

Copyright and Publishing Essentials for Dissertations

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What is protected by copyright?

“Original works of authorship fixed in any tangible medium of expression, now known or later developed”

Copyright Act of 1976, 17 U.S.C. § 102(a)

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What kinds of works are protected?

- ✓ Literary works
- ✓ Musical works, including any accompanying words
- ✓ Dramatic works, including any accompanying music
- ✓ Pantomimes and choreographic works
- ✓ Pictorial, graphic, and sculptural works
- ✓ Motion pictures and other audiovisual works
- ✓ Sound recordings
- ✓ Architectural works
- ✓ Software

What is not protected?

- × Ideas
- × Titles
- × Facts (Data)
- × Processes
- × Works prepared by the U.S. Federal government*
- × Works that are in the public domain (copyright expired)*

How long does copyright protection last?

- **Published prior to 1923** – public domain
- **Published between 1923-1977** – it depends on whether the work was published with a copyright notice and whether copyright was renewed
- **Published 1978-present** – life of the author + 70 years
- **Out-of-print** ≠ **out-of-copyright**

Wait, what are copyrights?

Exclusive Rights:

- Reproduce (copy)
- Distribute copies to the public
- Adapt - translate, dramatize, fictionalize
- Display publicly – pictorial, graphic, sculpture
- Perform publicly – motion pictures, AV works

Subject to a number of exceptions

Plagiarism vs Infringement

- *Plagiarism* is an appropriation of someone else's work without giving proper credit
 - *Infringement* is using someone else's work in violation of his or her rights
- You can plagiarize without infringing copyright
- You can commit copyright infringement without plagiarizing

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Using copyrighted works in your dissertation– do you need permission?

- Review all material you might use in your final product
- Are the works you are using protected?
 - Public domain?
 - Creative Commons or open access?
 - Your own works?

If included works are copyrighted, you need permission IF your use does not qualify as FAIR USE

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Fair Use

“Fair Use” allows for use of a copyrighted work without permission, if for purposes such as criticism, commentary, news reporting, home use, education and research.

Four factor test for determining whether such a use qualifies as fair use:

1. Purpose and character of the use
2. Nature of the copyrighted work
3. Amount and substantiality of the portion of the work used in relation to the whole work
4. The effect of the use upon the potential market for the work

Purpose and character of the work

Key issue – is your use of the work *transformative*?

Transformative uses are often considered fair uses.

- If you contribute something new and original, it more likely is transformative.

Other considerations for this factor:

- Commercial or noncommercial use?
- Are you commenting on the work or using for its original purpose?

Nature of the work

- Use of published works is more likely to be fair than use of unpublished works.
- Use of scholarly works is more likely to be fair than use of more creative works such as fiction, art or music.

Amount used

- There is ***no bright line*** – no set number of words, pages, minutes, or other quantifiable limit.
- Ask yourself:
 - Are you using only as much as you need to make your point?
 - Are you copying the central “heart” of the work?
 - What proportion of the original are you using?
- In most cases, it is best to use a “decidedly small” portion

Effect on the market

- Does your work, or the excerpt you are using, supersede the demand for the original work or otherwise compete with it?
 - If not – if your work reaches a different need or marketplace than the original – then it is more likely to be fair.
- Does the author or rights holder of the work offer a license to uses similar to yours?
 - Use of it without the license could harm the market for the license.

Analyze Factors

- Review sub-factors for and against fair use for each factor and consider how heavily overall the factor weighs for or against fair use
- **Factor 1 will almost always favor Fair Use for Non-profit education**
- **Factor 1 and 3 overlap**
 - The educational purpose interacts with the appropriateness of the amount used
- **Factors 3 & 4 overlap**
 - If you are using more, impact on the market is more likely
 - Be mindful of the heart for the work
- **Factor 4 is due more weight in the case of non-transformative uses.**

Fair Use Summary

- Flexible
- Useful
- Uncertain
- Always requires a fair use analysis

Questions?

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Getting Permission

1. Identify the copyright holder – may be the author or publisher or someone else (www.copyright.gov/records).
2. Obtain the address of the copyright holder (email or web form).
3. Sent copyright permission request (written or electronic)

OR

Use a collective licensing agency

- Books and journal: Copyright Clearance Center (usually the easiest, never free)
- Music: BMI or ASCAP
- Film: Motion Picture Licensing Corp. or Swank

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Your Rights as a Copyright Holder

- **Remember these?**

- Reproduce (copy)
- Distribute copies to the public
- Adapt - translate, dramatize, fictionalize
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Copyright and your Dissertation

- You hold the copyright in your dissertation.
- Copyright is automatic from the time your work is fixed in a tangible form.
- You do not need to register the copyright for it to be effective
 - Registration required for filing an infringement claim and statutory damages.
- You do not need to include the © symbol
 - It is still a good idea to do so to put others on notice that you own the copyright.

Is your dissertation made up of published articles?

- **You may not own the copyright**
 - Review the publication agreement(s) you signed
 - Review publisher policies about dissertations
 - Ask permission

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Should I Embargo my dissertation?

- **Yes:**

- Your dissertation is likely to result in a patent application
- You have reason to know publishers in your field consider ETDs prior publications

- **No:**

- You want broad access to your work
- You want to provide access to potential employers
- You are so proud of your work you want to share it!

Publishing Beyond your Dissertation

- Protect your rights
- What do you want to be able to do with your work?
- Many publishers' default agreements are copyright transfers!
- Read and negotiate



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