

# Copyright for Graduate Students

## Quick Reference Materials

### What Graduate Students Should Know about Copyright

- Using Copyrighted Works in Your Dissertation or Thesis
  - How do you know if it is protected by copyright?
  - So long as I cite it, isn't that enough?
  - But doesn't fair use let me use copyrighted works?
  - If I need permission, how do I get it?
- Your Rights as a Copyright Holder
  - Depositing your dissertation in the UA Campus Repository
  - Publishing your dissertation through ProQuest/UMI

Questions?

Ellen Dubinsky

[edubinsky@arizona.edu](mailto:edubinsky@arizona.edu)

520-621-6433

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## How Do You Know if it is Protected?

“Original works of authorship fixed in any tangible medium of expression, now known or later developed.”

Copyright Act of 1976, 17 U.S.C. § 102(a)

## What is Protected?

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

## What is Not Protected?

- Works that have not been fixed in a tangible medium of expression
- Titles, names, short phrases and slogans; familiar symbols or designs; listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries or devices
- Works that consist entirely of information that are natural or self-evident facts, containing no original authorship (such as a phone book or standard calendar)
- Works created by the U.S. Government
- Works for which copyright has expired (works in the public domain)

## How Long Does Copyright Protection Last?

- Copyright does expire, and works then fall into the “public domain”
  - **Published Prior to 1928** – work is in the public domain (see [Public Domain Chart](#))
  - **Published between 1928-1977** – you will need to know whether the work was published with a copyright notice and whether copyright was renewed
  - **Published 1978-present** – life of author + 70 years
- Out-of-print is not out-of-copyright – BUT....this may help your fair use analysis

Public Domain works – or other works out of copyright – can be freely reused.

Prior to effective date of the 1976 act, notice of copyright and renewal requirements varied. Thus it is complicated to determine whether copyright protection still in effect for a work Refer to the Public Domain chart (<https://guides.library.cornell.edu/copyright/publicdomain>) for specific details.

## But If I Cite It, Isn't That Enough?

- Copyright infringement is different from plagiarism:
  - “**plagiarism**” is an appropriation of someone else’s work without giving proper credit
  - “**infringement**” is using someone’s work in violation of his or her rights.

*You can plagiarize without infringing a copyright; you can commit copyright infringement without plagiarizing a work.*

Copyright infringement is a violation of the copyrights of another as granted by law, while plagiarism is an ethical and often institutional policy offense.

Even if your use of another’s work is allowable under copyright law, you may be committing plagiarism if you use the work or ideas of another person and fail to attribute them properly.

## Using Copyrighted Works in My Dissertation or Thesis: Do I Need Permission?

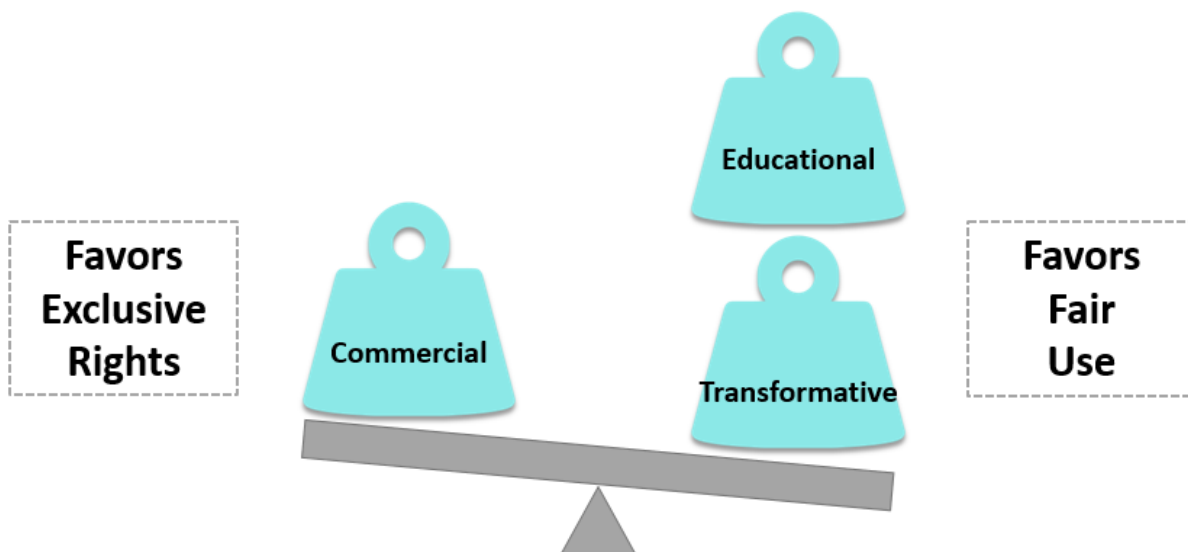
- Review all materials that you might include in your final product – quotations, photographs, charts – anything that is copyrightable
- Are the works you are including protected?
  - Public Domain?
  - Creative Commons or Open Access?
  - Your own published works? (You'll need to check the agreement you signed with the publisher)
- If included works are copyrighted, you might need permission if your use does not qualify as **FAIR USE**

In advance of filing your dissertation—preferably several months before—do a systematic review of your draft. Identify all materials that you might include in the final product, ranging from ordinary quotations to full reproductions of photographs, music, software, and any other copyrightable material. Each item will need at least brief consideration for copyright clearance, but others may require careful evaluation and perhaps even the time to track down a copyright owner for permission. You should also identify third party materials in order to give them an appropriate citation. Citing sources is of great importance for intellectual honesty, but citations do not resolve the copyright questions.

## What is Fair Use?

- “Fair Use” allows for use of a copyrighted work without permission, if for purposes such as criticism, commentary, news reporting, education, and research.
- Four factor test for determining whether such a use qualifies as fair use:
  1. Purpose and character of the use
  2. Nature of the copyrighted work
  3. Amount and substantiality of the portion of the work used in relation to the whole work
  4. The effect of the use upon the potential market for the work

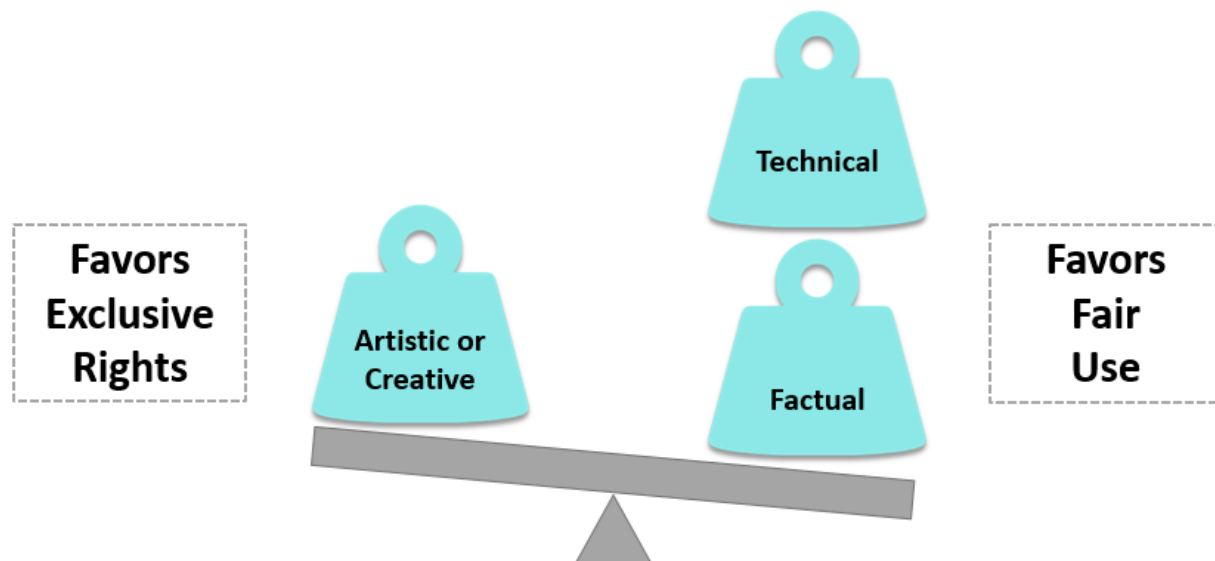
## Purpose and Character of the Use



Fair use law favors nonprofit educational and noncommercial uses over commercial uses. Nevertheless, even some commercial or for-profit purposes may be overshadowed by the scholarly or educational objectives of the use. The fair use statute explicitly lists several purposes appropriate for fair use, such as criticism, comment, news reporting, teaching, scholarship, or research. But be careful: Not all nonprofit educational uses are “fair.” A finding of fair use depends on an application of all four factors, not merely the purpose.

In analyzing the “purpose” factor, a “transformative” use of the work can tip this factor even more strongly in favor of fair use. For example, cutting, adjusting, and altering the work to place it in the context of scholarly study can be transformative. Selective quotations in a scholarly study, short clips in an analytical multimedia work, or deconstruction of text in a critical analysis are also likely to be transformative. The use of photographs and other images can be transformative, especially when they are small images or detailed close ups and are clearly tied to the scholarly analysis. By contrast, full-size and high-resolution color images can compete with licensed originals and may not be as transformative.

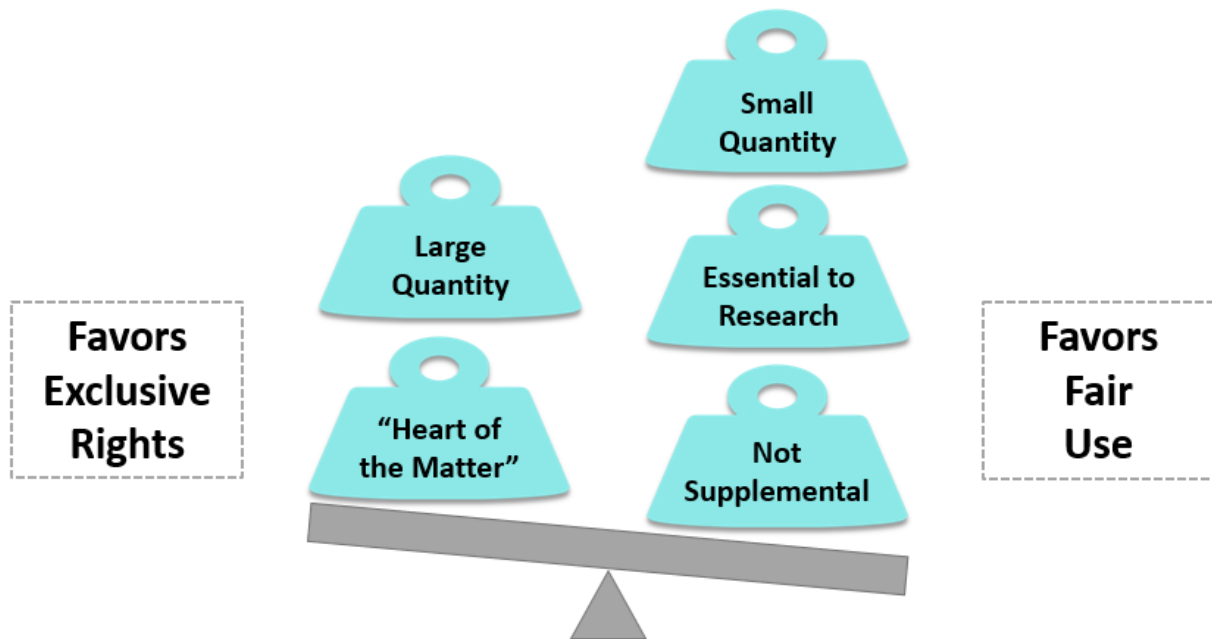
## Nature of the Work



Evaluate carefully the work you are proposing to use. Is it a scholarly nonfiction work? Is it the type of material from which quoting is normal, expected, or even encouraged? Fair use of these works may be greater than for other materials. Is it published? Fair use for unpublished manuscripts is often more restrictive than for published works, although limited uses in a scholarly study can be fair use. The fair use of workbooks, survey instruments, and other “consumable” works may also be limited. Courts favor uses of nonfiction more readily than they favor uses of fiction or artistic works.

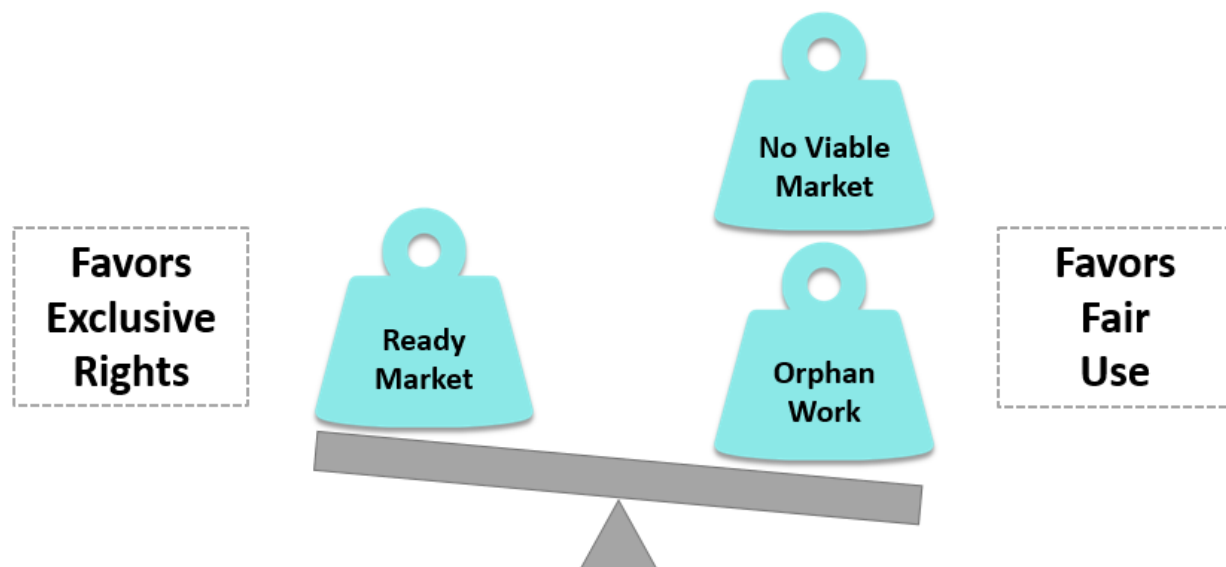
Courts have given modest guidance about the “nature” of videotapes, software, and other relatively new media and whether they merit special treatment, but recent cases have indicated that even the use of creative artworks and photographs can still be fair use, although usually within tighter limits. One place to start your consideration of this factor is by evaluating the importance and relevance of selecting and copying the work to further your educational or scholarly purpose; be sure any music, video, and photography in your dissertation is important for advancing your research objectives.

## Amount of Work Used



This factor may be intuitively the clearest to assess, but still without simple answers. The law has avoided strict measures such as word counts, bars of music, or minutes of film footage in favor of a flexible standard that can adapt to changing needs and circumstances. In most cases, the more you use the less likely you are within fair use, and courts consider whether you are using the central “essence” or “heart” of the original work. Yet courts seem to look most often at whether the amount that you are using is appropriate and necessary for serving your research or educational purpose. Keep your quotations and clips to a minimum, and keep them tightly tied to your scholarly objectives. One important court decision held the use of small-size and low-resolution images were necessary to tell the historical story in the book and thus were within fair use; the court also cautioned that full-size color reproductions might not be allowed.

## Effect of the Use upon Market for Original



This factor centers on whether your use interferes with a realistic purchase or even license of the copyrighted work. Does your proposed use compete with or supersede the original work? Is your copy or excerpt likely to substitute for purchasing the original? Many people make downloads and reproductions with the rationale “I wouldn’t buy one anyway,” but the real question is whether the work is available on the market on terms that reasonably would serve your needs. Brief quotations in books and on websites are usually allowable, but substantial excerpts and reprints are harder to justify if the material is licensable on reasonable terms. If a professional photographer, for example, offers a simple and affordable license for including an image in your dissertation, this factor might weigh against fair use.

On the other hand, your use might not harm the market if the price is unusually high, the terms restrictive, or the license simply does not permit the type of use you need for scholarly research. Further, the more that you alter or adjust the work for your specific research needs, the less you are competing with the original. Once again, no simple rule can apply. Fair use depends on the particular circumstances of each situation. Finally, this factor is implicated if you post your dissertation online. Photographs and other copyrighted works might be easy fair use if your dissertation went only to your committee, but allowing public access can arguably produce market competition.



## Getting Permission

1. Identify the copyright holder – may be author or publisher or someone else  
(Registration post-1978 is available online: [www.copyright.gov/records](http://www.copyright.gov/records))
2. Obtain the address of the copyright holder
3. Send copyright permission request (written request or electronically submitted)  
OR
4. Use a licensing agent to get permission:
  - Books and Journals: Copyright Clearance Center: [www.copyright.com](http://www.copyright.com)
  - Music: BMI (Broadcast Music Inc.): [www.bmi.com](http://www.bmi.com)
  - Film: Motion Picture Licensing Corp: [www.mplc.com](http://www.mplc.com)

In the event your work is not fair use or your publisher wants to see documentation of permission – how do you get permission? Identifying the copyright holder – check the Copyright Office’s registry or do a Google search. Finding addresses – the library has various biographical and address directories for publishers – or use Google. Make sure written copyright request includes a place for the recipient to sign to indicate they grant the requested permission. If you don’t receive any response, you cannot assume permission has been granted. You may have to delete or rewrite the segment of your dissertation or project that uses that material. Reducing the use of copyright material may also help with fair use claims, if you used a substantial amount. (Make sure what you have is all really relevant and necessary. Use the smallest amount possible.) If, after an extensive search for a copyright holder, you find no one, you might reasonably decide that no one remains to assert the claim, and accept the risk that you may be wrong about this. (If you are publishing commercially, your publisher may or may not agree to let you do this, since they would also bear responsibility.)

What if the copyright holder requests a licensing fee? You have to decide whether it is worth that, and you can negotiate a lower price. Can you replace the material you used with something from an openly licensed resource?

## Your Rights as Copyright Holder

- You are the copyright holder of your thesis or dissertation
- Copyright protection is **AUTOMATIC** upon the moment your work is created and fixed in tangible form
  - Formal publication not required
  - Since 1989 – no requirement of registration or inclusion of a copyright symbol  
(*registration is required for filing an infringement claim and winning damages*)
    - ✓ You may want to register if work has high market value or is highly creative.
    - ✓ Simple form and nominal fee – <http://www.copyright.gov>

## Publishing Your Work

- Publishing Your Dissertation or Thesis at UA
  - Dissertation Publication with ProQuest/UMI – nonexclusive license to reproduce, distribute, display and transmit the work
    - Traditional Publishing or Open Access Option
    - Embargo options available
  - Deposit in the UA Campus Repository – nonexclusive license to archive, preserve and grant access to your thesis or dissertation
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Both publishing agreements allow students to elect to make their dissertations available immediately or after a specific limited period of time known as an embargo. An embargo may be appropriate and desired when a student wants to allow time to explore publishing part of it in other forms, if the dissertation contains material for which a patent might be sought, or if it includes other sensitive or confidential information.

## Resources

- [Copyright Term and the Public Domain in the United States](#)
- [Major Academic Publishers and Standard Policies Related to Academic Theses](#)
- [ProQuest, Dissertations and Master's Theses Traditional Publishing Agreement](#)
- [UA Fair Use Checklist](#)
- UA Graduate College, "[Archiving the Dissertation](#)"
- University of Texas Libraries, "[Copyright Crash Course: Getting Permission](#)"

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[edubinsky@arizona.edu](mailto:edubinsky@arizona.edu)

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