?

In this scenario the photograph which Jane has reproduced in her electronic thesis will be protected by copyright, as it falls within the definition of an “artistic work”. Accordingly, Jane will be prevented from exercising a number of rights in relation to the photograph, including reproducing the photograph in her electronic thesis unless the permission of the copyright owner has been obtained or one of the defences or other exceptions to copyright applies. The fair dealing defences, for example for research and study, have potential but uncertain application when the electronic thesis is communicated online.

Each photograph will be a work in itself, therefore, as Jane has reproduced in her thesis the whole of the photograph, she will have reproduced a whole or substantial part. Therefore, to avoid any risk of infringement, we suggest that Jane seeks the permission of the copyright owner before including the photograph in her electronic thesis.

Scenario 3

David reproduces as part of his appendix in his electronic thesis which is made available online, nine pages of text from the main argument in a textbook. Has David infringed copyright?

In this scenario the text which David has reproduced in his electronic thesis will be protected by copyright, as it falls within the definition of a “literary work”. Therefore,

David will be prevented from exercising a number of rights in relation to the text, including reproducing the text in his electronic thesis unless he has first obtained the permission of the copyright owner or one of the defences or other exceptions to copyright applies. The fair dealing defences, for example for research and study, have potential but uncertain application when the electronic thesis is communicated online. However, it would seem unlikely that any of the fair dealing defences would apply, given that the nature of David's dealing is unlikely to be interpreted as fair.

When considering whether David has reproduced a substantial part of the text, it will be necessary to consider the quality of the nine pages taken and the importance which these nine pages bear in relation to the whole of the textbook. Given that these nine pages form part of the main argument in the textbook, it is likely that their quality will be such as to render them an essential or material part of the textbook. Therefore, to avoid any risk of infringement, we suggest that David seeks the permission of the copyright owner before including the nine pages of text in his electronic thesis.

Scenario 4

Mary reproduces in her electronic thesis which is made available online, two sentences of introductory text from a 54 page journal article. Has Mary infringed copyright?

In this scenario the text which Mary has reproduced in her electronic thesis will be classified as a "literary work". Therefore, provided the text constitutes a substantial part, Mary will be prevented from exercising a number of rights in relation to the text, including reproducing the text in her thesis unless she has first obtained the permission of the copyright owner or one of the defences or other exceptions to copyright applies. The fair dealing defences, for example for research and study, have potential but uncertain application when the electronic thesis is communicated online.

When considering whether the sentences which Mary has reproduced in her thesis will constitute a substantial part of the article, it will be necessary to consider the quality of the sentences taken and the importance that the sentences bear in relation to the whole of the journal article. Given that the sentences taken from part of the introductory text of the article, it is likely that its quality and importance in relation to the whole of the journal article will not be significant enough to mean it an essential or material part of the journal article.

Therefore, it is unlikely that Mary will have reproduced a substantial part of the journal article in her electronic thesis, thus Mary will not have infringed copyright in this scenario, although there may be a separate issue of academic dishonesty involved for a failure to reference the material correctly.

Scenario 5

William reproduces in his electronic thesis which is made available online, a photograph for the purposes of critiquing it in one of his chapters. Has William infringed copyright?

In this scenario the photograph which William has reproduced in his thesis will be protected by copyright as it falls within the definition of an “artistic work”. Accordingly, William will be prevented from exercising a number of rights in relation to the photograph, including reproducing the photograph in his thesis, unless he has obtained the permission of the copyright owner. Each individual photograph will be a work in itself, therefore, as William has reproduced the whole photograph, he will have reproduced a substantial part.

However, it is also necessary to consider whether there are any defences or other exceptions to copyright which may apply in William’s case, considering that he has reproduced the photograph for the purposes of critiquing it in his thesis. Under the fair dealing defence, a person may use material protected by copyright, without the permission of the copyright owner, provided it is for the purpose of criticism or review. In order to invoke this fair dealing defence in this case, William will need to be critically evaluating or analysing the style or merit of the photograph, not simply reproducing the photo as an illustration. William’s dealing with the photograph will also need to be fair. In determining “fair”, it is necessary to take into account all of the circumstances, including the nature and purpose of William’s dealing.

Therefore, in scenario 5, provided William can establish the necessary precondition for criticism or review, he will not have infringed copyright by reproducing the photograph in his thesis.

Appendix 1

Model Third Party Copyright Permission Request 1²⁸

[*Copyright owner's details*]

[*Date*]

[*Your name and address details*]

Dear [*Copyright owner's name*]

Request for Copyright Licence

My name is [*your name*]. I am completing a [*Masters / PhD / Professional Doctorate*] thesis at [*your academic institution*]. I am seeking your permission, in the form of a non-exclusive licence, to include your works in the online digital version of my thesis. The thesis will be available for anyone to access online via the Australian Digital Theses database and our institutional repository [*insert name/URL of repository*]. Your works will be fully and correctly referenced.

My thesis includes the following copyright material:
[*Description of work and source*]

From the following works for which I believe you hold the copyright:
[*Description of source*]

Please sign below if you agree and return to me a copy. If you do not agree, or do not hold the copyright in the above works would you please notify me of this in writing.

I _____ agree to grant you a non-exclusive licence for an indefinite period to include the above materials for which I am the copyright owner, into your online digital thesis. I understand that this thesis will be made available on the internet for online public access via the Australian Digital Theses database and your institutional repository.

Date:

Signature (Copyright Owner) _____

Yours Sincerely,

[*Your Name*]

²⁸ Appendices 1, 2 and 3 have been adapted from the Queensland University of Technology ADT Copyright Owner Request Form, Division of Technology, Information and Learning Support http://www.tils.qut.edu.au/copyrightguide/files/ADT_copyright_owner_request.doc.

Appendix 2

Model Third Party Copyright Permission Request 2

[*Copyright owner's name and address details*]

[*Date*]

[*Your name and address details*]

Dear [*Copyright owner's name*]

Request for Copyright Licence and Creative Commons Licence

My name is [*your name*]. I am completing a [*Masters / PhD / Professional Doctorate*] thesis at [*your academic institution*]. I am seeking your permission, in the form of a non-exclusive licence, to include your works in the online digital version of my thesis. The thesis will be available for anyone to access online via the Australian Digital Theses database and our institutional repository [*insert name/URL of repository*]. Your works will be fully and correctly referenced.

I am also seeking permission from you to make your works available to the public through my online digital thesis under a [*You choose and insert the details of one of the Creative Commons Licences explained in Appendix 4*]. A full explanation of the Creative Commons licenses is attached. My thesis includes the following copyright material:

[*Description of work and source*]

From the following works for which I believe you hold the copyright:

[*Description of source*]

If you agree please enter your name in the agreement below, your signature and return a copy to me at the above address.

I _____ agree to grant you a non-exclusive licence for an indefinite period to include the above materials for which I am the copyright owner, into your online digital thesis and to permit you to make these works available to the public through your online digital thesis under the Creative Commons licence referred to above. I understand that this thesis will be made available on the internet for online public access via the Australian Digital Theses database and your institutional repository.

Date:

Signature (Copyright Owner)_____

Yours Sincerely,

[*Your Name*]

[*Enclose a copy of the explanation of Creative Commons Licences given in Appendix 4 with this request letter*]

Appendix 3

Model Third Party Copyright Permission Request 3

[*Copyright owner's details*]

[*Date*]

[*Your name and address details*]

Dear [*Copyright owner's name*]

Request for Copyright Licence and Creative Commons Licence

My name is [*your name*]. I am completing a [*Masters / PhD / Professional Doctorate*] thesis at [*your academic institution*]. I am seeking your permission, in the form of a non-exclusive licence, to include your works in the online digital version of my thesis. The thesis will be available for anyone to access online via the Australian Digital Theses database and our institutional repository [*insert name/URL of repository*].

My thesis includes the following copyright material:

[*Description of work and source*]

From the following works for which I believe you hold the copyright:

[*Description of source*]

I wish to seek from you a limited, non-exclusive licence, for an indefinite period to include these materials for which you hold the copyright, in the online digital version of my thesis to be made available on the ADT database and [*your academic institution*] repository. Your works will be fully and correctly referenced.

Please sign below if you agree and return to me a copy. If you do not agree, or do not hold the copyright in the above works would you please notify me of this in writing.

I _____ agree to grant you a non-exclusive licence for an indefinite period to include the above materials for which I am the copyright owner, into your online digital thesis. I understand that this thesis will be made available on the internet for online public access via the Australian Digital Theses database and your institutional repository.

In addition, I seek a licence from you to make the copyright material described above, available to the public through my online digital thesis under a Creative Commons licence. A full explanation of the Creative Commons licenses is attached.

I have indicated below which, if any, Creative Commons licence I am seeking permission from [*Copyright owner's name*] to use to make the copyright material described above, available to the public through my online digital thesis by checking and initialling the appropriate circle as the 'Thesis Author'.

[*Copyright owner's name*] has indicated below which, if any, Creative Commons licence [*Copyright owner's name*] agrees to allow [*your name*] to use to make the copyright material described above, available to the public through their online digital thesis by checking and initialling the appropriate circle as the 'Copyright Owner'.

Creative Commons Attribution 2.5 Australia Licence:

- Thesis Author
- Copyright Owner

Creative Commons Attribution-Share Alike 2.5 Australia Licence:

- Thesis Author
- Copyright Owner

Creative Commons Attribution-Non-Commercial 2.5 Australia Licence:

- Thesis Author
- Copyright Owner

Creative Commons Attribution-Non-Commercial-Share Alike 2.5 Australia Licence:

- Thesis Author
- Copyright Owner

Creative Commons Attribution-No Derivatives 2.5 Australia Licence

- Thesis Author
- Copyright Owner

Creative Commons Attribution Non-Commercial No Derivatives 2.5 Licence

- Thesis Author
- Copyright Owner

I do not grant a Creative Commons Licence.

- Copyright Owner

Date:

Signature (Copyright Owner)_____

Yours Sincerely,

[*Your Name*]

[*Enclose a copy of the explanation of Creative Commons Licences given in Appendix 4 with this request letter*]

Appendix 4

Attachment to Model Third Party Copyright Permission Requests 2 and 3:

Attachment: Creative Common Licenses

About Creative Commons

Creative Commons is a non-profit organisation that aims to increase access to creative works by providing flexible copyright options for creators. Creative Commons offers a range of licences that enable authors and artists to make their work more freely available for others to access and use. Creative Commons is similar to the open source software movement, but is aimed at non-software material, such as text, music, films and pictures. Like the open source movement, Creative Commons builds upon the “all rights reserved” of traditional copyright to create a voluntary “some rights reserved” system.

The licensing elements

The Creative Commons licences currently offer four licensing elements that creators can use to increase or restrict how their work may be used. These are:

Attribution – A compulsory element, which applies to all Creative Commons licences. This means that whenever a work is copied or redistributed under a Creative Commons licence, credit must always be given to the creator.

Non-Commercial – This lets others copy, distribute, display, and perform the work — and derivative works based upon it — but for non-commercial purposes only.

No Derivative Works – Lets others copy, distribute, display, and perform only verbatim copies of a work, not derivative works based upon it.

Share Alike – Allows others to distribute derivative works only on the same licensing conditions that govern the original work.

Note: A licence cannot feature both the Share Alike and No Derivative Works options. The Share Alike requirement applies only to derivative works.

Core licences

By mixing and matching the above licensing elements, creators are able to choose between the following six core licences:

Attribution (BY) - This is the most accommodating of the licences offered, in terms of what others can do with your work. It lets others copy, distribute, remix, tweak, and build upon your work, even commercially, as long as they credit you for the original creation. This licence is further specified at <http://creativecommons.org/licenses/by/2.5/au/legalcode>.

Attribution Non-commercial (BY-NC) - This licence lets others copy, distribute, remix, tweak, and build upon your work, as long as it is not for commercial purposes and they credit you as the original author. This licence is further specified at <http://creativecommons.org/licenses/by-nc/2.5/au/legalcode>.

Attribution Share Alike (BY-SA) - This licence lets others remix, tweak, and build upon your work even for commercial purposes, as long as they credit you and license any derivative works under identical terms. This licence is often compared to open

source software licences. All new works based on yours will carry the same licence, so any derivatives will also allow commercial use. This licence is further specified at <http://creativecommons.org/licenses/by-sa/2.5/au/legalcode>.

Attribution Non-commercial Share Alike (BY-NC-SA) - This licence lets others remix, tweak, and build upon your work, as long as it is for non-commercial purposes, they credit you and they license their new creations under identical terms. All new work based on the original will carry the same licence, so any derivatives will only allow non-commercial uses. This licence is further specified at <http://creativecommons.org/licenses/by-nc-sa/2.5/au/legalcode>.

Attribution No Derivatives (BY-ND) - This licence allows use of a work in its current form for both commercial and non-commercial purposes, as long as it is not changed in any way or used to make derivative works, and credit is given to the original author. This licence is further specified at <http://creativecommons.org/licenses/by-nd/2.5/au/legalcode>.

Attribution Non-commercial No Derivatives (BY-NC-ND) - This licence is the most restrictive of the six core licences. It is often called the "free advertising" licence because it allows a work to be copied and shared with others as long as it is for non-commercial purposes and credit and a link are provided to the original author. This licence does not allow the creation of derivative works, or the use of the work for commercial purposes. This licence is further specified at <http://creativecommons.org/licenses/by-nc-nd/2.5/au/legalcode>.

For more information visit <http://creativecommons.org.au> or <http://creativecommons.org>

Appendix 5

Copyright Compliance Table

Higher Degree Research Candidate Name: _____

Date	Page of thesis	Copyright item	Amount in relation to the whole work	Nature/Quality of item utilised (essential, important or material part of the item)	Substantial Part (Yes/No)	Fair Dealing (Yes/No)	Other Exception	Permission Required and Requested (Yes/No)	Permission Obtained (Yes/No)	Remaining Issues

