

# Keeping Your Thesis Legal

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Based on a work at <http://www2.le.ac.uk/library/downloads/copyright/Keeping%20Your%20Thesis%20Legal-Nov2014-v2.4.pdf>.

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### Legal Disclaimer

Copyright is an incredibly labyrinthine area of law. Neither of the two original authors of this work, nor subsequent adapters of the 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 consult a specialist lawyer.

## Introduction

This booklet accompanies workshops presented by the University of Gloucestershire Library, Technology and Information 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 the University of Gloucestershire is normally stored as a PDF document. Other digital formats will be accommodated where practical. 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 theses similar to the University of Gloucestershire. As well as being deposited into the University's Research Repository (RR) your eThesis will also be disseminated via the British Library's **ETHOS** (national online thesis scheme site) providing it is available as an open access publication.

## Questions and answers

If you have any questions, please contact the *Senior Librarian (Policy and Research)* [ethesis-help@glos.ac.uk](mailto:ethesis-help@glos.ac.uk), but remember to see the **Frequently Asked Questions** at the end of this booklet first. Scholarly and open access publications 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 Gloucestershire research students are required to provide a digital copy of their completed, accepted thesis into the University's Research Repository in addition to providing a bound paper copy to the Research Administration Office (RAO). Submission of your thesis in digital format is mandatory for all students who enrolled on or after the 1<sup>st</sup> February 2013 and is optional for students who enrolled before 1<sup>st</sup> February 2013. Refer to the *Research Student Handbook* and the *Academic Regulations for Research Degree Provision* for further information.

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 as open access publications, anyone around the world can read them.

There are 336 University of Gloucestershire eTheses available through **ETHOS** <http://ethos.bl.uk>

For you the benefits are a combination of gaining more readers, developing your professional reputation and visibility as a researcher within your field. Both the Research Repository and **ETHOS** provide 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 Gloucestershire has mandated the licensing of an electronic facsimile of your thesis on the Research Repository. Licensing is based on the University Author Consent Form for a Research Thesis.

## 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

**Third party copyright** relates to any material that is not your own creation, or where you agreed to transfer some or all of your rights to your publisher.

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 an EEA<sup>2</sup> 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 has the same protection as it would get in its home country. If you are not sure whether an item is in copyright, ask 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.

<sup>2</sup> EEA = European Economic Area, which comprises the countries of the EU plus Iceland, Liechtenstein and Norway.

## Using third party copyright material

### General considerations

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, 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.

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

<ul style="list-style-type: none"> <li>• Long extracts of texts from works by other people</li> </ul>	<ul style="list-style-type: none"> <li>• Maps or charts, even those you have redrawn yourself</li> </ul>
<ul style="list-style-type: none"> <li>• Illustrations or images</li> </ul>	<ul style="list-style-type: none"> <li>• Material of your own that has been previously published</li> </ul>
<ul style="list-style-type: none"> <li>• Figures or tables</li> </ul>	
<p>If you have included any of these items in your thesis, then permission from the rights holder <b>may</b> be required if you cannot claim the criticism or review defence, or if its inclusion may harm the commercial interests of the rights holder.</p>	

If you think you are using a substantial amount of material then you may still be able to include it, as the law specifies a number of permitted acts in relation to the use of published copyright works. Two of these, Criticism or Review, and the Quotation exception, may be applicable to material in your thesis.

### Criticism or review

For example, 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 *criticism*, providing the use is fair. However, 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.*

### Quotation

You can quote from any type of work, for example you can reproduce an extract of text, or an excerpt from a performance or recording, providing the use is fair. Unlike criticism and review this allows for illustrative use of extracts.

### Fair dealing and other considerations

Both the Criticism or Review and Quotation exceptions above state that any reuse must be 'fair'. JISC (June 2014) advise that 'the law does not give specific guidelines on what constitutes 'fair dealing'; but it may be relevant to take into account the following:

- the length and importance of the extract
- the amount used in relation to the commentary
- the extent to which the work competes with or rivals the work quoted
- the extent to which the use is commercial rather than academic'<sup>2</sup>

<sup>2</sup> JISC, Copyright Law Overview (12 June 2014)

UK copyright does, however, specify that for reuse to qualify for either of the exceptions:

- the work has been made available to the public,
- the extent of the extract is no more than is required by the specific purpose for which it is used, and
- the extract is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise)

So, if you are using a substantial amount of a third party work in your thesis and are unable to claim the Criticism or Review or Quotation defence 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** licence, allowing non-commercial re-use.

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.

*Table 3 How would I check for copyright and permissions?*

<b>For items on the web</b>
<ul style="list-style-type: none"> <li>• There may be a copyright notice at the top or bottom of the main page.</li> <li>• If not, check for terms and conditions on the site.</li> </ul>
<b>For items from a book or journal</b>
<ul style="list-style-type: none"> <li>• Check the publisher's site for their permissions department.</li> <li>• Sometimes this can be located under the <i>Contact Us</i> information.</li> <li>• If the journal or book was accessed electronically, you should check the licence terms associated with gaining or purchasing access to the item.</li> </ul>
<b>For material from archives, galleries, museums or other similar locations</b>
<ul style="list-style-type: none"> <li>• Check their terms and conditions of access.</li> <li>• These may be on your entry ticket otherwise contact the relevant organisation.</li> </ul>
<b>Remember</b> , 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 <b>does not</b> mean it is copyright free.

## 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*

<b>BY – By Attribution</b> (original source and author must be cited)
<b>SA – Share Alike</b> (the work this is included in must also be shared under the same CC license)
<b>NC – Non-Commercial</b> (the material cannot be republished or shared in an item that is sold or otherwise used in any commercial work)
<b>ND – No Derivatives</b> (the material cannot be changed, paraphrased, built upon or incorporated in 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; 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. However, if you have used an image or figure as part of your argument, or to illustrate a point, then this may count under one of the exceptions detailed above, 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. 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 submit 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 p. 13 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*

<p>If someone else created the original image or photo,</p> <ul style="list-style-type: none"> <li>You need to seek permission from the photographer or rights holder.</li> </ul>
<p>If you created the original image or photo, <i>you</i> are the rights holder</p> <ul style="list-style-type: none"> <li>Unless you have assigned it to someone else or</li> <li>You have photographed something in which the rights are owned by someone else (e.g. a pages in a published book).</li> </ul>
<p>If the image is a photograph of people</p> <ul style="list-style-type: none"> <li>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)</li> <li>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.</li> <li>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.</li> </ul>
<p>If the image is of other images (e.g. portraits in a museum)</p> <ul style="list-style-type: none"> <li>You would need to seek permission of the gallery or painter.</li> <li>This applies even if you took the picture yourself, as most galleries have terms and conditions associated with the reproduction of their works.</li> </ul>
<p>If the image is from a photosharing site like Flickr or on a blog</p> <ul style="list-style-type: none"> <li>Reuse may depend on the specific licenses attached to the image. If none are given assume reuse in your eThesis requires formal permission.</li> <li>Some people share images for which they are not the rights holder. Reusing these, even with permission, is a higher risk approach!</li> </ul>

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 Senior *Librarian (Policy and Research)* [ethesis-help@glos.ac.uk](mailto:ethesis-help@glos.ac.uk).

## 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 [ethesis-help@glos.ac.uk](mailto:ethesis-help@glos.ac.uk) to ask advice if you are using musical scores, audio-visual material, multimedia, or anything not mentioned above. These items may well include multiple sources of copyright (e.g. music within 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.

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 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.

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

As this is quite a complex area, you are strongly suggested to discuss this matter with the Senior Librarian (Policy and Research) [ethesis-help@glos.ac.uk](mailto:ethesis-help@glos.ac.uk) if you are including such adapted objects in your eThesis.

## 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 the 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 as to whether you need to have formal permission to include 3rd 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**. When you submit the digital copy of your thesis you should also submit evidence of relevant 3<sup>rd</sup> party copyright permissions obtained.

## 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 3rd 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*

Dear [NAME],

Subject: Copyright permission request

I am writing for permission to make a copy of an extract of the item referred to below, for inclusion in the digital version of my doctoral thesis, which is being submitted for examination to the University of Gloucestershire.

Digital versions of University of Gloucestershire doctoral theses are also made available as open access publications and can be downloaded from the University's Research Repository available at <http://eprints.glos.ac.uk/>

Bibliographic Information and details of the extent of the extract, title of the image, graph, etc. and the page numbers from the original work.

Yours faithfully,

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 University of Gloucestershire regulations, scholastic reasoning)

As in all communication of this kind be specific, 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 who 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 p. 13 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 Research Repository Manager 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 Research Repository Manager 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 such circumstances for a rights holder to request or expect a fee to be paid. Permission is normally granted to reuse an item **ONLY** for the purpose specified in the original request.

## 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 an 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 request that the embargo is 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 RR Team 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.

The UK Government has introduced an Orphan Work licensing scheme for reuse of all works for commercial or non-commercial use. A licence can be granted by the UK Intellectual Property Office (IPO) for seven years (upon payment of a fee) provided you can be shown to have exercised due diligence. Check lists for performing due diligence for different types of works can be found on the IPO website in the document *Orphan Works Diligent Search Guidance for Applicants*, IPO 2014.

If you do not wish to apply for a licence, 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 the modicum of risk you are exposing yourself to 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 contact the *Senior Librarian (Policy and Research)* [ethesis-help@glos.ac.uk](mailto:ethesis-help@glos.ac.uk) .

## 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 a CTA prior to publication. Upon signing a CTA 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 astute 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.

Thus if you are reusing portions of journal articles in your thesis you are advised to examine the CTAs for the journals in question. The **SHERPA/RoMEO** database of publishers' copyright policies allows you to search by publisher or journal, and provides links to publisher copyright transfer agreements, which can be much quicker than simply searching the internet. However, the majority of information on the SHERPA/RoMEO site 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.

Remember, if you are struggling to understand what rights a CTA does or doesn't transfer to a publisher, then contact the *Senior Librarian (Policy and Research)* [ethesis-help@glos.ac.uk](mailto:ethesis-help@glos.ac.uk) for more help.

**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.

**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.

## 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 Research Repository (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 *Senior Librarian (Policy and Research)* [ethesis-help@glos.ac.uk](mailto:ethesis-help@glos.ac.uk) 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 3rd party material out renders the thesis unusable, then you will need to speak to the *Senior Librarian (Policy and Research)* [ethesis-help@glos.ac.uk](mailto:ethesis-help@glos.ac.uk) 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; this evidence must be submitted with your eThesis and will be retained in the Research Repository

There is **some risk** associated with this second approach. The rights holder may at some point object to items being used and ask the University 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. In the event that the University is unable to contact you, having evidence of your due diligence enables the University to respond to claimants.

The **only 100% risk free approach** to dealing with third party copyright items is to have clear permission granted for each item 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. If you think you will be publishing from the thesis after making significant revisions or enhancements, then this may be less of an issue, however, it is worth discussing it with your supervisor and the prospective publisher in advance if possible.

**Remember**, you are still required to submit an electronic copy to the RAO, even with a full embargo!

## What does the embargo cover?

The thesis embargo may cover the electronic copy or both print and electronic copies. Where intention to publish is the reason for the embargo, it is expected that the embargo will apply only to the electronic copy. If the request is for other reasons it may apply to both the print and electronic copies.



## Embargoes

An embargo means that the University has agreed to formally restrict access to your print and/or eThesis. You are required to submit an electronic copy of your thesis at the same time as your printed version even if you have been granted an embargo. The embargo period will not normally exceed 2 years.

You can request an embargo for the eThesis only, or for both the print and eThesis versions. During the embargo period access to the thesis is restricted i.e., for an embargo on print and eThesis versions the thesis is not made available in the University Library for reference nor is the electronic copy supplied to the Research Repository and to EThOS accessible. LTI will create a record for the embargoed thesis on the library catalogue linking to a record on the Research Repository (and EThOS) providing details of the reason for, and duration of the embargo. The print thesis and/or eThesis will become accessible when the embargo period ends.

If you think you will need an embargo you and your supervisor must apply to the Head of Postgraduate Research; application for approval is normally made at the time of research proposal approval. In cases where the need for confidentiality emerges at a subsequent stage, a special application for the thesis to remain confidential after submission should be made to the University Research Degrees Committee (URDC) at the same time as approval is sought for examination arrangements.

Embargo end dates are managed automatically by Research Repository systems functions, if you fail to contact the Research Repository Manager before the agreed embargo end date expires your thesis will be made publicly available. In rare and exceptional circumstances a permanent embargo can be granted which will not normally be reviewed or redacted.

## 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.

## 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 insist on commercial secrecy of research they fund and require that you request a full embargo. Discuss these matters with your supervisor and apply to URDC for an embargo as soon as possible.

Some research students are concerned that adding a copy of their eThesis to the Research Repository could restrict their subsequent commercial publishing options. Normally this is not the case and studies have shown that making work available through a repository 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.

## 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 work on the web you may wish to delay distributing the eThesis to the public. How long that period should be is a question best discussed with your supervisor.

An embargoed thesis will normally be listed on the library catalogue, the Research Repository and EThOS however access to the print and/or eThesis will remain restricted during the embargo period. This includes scholars intending to visit the library in-person to consult the print version. Providing a public record of theses and embargo durations without providing access enables researchers to be aware that the research exists and the scheduled public release date. In exceptional circumstances URDC may instruct LTI not to catalogue or record a thesis in the Research Repository or EThOS e.g., for ethical, commercial or national security reasons. In such cases the research is effectively undiscoverable.

Where there is a 3<sup>rd</sup> party copyright issue that is restricted to specific elements of your thesis (e.g. a table of data, image or extract from a book) you could choose to edit this from the eThesis; while leaving the print version intact. This approach gives you the reputational and career benefits of early public dissemination without the legal risk.

## 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. Submit copies of all correspondence relating to permissions with your eThesis.
- 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 *Senior Librarian (Policy and Research)* [ethesis-help@glos.ac.uk](mailto:ethesis-help@glos.ac.uk) is here to help.

## 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.
- **Embargo** – a permanent or semi-permanent restriction in an electronic and printed thesis' availability; only grantable upon application to the University Research Degrees Committee.
- **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.
- **Mandate** – a university requirement with respect to deposition of research in the Research Repository.
- **Open access** – making a publication or a thesis available without placing any kind of fee based restriction on accessing it.
- **Research Repository** – the University of Gloucestershire's online open access repository.
- **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

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>

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

Creative Commons (2015) *About the licenses*, <http://creativecommons.org/licenses/>

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Great Britain (2014) *The Copyright and Rights in Performances (Quotation and Parody) Regulations 2014* - [http://www.legislation.gov.uk/ukxi/2014/2356/pdfs/ukxi\\_20142356\\_en.pdf](http://www.legislation.gov.uk/ukxi/2014/2356/pdfs/ukxi_20142356_en.pdf)

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SHERPA/RoMEO, <http://www.sherpa.ac.uk/romeo/>

SHERPA, *Glossary of open access abbreviations, acronyms and terms*, <http://www.sherpa.ac.uk/glossary.html>

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University of Gloucestershire Research Repository <http://eprints.glos.ac.uk/>

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://norman.hrc.utexas.edu/watch/>

## Appendix: Frequently Asked Questions & Answers

<p><b>If I redraw a map from an original, do I need permission of the copyright holder of the original to include my map?</b></p>	<p>This is a substantial reuse of an object so permission would be required unless the reuse fell under the criticism and review defence.</p>
<p><b>If there is an object in my photo, (e.g. a Coke can) do I need permission of the copyright holder of the object?</b></p>	<p>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.</p>
<p><b>I want to place a copy of my thesis in the local records office. Is that a problem?</b></p>	<p>You would need 3rd party copyright as for the digital copy.</p>
<p><b>Can a permanent embargo be lifted by me?</b></p>	<p>Yes – you would need to contact the Research Administration Office and either the Research Repository Manager <a href="mailto:sturner@glos.ac.uk">sturner@glos.ac.uk</a> or <a href="mailto:eprints@glos.ac.uk">eprints@glos.ac.uk</a></p>
<p><b>I want to place a copy of my thesis in the local record office. Is this a problem?</b></p>	<p>You would need third party copyright permission as for the digital copy.</p>
<p><b>Does copyright last for 70 years after death of author even if someone else is the copyright holder?</b></p>	<p>Yes. The term of protection in the UK for an original written (literary), theatrical (dramatic) musical or artistic work lasts for the <b>life of the creator plus 70 years</b> from the end of the year in which he/she died.</p>
<p><b>Can I take no reply to a request as a “yes” – or make statement to that effect in a letter (that is, “if I do not hear from you within one month, I will assume you are granting permission”)?</b></p>	<p>Our advice is not to include any work for which you do not have permission.</p>
<p><b>What if the publisher has ceased to exist?</b></p>	<p>It is possible that the publication rights may have been sold onto another publisher. It is worth checking the Firms out of Business website (<a href="http://tyler.hrc.utexas.edu/fob.cfm">http://tyler.hrc.utexas.edu/fob.cfm</a>). Follow the advice in <i>Orphan Works Diligent Search Guidance for Applicants</i>. <a href="https://www.gov.uk/government/publications/orphan-works-diligent-search-guidance-for-applicants">https://www.gov.uk/government/publications/orphan-works-diligent-search-guidance-for-applicants</a></p>
<p><b>If an eThesis is a “published work”, who is the publisher? The individual, or the University?</b></p>	<p>Effectively the individual because the University does not require a transfer of rights and would not claim publication. There may be contractual exceptions to this where a student's studies are funded by a 3<sup>rd</sup> party eg an employer or other sponsor.</p>
<p><b>Can the University mandate a student to submit a digital copy of their thesis if it was not in their original terms and conditions?</b></p>	<p>Only doctoral students who enrolled on or after 1<sup>st</sup> February 2013 are mandated to submit a digital copy of their thesis.</p>
<p><b>Does the University create a doi for each thesis?</b></p>	<p>Not currently, each thesis on the Research Repository has a unique URL which can be used to refer others to the thesis.</p>

<b>Within what timescale do I need to submit the digital copy?</b>	You should submit your eThesis at the same time as the print copy.
<b>Are there any requirements about the settings of PDF – re. Images, version of Acrobat, etc.</b>	The Research Repository Manager can be asked for advice, as can Library Enquiry Desk staff. There are some technical standards (compliant with a recent version of Adobe). One file only and files should not be secured or locked down.
<b>Are EThOS and the Research Repository sources for Turnitin?</b>	Potentially yes, like any well organised and indexed resource.
<b>Do I need permission to include an item from the local record office?</b>	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.
<b>If I have quoted a line from an article, and referenced it correctly – can I use that without permission?</b>	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.
<b>Could the author of a thesis attach a Creative Commons licence to the entire work?</b>	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.
<b>Can images from sites containing Creative Commons licensed (or similar) material, such as Flickr, be used in a thesis</b>	Check 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 and by providing links to this material you may be committing a secondary infringement CDPA 1988 26 (4).
<b>What format should permissions be in?</b>	Written form, either by letter, e-mail or fax. Verbal permission is unlikely to be sufficient.
<b>How do I get access to theses to view style/how they are set out etc?</b>	Examples of eTheses are available on the Research Repository and on EThOS.
<b>Will the University take legal action on my behalf?</b>	The University Author Consent form specifically states that 'The administrators of the University's Research Repository do not hold any obligation to take legal action on behalf of the Depositor, or other rights holders, in the event of a breach of intellectual property rights, or any other right, in the material deposited'.
<b>How long is a 'substantial' or 'fair' piece of text?</b>	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.
<b>Is only work with a © on it copyrighted?</b>	No, in the UK copyright automatically applies unless otherwise stated. Always check the item's terms and conditions of use/copyright information. In the USA you are required to register your copyright and use the © symbol, it is not required in other countries.

## 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.

### ethesis-help

- Can help with matters relating to the mandate, copyright policies of publishers or journals, submitting digitally, and any possible policy clashes with eg grant making bodies.

[EthesisHelp@glos.ac.uk](mailto:EthesisHelp@glos.ac.uk)

### Senior Librarian (Policy and Research) and Research Repository Manager, Susan Turner

- You should notify the Research Repository Manager if you have made changes to your thesis to meet the requirements of digital dissemination. Sue can advise on the mandate to deposit your thesis, the copyright policies of publishers or journals or other 3<sup>rd</sup> party intellectual property, seeking permission from publishers, submitting digitally, and any possible policy clashes with funding bodies.
  - Email: [sturner@glos.ac.uk](mailto:sturner@glos.ac.uk)
  - tel. +44(0)1242 714718

### Your Supervisor

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

### Research Administration Office

- Can advise on the appropriate method of obtaining an embargo and the University regulations relating to doctoral candidates.
  - Email: [researchadmin@glos.ac.uk](mailto:researchadmin@glos.ac.uk)
  - Tel. +44 (0)1242 715367 / 714071

### Library Enquiry Desk

- Can advise on creating PDFs from Word.
  - Email: [ask@glos.ac.uk](mailto:ask@glos.ac.uk)
  - Tel. +44(0)1242 714555

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.

## Acknowledgements

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*Keeping Your Thesis Legal*, University of Leicester V2.4 Revised and updated by Tania Rowlett and Brett Dodgson Nov 2014, V2 Revised Nov 2011, Revised, augmented and updated by Gareth J Johnson, Tania Rowlett and Rob Melocha,

Original 1.0 version by K. Nockles & Tania Rowlett 2008