

## Avoiding Copyright and Plagiarism Issues

No one wants to infringe on someone else's copyright or plagiarize someone else's work. This is especially true when writing a dissertation or thesis. The following information is designed to help avoid some common pitfalls.

### Copyright 101

Copyright is protected by the US Constitution and governed by the US Congress – Article I, Section 8, Clause 8, “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

Under current US copyright law, any created material that shows a modicum of originality (facts cannot be copyrighted) and is fixed in a tangible meaning of expression (printed book, journal article, PDF, MS Word document, PowerPoint presentation, e-mail message, handwritten manuscript, web pages, DVD, CD, microform, painting, statue, photograph, etc.) is automatically copyrighted – whether there is a copyright notice or not. In the United States, if the creator chooses to register the copyright, then s/he can benefit from the award of statutory damages and the payment of legal fees if an infringement case goes to court.

Some material is in the **public domain** and is no longer protected by copyright, for example anything published in the United States prior to 1923 or most US government documents.

In law school, students are often taught that the rights associated with copyright are “a bundle of sticks”, which include:

1. The right to make copies;
2. The right to distribute;
3. The right to make derivative works;
4. The right to publicly perform the copyrighted work (if applicable); and
5. The right to publicly display the copyrighted work (if applicable).

These rights belong – exclusively – to the creator until that person/entity transfers or licenses them to another person or entity. Transfers and exclusive licenses must be in writing and signed by the copyright owner, or they are not effective. **Note:** When articles or books are accepted for publication, the common practice has been for the creator of the work to transfer all of her copyrights – exclusively – to the publisher. This transfer means that – unless stated otherwise in the copyright transfer agreement – the creator no longer owns the bundle of sticks representing copyright; the publisher owns them, often exclusively.

However, often the creator is not obligated to transfer all rights and the creator is not obligated to transfer them “exclusively”. Creators can negotiate the transfer agreement, agreeing to transfer some rights and holding on to some rights and/or agreeing to a non-exclusive transfer for some or all rights. The key issue is to **read** the transfer agreement and **understand** the agreement before signing it. For assistance in understanding copyright transfer agreements, contact [copyright@baylor.edu](mailto:copyright@baylor.edu).

### Fair Use

There are a number of exceptions that allow people to make use of copyrighted material without asking the copyright holder for permission – “fair use” being the most widely known education exception. Fair use provides for limited use of copyrighted material without permission from the copyright holder for purposes such as criticism, parody, news reporting, research and scholarship, and teaching. There are four factors to consider when determining whether the use is a fair one. **All** the factors must be considered, even though all the factors do not have to be in favor of a use in order to make it a fair one.

1. The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work, such as whether the work is fiction or non-fiction, published or unpublished;
3. The amount of the work used in relation to the copyrighted work as a whole, such as using a poem in its entirety, or using one chapter from a long book;
4. The effect of the use upon the potential market for the copyrighted work.  
(<http://www.baylor.edu/copyright/index.php?id=56543#fairuse>)

## Using Copyrighted Material in Dissertations and Theses

From Copyright 101, it is clear that almost any material found in another source (third party content) is protected by copyright. Therefore, if this content is used in a dissertation or thesis (or any other research document) – whether paraphrased or directly quoted – there are two choices:

1. If a case for an exception to the copyright law ([Fair Use](#)) can be made, the third party content must be appropriately cited. This includes third party content that was created by the same person who is writing the dissertation or thesis and it includes third party content that was created by her advisor or mentor.
2. If no exception to copyright law can be applied, the creator of the dissertation or thesis must contact the copyright holder and ask them for permission to use the content in his/her dissertation or thesis.

Additionally, third party content from public domain material must also be appropriately cited.

### Some Examples

Following are some common examples of the use of third party content in dissertations or theses and how these issues should be handled. These are representative examples and are not all inclusive. If you have any questions about the use of third party content in your dissertation or thesis, contact [copyright@baylor.edu](mailto:copyright@baylor.edu).

Throughout chapter 2 of my dissertation, I used content from my master's thesis.

This is a fair use, but you need to cite your master's thesis whenever you use content from it.

In chapters 2 and 3, I paraphrased content from a published article that I jointly authored.

Most likely, this is a fair use, but you need to cite the article in which the paraphrased content can be found, which means you will cite yourself.

In chapter 4, I quoted content from an article written by my research advisor.

Most likely, this is a fair use, but you need to cite the article in which the quoted content can be found, which means you will cite your advisor.

Chapters 2, 3, and 4 are – word for word – copies of 3 articles I had published in 3 separate journals. These chapters reflect changes that came out of the peer review process (**post print**).

This is not a fair use, since you are using the entire article. You need to look at the copyright transfer agreement to see if you retained any rights to use the articles in other publications. Since Baylor dissertations and theses are placed in an online environment, you also need to see if the agreement allows you to place a **post print** in an online repository. If you did not retain these rights, you will need to ask the publishers for permission to use those articles in your chapters. [SHERPA/ROMEO](#) is an excellent source to find an overview of specific journal publishers' policies on the use of their copyrighted material.

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I'm using photographs from the Texas Collection in my dissertation.

This is fair use, but you need to cite the Texas Collection as they specify in their usage agreement documents.

A publisher wants to publish my revised dissertation, in which I have used photographs from the Texas Collection.

Mostly, this is not a fair use, and your publisher will ask that you contact the copyright holder of these photographs to obtain permission to use them in the published book. Although the photographs are owned by the Texas Collection, the Texas Collection most likely does not own the copyright for the photographs. It is generally your responsibility to find the copyright holder and ask permission. Additionally, you will need to cite the Texas Collection as they specify in their usage agreement documents.