

A Student's Guide to Copyrights and Fair Use

Copyright & Ownership

What is intellectual property?

"Intellectual property" encompasses all forms of intellectual activity, such as, inventions, discoveries, creative or artistic works, know-how, processes, and unique materials. Intellectual Property is protected by law, through patent, copyright, trademark, and trade secrets. Multiple forms of protection may be used on the same piece of intellectual property, say, for example computer software, which can be protected by copyright, patent, trade secret and trademark. Intellectual Property is also protected through agreements which control access and use of the Intellectual property.¹

University ownership of intellectual property

Except as noted below for Creator-Owned Copyrighted Works, or in specially approved situations, the University



owns intellectual property developed by any University employee or by anyone, including students, using any University facilities, equipment or funds.

What is copyright?

Copyright is the form of intellectual property that protects the expression of a creative idea that is fixed in a tangible form.² For example, in *The Wizard of Oz*, copyright protects the order of the words in the story and the layout of pictures, color and words on the page. Copyright does not protect the ideas, the plot or the characters. Each adaptation of this classic tale (book, screenplay, movie, music) generates independent copyrighted works.

For scientific writings, copyright does not protect the procedures, systems, processes, concepts, formulae, discoveries or devices described in the work. "Copyright" is literally

the right to copy, which includes the right to copy, distribute copies, and make changes to the original copyrighted work, (known as derivative works).

Copyright provides the owner with the right to determine how the work is copied and distributed to others: through traditional or on-line publication, through open access, through sale, lease, or lending, and whether you want to make it available without a fee or to charge royalties.

How is copyright protected?

Copyright protection occurs immediately from the time a work is created, without notice or without having to undergo a formal registration process.³ Each iteration of a work automatically has its own independent unregistered copyright protection under the law. However, placing a copyright notice on a work and registration of that work provides certain advantages.

Notice provides the name of the creator/author/owner so those who would like to quote or use a portion of the work may request written permission and provide appropriate acknowledgement. Notice takes the following form:

© 200X Creator/Owner's Name

– or –

Copyright 200X Creator/ Owner's Name

Works owned by the University should bear the following copyright notice in the University's formal name:

© 200X The Board of Trustees of the University of Illinois

Registration of the copyright with the United States Copyright Office provides an independent formal record of the Work. Registration is also required if you want to pursue someone infringing your copyright. The Office of Technology Management is the conduit for registering University-Owned Copyrighted Works.

If you feel it is necessary to register a work, the registration process is fairly simple and not costly. There are separate forms for copyright categories (e.g., literary works, performing arts, visual arts, sound recordings, etc.)⁴ which are available from the US Copyright Office or the Library of Congress. Upon registration, copies of the work are deposited in the Library of Congress.

¹ See Article III, Section 5 of the University General Rules: www.uillinois.edu/trustees/rules.cfm#art3

² See U.S. Copyright Office website: www.loc.gov/copyright

³ See Association of Research Libraries' Copyright & Intellectual Property gateway: www.arl.org/sc/copyright/index.shtml

⁴ See U.S. Copyright forms: www.copyright.gov/forms



Who owns copyrightable works created at the University?

Copyright ownership is dependent on the specific circumstances that lead to a work's creation. Below are general guidelines for when a work is owned by the creator/author or by the University. For complete definitions and more examples, see the University's General Rules.⁵

Creator-owned copyrighted works

In many cases, copyrightable works created at the University fall in the categories of "Traditional Academic Works" or "Student Works" and are owned by the faculty or student who created them.

Traditional academic works are works created independently and at the creator's own initiative for traditional academic purposes. Examples of Traditional Academic Works include scholarly publications, lectures, manuscripts, class notes, textbooks, and course content. Due to the use of other University resources, software is usually not considered a Traditional Academic Work.



Student works are works prepared as part of the requirements for a University degree, such as a thesis or dissertation. While the student owns the copyright in the thesis, the University retains rights to publish and distribute the thesis. The University also owns the underlying laboratory notebooks, original records, software or devices created to do the research and patents derived thereof.

The University retains some rights in the copyright owned by you, the Creator, (as per the parameters above) the University reserves certain rights, such as the right to use the copyrighted work in the University's programs of teaching, research, and public service.

University Owned Copyrighted Works

The University owns all other copyrighted works. See General Rules Article III, Section 4.

Copyrights & Your Dissertation

A dissertation (or thesis) is a written document that represents the culmination of research and findings in support of candidacy for an academic degree.

Who owns my dissertation?

You own the copyright to your dissertation. However, your copyright ownership does not extend to the underlying data, software, algorithms and other intellectual property (inventions, methods, processes, designs) used or described in your thesis research. It also does not extend to the underlying laboratory notebooks and original records of the research. These are owned by the University.

How does publishing my dissertation affect ownership?

Universities have a scholarly tradition of publishing and archiving theses to ensure access to the work by others in the field. This allows the work to be catalogued and cited. It is also a first step in establishing a professional reputation. The University of Illinois, along with many other Universities, has long used the publishing and archival services of University Microfilms, Inc (UMI), now owned by ProQuest.⁶ Publishing

through ProQuest does not affect your ownership. You, as copyright owner of your Dissertation, authorize ProQuest to fulfill the University's publication and archival requirement. The agreement you sign with ProQuest to do this is non-exclusive, which means that you still have the right to re-publish all or part of your work.

With ProQuest, you determine how you want your dissertation to be published, either through traditional, royalty bearing distribution of copies for purchase, or free, open-access publication through the internet via free downloads. With both types of publication, there are other options⁷ to defer publication through ProQuest for up to 2 years (embargo), to elect searchability via internet search engines, or to restrict sales of your thesis via third parties. In addition, because you retain copyright over your dissertation, you can also choose to make it publicly available through the University's repository, IDEALS (<http://ideals.uiuc.edu/>), independent of ProQuest.

⁵ See Article III, Section 4 of the University's General Rules: www.uiuc.edu/trustees/rules.cfm#art3

⁶ ProQuest Information and Learning Company, UMI® Dissertation Publishing

⁷ See Thesis Handbook, Chapter IV: Publication, Copyright, and other Patentable Materials: www.grad.uiuc.edu/thesisandhandbook/pdf/chapterIV.pdf



I am utilizing portions of another's copyrighted work in my dissertation, is permission required?

Probably. As mentioned above, the copyright owner determines how others are permitted to use their copyrighted work, unless that use qualifies as a fair use (see below). When you use other's copyrighted works (or portions thereof) in the creation of your dissertation, it is your responsibility to respect the rights of other owners and obtain permission. Unless your use is considered fair use, unauthorized uses of another's copyrighted work are infringement. An infringement can expose you to significant financial liability.

What is fair use?

Fair use under copyright law allows for the reproduction of copyrighted materials for purposes such as criticism, commentary, news reporting, teaching, scholarship, and research. US Code, title 17, Section 107 provides a description of the uses that would constitute fair use.⁸ The following four factors are used when determining whether or not a particular use is fair:

- (1) purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
- (2) status of the copyrighted work; (e.g., is work still in print?)
- (3) amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) effect of use upon the potential market or value of the copyrighted work.

The above is the only guidance the law provides as to whether a particular use is a fair use or an infringement.⁹ This is in part due to the varied nature of the media protected by copyright (literature, music, poetry, paintings, movies, etc). Much is left to the individual to make the determination.

Fair use is limited, acknowledged use of third party controlled copyrighted materials. However, just acknowledging the source of the copyrighted material does not make the use "fair." Fair use is dependent on how broadly your work is disseminated. For example, what is considered fair use when teaching in a classroom setting may not be fair use if the same material is available to an internet audience.¹⁰ Similarly use of paintings, videos, music, graphs, poetry, long quotations, or copyrighted works of others that would be considered "fair use" when distribution is limited, may not qualify for fair use once the dissertation is published.

Even some of your own work that is previously published may be copyrighted in the name of a third party (e.g. the publisher). The University of Illinois permits you to include in your dissertation some work that has been previously published by you. If you include such work you should investigate copyright ownership and whether permission is required. For instance, you may no longer own the copyright in an article you authored, because publishers often require assignment of your copyright ownership. For all these reasons, you should be diligent in investigating whether your use is fair use, or whether you need to obtain permission from the owner.



Obtaining Permissions

I've determined that I need permission to use some of the copyrighted works I reference in my dissertation, what is the process to get permission?

Obtaining permission to use copyrighted works of others in your own creative work is the safest way to proceed when getting ready to publish. When you seek permission from the owner, identify the works or portions that you want to include, and inform the owner that your dissertation is being published by ProQuest, describing the mode of distribution you have chosen (traditional publishing or open access dissemination). Sample permission request letters are available through the Graduate College¹¹ and on the last page of this newsletter. Following are suggested steps to help you navigate the landscape.

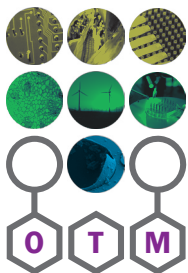
- (1) Find out if the work is still under copyright protection. You can find this out by following the guidelines set out in the Copyright Office or Library of Congress (www.copyright.gov/circs/circ1.html#hlc). Anything created prior to 1900 is probably not protected anymore.
- (2) Determine who owns the copyright, which can usually be done by contacting the publisher. If you have difficulty identifying an owner, contact the Library for assistance.
- (3) Request permission from the owner by using a permission request letter similar to the example below.
- (4) Keep a copy of your correspondence for your records. Also, keep in mind permission is specific only to the uses you have requested. If you want to use previously permitted material in a new work, for example a textbook, you should contact the copyright owner for a new permission.

⁸ See U.S. Copyright Office Fair Use: www.copyright.gov/fls/fl102.html

⁹ See "Know Your Copyrights": www.knowyourcopyrights.org/resources/fac/kycrbrochure.shtml

¹⁰ See Association of Research Libraries White Paper on Educational Fair Use: www.arl.org/news/pr/ed-fair-use-12dec07.shtml

¹¹ See sample permission letter for your thesis published via ProQuest: www.grad.uiuc.edu/forms/diss_pub/1-07dpa-G6.pdf



Sample Copyright Permission Letter

(1) Name and address of copyright owner.

(2) Position/title.

(3) Describe your creative work in as much detail as possible

(4) Provide the title of your work.

(5) State specific permission request.

(6) Use title and description the copyright owner will recognize.

¹JOHN Q.OWNER

1400 Times Square
New York, New York 10010

Dear Mr. Owner :

I am a ²faculty member/student at the University of Illinois and am completing {a book, manuscript, doctoral dissertation³} titled "⁴JANE A STUDENT'S STUDIES." I would like your permission to ⁵reprint in my work excerpts from your work identified below:

(insert full citation and description of John Q Owner's original work)⁶

The excerpts of the work to be reproduced in my work are:
(insert detailed explanation or attach copy).⁷

I am requesting permission to include these excerpts in my work and plan to distribute ⁸my work through Publisher X, under an arrangement where I will earn royalties (or I plan to distribute the work freely via the internet).⁹

I am requesting that your permission extends to any future revisions, editions, and translations of this work made by me or on my behalf.¹⁰ If you approve of the use requested above, kindly sign this letter where indicated and return it to me in the enclosed, self addressed, stamped envelope. By signing this letter, you also confirm that you are the owner (or are authorized by the owner) of the copyright in the above listed material. Thank you very much. If you have any questions or concerns, please do not hesitate to contact me, either by phone at 217-123-4567 or by email at jastudent@uiuc.edu.

Sincerely,

Jane A. Student
JANE A. STUDENT

PERMISSION GRANTED FOR THE USE REQUESTED ABOVE:

.....
John Q. Owner

.....
Date

(7) The more detail, the better.

(8) State desired usage, ie. teaching, printed publication, website. You will only get rights for the specific usage request.

(9) Note: indicate honestly what you hope to gain from this endeavor.

(10) It's best to obtain rights of use for as long as possible.

(11) Signature confirmation is your proof that you are obtaining rights from the copyright owner.

For more information, please contact:

University Library: Scholarly Communications: 217.265.5386; IDEALS: 217.244.3877; ideals-gen@uiuc.edu
Graduate College: 217.333.0035; www.grad.uiuc.edu

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