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Keeping Your Thesis Legal

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Keeping Your Thesis Legal



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Legal Disclaimer

Copyright is an incredibly complex area of the law. None of the authors of this work are intellectual property lawyers, and while advice is given from a best professional understanding standpoint it should not be regarded or construed as legal advice. If you need to see specific legal advice with respect to copyright you are advised to consult a specialist lawyer

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Introduction

This booklet accompanies workshops presented by the Archbishop Alemany Library, focused on theses and rights risk management. It gives you more information on the copyright implications of making your thesis available on the web, as required by your graduate program. While its focus is primarily on digital theses (eTheses) rather than traditional printed versions, there is some coverage of the copyright law differences between the two different formats.

What is an eThesis?

An eThesis is an electronic or digital copy of the finally accepted print thesis, which at Dominican University of California (Dominican) we store, display, and distribute as a PDF document. An eThesis is as close as possible in appearance and layout to the printed version, but may have some elements removed for copyright reasons. Digital theses are accessed many more times by readers around the world than are the printed theses, benefiting the author's professional career and recognition. Dominican is joined by many US and major international universities in mandating the submission of digital theses.

Questions & Answers

If you do have any questions, please contact the University's Scholarly Communications Librarian. Scholarly publications and use a wide variety of terms with which you may not be familiar. While we have endeavored to keep their use to a minimum, a glossary of key terms is provided toward the end of this booklet.

Benefits of eTheses

In 2019, all of the top 10 most downloaded items from Dominican Scholar were student theses. Each month, master's theses are consistently the mostly highly accessed materials.

Theses are an often untapped and underutilized source of unique research and information. The print copies are usually hidden away in library stacks and are rarely consulted locally; yet around the world researchers are keen to read them. Because eTheses are more easily found through open access search tools like Google, anyone around the world can read them. Consequently, digital theses represent an important step forward in making your research widely available, offering visibility and enhanced professional reputation within your field. Dominican Scholar also

tracks the geographical origin and number of hits for each eThesis accessed. Proof of widespread interest in your work can be very useful in persuading an academic publisher to publish your thesis as a book.

Including Copyrighted Materials

When including material authored by someone else (generally referred to as third party material) in your thesis, you should be concerned about copyright. Under US law, authors automatically hold copyright in anything they write or otherwise create; they do not need to apply for it or mark their work with the © mark for copyright to take effect. Ideas, data and facts cannot be copyrighted,

Third party copyright relates to any material that is not your own creation, or where you are no longer the rights holder (e.g. a published article)

although the presentation of ideas and facts may be. In addition to content copyright, the format or layout (typography) of an item may have rights associated with it. Images within a work, e.g. book illustrations, may also have copyright over and above that embodied by the book as a whole. Finally, authors can assign parts of their copyright to someone else, for example, a publisher. Therefore, any individual or corporate entity that currently holds the rights to exploit and reuse an item is known as the rights holder.

If the published item (and this includes periodical articles) is from the US, copyright in that item lasts until 70 years after the end of the calendar year in which the author (or the last surviving author, if there is more than one author) dies. If the item is published outside the US, it gets the same protection as it would get in its home country. If you are not sure whether an item is in copyright, ask the Library for advice.

Table 1: What exactly is a rights holder?

The owner of the copyright for an item is usually referred to as the rights holder. This may be the author but for academic articles and books is probably the publisher. Only the current rights holder has the exclusive right to:

- Copy the work
- Issue copies to the public
- Perform, show or play the work
- Broadcast the work
- Adapt the work
- Rent or lend the work

If you are not the rights holder and you want to do any of these things, you need the rights holder's permission.

Using Third Party Copyrighted Material

General Considerations

The law states that less than a substantial part of a third party work may be copied or quoted without permission or infringement of copyright. Unfortunately, as "substantial" is not defined, it will depend on the significance of the passage within the whole item. Graham Cornish (2009 p.18) cites the copying of

a report's recommendations and conclusions - even if these constitute only three paragraphs of an 80-page report – as potentially being classed as substantial.

Fair Use and Other Considerations

Fair Use is an exception to copyright law that allows the use of a limited amount of copyrighted material without acquiring permission from the copyright holder. Fair Use is intentionally vague in its definition to allow for a broad interpretation.

The US Copyright office states: "There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission."

Table 2: Have I used substantial third party items in my thesis?

- | | |
|--|--|
| <ul style="list-style-type: none"> • Long extracts of text from works by other people • Illustrations or images • Figures or tables | <ul style="list-style-type: none"> • Maps & charts, even those you have redrawn yourself • Material of your own that has been previously published |
|--|--|

If you have included any of these items in your thesis, then permission from the rights holder may be required if you cannot claim *Fair Use*.

Four factors must be taken into account when determining Fair Use:

1. The Purpose and Character of Use (The Transformative Factor)

How are you using the work? Has the material taken from the original work been used to create something new? Generally, parody, commentary or criticism, and quotations are considered Fair Use. If you use a long extract of text or an illustration or figure and it is integral to your argument, then this might count as commentary or criticism and is generally considered Fair Use.

2. The Nature of the Copyrighted Work

Is the material taken from a work of fiction or non-fiction? Was it previously published or is it an unpublished manuscript? Works of fiction and unpublished materials have more weight in the eyes of the courts and material taken from works of fiction or unpublished works probably won't pass the Fair Use test.

3. The amount and substantiality of the portion used

How much of the original work did you use? Less is better. Nevertheless, even if you use a small amount of the original work, if it is considered the "heart" of the work, it might not qualify as Fair Use. In other words, if you use a small but memorable part of the work, you may be violating copyright.

4. The effect of the use upon the potential market

Are you depriving the copyright owner of potential income? If you might detrimentally affect potential sales for the copyright owner, you cannot claim Fair Use. Courts generally look at this factor as the most important consideration in determining Fair Use.

So, if you are using a substantial amount of a third party work in your thesis and are unable to claim the Fair Use provision detailed above, you will need to seek permission for its inclusion.

Practical Steps

Check the copyright of the item in question to see what you are allowed to do with it. You may be allowed to reproduce the material in your eThesis without asking permission. Alternatively, the material may be licensed under a Creative Commons license, allowing non-commercial re-use.

Table 3: How would I check for copyright & permission?

For items on the internet	For items from a book or journal
<ul style="list-style-type: none"> • There may be a copyright notice at the top or bottom of the main page. • If not, check for terms and conditions on the site. 	<ul style="list-style-type: none"> • Check the publisher’s site for their permissions department. • Sometimes this can be located under the “Contact Us” information. • If the journal or book was accessed electronically, you should check the license terms associated with gaining or purchasing access to the item.
<p>For material from archives, galleries, museums or other similar location</p>	
<ul style="list-style-type: none"> • Check their terms and conditions of access. • These may be on your entry ticket otherwise contact the relevant organization. 	
<p>Remember, copyright does not have to be claimed, it is automatically owned by the rights holder. Although an item may be on the internet without a copyright notice, this does not mean it is copyright free.</p>	

If permission is required, you will need to **ask** the rights holder’s permission. This may be the author or, more likely, the publisher. **Be specific** about exactly what material you want to include and about what is going to happen to your eThesis. **Keep copies** of all the letters or emails you send and of all replies.

Creative Commons Licenses

Creative Commons (often abbreviated to CC) is one of the most popular alternatives to absolute copyright. It allows the rights holder, generally the original creator, to detail certain circumstances under which work can be reused and shared by others without the need to seek permission. In this way items shared under one of the Creative Commons licenses will allow you to include it within your eThesis without the need to seek formal permission. Licenses are generally selected by combining one or more elements from the CC license mix.

Table 4: Creative Commons License Mix

- | |
|--|
| <ul style="list-style-type: none"> • BY – By Attribution (original source and author must be cited) • SA – Share Alike (the work this is included in must also be shared under the same CC license) • NC – Non-Commercial (the material cannot be republished or shared in an item that is sold or otherwise used in any commercial work) • ND – No Derivatives (the material cannot be changed, paraphrased, built upon or incorporated in any way to other publications) |
|--|

For example, this booklet is shared under a **BY-SA-NC-SA** license, which means that others can rework and develop the material in this booklet, so long as they credit its authors and license their new creations under the identical terms. It should be noted that if an item is shared under a license with a NC element, then you would not be permitted to include it in a commercial publication such as a book; but you would be allowed to include it in your eThesis. Creative Commons licenses can be applied to all forms of media and are not solely limited to text-based works.

Particular Material Types

In this section we will look at the uses of different kinds of media within your eThesis, other than purely text-based items.

Illustrations, Figures and Tables

If you have used an illustration purely as decoration, then this would certainly require express permission; however, if you have used an image or figure as part of your argument or to illustrate a point in a single instance, then this may count under one of the exceptions detailed above, and you may not need permission. If you have reused multiple figures from the same source, then this may well be considered as harming the commercial interests of the rights holder, in which case you would almost certainly need to obtain permission. As always, if you are in any doubt as to the rights or license situation for images, always seek permission for inclusion from the rights holder.

Maps and Charts

If you have used a map from organizations like the *David Rumsey Historical Map Collection* or *US Geological Survey*, check the relevant license to see if the use is permitted. If you have obtained the map from a book, check who owns the copyright in the map. Ownership should be indicated either with the map, or at the beginning or end of the book.

Some older maps or charts may be out of copyright, but never assume this is the case for all items, and always fully acknowledge the source of the material. If the rights are unclear, it is usually better practice to seek permission than to risk inclusion of items that may breach copyright. Remember, if you have exercised due diligence in seeking permission, then you may take the low-risk option of including it in your thesis, provided that you keep documentation of your efforts.

Where a map's copyright owner is no longer in existence or is unable to be traced, then you may wish to include it as an orphan work (see below).

Photographs and Images

These can be an especially tricky area of copyright, as even if you were the original photographer, you may be taking photographs of materials in which someone else holds rights (e.g. artworks in a museum). It is also important to remember that a photograph on the Internet or a website is likely to be copyrighted even if it doesn't explicitly state this fact. In terms of including images in your eThesis, the following general rules apply.

Owing to the potential confusion in this area, if you are using a significant number of pictures in which there are third party copyright considerations, then it is advisable to contact the Scholarly Communications Librarian for advice at the earliest possible juncture.

Table 5: Using Images - rules of thumb

If someone else created the original image or photo

- You need to seek permission from the photographer or rights holder.

If you created the original image or photo, you are the rights holder

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

If the image is a photograph of people

- You need their formal permission to use the photo in the digital thesis, unless they are incidental to the photo (e.g. a picture of a building with people passing by)
- If the people are deceased, it is unlikely you will need to ask anyone else for permission, but please use caution if the photographs are of a sensitive nature or used in a manner which could cause distress to friends and relatives.
- If the photograph is of minors or of an otherwise sensitive nature you may need to discuss the ethics of its inclusion as well as seeking permission.

If the image is of other images (e.g. portraits in a museum)

- You would need to seek permission of the gallery or painter.
- This applies even if you took the picture yourself, as most galleries have terms and conditions associated with the reproduction of their works.

If the image is from a photosharing site like Flickr or on a blog

- Reuse may depend on the specific licenses attached to the image. If none are given assume reuse in your eThesis requires formal permission
- Some people share images for which they are not the rights holder. Reusing these, even with permission is a high risk approach!

Internet Material

Although material on the web is freely accessible, this does not mean it can be freely re-used without permission. Check the top or bottom of the main site page for links to copyright information, terms and conditions, or terms of access to see what is allowed. In some cases, e.g. databases, the rights to reuse the material might even be held by rights holders external to the site owners.

Other Types of Material

Contact the Library to ask advice if you are using musical scores, audiovisual material, multimedia, or anything not mentioned above. These items may well include multiple sources of copyright (e.g. music

inside a video), and may need a meticulous permissions approach to several different rights holders for each item. As always, be prepared to factor in a number of weeks to ensure clearance of items where you think there may well be multiple copyright issues.

Adaptation

You cannot adapt portions of any published literary, dramatic, or musical work (including scores, films and soundtracks) without the permission of the rights holder. (Adaptation of an artistic work is not an infringement.).

If you have demonstrated a significant degree of skill and judgment in creating a new work, this could be classified as an adaptation. Such works may then qualify for copyright protection in their own right; however, the end product may or may not be sufficiently distinct to constitute a new item free from the original rights. In such cases, it is usually advisable to seek formal permission for inclusion.

Adaptation in this context means to take an original object and then add significant information to it or rework it in some way to create a 'new' object.

In view of the complexity concerning adaptations, you are strongly urged to discuss this matter with the Scholarly Communications Librarian.

Seeking Permission

Start asking for permission as soon as you realize that you need to!

While an exemption applies for the items you have included in the copy of your thesis submitted to your thesis advisor, this exemption does not apply to same material included in the eThesis version. You **MUST** have permission for all substantial third party copyrighted items in your eThesis, unless you can satisfactorily apply the *Commentary or Criticism* defense. If you are in doubt about whether you need to have formal permission to include third party material in your eThesis, the safest course is to ask permission.

Table 6: Seeking copyright permissions - protocol

1. Identify the rights holder
2. Formally request permission to include item
3. Keep records of all correspondence
4. Repeat request after 6 weeks if you haven't heard anything (twice)
5. Leave plenty of time to get all permissions

When you submit your thesis, you will sign to agree that all appropriate copyright permissions have been sought and obtained, so the **responsibility for seeking permission is YOURS**.

Formal Permission

While gaining formal written permission may sound like a daunting task, in truth it is little more than ensuring you have documentary evidence that permission for inclusion has been granted. During your research you may find it easiest to seek permission as soon as you are sure you will be including a third party item in your work (Note: if you decide at a later point not to include an item, you can simply remove it from the thesis; you don't need to inform the rights holder that you have changed your mind). A verbal agreement is not sufficient and would be difficult to prove at a later date in court. If, for example, during a telephone conversation with a fellow researcher, you receive permission to reuse portions of a work, then it is good practice to follow up with a written formal request as soon as possible.

Written permission does not need to be in print, as a dated email is likely to be sufficiently attributable for your purposes. Some rights holders, however, do not possess readily locatable email addresses, and in all likelihood, you will probably send a letter or two as well. Remember postal replies will take longer than email, and you will need to factor this into your permissions-seeking timetable.

Sampler Permission Request

There is no absolute format that a permissions request must take, but a good practice example is shown below. You have permission to adapt and to make use of this permission request template for the purposes of your own copyright clearances, as per the Creative Commons license for this whole booklet.

Table 7: Reuse Permission Request Template

<p>Re: Permission to Use Copyrighted Material in a Master's Thesis</p> <p>Dear _____,</p> <p>I am a graduate student, at Dominican University of California, completing my master's thesis entitled "_____."</p> <p>My thesis will be available in full text on the Internet for reference, study and/or copy. Except in situations where a thesis is under embargo or restriction the electronic version will be openly accessible through Dominican Scholar, the institutional repository of Dominican University of California, the Library's online catalog, and also through web search engines. These rights will in no way restrict re-publication of the material in any other form by you or by others authorized by you.</p> <p>I would like permission to allow inclusion of the following material in my thesis [insert copy or detailed explanation including the title of the article or book, the figure or page numbers of the material used , the journal name, year, volume or unique publication identifier, the publisher and year]. The material will be attributed through a citation.</p> <p>Please confirm in writing or by email that these arrangements meet with your approval. Thank you for your help.</p> <p>Sincerely,</p> <p>Your Name</p>
--

The key points that you should always highlight are:

- The item for which you are seeking permission to reuse
- Where you are seeking to reuse it (your thesis)
- How and where your thesis will be published and found by others
- A short background to your need (program requirements, scholastic reasoning)

As in all communication of this kind, be specific, be polite and wherever possible, be brief; a rights holder may have limited time to read extensive communications and in some cases may simply not feel they have the time to respond to a longer request. You can always expand on any requirements in subsequent correspondence.

Locating Rights Holders

In many cases the rights holders you will be approaching will be academic publishing houses, for whom the details will be easily locatable on the Internet; however, you may wish to include materials for which you need to seek out a specific individual or entity not easy to locate. While you may spend some time tracking them down yourself or decide to treat materials as an orphan work (see below), agencies exist to aid in their location, such the *Society of Authors* website.

Previously Published Work

Publishing a portion of your thesis prior to its submission is a common and well established academic practice. You may need to consider carefully, however, your rights to reuse your own work within your thesis at this point, if any rights have been gifted or otherwise assigned to a publisher.

Remember, you must clearly attribute any portion of your work that has appeared elsewhere prior to your thesis submission, simply to avoid charges of self-plagiarism by your thesis advisor.

If any portion of your thesis has been already published, perhaps as a journal article, you must check the agreement that you signed with the publisher. Even if you assigned copyright to the publisher, the agreement may still allow you to use the material in your thesis, so look for any academic exemption clause. If it does not expressly note this or you are unable to find the agreement, then you must directly approach the publisher for permission.

If you edit or remove any elements from your eThesis that appear in your printed version, then you must let the Dominican Scholar Administrators know, so they can highlight this in the online record.

On the other hand, you may wish to include a complete published version of an article written by you within the thesis. Normally, when these articles are included, they appear in the appendices of the thesis print version, but are commonly removed from the eThesis due to copyright restrictions. Ideally, you should seek permission from the publisher to include them, as they will contain significant elements of third party material such as your publisher's type-setting, logo and branding.

Keep in mind that because many publishers will be disinclined to grant permission for these full articles to be made available within an institutional repository, your time may be better spent elsewhere in your research. In this case for reasons of copyright, remember to notify the library at the time you submit your eThesis, if there are any elements of the thesis that do not appear in the electronic version.

Including 3rd Party Materials in Commercial Publications

Throughout this booklet we have considered the steps in gaining permission to use materials within your eThesis. If, subsequent to your doctorate, you wish to publish an article or a book using material from your thesis, then you would need to seek permission again from any third party rights holders -- unless you specifically state in your original request that you will be seeking to publish using the materials in question. Permission is normally granted to reuse an item ONLY under the circumstances originally requested. It is not unknown in these instances for a rights holder to request payment of a fee.

Managing Permissions

Dealing With Rights Holder Responses

If you are able to gain a response from the rights holder, a number of outcomes are possible:

1. **Yes, permission granted.** At the relevant place in the thesis, make sure you fully reference the item and acknowledge that permission has been granted (e.g. *Picture reproduced with permission of Mr. T.C. Smith.*)
2. **Yes, permission granted but with conditions.** These will vary between different rights holders.
 - 2.1. They may require a link to the published material, or a more formally worded acknowledgement in the text.
 - 2.2. They might even request that the eThesis not be made available immediately. You can request an embargo (delay) when you submit your thesis to address this.
3. **Fee required for permission.** Some rights holders will request a fee to include their item in your thesis.
 - 3.1. You and your thesis advisor will have to discuss ways in which this fee can be paid.
 - 3.2. If you decline to pay the fee, then permission is not granted and you will have to proceed as below.
4. **No, permission not granted**
 - 4.1. If the copyright holder declines permission, then you could remove the material from your eThesis (see *submitting an edited thesis* below).
 - 4.2. The Fair Use exception may let you keep the item in the print thesis.
5. **Unclear**
 - 5.1. You may have been in touch with a rights holder, but at the point of thesis submission they may not yet have granted or declined permissions to include their items.
 - 5.2. If it looks likely that they may (eventually) grant permission, place an embargo on your thesis. You can always request this to be lifted once the rights holder grants permission.
 - 5.3. Alternatively, you can deposit an **edited thesis** (see below) with the item removed. If at a later date the rights holder gives permission, Dominican Scholar will happily update the version of your thesis available online. Please discuss this option with the Scholarly Communications Librarian prior to submission.

Ensure you keep copies of the correspondence between you and the rights holders for some years after you graduate, as you may need to refer to them again in the unlikely event of a challenge to your inclusion of the material.

Orphan Works

Orphan works is the term used to describe works where the rights holder cannot be identified or contacted. This can happen if the publisher has gone out of business or repeated attempts to contact them have failed. It may also be that the rights holder has predeceased your request, and you have been unable to establish to whom the rights have passed. The US Copyright office realizes the

problems caused by orphan works and is in the process of updating legislation and advising Congress on next steps.

If you do not wish to apply for a license, as you will see below, you can opt to remove the potentially risky item from your eThesis; however, it may be that the removal will cause structural or scholarly problems with your research narrative. In this eventuality you will need to decide whether to accept a modicum of risk involved in retaining the integrity of your eThesis as a whole.

If you need advice over seeking permission or interpreting the responses of a rights holder, then remember to contact the Scholarly Communications Librarian for further advice.

Copyright Transfer Agreements

Publishers' copyright transfer agreements (**CTA**) for journals can be complex, lengthy, confusing or, in some cases, impossible even to locate. If you have ever formally published a journal article or a book chapter, then you will probably have been asked to sign a CTA prior to publication. Upon signing one an author will likely have transferred the economic rights for reproduction and reuse of their work to the publisher, although their moral rights will have been retained. While some more cunning authors might have made use of something like the SPARC Authors Addendum to retain their rights, the vast majority of them will have complied with the publisher's standard terms and conditions.

Moral rights are the right of the author to be identified as the originator of the work, and cannot be transferred. It also includes the right for their work not to be the subject of distortion, modification or derogatory treatment.

Economic rights allow for the control of the reproduction and reuse of a piece of work. These can be sold, transferred or gifted to another entity.

Thus, if you are reusing portions of journal articles in your thesis, you will probably need to examine the CTAs for the journals in question. Thankfully, the **SHERPA/RoMEO** site allows you to search by publisher or journal and provides links to publisher copyright transfer agreements. Using this site is much quicker than simply searching Google. The majority of information on the SHERPA/RoMEO site is aimed at archiving papers in open access repositories, rather than including items in a thesis, so for the latter you will need to visit the publisher's site directly.

Remember, if you do run into any difficulty in understanding what rights a CTA does or does not transfer to a publisher, then speak to the Scholarly Communications Librarian for more help.

Unable to Contact a Rights Holder

If you are unable to trace a rights holder and do not obtain an orphan works license, or you do not receive a response from a rights holder to repeated requests for permission, you have two options open to you.

1. **Submit an edited eThesis to Dominican Scholar (no risk)**

- 1.1. Remove any items/sections where you were unable to locate a right's holders, or obtain permission.

- 1.2. You will need to notify the Scholarly Communications Librarian that this is an incomplete copy of your work so they can add the information to your thesis record.
 - 1.3. Submit a copy of your unedited thesis to the Library for archival purposes
 - 1.4. If taking the third party material out renders the thesis unusable, then you will need to speak to the Scholarly Communications Librarian about the possible options available. There is no legal risk associated with this approach.
2. **Submit with the items still included (potential risk)**
- 2.1. Where you have made a number of repeated and documented efforts to contact a rights holder and have received no response, then you could choose to include the item.
 - 2.2. You must be able to show upon request for some years afterwards the lengths to which you went to contact a rights holder.

Some risk is associated with this second approach. The rights holder may at some point object to items being used and ask for Dominican Scholar to take down the thesis and potentially threaten legal action. At this point you will need to demonstrate that you used all **due diligence** in trying to obtain permission.

The only 100% risk free approach to dealing with third party copyright items is to have clear permission granted for each one or to remove any items with uncertain permissions status from your eThesis.

Publishing Your Thesis

If you think you might want to publish part of your thesis in its current form and you have a publisher in mind, you should check the publisher's policy. If you think that your chances of publication will be harmed, or you have not yet identified a suitable publisher, request a thesis embargo. It should be noted that a number of recent studies (see References) have indicated that the risk of publisher rejection of a manuscript that has been previously shared as an eThesis is negligible.

Remember, you are still required to submit an electronic copy of your thesis even with an embargo.

If you think you will be publishing it after significant revisions or changes, then this may not be an issue, but it is worth discussing it with your supervisor and the prospective publisher, if possible.

Embargoes

An embargo means that the University has formally restricted access to your thesis. The embargo period will not normally exceed three years and over that period no public access to the eThesis is permitted – a record of the eThesis will be available in Dominican Scholar that will show the thesis title, author name and abstract, but the eThesis, itself, will not be accessible.

When is an Embargo Needed?

Occasionally, there are circumstances in which open access is not appropriate. To protect this type of material, access to these research outputs can be restricted when the University accepts that there are good reasons for doing so.

A thesis embargo may be appropriate when the thesis contains material that is:

- commercially sensitive - in these cases 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 - in these cases an embargo can provide time for ethical sensitivities to lessen where the thesis includes material relating to an identifiable individual, though 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

Some research students may also have concerns that adding an electronic copy of their thesis to Dominican Scholar may harm their ability subsequently to publish their work commercially. Normally, this is not the case and studies have shown that making work available through a repository such as Dominican Scholar can, in fact, help secure a publishing contract.

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

Requesting an Embargo

You may request an embargo when you submit your eThesis to Dominican Scholar; the maximum embargo period is three years. If you wish a permanent embargo of your work, you may request one in

writing addressed to the Scholarly Communications Librarian. If your request is approved, a record of your thesis will be available in Dominican Scholar, but it will be permanently inaccessible.

Please note that even if you request an embargo, you must still submit an electronic copy of the final version of your thesis - this will then be stored securely until the end of the embargo period.

Choosing Between an Embargo or Immediate Availability

To gain the maximum career benefits from your eThesis, you will want to make it available as soon as possible. As noted above, however, in order to assuage some publishers' concerns over prior availability of original work on the web, you may wish to delay availability. How long that period should be is a question best discussed directly with your thesis advisor.

An embargoed thesis will be listed in the library catalogue, but will not be available at any time during the period of embargo. To all intents and purposes, nothing will direct employers or collaborators towards it, if they wish to know more about your research, unless you have published from it. If ethical, commercial or national security reasons intervene, you may decide to restrict access to your thesis.

Remember, if it is only an issue with elements of your thesis (e.g. a table of data or extract from a book), then you could always choose to edit this from the eThesis. This action would allow you to gain the benefits without exposing yourself to any form of legal risk.

Funding Bodies

If you are externally funded, check the conditions of the grant. For example, the grant making body may own the research you produce or apply certain conditions to its reuse. If such conditions appear to clash with your academic program mandate, seek advice from your funding body. The funder may agree to allow re-use of the material subject to an embargo on the eThesis. Some funders may insist on commercial secrecy of their funded work and may require that you seek a full embargo. In this case it is best to discuss this matter with your thesis advisor as soon as possible.

Final thoughts

- If you are in doubt about an item's copyright and reuse status, ask permission from the rights holder.
- Don't leave seeking permission until the last minute, as it can take weeks to arrange.
- Remember, if permission is still outstanding on the day that you submit your print and electronic theses, you can place an embargo on the eThesis. You can always request its removal once permission is granted.
- Keep copies of all correspondence for at least 5 years after you graduate. You may need to refer to them again.
- Reference and acknowledge everything, even if you have not had to ask permission. This is both courteous and good academic practice.
- Ask for help if you need it: the Library is here to help.

Getting Help

If you have questions about copyright, whether it's yours's or someone else's please contact the University's Scholarly Communications Librarian as soon as possible at dominican.scholar@dominican.edu.

Glossary of Terms

Copyright – (simply) is legal protection for an author/ creator which restricts the copying and reuse of an original work they have created. Often shortened to simply *rights*.

Copyright transfer agreement (CTA) – legal form commonly signed by authors transferring reproduction and reuse rights in a work to a publisher for the purposes of publication.

Creative Commons – a form of open licensing that permits certain categories of reuse chosen by the rights holder.

Dark archive – a term commonly used to refer to an offline store for electronic or physical information where content is safely maintained but is not made accessible.

Embargo – a permanent or semi-permanent restriction in an electronic and printed thesis' availability; only grantable upon application to Senate and the Graduate Dean.

eThesis – electronic digital facsimile of the print doctoral thesis

Fair Use, criticism and review – a poorly defined right to reuse substantial portions of a work without seeking formal permission.

Formal permission – written or emailed correspondence with a rights holder granting permission to reuse/include a work in your thesis.

Dominican Scholar – the University's online open access institutional repository.

Mandate – a Senate & VC approved university requirement with respect to deposition of research in the institutional repository (LRA)

Open access – making a publication or a thesis available without placing any kind of fee based restriction on accessing it.

Rights holder – an individual or corporate entity who owns the rights for reuse of any materials.

Third party copyright – material in which others hold rights.

References and Further Reading

Australasian Digital Theses Program, <http://adt.caul.edu.au/>

Brown, J. & Sadler, J. (2010). ETheses: Impact on future publication: RSP Briefing Paper, Online at: <http://www.rsp.ac.uk/documents/eTheses-briefing-papers/ImpactOnFuturePublication.pdf>

Business Link, Sample internet policies and notices: Sample website terms and conditions <http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1076142035&type=RESOURCES>

CAIRSS (CAUL Australian Institutional Repository Support Service), <http://www.caul.edu.au/caul-programs/cairss>

Cornish, G. (2009). Copyright: interpreting the law for libraries, archives and information services. 5th ed. London, Facet Publishing.

Creative Commons (2011) About the licenses, <http://creativecommons.org/licenses/>

EThOS- Electronic Theses Online Service, <http://ethos.bl.uk>

Graduate School, Writing and Submitting Your Doctoral Thesis, <http://www2.le.ac.uk/departments/gradschool/training/eresources/study-guides/thesis> 20
UNIVERSITY OF LEICESTER · LIBRARY Keeping your Thesis Legal

www.le.ac.uk/library

Graduate School, Final Submission of your Thesis, <http://www2.le.ac.uk/departments/gradschool/training/eresources/study-guides/viva/after/final-submission>

Intellectual Property Office, Due Diligence checklists - <https://www.gov.uk/government/publications/orphan-works-diligent-search-guidance-for-applicants>

JISC, Copyright Law Overview (12 June 2014) <http://www.jisclegal.ac.uk/ManageContent/ViewDetail/ID/3588/Copyright-Law-Overview-12-June-2014.aspx>

Library, Theses: Benefits and rights, <http://www2.le.ac.uk/library/find/lra/theses>

Library, Submitting an electronic thesis, <http://www2.le.ac.uk/library/find/lra/submittingtheses>

Library, Theses: embargoes, <http://www2.le.ac.uk/library/find/lra/embargoes>

Networked Digital Library of Theses and Dissertations, <http://www.ndltd.org>

- McCutcheon, A. M. (2010). Impact of Publishers' Policy on Electronic Thesis and Dissertation (ETD) Distribution Options within the United States (PhD thesis), Ohio University, <http://etd.ohiolink.edu/send-pdf.cgi/McCutcheon%20Angela%20M.pdf?ohiou1273584209>
- McMillan, G. (2001). Do ETDs Deter Publishers?, *College and Research Libraries News*, 62(6), 620-621, online at: <http://scholar.lib.vt.edu/staff/gailmac/publications/pubrsETD2001.html>
- Orphan works diligent search guidance for applicants, Intellectual Property Office, 17 September 2014, <https://www.gov.uk/government/publications/orphan-works-diligent-search-guidance-for-applicants>
- Owen, T.M. et al. (2009). ETDs in lock down: Trends, analyses and faculty perspectives on ETD embargoes, online at: <http://drum.lib.umd.edu/handle/1903/9087>
- Padfield, T. (2007) *Copyright for Archivists and Managers*, 3rd ed. London, Facet Publishing
- The Society of Authors, <http://www.societyofauthors.org/>
- SHERPA/RoMEO, <http://www.sherpa.ac.uk/romeo/>
- SHERPA, Glossary of open access abbreviations, acronyms and terms, <http://www.sherpa.ac.uk/glossary.html>
- SPARC (2006) Using the SPARC Author Addendum to secure your rights as the author of a journal article <http://www.arl.org/sparc/author/addendum.shtml>
- The Copyright and Rights in Performances (Quotation and Parody) Regulations 2014 - http://www.legislation.gov.uk/ukxi/2014/2356/pdfs/ukxi_20142356_en.pdf
- University of Leicester, Theses and dissertations (international), <http://www2.le.ac.uk/library/find/theses/theses#theses-int>
- University of Leicester, Copyright support, <http://www.le.ac.uk/copyright>
- University of Texas at Austin: FOB: Firms out of Business database, <http://tyler.hrc.utexas.edu/fob.cfm>
- University of Texas at Austin, WATCH: Writers, Artists and their copyright holders, <http://tyler.hrc.utexas.edu/>
- Fair Use. (2012). United States Copyright Office. Retrieved from <http://www.copyright.gov/fls/fl102.html> on 4/21/2015