

1. Copyright for students and researchers

(a) What this section is about

This section of the Guide outlines copyright issues that arise for students and researchers in the tertiary education sector, for instance when preparing assignments, writing and publishing research theses or dissertations. It covers ownership and protection of copyright created in student and research works. It also outlines what students and researchers can do to avoid infringement when using third party works.

(b) The works you create

(i) Ownership of copyright in your original work

When you are enrolled in a course of education, it is inevitable that you will be producing copyright material. In most cases, you own copyright in any original works you create, including assignments, theses or dissertations. There is no need to put a copyright notice or symbol on your work to get copyright protection. The copyright arises automatically as soon as your work is written down or recorded in some way.

(ii) Rights as a creator of material

Copyright ownership means you may choose how your original works may be copied and communicated, within certain limits. Generally, you have the exclusive right to copy, publish, publicly perform, play or show, and communicate your work to the public (broadcast, e-mail or upload onto the internet). Third parties who wish to copy or quote from your work or do other things restricted by copyright, may only do so within the scope of the law or with your permission. Alternatively, you may choose to make your work available under an open access licence such as Creative Commons (which permits users of the work to make use of them more freely than is permitted under copyright law). Researchers often choose to make their work available on open access repositories to increase readership and citations.

(iii) Staff researchers

a. Employees. Under the law, if you create material as an employee, your employer generally retains copyright in any works you create in the course of your employment. However, this general rule can be changed by contract terms. If you are a staff member at a TEI, the terms of your employment agreement may have an impact on whether you own or control copyright in any work you produce.

b. Contractors. If you are contracted by a TEI or third party to undertake research, the terms of your research contract will usually set out who owns copyright in the work you produce. The commissioning rule in the Copyright Act may be relevant to you.

(iv) Collaboration with others

If you have collaborated with a colleague or fellow student to create a copyright work, you may both own copyright in the material created. This means that you have joint rights to use and authorise others to do restricted acts with the work. It is a good idea to agree at the outset of any joint research or study project how ownership in any copyright material will be held and the extent to which you each

may make use of the end product or authorise others to use it and under what terms.

(i) **What you can do to protect your work**

The best way to protect a work you have created is to ensure you have evidence that you created it. Keep dated notes, drafts, manuscripts and recordings used to produce your work. Put the universal copyright symbol ©, your name and the date on your work to let everyone know you claim copyright in the work. From a practical perspective, this helps people to contact you if they want to ask permission to use your work, although it does not give the work protection it would not otherwise have. It is also necessary to formally assert your moral right to be identified. For example, “ABC asserts her right to be identified as author of this work in accordance with the Copyright Act 1994”.

(c) **Using other people’s material**

(i) **Responsibility to respect copyright**

Tertiary students and researchers rely heavily on other people’s content during their course of study or research. You refer to, copy and quote from all types of books, journals, course packs, images, diagrams and more. Some disciplines actively produce, perform, play and show musical, audio and video content during the course of their studies. At a tertiary level, you are responsible for your own learning and research output. You have a responsibility to respect the rules that protect and encourage the production of third party material that you rely on. It is important to familiarise yourself with the rules that govern what you can and cannot legally do with copyright material. Students writing a thesis or engaged in research where there is a likelihood of publication need to be especially mindful of using third party copyright content because publishing a work generally takes it out of the context in which educational or research copyright exceptions and licences apply.

(ii) **Acknowledge material you didn’t create**

Often you will be allowed to copy or use copyright material by virtue of being a researcher or student carrying out a course of study at an education institution. You have access to privileges with copyright material which eliminate the need to get permission from copyright owners in many cases. However, regardless of whether you have a special entitlement to copy in any situation, it is vital to acknowledge material you did not create. Where possible, attribute illustrators, photographers and all other creators as well as writers. In a tertiary setting, it is standard practice to provide a full bibliographic citation of your reference materials.

(d) **Statutory exceptions for students and researchers**

(i) **Fair dealing for research or private study purposes**

a. Broad permission. Under the Copyright Act, a fair dealing with a work for the purposes of your research or private study does not infringe copyright. This means you may copy from any copyright material, including written works, art, photographs, maps, charts, diagrams or sheet music when engaged in research or study. However, this material is for your own use, not the research or study purposes of anyone else. You are limited to making only one copy on any occasion.

b. Fair dealing guidelines. There is no set amount that may be copied under fair

dealing. It is a qualitative assessment in each case and there are a number of factors listed in the legislation which are taken into account determining what is fair. As a general guide, copying a small extract for your own research or study is permissible. In some cases, copying of a whole work, such as a poem, journal article or a photograph would also be fair. Copying a whole publication would never be fair, unless it is not available for purchase. It would be less fair to copy a large or important part of a work than to copy a small or unimportant part. As a general rule, ensure you copy no more than is necessary in any case to make your point. If your use has the potential to impact on the copyright owner's legitimate market for their work, it is unlikely to be fair dealing.

c. *No publication.* When you are engaged in research or study, you are only permitted to make one copy of material at any one time under the fair dealing provision. The permitted use is also for your own research or study (no one else's). It follows that publishing the copied material or communicating it to the public in an online repository will take your use out of the scope of fair dealing for research or study.

(ii) Fair dealing for criticism or review

Fair dealing with a work for criticism or review allows use of copyright material when you are critiquing or reviewing material for example in an academic paper, book review or film. The important point to remember is that you always need to acknowledge the author and the title of the work that you are critiquing or reviewing. There is no restriction on the number of copies that can be made for critique or review purposes. However, there is still a requirement that the dealing be fair and the factors taken into account in determining fairness in relation to research or private study apply here. As a general guide, ensure you do not copy any more in your critique or review than is necessary to get your point across.

(iii) Anything done for examination purposes

You are permitted to copy copyright material for the purpose of any examination. This includes any material you copy in assignments, theses and dissertations or other work that counts towards your final grade in your course of study.

(i) Incidental copying

It is not an infringement of copyright if you incidentally copy any work in your artistic work, sound recording, film or communication work and publish, play, show or communicate your work to the public. For example, if you make a documentary film which includes a painting on a wall in the background, this is likely to be considered incidental copying. Incidental copying of a musical work or lyrics, will still infringe copyright if it is deliberately copied. For example, permission will be needed to include music on a film soundtrack, even if it is not an essential feature of the scene. Permission will not be required if part of a song on the radio is accidentally captured in a live broadcast.

(f) Course materials provided by lecturers

(i) Copyright applies

Many of the teaching materials you receive as part of your course of study, such as articles from journals and chapters from books or other publications, are protected by copyright. Often these are copied for or otherwise made available to you under special copyright licences entered into by your TEI. These licences allow for the copying by your institution in a more extensive way than would otherwise be allowed

under the Copyright Act. Often there are conditions attaching to the copyright licences. Importantly, copying and sharing of material must only be done for the educational purposes of the institution in providing course packs and other material to enrolled students carrying out a course of study at the institution.

(ii) Course packs and other materials provided in hard copy form

If copyright materials are provided to you in hard copy form they are only for your own education purposes and will generally display a copyright notice to this effect. You can quote from or copy extracts from the material for the purposes of exams or assessments or for your own research or study. However students are not allowed to make photocopies or digitise this material to share with others unless a special copyright exception applies (such as limited use for fair dealing criticism or review) or you have permission from the copyright owner.

(iii) Material provided in electronic form

If copyright material is available to you in electronic form, it is for your own educational purposes only. Students are generally allowed to print a copy for themselves but not to make extra copies or share with others unless a special exception or permission applies. For example, you are not allowed to upload these materials on social media sites such as Facebook even if it is for research or study purposes.

(g) When you need to ask permission

(i) Publication generally

If you intend to publish your work, include it in your institution's online research repository or use it for purposes outside your own education or research, it is likely that you will need to get permission from owners in any third party material you have incorporated in your work. For students writing a thesis or dissertation, this needs to be considered at an early stage in your project, not at the time of submission. Particular care needs to be taken whenever you upload copyright material on to the internet or communicate it via the internet. Once material is on the internet it becomes widely available and can be instantly copied and recommunicated.

(ii) Where a statutory exception does not apply or no longer applies

You have statutory privileges to use third party copyright material for educational and research purposes such as examinations, assignments and theses. The statutory permissions do not apply if you publish or communicate your work to the public. Depositing a digital copy of your thesis or dissertation in your institution's online research repository, in a library catalogue, or any other online service or platform makes it a publication because it is posted on a publically available space. This does not come within the purpose of research or study, examination or assessment. So even if your original use of copyright material was allowed, you will need to get permission before you upload or publish your work externally.

(iii) Where you co-own or jointly own copyright in a work

If you have collaborated with someone else to create your work, you will need to get permission from the other owner/s before you copy, publish, or do any of the other copyright restricted acts unless your use is covered by a statutory exception.

(iv) Where your intended use is outside the scope of an existing licence

You may already have permission to use copyright material for one purpose, for example, reproduce and incorporate text in screenplay you are writing. However, you need to get permission for any additional or subsequent use, such as performing and recording that work.

(v) Using public domain works that remain in copyright overseas

It is not an infringement of copyright to use public domain works. However if you copy from a work that is still under copyright protection in another country and you intend to distribute your work in that country or post it on a publicly accessible website, you need to get permission.

(h) How to get permission to use a copyright work

(i) Licence agreements

Getting permission to incorporate copyright content into your work, such as extracts or images, requires you to enter into an agreement with the copyright holder of a work. It is a good idea to ask for permission at the beginning of your project after considering all possible uses you may wish to make of your work. This agreement (sometimes called a “licence”) must give you the right to use the work in the ways that you need that are otherwise restricted by copyright.

(ii) Steps involved in permission request

- a. *Be sure the material is copyright-protected.* Although the majority of content used in an education context is capable of copyright protection, in some cases it will not be. If copyright has expired then the work falls into the public domain, meaning permission is not required. Some works do not attract copyright protection, such as certain public documents and small or insubstantial works like names, titles and headlines.
- b. *Determine precisely which rights you require.* Do you intend to communicate your work to the public, such as uploading the work on a publicly accessible website? How much of the third party content do you wish to use, how do you propose to use it and for how long?
- c. *Identify the copyright owner.* Make sure you identify the person who owns the copyright. Remember that the creator of the work may not be the copyright owner and there may be more than one copyright owner in a single work. There may be other owners in illustrative works. If the work you wish to use has been published, it is advisable in the first instance to contact the publisher to ascertain ownership status. In many cases the publisher will be authorised to grant permission for use. Often collecting societies and professional associations of copyright creators are a useful source of information when trying to identify or locate the copyright owner.
- d. *Contact the copyright owner to request permission.* Ideally you should request permission in writing, either by letter or e-mail. Provide a brief description of yourself and your work and explain precisely how you would like to use their work. It is a good idea to emphasise, if relevant, that the work is for educational, non-commercial purposes. Remember that the copyright owner is entitled to require payment of a fee or impose certain conditions.
- e. *Follow up.* If you do not receive a response to your written request for permission, send a follow-up letter.

f. *Keep records.* Keep a record of all communications including documentary evidence of any permission you receive.

(iii) What if permission cannot be obtained?

a. Paraphrase or reduce. If you have been unable to obtain permission to reproduce copyright material, it is prudent not to include it in your work. However, in many cases it may be feasible to paraphrase the content rather than make a direct copy. Remember it is not an infringement of copyright to refer to someone else's work or to ideas discussed in it. Another option is to reduce the amount of material copied so that it falls within a statutory exception (although fair dealing with copyright material for research or study does not permit publication of that material).

c. Suppress. If you have been unable to obtain permission to reproduce copyright material and you intend to publish your thesis in an online repository, you may consider placing the unauthorised material in a separate section of your thesis which can then be suppressed from public view. In such case, once material has been removed, you may replace it with a statement such as "This text [or this image] has been removed for copyright reasons" and cite full bibliographic details.

d. Provide URL links. Simply providing a URL link to material you are referring to is not reproducing the material so there is no risk of copyright infringement.

e. Acknowledgment no substitute for permission. In all cases it is important to reference the material you reproduce or quote from. However, acknowledging the source of a work is not a substitute for permission. If you need permission to use all or part of a work, identifying the author or the work is not enough.

(i)

Publishing your work

(i) Publishing contracts

Often in submitting your work for publication, you may be required to sign a publishing contract. It is important to read the contract carefully and consider what rights it is asking you to give to the publisher and how this will impact what you can do with your work in future. You are always free to negotiate terms of a publishing contract before you sign it.

(ii) Effect of assigning your work to a publisher

Sometimes publishing contracts will require you to transfer or "assign" your copyright to the publisher. An assignment to be legally effective must be in writing and signed by the person transferring copyright. An example of the language is: "The author hereby transfers, assigns, or otherwise conveys all copyright ownership, including any and all rights incidental thereto, exclusively to the publisher." Once you have assigned copyright to someone else you give up all of your copyright rights to that work which limits your ability to make certain uses of the work. For example, you cannot print, distribute copies, post the work online or in your institution's online research repository without permission from the publisher.

(iii) Retaining rights in works you publish

a. If you are publishing your research and would like to include it in your thesis in future, then ensure you retain copyright ownership. You can do this by giving the publisher a non-exclusive licence to publish your work (so you are not prevented from publishing your work in the future). Alternatively, ensure you include wording

in the agreement giving you the specific right to include it in your thesis and deposit that thesis in a research archive or depository.

b. Other rights you may wish to reserve to yourself include:

- the ability to make copies for distribution to your students or colleagues;
- uploading the published final version to your personal website or blog;
- republishing the work in a subsequent work of your own;
- ensuring rights revert to you if the article is not published;
- granting permission to others to use your work for specified purposes (such as non-profit or educational purposes).

c. SPARC (Scholarly Publishing and Academic Resources Coalition) has created a useful model Author Addendum that authors may use to modify a publisher's contract to allow retention of important rights. For more information, see <https://sparcopen.org/>.

(iv) Publisher prohibitions on publication of “prior versions”

If you intend to publish work which is based on or derived from a research assignment or thesis that has been included in your institution's online digital repository or otherwise published online (for example through Creative Commons), check that the chosen publisher does not prohibit publication of “prior versions”.

(i) Open access publication

Many authors in an academic or research context choose to publish their work openly so that anyone may access their work online and free of charge. Some funding agencies will require open access archiving for their research to maximise the use of research works. Benefits of open access for authors are that you can reach a wider audience and achieve greater readership and more citations for your work. It is important to familiarise yourself with the open access platform you wish to use and understand the limitations it may place on your future use of the work. Sherpa Romeo is an online database that provides information about publisher open access policies from around the world and provides summaries of self-archiving permissions and conditions on a journal-by-journal basis. This can tell you what version of an article can be deposited, where it can be deposited, and any conditions that are attached to that deposit.