UNIVERSITY COPYRIGHT OFFICE

THE UNIVERSITY OF MELBOURNE

Copyright & Research

What is Intellectual Property?

Intellectual property refers to the product of a person's imagination and creativity and the rights of these people to control the use of their products. Intellectual property can be bought, sold, exchanged and licensed to other people or organisations by the intellectual property holder. Intellectual property is intangible and is not linked to the tangible artistic, dramatic or musical work which may have resulted from it. For example: a book is actual property and can change hands without affecting the intellectual property (in this case copyright) of the artist.

Intellectual property is protected by intellectual property law. There are six major types of intellectual property law: copyright, patents, designs, trade marks, circuit layouts and new plant varieties; however, confidential information, the duty of fidelity, trade secrets, confidentiality and moral rights are also included.

Apart from trade marks, intellectual property has a set duration after which the rights of the intellectual property owner cease and the works move into the public domain.

The focus of this guide is copyright and your research, however your research may also be subject to and protected by other forms of intellectual property law such as patents, designs and confidentiality. For more information about these areas see *Intellectual Property at Melbourne* http://www.research.unimelb.edu.au/ridg/ip/ or contact the Melbourne Research Office http://www.research.unimelb.edu.au/

Copyright – the basics

Copyright does not apply to ideas or information, only how they are expressed in a material form, e.g. written as text or recorded as sound or images. Copyright refers to the expression of ideas or information in an original artistic, literary, dramatic or musical work, film, broadcast, sound recording, published edition, webpage, computer program etc. Copyright applies automatically as soon as the work is created. There is no need to register your work for copyright to apply. Copyright applies to both print and electronic material as well as unpublished works. Any written material, films, music or images created by other people that you use as part of your research will also be protected by copyright.

Creators of works are usually the copyright owners and have the right to control how their work is used, such as how, and if, it is reproduced, published, performed or communicated online. There are certain circumstances in which a work can be used without needing to seek the permission of the copyright owner, including for the purposes of research. Generally, copyright lasts for 70 years after the death of the creator. For some types of works, such as films, copyright lasts for 70 years after the year of publication (For more details see: http://www.unimelb.edu.au/copyright/information/overview.html#duration). Once copyright has expired, it cannot be renewed and the work passes into the public domain where it can be freely used by anyone.

For more general information about copyright see our guide, *Introduction to Copyright* (http://www.unimelb.edu.au/copyright/introguideblue.pdf) or our website, *Overview of Copyright* (http://www.unimelb.edu.au/copyright/information/overview.html)

IP, Copyright & the University of Melbourne

Intellectual property (IP) and copyright are generally owned by their creator in the first instance. However ownership can vary depending on employment and legal agreements such as funding or research agreements. For example, under the *Copyright Act 1968*, if copyright material is created as part of an employee's duties or work, then copyright will belong to the employer rather than the employee. However at the University of

Melbourne, under the IP statute (*Statute 14.1 Intellectual Property* http://www.unimelb.edu.au/Statutes/s141.html), academic staff will own copyright in their scholarly works, i.e. the research. Students own copyright in all their work. The University owns copyright in all teaching material and material created by professional staff.

Additionally, if the research is subject to a research or funding agreement, then ownership of copyright may be determined by the conditions of that agreement. For additional information about legal agreements, copyright and IP, please contact the Melbourne Research Office http://www.research.unimelb.edu.au/ .

It is also possible to have more than one copyright owner. Under research or funding agreements, copyright might be shared between the academic and the funding body for example. Where a copyright work has been created by a research team, then copyright will shared equally by all members of the team.

Copyright & Your Research

Any of your research that is expressed in a material form, e.g. written down or recorded as sounds or images, will be protected by copyright. This means that if anyone else wishes to reproduce, communicate online, publish or perform your copyrighted research, they can only do so with your permission. You will also have moral rights over your research (see box below).

Although copyright is applied automatically and there is no need to register it, it is recommended that you take a few simple steps to protect your work. You should include a title and author on your work and a copyright statement to indicate that the work is protected by copyright. The copyright statement includes the copyright symbol, the name of the copyright owner, and the year the work was created, e.g. © John Smith 2008. By including this information, you are also making it easier for people to identify the copyright owner if required. If you choose to make your copyright material available electronically, you should consider the format that you will use. A pdf document, for example, will make it harder for people to cut/paste sections from your document and will help to protect the integrity of the document.

Often as part of the research process, researchers use copyright material created by other people – known as third party copyright material. There are provisions in the Copyright Act that allow copyright material to be reproduced for research and study under certain conditions without permission from the copyright owner. These provisions, known as fair dealing for research and study, will allow you to reproduce third party copyright material for your research. Fair dealing for research and study also allows other researchers to reproduce copyright material that you have created for their research and study. If you do not wish your material to be used by other researchers, then you should keep it confidential.

Acknowledge Your Sources!

The Copyright Act also provides creators with 'moral rights'. These rights include the right for the creator of the work to be acknowledged, the right not to have their work falsely attributed to someone else, as well as the right not to have their work treated in a derogatory or prejudicial way.

Any copyright material that you create is also protected by moral rights. Anyone using your material must acknowledge you as the creator.

You must attribute any materials created by other people that you reproduce in your research. *Endnote* is bibliographic software that can help you manage your references as well as create and format your bibliography. *Endnote* can be downloaded from http://www.lib.unimelb.edu.au/endnote/index.html

Using Other People's Copyright Material

You may need to reproduce third party copyright material for your own research. You may be reproducing this material as background reading or information or you may wish to include copyright material in a research paper. There are a number of provisions in the Copyright Act that allow you to reproduce material for your research without needing to seek permission from the copyright owner:

Copyright has expired

Once copyright has expired, the work passes into the public domain and can be freely used. Copyright generally last 70 years after the death of the creator of after the first year of publication depending on the type of material and/or when it was first published.

Determining whether a work is still in copyright can be complex – visit: http://www.unimelb.edu.au/copyright/information/overview.html#duration for more information or contact the Copyright Office.

Using an insubstantial portion

If you want to quote a few lines or sentences then you may do so under the insubstantial portion provision. This provision allows an insubstantial portion of a copyrighted work to be reproduced or published without needing permission from the copyright owner. This means that if you wish to quote a few lines or sentences from a book or play, you can do so but you must acknowledge the work used.

You may also be able to use a short clip of a film or a snippet from a sound recording as an insubstantial portion. However, the Copyright Act does not define what an insubstantial portion is. Whether something is insubstantial depends on how distinctive it is and how important it is to the overall work. As this is qualitative rather than quantitative, even a really short extract may be considered substantial if it is distinctive or a key part of the overall work. For example, a short scene in a movie that reveals a key plot point or a few bars from a song if they form a distinctive part of the melody will probably be deemed substantial.

Copyright, Websites and the "Public Domain"

Websites and other electronic formats, such as emails, are considered published material and are protected by copyright. Although it is possible to download, print or copy material available on websites, it is important to note that this may well be an infringement of copyright, unless you have the creator's/copyright owner's permission.

"Public Domain" is often used to describe information that is freely accessible on the Internet. However, this type of material is usually still subject to copyright. In the copyright context the term "public domain" has a more specific meaning. It refers to material where copyright has expired or the copyright owner has licensed the material so that it can used in certain ways without the permission of the copyright owner, e.g. Creative Commons (http://www.creativecommons.org.au)

Check the terms of use of the website to see what you may or may not do, if there are no terms of use available, then you may only do what you are normally allowed under the *Copyright Act*, for example under fair dealing for research and study.

Fair Dealing for Research and Study

Fair dealing for research & study is a key provision in the Copyright Act that will allow you to reproduce material for your research. Under fair dealing you can reproduce material, for example book chapters, journal articles or images that are required as background material or information for your research. However, it is important to note that fair dealing for research & study is **limited solely to your own research and study**. It does not cover including copyright material in your research papers for publication or to make available online. **If you wish to publish or communicate your research paper online and it includes third party copyright material you must seek permission from the copyright owner (see below).**

Under fair dealing for research & study, you can reproduce 10% or one chapter (whichever is greatest) of literary works (books, reports, poems etc), dramatic works (plays, screenplays, choreography), or musical works (notated or sheet music). If you would like to reproduce journal articles, you may copy one journal article from one journal issue or two or more articles from the same issue if the articles are on the same topic. Topics must be closely related and the more specialised the journal content, the more closely related the two articles must be. For example, if you are researching the diet of polar bears, and you find two articles on polar bears in a single issue of *Journal of Zoology*, you may copy both articles. However, if you are reading an issue of the *Journal of Polar Bears*, you could not reproduce two articles on polar bears because all articles are likely to be on polar bears. You would be able to reproduce two articles on the diet of polar bears.

The '10% rule' does not apply if you wish to use artistic works (images, photographs, paintings, diagrams etc), unpublished material, films or sound recordings, including music. For these types of material, OR, if you would like to use more than 10% or one chapter of literary, dramatic or musical works, you will need to consider whether your use would be 'fair and reasonable'. There are five criteria used to determine this:

- Can I buy this item at a reasonable price within a reasonable time?
- How much am I planning to copy?
- Why I am copying?
- What effect will this have on the market for or value of the work?
- How much effort, time & resources went into creating this work?

If your intended use would be considered fair and reasonable against each of these criteria then you can copy the audio-visual, unpublished or artistic work or more than 10% or one chapter of the textual material such as a book or play.

Fair Dealing for Other Purposes

Fair dealing is not just limited to the purpose of research and study, you can also use copyright material under fair dealing for criticism and review or parody and satire. Material can only be reproduced under these provisions if the work is genuinely being critiqued, reviewed, parodied or satirised. You cannot use these provisions to reproduce work to illustrate a point or to make a joke, for example.

As with fair dealing for research and study, any use or material for criticism and review or parody and satire must be 'fair and reasonable'. The 10% or one chapter rule does not apply to criticism and review or parody and satire so you can use the entire work if your use is considered 'fair and reasonable'. For example, if you were reviewing a film, it might be considered "fair and reasonable" to include a brief clip as part of your review, but it would be unlikely to be considered "fair and reasonable" to include the entire film.

Express Permission

Some copyright owners expressly permit people to use their work for non-commercial purposes or certain other uses without having to seek their permission first. This is especially common on the web, where creators choose to make their work more freely available. It is important to realise that all material on the web is subject to copyright unless the copyright owner has specifically allowed the material to be used for non-commercial purposes.

Check the terms and conditions on the website to see what can and can not be done with the material. If the website allows the material to be used for either non-commercial or research purposes, you can use the content for those purposes only. You must abide by the terms and conditions on the website and you must fully acknowledge any websites you use.

If there are no terms and conditions, you may still be able to use material from the website under fair dealing if the use is 'fair and reasonable' – but you cannot assume that because you cannot find the terms or conditions that the material is freely available for any use.

Be aware that non-commercial or research purposes may not include publishing the material and you might need to seek permission from the copyright owner if you intend to include their work in your publication.

Using Material for Teaching

Fair Dealing for research and study only allows material to be reproduced for research or study purposes. There are separate provisions in the Copyright Act that allow us to use material for teaching purposes. Under the statutory licences, we can reproduce and communicate copyright material available online for educational purposes under certain conditions. For more information see:
http://www.unimelb.edu.au/copyright/information/guidelinesedpurp.html

Publishing Your Research

If you choose to publish your research you will need to be aware of your rights and responsibilities. There are several different publishing models to choose from, each with their own advantages and disadvantages. Additionally if you choose to publish or make your research available online, you will need to seek permission from the copyright owner for any third party copyright material you have included in your research unless copyright has expired or you have used an insubstantial portion.

Publishing with a Publisher

You may choose to submit your research for publication as either a monograph or journal article with a publisher. It is increasingly common for books and journals to be published in both print and electronic format or sometimes just electronically. Generally as part of the publication process, you may be required to sign an author or publishing agreement. This agreement will outline how copyright is licenced or assigned. Some publishers will ask that copyright be assigned to them, some may require that you licence the work to them for certain purposes (e.g. publish it in their journal, make it available on their journal website, include in it any databases that the journal is part of, etc.) and they may also require that you do not do certain activities with the article without their permission (e.g. make a copy of the article available on your personal website or circulate copies to colleagues).

The author or publishing agreement may also require you to sign a declaration stating that you have sought permission from the copyright owner to use all third party copyright material in your work.

You should read the agreement carefully and make sure that you understand it. You should keep a written copy of the agreement. You may also choose to negotiate a different agreement with the publisher if you are not happy with the conditions they have outlined. You also need to make sure that any research or funding agreements that your research is subject to are not contravened by what you are giving the publisher permission to do. For example, many research and funding agreements are now requiring research to be self archived on open access (see below), if the publisher does not allow your research publication to be deposited in an open access repository, you may need to negotiate a different agreement.

Some publishers may not require you to sign a publishing or author agreement. In this situation, you will retain copyright and they are only able to publish your work in that particular book or journal issue. If they wish to publish or use your work further, the publisher will need to seek your permission. In the absence of a standard publishing or author agreement, you may choose to request your own written agreement from publisher – outlining how your work will be used and what rights both you and the publisher have over the work.

Creative Commons Licences

As copyright applies automatically, it is the default position whenever an eligible work is created. Many authors and creators would like to make their work available for people to use with fewer restrictions than allowed under the Copyright Act with needing to give express permission. Creative commons is a licencing scheme that allows authors and creators to choose how they will allow people to use their work. For example, the author/creator may choose to licence their work for non-commercial use, which means that anyone can use the work for non-commercial purposes without seeking permission. However if someone wished to use the material for commercial purposes, they would need to seek permission from the author or creator.

There are a number of different creative commons licences available and you can choose whichever one suits your needs. More information is available at: http://www.creativecommons.org.au/

Although creative commons is primarily used for electronic publications, it can also be used for print publications. It is also possible to publish with a traditional publisher under a creative commons licence to. If you wish to publish with a traditional publisher under a creative commons licence, you will need to negotiate an agreement with your publisher.

The benefits of using a creative commons licence are that the material is freely available and easier for people to access and use. It is an excellent way to freely and widely distribute your research which may increase the frequency of citations. However, it may not be suitable for research that has commercial applications.

Open Access

Open Access allows the full text of a work to be made freely available for anyone to access on the internet. Although material is still subject to copyright, users can, freely print, download or use the material for research, educational and non-commercial purposes, depending on the terms and conditions of the OA site. Open Access comprises OA self archiving or OA publishing.

OA self archiving is generally where the researcher first publishes their work in a subscription journal. Subject to a publishing or author agreement, they can then deposit, or self archive, the journal article in either a institutional open access repository (e.g. University of Melbourne e-Prints Repository (UMER)) or in a central repository, usually discipline-based (e.g. PubMed Central). Some authors may also choose to self archive material that they have not published commercially.

OA publishing is where a researcher chooses to publish their work in an open access journal and the work is then freely available online as soon as it is published.

Like creative commons, publishing via open access is an excellent way to widely disseminate your research and may also increase your citation impact but it may not be suitable for research that has commercial applications.

The University of Melbourne has its own digital repository – University of Melbourne ePrints Repository (UMER) – and staff and students are encouraged to submit their own research to be included on UMER. For more information see the UMER webpage: http://eprints.unimelb.edu.au/ and for copyright & licencing information see: http://www.unimelb.edu.au/copyright/eprint.html

Requesting Permission to Use Copyright Material

If you choose to publish your research or make it available online you will need to seek permission to use any third party copyright material from the copyright owner unless an exception applies. If you are using copyright material where copyright has expired, you are using an insubstantial portion or you are using the work under fair dealing for criticism and review or parody and satire, you will not need to seek permission from the copyright owner. You will need to seek permission to use any third party copyright material that you have included under fair dealing for research and study, as this provision will not apply once the research paper is published or made available online.

Seeking permission can be complex and time consuming to obtain. You will need to identify and contact the copyright owner and this may be difficult. It may not always be possible to identify the copyright owner or to locate contact information for them. If there are multiple copyright owners, you will need to gain permission from each of them to use the work. In addition, copyright owners may not respond to your permission request promptly.

Any permission request should be made in writing and should outline your intended uses, e.g. publishing in print, or electronically; under creative commons licence or in an open access repository. Copies of all permission requests and attempts to contact the copyright owner should be kept on record.

Further information about seeking permission is available at:
http://www.unimelb.edu.au/copyright/information/fastfind/permission.html

Infringing Copyright

It is important that you do not infringe copyright in other people's work when undertaking research. Make sure that you do not use infringing material, such as illegal music, movies and software from the internet. The University regulations require that all staff and students not infringe copyright. The University will take disciplinary action against any staff and students found infringing copyright using University facilities or networks. You may also be liable for legal action from the copyright owners.

Of course, copyright will also protect your work from infringement by other people as well. In the event that you think your copyright has been infringed, you should seek legal advice.

More Information

- Copyright Office Website - http://www.unimelb.edu.au/copyright/
    - Overview of Copyright - http://www.unimelb.edu.au/copyright/information/overview.html
    - Fast Find Index - an A-Z glossary of copyright terms and topics http://www.unimelb.edu.au/copyright/information/fastfind/
    - Fair dealing - http://www.unimelb.edu.au/copyright/information/fastfind/FF_fairdealing.html
    - Seeking Permission - http://www.unimelb.edu.au/copyright/information/fastfind/permission.html
- Melbourne Research Office - http://www.research.unimelb.edu.au/
    - Intellectual Property at Melbourne - http://www.research.unimelb.edu.au/ridg/ip/
    - Statute 14.1 Intellectual Property - http://www.unimelb.edu.au/Statutes/s141.html
    - Research Contracts - http://www.research.unimelb.edu.au/ridg/
- UMER - http://eprints.unimelb.edu.au/
- Acknowledging Sources - http://www.services.unimelb.edu.au/llsu/resources/referencing/

  http://www.lib.unimelb.edu.au/cite/index.html
- IP Australia http://www.ipaustralia.gov.au/
- Contact the Copyright Office - http://www.unimelb.edu.au/copyright/contact.html

This guide prepared and written by:
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