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Keeping Your Thesis Legal

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Legal Disclaimer

Copyright is an incredibly labyrinthine area of law. Neither of the two authors of this work are intellectual property lawyers, and while advice given is from a best professional understanding standpoint it should not be regarded or construed as legal advice. If you need to seek specific legal advice with respect to copyright you are advised to speak to the institutional legal representative in the first instance or consult a specialist lawyer.

Introduction

This booklet accompanies workshops presented by the University of Leicester Library Service, focussed 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 the University. 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 Leicester we store 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. eTheses are accessed many more times by readers around the world than the printed thesis, benefiting the author's professional career and recognition.

Many UK and major international universities have mandates for thesis similar to Leicester. As well as being deposited into **the Leicester Research Archive (the LRA)** your eThesis will also go into the British Library's **ETHOS** national online thesis scheme site as well.

Questions & Answers

If you do have any questions, please do get in touch with the *Copyright Administrator* or *LRA Team*, but remember to see the **Frequently Asked Questions** at the end of this booklet first. Scholarly publication and open access use a wide variety of terms with which you may not be familiar. While we have endeavoured to keep their use to a minimum, a glossary of key terms is provided towards the end of this booklet.

Benefits of eTheses

University of Leicester research students are required by the University's Regulations to provide a licensed digital copy of their completed, accepted thesis into the Leicester Research Archive (LRA), in addition to providing a bound paper copy to the University Library.

Theses are an often untapped and underutilised source of unique research and information. The print copies are usually hidden away in library stacks and rarely consulted locally, and yet around the world researchers are keen to read them. This is why eTheses are an important step forward in getting your research widely read and respected. eTheses are more easily found as well through search tools like Google and because they are made available through open access, anyone around the world can read them.

In 2010 the second most highly accessed item on the whole LRA (which includes research from every University department) was an eThesis. eTheses have shown up every month in the most highly accessed materials in 2011 as well.

For you the benefits are a combination of gaining more readers, developing your professional reputation and visibility as a researcher within your field. The LRA also collects statistical information on how many times and where in the world your eThesis is being accessed from. This can be very useful when approaching an academic publisher in convincing them that work based on your thesis is worth considering for publication as a book.

International Schemes

The UK is not alone in creating extensive online collections of electronic theses. Many places like the US, Australia and the Scandinavian countries in particular have been doing this longer and on a much greater scale than the UK to date.

- **Australasia**, *Australasian Digital Theses Program*
- **Europe**, *DART-Europe E-theses Portal*
- **Sweden**, *Dissertations.Se*
- **USA**, *Networked Digital Library of Theses and Dissertations*

The need for UK based research to remain visible and accessible in a global market is just one more reason why the University of Leicester has mandated the licensing of an electronic facsimile of your thesis on the LRA.

Including Copyrighted Materials

In your thesis you will want to include material by other authors and this material will be copyrighted. An author automatically has copyright in anything they write or otherwise create, under UK law they do not need to apply for it or mark their work with the © mark for it to apply. Ideas and facts are not copyrighted, although 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**.

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)

If the published item (and this includes periodical articles) is from an EEA¹ country, 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 EEA, 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 | • Broadcast the work |
| • Issue copies to the public | • Adapt the work |
| • Perform, show or play 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.

¹ EEA = European Economic Area, which comprises the countries of the EU plus Iceland, Liechtenstein and Norway.

Fair dealing for criticism or review

Despite these exclusive rights, the law specifies a number of permitted acts in relation to the use of published copyright works (generally referred to as **third party material**), and one of these, fair dealing for criticism or review, may be applicable to material in your thesis.

The law says 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 pp.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 a substantial.

If you think you are using a substantial amount of material then you may still be able to include the excerpt, providing you use one of the fair dealing defences. **Criticism or review** is a reason for claiming fair dealing. For example, if you use a long extract of text or an illustration or figure, and it is integral to your argument, and not too large, then this might count as *criticism*. However, please remember this is not clear cut! For instance, Tim Padfield (2007, p. 116) reports that *a court will consider what proportion of the user's work consists of quotation, and what proportion consists of comment and analysis*. You should also consider whether inclusion of the material would interfere with the commercial interests of the rights holder of the original work. If it does, then you should seek permission.

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

Fair dealing is not defined in law either, although according to Cornish (2009, p.44) it is copying as long as the copying '*does not harm the copyright owner but nevertheless benefits either the individual or society generally.*'

Using third party copyright material

General considerations

Using correctly referenced and attributed third party material in a **printed** thesis does not need permission – under the law, the printed thesis is *examination material*, and so permission is not required. **However**, by placing the thesis online you are making the work available to the public, and so **permission must be obtained**.

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
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If you have included any of these items in your thesis, then permission from the rights holder may be required if you cannot claim the criticism or review defence, or if its inclusion may harm the commercial interests of the rights holder.

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** licence, allowing non commercial re-use.

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

<p>For items on the web</p> <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. <p>For material from archives, galleries, museums or other similar locations</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 organisation. 	<p>For items from a book or journal</p> <ul style="list-style-type: none"> • Check the publisher's site for their permissions department. • Sometimes this can be located under the <i>Contact Us</i> information. • If the journal or book was accessed electronically, you should check the licence terms associated with gaining or purchasing access to the item.
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Remember, copyright does not have to be claimed, it is automatically owned by the rights holder. Although an item may be on the Web without a copyright notice this **does not** mean it is copyright free.

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 for seeking 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

- **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 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 some of the differences between making use 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 need to have express permission as it falls outside the bounds of fair use. However, if you have used an image or figure as part of your argument, then this may count as **criticism**, and you may not need permission if it is a single instance. 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 organisations like the *Ordnance Survey* or *Digimap*, check the relevant licence to see if the use is permitted. It should be noted that the OS is especially protective of its rights and that reuse of any of its maps without express permission is a high risk approach. If you have obtained the map from a book, check who owns the copyright in the map, this 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 (for instance, Ordnance Survey maps over 50 years old are 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 take the steps towards seeking permission than risk inclusion of items that may still potentially 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 you keep documentation of your efforts.

Where a map's copyright owner is no longer in existence or 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. However, in terms of including images in your eThesis the following general rules apply.

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 pages 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 higher risk approach!

As this is not a straightforward area, if you are considering using a significant number of pictures in which there are third party copyright considerations then it is advisable to contact the Copyright Administrator for advice at the earliest possible juncture.

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, musical (including scores, films and soundtracks) or artistic work without the permission of the rights holder.

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 enough to be a new item free from the original rights, and it is usually advisable to seek formal permission for inclusion all the same.

As this is quite a complex area, you are strongly suggested to discuss this matter with the Copyright Administrator if you are including such adapted objects in your eThesis.

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

Seeking Permission

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

While an *examination exception* applies for the items you have included in your printed thesis, this rule does not apply to same material in the eThesis version. You **MUST** have permission for all substantial third party copyrighted items in your eThesis, unless you can satisfactorily apply the *criticism or review defence*. If you are in doubt over whether you need to have formal permission to include Third Party material in your eThesis or not 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 a daunting task, in truth it is little more than ensuring you have some documentary evidence that an agreement has been made to allow inclusion of a work in your thesis. 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.

However, a verbal agreement is not sufficient and would certainly be difficult legally to prove at a later date. If, for example, during a telephone conversation with a fellow researcher they grant you permission to reuse portions of their work, then it is good practice to ensure you follow this up with a written formal request as soon as possible.

Written permission does not need to be in print, a dated email is likely to be sufficiently attributable for your purposes. However, some rights holders do not possess readily locatable email addresses and in all eventualities 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 timescale.

Sample Permission Request

There is no absolute format that a permissions request must take, but a good practice example is shown below (Table 7). Permission to adapt and 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: Permissions Request Template Message

<p>Dear [NAME],</p> <p>I am currently in the process of finalising my PhD thesis on, which I am shortly due to submit to the University of Leicester.</p> <p>During my research, I came across the following article/image and would like to request your permission to include it in an electronic copy of my thesis.</p> <p>The University of Leicester requires their students to submit an electronic copy to their institutional repository, Leicester Research Archive (https://lra.le.ac.uk/), which is a digital archive of research outputs from the University. By submitting my thesis to the LRA it will be available in full, to anyone, free of charge ("open access").</p> <p>I believe that the inclusion of is integral to my thesis and would therefore be extremely grateful if you could grant permission for me to use this in the manner detailed above. Naturally, I would fully reference your work and include any acknowledgement you deem appropriate.</p> <p>Please let me know if you require any further information, otherwise thank you in advance for your kind consideration.</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)
- A short background to your need (the Leicester regulations, 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 well wish to include materials for which you need to seek out a specific individual or entity whom are not as easy to locate. While you may spend some time tracking them down yourself, or decide to treat materials as an orphan work (see below) there are agencies that exist to aid in their location, such as WATCH and the Society of Authors websites.

Previously Published Work

Publishing a portion of your thesis prior to its submission is a common and well established academic practice. However, you may need to consider carefully your rights to re-use 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 examiners.

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 educational 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 LRA 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.

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

Including 3rd Party Materials in Commercial publications

Throughout this booklet we are considering 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 also be seeking to publish using the materials as well. It is not unknown in these eventualities for a rights holder to request or expect a fee to be paid.

Permission is normally granted to reuse an item ONLY under the circumstances originally requested

Managing Permissions

Dealing with Rights Holder Responses

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

1. Yes, permission granted

- a. At the relevant place in the thesis, make sure you fully reference the item and acknowledge that permission has been granted.
 - i. E.g. *Picture reproduced with permission of Mr T.C. Smith.*

2. Yes, permission granted but with conditions

- a. These will vary between different rights holders.
- b. They may require a link to the published material, or a more formally worded acknowledgement in the text.
- c. They might even request that the eThesis not be made available immediately. You can request a embargo (delay) when you submit your thesis to address this.

3. Fee required for permission

- a. Some rights holders will request a fee to include their item in your thesis.
- b. You and your supervisor will have to discuss ways in which this fee can be paid.
- c. If you decline to pay the fee, then permission is not granted and you will have to proceed as below.

Fees, and the amounts rights holders charge are an uncertain science. While it is not uncommon to encounter one of the order £7 to £50, higher and lower fees are not unknown. In some rare cases rights holders have been known to even ask the requestor what they consider an appropriate fee.

4. No, permission not granted

- a. If the copyright holder declines permission, then you could remove the material from your eThesis (see *submitting an edited thesis* below).
- b. The examination exception will let you keep the item in the print thesis.

5. Unclear

- a. You may have been in touch with a rights holder, but at the point of thesis submission they may not have granted nor declined permissions to include their items.
- b. 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.
- c. Alternatively you can deposit an **edited thesis** (see below) with the item removed. If at a later date the rights holder gives permission, the LRA will happily update the version of your thesis available online.

Ensure you keep copies of the correspondence between you and the rights holders for some years after you graduate, 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 either be identified, or contacted. This can happen if the publisher has gone out of business (the FOB website may be of use), 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. Normally this is the next of kin but they may have been willed or subsequently sold to a third party, further complicating the matter.

In these instances, a judgment has to be made as to the level of risk associated with using the extract. 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 may decide to accept that the modicum of risk you are exposing yourself to is worthwhile when contrasted with the benefit to 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 Library's **Copyright Administrator** for further advice.

Copyright Transfer Agreements

Publishers' copyright transfer agreements (CTA) for journals can be complex, lengthy, confusing or in some cases impossible to even locate. If you have ever formally published a journal article or a book chapter then you will probably have been asked to sign one 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 a work, and cannot be transferred. It also includes the right for their work not to be subject to derogatory treatment.

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, which can be much quicker than simply searching Google. However, the majority of information on the SHERPA/RoMEO site itself is aimed at archiving papers in open access repositories, rather than including items in thesis, so for the latter you will need to visit the publisher's sites directly.

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

Remember, if you do run into any difficulty in understanding what rights a CTA does or doesn't transfer to a publisher, then speak to the **Copyright Administrator** or **LRA Administration team** for more help.

Unable to Contact Rights Holder

If you are unable to trace a rights holder or receive no response to repeated requests for permission, you have two options open to you.

1. Submit an edited eThesis to the LRA (no risk)

- a. Remove any items/sections where you were unable to locate a right's holders, or obtain permission.
- b. You will need to notify the LRA that this is an incomplete copy of your work so they can add the information to your thesis record.
- c. Your unedited print thesis will be deposited in the library.
- d. If taking the third party material out renders the thesis unusable, then you will need to speak to the LRA team about the possible options available. There is **no legal risk** associated with this approach.

2. Submit with the items still included (potential risk)

- a. 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.
- b. You must be able to show the lengths to which you went to contact a rights holder for some years afterwards on request.

There is **some risk** associated with this second approach. The rights holder may at some point object to items being used and ask for the LRA 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 from 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 to the LRA Administration team; Even with a 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 limited or no public access to the thesis is permitted – the thesis is not made available in the University Library for reference nor is an electronic copy added to the Leicester Research Archive or ETHOS.

When is an embargo needed?

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

A thesis embargo may be appropriate where 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 as to whether adding an electronic copy of their thesis to the Leicester Research Archive may harm their ability to subsequently publish their work commercially. Normally this is not the case and studies have shown that making work available through a repository like the Leicester Research Archive can in fact help secure a publishing contract.

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

What does the embargo cover?

The thesis embargo may cover the electronic copy only or both the electronic copy and the print copy.

If the request is made on the grounds of concerns relating to subsequent publication, it is expected that an embargo applying to the electronic copy only will be sufficient. If the request is made on other grounds, an embargo applying to both the electronic copy and the print copy may be requested.

The maximum embargo period is three years. Requests for an embargo period of more than three years will not be approved.

Requesting an Embargo

Embargo requests will be considered by the Graduate Dean who will give you written notice of her decision. If the embargo is approved, you should retain a copy of the approval notice as you will need to bring this with you when you make the first submission of your thesis to the Graduate School Office.

Research students are required to provide with their request confirmation from their supervisory team that an embargo is appropriate.

Where the embargo is being requested on the grounds that it would harm the research student's ability to later publish their work, the request should include supporting evidence such as a letter from their publisher or an extract from the publisher's terms and conditions taken from the Sherpa-Romeo website.

A request for an embargo should be made to the Graduate School Office on or before the date at which your thesis is submitted for examination.

Please note that even if an embargo has been approved, 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. However, as noted above, in order to assuage some publishers' concerns over prior availability of original work² on the web you may wish to delay availability. How long that period should be is best a question discussed directly with your supervisor.

An embargoed thesis will not be listed on the library catalogue, nor made available at any time during the period of embargo (unless the embargo applies to the eThesis only). This includes scholars whom may visit the library in-person specifically for the purpose of consulting your work. To all intents and purposes there will be nothing to direct employers or collaborators towards if they wish to know more about your doctoral research, unless you

² Interestingly, you might like to think about the impacts of discussing your work through social networking sites (e.g. blogs) and how a publisher might view those as well.

have published from it. However, if for ethical, commercial or national security reasons you need to restrict access to your thesis then this is a decision you will have to take.

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; while leaving it in the print version. This 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 those appear to clash with the University 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 only. Some funders may however, 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 supervisor and the Graduate School 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, 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 good academic practice.
- Ask for help if you need it: the Library is here to help.

Getting Help

Remember, you are not alone. There are a lot of people around the University who will be able to support you with this process.

LRA ETheses Admin team

- Can help with matters relating to the mandate, copyright policies of publishers or journals, submitting digitally, and any possible clashes with grant making bodies. They are also happy to discuss practical issues relating to embargoes.
 - Email: eThesis@le.ac.uk or lra@le.ac.uk
 - tel. +44(0)116 252 2310
 - Web: www.le.ac.uk/lra

Tania Rowlett, Copyright Administrator

- Can advise on matters relating to copyright, including methods of seeking permission.
 - Email: copyright@le.ac.uk
 - tel. +44(0)116 229 7399
 - Web: www.le.ac.uk/copyright

Your Supervisor

- Can help by advising on how publication timescales relate to embargos, about setting up embargoes, and assist you in discussions with rights holders.

Graduate School

- Can advise on the appropriate method of obtaining an embargo and the University regulations relating to doctoral candidates.
 - Email: graduatedean@le.ac.uk
 - Tel. +44(0)116 229 7463

IT Help Desk

- Can advise on creating PDFs from Word and other word processing packages.
 - Email: ithelp@le.ac.uk
 - Tel. +44(0)116 242 2253

Hopefully now you have a better idea about how to seek permission for items in your thesis where other people have rights. If you're not sure or would like more details about anything please ask.

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 dealing, 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.
- **The Leicester Research Archive (LRA)** – 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 & 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>

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<http://www2.le.ac.uk/departments/gradschool/training/eresources/study-guides/viva/after/final-submission>

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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>

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/>

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Original 1.0 version by K. Nockles & Tania Rowlett 2008

Appendix: Frequently Asked Questions & Answers

If I redraw a map from an original, do I need permission of the copyright holder of the original to include my map?	Yes, as this is a substantial reuse of an object.
If there is an object in my photo, (e.g. a Coke can) do I need permission of the copyright holder of the object?	Probably not, as long as it's inclusion is either incidental (ie. not the primary reason for the photo) or, in terms of the print copy of your thesis only, is for the purpose of criticism and review.
If I can't find the copyright holder, can I leave the 3rd party material in?	The use of orphan works, as such materials are known, comes down to a judgement of risk. If the material is old, it is probably ok to leave in but always say where you found it. If you found it on the web, take care before using – it ought to be possible to trace a copyright holder by checking their terms and conditions of use.
Does the university view my thesis as a “published” work – that is, can I list it as such on my cv?	You could list it as published but would need to list the digital version.
Can a permanent embargo be lifted by me?	Yes – you would need to contact the Graduate School in the first instance.
I want to place a copy of my thesis in the local record office. Is this a problem?	You would need third party copyright permission as for the digital copy.
Does copyright last for 70 years after death of author even if someone else is the copyright holder?	Yes
Can we take no reply to our request as a “yes” – or make statement to that effect in letter (that is, “if I do not hear from you within one month, I will assume you are granting permission”)?	Again, this is a judgment of risk, but our advice is not to include any work for which you do not have permission to use.
What if the publisher has ceased to exist?	If it really has vanished, then there is nothing you can do to ask permission. Just keep records of where and how you looked for info. However, it is possible that the publication rights may have been sold onto another publisher. It is worth checking the Firms out of Business website (http://tyler.hrc.utexas.edu/fob.cfm).
If an eThesis is a “published work”, who is the publisher? The individual, or the University?	Effectively the individual because the University does not require a transfer of rights and would not claim publication.
Can the University mandate a student to submit a digital copy of their thesis if it was not in their original terms and conditions?	Only students submitting from 2008 onwards are mandated.
If I make a map from an aerial photo, do I need permission of the copyright holder of the photo to include my map?	Yes, unless your map is substantially different from the original and has involved a degree of skills and judgement in its creation.

Within what timescale do I need to submit the digital copy?	You should submit your eThesis at the same time as the print copy.
Are there any requirements about the settings of PDF – re. Images, version of Acrobat, etc.	The LRA Team can be asked for advice, as can IT Help Desk. There are some technical standards (compliant with version 9 of Adobe preferred)
Is LRA a source for Turnitin?	Potentially yes, like any well organised and indexed resource. However, this is not currently done on a systematic basis.
Do I need permission to include an item from the local record office?	Yes, if the item was not freely accessible or your use doesn't fall under the criticism and review defence. You may have had to sign some terms and conditions of use when you accessed the records, so it is worth checking what they say.
If I have quoted a line from an article, and referenced it correctly – can I use that without permission?	Yes, this is probably ok. If it is a more substantial section, like a number of paragraphs then it is less clear and it would be advisable to seek permission from the rights holder..
Do we add DOI's in LRA for theses?	No, we don't add DOI's, but what we do is create unique web addresses (URIs) or handles for each item that are stable and can be referred to directly.
Does the LRA link to already published articles from the thesis?	No, unless they are archived in the LRA as well – which we would be happy to do. Potentially we could add a citation to the metadata, but not a link if requested.
Do we add further metadata to the thesis if articles are published from it?	No, not routinely unless asked and then it would need to fall within our metadata scheme's rules.
Could the author of a thesis attach a Creative Commons licence to the entire work?	Yes, but please remember you would need to ensure that you have permission from any third party rights holders to make their material available in this manner.
Can images from sites containing Creative Commons licensed (or similar) material, such as Flickr, be used in a thesis	This would depend on the specific licence conditions attached to the image. You should also be aware that some people may make content available for which they do not have permission, therefore if the image is unlike any of their other postings it may not be theirs.
Do most people put an embargo on their thesis?	Around 30% of theses submitted have an embargo placed on them by their author.
What format should permissions be in?	Written form, either by letter, e-mail or fax. Verbal permission is unlikely to be sufficient.
If you didn't come to this presentation how would you know all of this information?	It is available on the Graduate School website, Library website and LRA website.
How do I get access to theses to view style/how they are set out etc?	Your supervisor can help, but look at those on the LRA and ETHOS for examples.
Will the University take legal action on my behalf?	The LRA deposit licence specifically states that the <i>"University of Leicester is not and will not be under any obligation to take legal action on behalf of me or other rights holders if there is an infringement of intellectual property rights or any other right in the Work"</i> .

How long is a 'substantial' or 'fair' piece of text?	The law makes no definition of substantial but it is important to remember that it relates to quantity and quality. A general rule of thumb is that if you are asking the question, then it probably <i>is</i> a substantial extract.
Is only work with a © on it copyrighted?	No, in the UK copyright automatically applies unless otherwise stated. You always needs to check the items terms and conditions of use/copyright information. However, in the USA you are required to register your copyright and use this symbol, it is not a requirement in other countries.