

# **COPYRIGHT HANDBOOK**

**for**

# **RESEARCHERS**

Contains advice for the creation and publication of theses, journal articles and conference papers by staff and students.

# **COPYRIGHT HANDBOOK FOR RESEARCHERS**

## **CONTENTS**

### **1. Copyright basics**

- Moral rights
- Fair dealing for research and study
- Ownership and permission
  - Author or owner of work
  - Who owns the rights in works created by several persons?
  - Employers, works for hire and researchers

### **2. Creating your work**

- Material freely available
- Copyright or third party material
- Internet and social media – wikis, blogs & web 2.0

### **3. Submitting a digital thesis to VU Research Repository**

- Pre-print or post print versions

### **4. Publisher agreements and managing your rights**

- Publishing commercially or Open Access
- Open Access publishing options
- Publisher agreements or contracts and licences

### **5. Conferences**

### **6. Research data**

### **7. Permission letter template**

### **8. Further references**

# COPYRIGHT HANDBOOK FOR RESEARCHERS

## Copyright basics

Copyright law gives a legal framework for the use and management of a range of works, including text, artistic works, dramatic works, musical works, films, broadcasts and published editions. Copyright gives you, the owner, exclusive rights to

- reproduce,
- publish in print or electronic form,
- perform the work in public,
- communicate to the public and adapt or modify their work.

As the copyright owner, you can transfer any or all of these rights to users or a third party. Generally copyright lasts for 70 years after the death of the creator or 70 years after the first publication.

General information about copyright can be found at the Australian Copyright Council's website at <http://www.copyright.org.au/>. The ACC provides Factsheets on a range of topics such as Copyright and Research, moral rights, duration and the law regarding use of third party copyright or using material such as logos etc.

## Moral rights

These are rights linked to copyright but are not transferrable to another person or body.

Moral rights

- Are personal legal rights belonging to the creators of copyright works and cannot be transferred, assigned or sold.
- Only individual copyright owners can have moral rights (corporations or organisations cannot have moral rights).
- Ensure that the creators of works are correctly attributed for their work.
- Ensure the works are not treated in a derogatory way.

## Fair dealing for research and study

While writing your thesis you can rely **on fair dealing exceptions** for the use of works **for research and study**. Fair dealing does not cover copyright material in research papers for publication, presenting at conferences or making them available online, such as for open access. Once the thesis is published this exception no longer applies to the work used in the thesis. Permission will be required unless you use an insubstantial portion of the copyright work.

Under fair dealing for text you can reproduce for research and study

- 10% or one chapter (whichever is greater) of literary, dramatic or musical works.
- Journal articles – one article per journal or two articles from the same journal if the articles are for the same research.

# COPYRIGHT HANDBOOK FOR RESEARCHERS

Artistic works, unpublished material, films and sound recordings, including music do not have the same 10% provision. To use these materials and to use more than 10% you will need to consider whether the use is fair and reasonable. The criteria for this determination are as follows:

1. Can this item be bought at a reasonable price within a reasonable time?
2. How much do I need to copy?
3. Why am I copying?
4. What effect will this have on the 'normal exploitation' or value of the work?
5. How will this use affect the copyright holder's rights?

Fair dealing also covers uses **for criticism and review and parody or satire** if you are genuinely producing a critique, review, satire or parody of a work. The use must be 'fair and reasonable'. There is no limit to the amount of the work you can copy but it must be considered 'fair and reasonable'.

## Ownership and permission

If the work is created as part of the author's employment role, for example as a teacher at Victoria University, then copyright will be owned by the employer, namely the University. Generally the creator is the copyright owner and he or she has the right to control the use of the work unless bound by a contract which assigns copyright to another party; an author can also give exclusive rights or non-exclusive rights to another party such as a publisher.

When completing a thesis or research article candidates must ensure that they have permission to use any third party material within their work. Before publishing researchers or students should check their rights within a publishing contract – they may wish to seek legal advice in order to negotiate terms and conditions which allow them future access and use, for example to review and edit chapters.

## Author or owner of work

The original creator of a work is called the "author" although in the common vernacular the word is used to identify the person who wrote something such as a book, paper or article. In copyright law the term is used to identify the creator of any work. For example, a sculptor, artist or photographer would be an "author" of their work.

*"If copyright is assigned or transferred to a second person or entity, that person does not become the author, merely the new rights holder. The original author always retains that status or description"* (Copyright for Librarians, (nd), Creative Commons licence).

Under the Moral Rights law the author has rights to acknowledgement and integrity of the work that cannot be assigned, altered, or renounced.

# COPYRIGHT HANDBOOK FOR RESEARCHERS

## Who owns the rights in works created by several persons? *(from UNESCO's 'The ABC of Copyright, 2010, Paris).*

Two or more persons can collaborate in the creation of a work in different ways. Copyright ownership in such works follows different rules according to the degree to which the individual contributions can be distinguished within the final result.

- i) When the contributions made are merged into an inseparable or interdependent unit, we speak of **'joint works'** or works of collaboration. For example when two authors join together to write a book it becomes a collaborative work.

In the case of joint works, the contributors are considered co-authors who jointly own the rights in their creation. As joint owners they must generally exercise their rights together. The co-authors may not unreasonably refuse to give their consent for the exploitation of the work. Unless otherwise contractually stipulated, profits are distributed in equal parts.

- ii) Joint works are to be distinguished from **'composite works'** which term is used if two or more pre-existing works are linked to a new creation without losing their individual character. For example, when music is written to pre-existing lyrics, and thus a song is created, both the music and the lyrics may be used separately from the song, without affecting the rights in the new 'composite' work.

While the rights in the new work (the song) are held jointly, copyright in the individual contributions (the music and the lyrics) continues as a general rule to belong to the respective creators, subject to any specific contractual agreements.

- iii) A **'collective work'** merely assembles several contributions without amounting to a joint work. Some examples are periodicals, anthologies and encyclopaedias as well as databases.

Though the contributions in this case are separate and discernible, they are often undertaken at the initiative of someone who plans, arranges, coordinates, prepares and publishes the collection (often called the 'editor'). It is therefore generally recognised that, without prejudice to the copyright in the individual works, there is separate copyright in the whole, which is usually vested in this person or legal entity.

## Employers, Works for Hire and researchers

According to the common law legal tradition, when an employee produces a work in the normal course of his or her employment, the employer is regarded as the initial owner of copyright, and hence considered the author, unless there has been an express agreement to the contrary.

Works made for hire are any works produced in the course of employment, including leave and if created using any equipment belonging to the employer.

For academics at VU this does not always apply if they create works which are not part of their teaching work. According the [IP Policy](#)

Part 2.4 ownership of Intellectual Property at VU depends on your role whether student, staff or researcher.

If in doubt check the University's IP Policy or speak to the Copyright Officer.

# COPYRIGHT HANDBOOK FOR RESEARCHERS

## Creating your work

When writing your thesis or work to be published you may wish to include material from other sources. When using other work you will need to check the copyright status or look for 'out of copyright' and 'copyright free' works. There are several categories of works available for your use.

An **insubstantial portion** can be a few lines or sentences from another source, such as a book or a journal, which is acknowledged; a short film clip or a snippet from a sound recording may also be used without permission if acknowledged. A quote from another source can be considered an 'insubstantial portion' and will not require permission.

Whether something is 'insubstantial' depends on quality and quantity and the Copyright Act does not define exactly what qualifies as an insubstantial portion. Sometimes even a short film clip if it gives away the plot will be considered substantial and will require permission.

## Material freely available

**Creative Commons licences** give authors or creators several options for licensing their work for use by others. Under Creative Commons (CC) authors can choose how they will allow people to use their work, whether for commercial or non-commercial purposes and whether they can adapt, change, modify work and create derivative works or mash-ups. In some cases, you will be given an option to 'share-alike' which means any derivative work using the CC material must be licensed under the same terms.

The most common CC licence is the CC- BY which has the condition that the work is attributed to its author or creator and can be used by others under the same conditions without seeking permission.

You can use material that is out of copyright or available under a Creative Commons or similar licence for your work. For more information about these open licences go to: <http://www.creativecommons.org.au> or <http://www.gnu.org>

If you wish to find freely available material to include in your thesis or work to be published you can go to: <http://search.creativecommons.org/> where you will find various sites to search for freely available material such as images and other media.

You may also use **Open Access** material which is available online for the purpose of research and study. This category of material makes the full text of works available online for downloading and printing for research and study but it will still be subject to copyright if you wish to reproduce for publication

## Copyright or third party material

When including work created by another person or organisation in your thesis, you will need to seek permission unless the work is out of copyright and comes under one of the categories described above.

You can find information and a template for a permission document to be used to collect permission from copyright owners for any work you have used in your thesis at: <http://www.vu.edu.au/library/researcher-support/research-repository/submitting-a-paper>

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## **Internet and Social media – wikis, blogs & web 2.0**

### **Internet use**

It is a good habit to always check the **terms and conditions** of use or **copyright statements** when accessing material on the internet. Not everything on the internet is free for further use. It is important to check the terms and conditions for any images you may find for use on the internet.

Linking rather than copying is recommended when using digital material from the internet. When using third party material, such as videos from YouTube, check whether the “embed” option is available as this allows you to embed the work using an ‘implied licence’.

**Privacy** must be considered when using these sites and any information collected on them

- Under your sites’ terms and conditions include guidelines of what can and cannot be posted on the site. For example, you may exclude pornographic material, defamatory, racist or abusive material and any information which is personal or private such as contact details.

See *Blog, Podcast, Vodcast and Wiki Copyright Guide for Australia* by Anthony Austin, et al (2009), ARC Centre for Excellence for Creative Industries and Innovation.

**Web 2.0** describes a variety of web sites and applications that allow anyone to create and share information online; it allows people to create, collaborate, share and communicate. Examples of this type of facility are Facebook, twitter, wikis, blogs and sites such as YouTube and Flickr.

Web 2.0 makes it easy for anyone to create an original work or to adapt or make a compilation from a variety of works but often there is little regard for the copyright in the work or works. When using wikis and blogs for research purposes you must consider the implications of copyright and privacy laws when using other people’s work.

### **Wikis and blogs and social network sites:**

- Users or contributors own copyright in their original work
- Material may be used under ‘fair dealing’ provisions but permission is required to publish or present the work at a conference.
- When setting up a site for collecting research make sure you have included terms and conditions for users so that they are informed about how the material will be used and giving an ‘opt out’ choice.
- Terms and conditions on any of the above sites are legally binding.

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## Submitting a digital thesis to VU Research Repository

When making work available for uploading into an Institutional Repository (IR) all third party material in the thesis must have permission documentation recorded to allow further online access. Candidates or researchers must complete **Victoria University's Research Repository submission and permission form** before the thesis or article can be loaded into the repository.

Guidelines for the process of submission of your work can be found on the Library's web page as shown above or go to: <http://www.vu.edu.au/library/researcher-support>

All third party permissions and author submissions need to be filed and stored according to the University's policy for Records Management and are then managed by the VUIR team.

### PhD including published papers

As your digital thesis will be made openly available on the institutional repository the copies of any published articles may not be able to be included depending on the agreement you have made with the publisher of those articles.

### Pre-print or post-print versions

The published version of most peer-reviewed research outputs cannot be directly loaded into Institutional Repositories such as VUIR as the rights are held with the commercial publisher unless a complex negotiation process, or money changing hands, has allowed some rights to the author.

**Pre-print versions and theses** are usually free to load into the repository as this could not be considered "publishing". Publishers allow these versions to be made available via the repositories because the version has not been peer reviewed and there is no financial investment by the publisher. There may be an embargo period imposed by the publisher.

Many authors do not want their pre-print version made public as it has often undergone significant changes in the peer review process.



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## **Publisher agreements and managing your rights**

### **Publishing commercially or Open Access**

If you wish to publish your work you will need to decide how you intend to publish – as a full book or only parts of it as journal articles, conference papers or chapters in a book of collected works.

Choose a suitable publication model whether with an established academic publisher or open access publishing which is generally a form of e-publishing or you can do self-publishing which is not always recommended. Also be aware of any publishing conditions associated with your funding grants as you may need to make your work available as Open Access.

It would also be useful to consider what you wish to do with your work in the future as you may wish to retain some of the rights in order to copy, distribute, make adaptations or add it to an Open Access repository.

### **Publishers**

It is usually the **pre-print** version which is allowed to go into the repository and made accessible online.

Most publishers do not want the published version made available as Open Access as they fear it will reduce their subscription base.

Some publishers do not allow any version to be made Open Access, or they charge a significant fee per article, book, chapter or conference paper to do so. This can be referred to as the Gold Access version

Many publishers make linking to the published version on their website a condition or requirement for adding Open Access full text to a repository.

### **Open Access publishing options**

There are several options available to an author when thinking about Open Access publishing but listed below are two basic types you can use.

#### **Gold access:**

A researcher pays for an article to be published in an open access journal or an otherwise subscription-based journal. This is known as hybrid publishing.

#### **Green access:**

In this system research findings are placed in repositories that are free to access generally. Usually there will be an embargo period between publication in the journal and general open access.

The Sherpa/Romeo list provides information on most publishers' policies regarding copyright agreements. Search for the journal of your choice and it will explain your self-archiving rights and link out to documentation from the publisher. Go to <http://www.sherpa.ac.uk/romeo/>

# COPYRIGHT HANDBOOK FOR RESEARCHERS

## Publisher agreements or contracts and licences

As copyright owner of your work you have the right to **reproduce** your work, **publish** it in print or electronically, make it available **online** and includes **communicating** it to another person by email or fax) , **perform** it in public, **adapt** it and **broadcast** it

**Moral rights** are retained by the author even if the copyright has been assigned to another party. The author must still be acknowledged and credited as the creator of the work. Your work should not be falsely attributed as this is a breach of the law. If your work has been produced on behalf of your employer or you have been commissioned or hired to do the work then the copyright resides with the employer.

**Publishing Agreements** will generally detail the time limit of the agreement or whether it can be terminated. An irrevocable perpetual agreement means that it is permanent and will last indefinitely. Once an agreement expires you can enter into a new agreement.

Publishers agreements are often standard agreements, particularly for journal articles but this does not mean that you cannot change the terms and conditions to suit your requirements. (see the addendum link below). Before signing any agreement make sure you have it checked by a legal officer or lawyer and always keep a copy so you can check on your terms and conditions at a later date.

Most academic publishers require authors to transfer copyright to the publisher which will restrict the ability of the author or the University to make a copy of any published works available online, including as part of a **PhD with associated papers (by publication) thesis**. It is important that any researchers and PhD candidates retain full and complete copies of their final versions of all articles, as in some cases these can be included in the online version of their thesis.

If a publisher does not allow any version of the article to be made available online, it may only be possible for the University to include URL links to the articles that form part of the thesis in the digital version of the thesis. Access to these articles may then only be made via a subscription to the journal, so the full thesis will not necessarily be available to all users.

All candidates or writers should scrutinise their publisher agreements and policies so that they can gain future access to their work. They should also consider asking publishers for permission to include their article in an online version of the thesis and retain copies of all agreements.

Below are descriptions of some of the more usual types of licence or permission documents used by authors or publishers.

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## **Assignment of copyright**

This means that you assign all rights to your work to another party such as your publisher. If you wish to deposit your work in the university open access repository, make it available online or provide copies to colleagues, you will need permission from the publisher. (See Addendum notes below).

It is usually permanent unless the agreement states otherwise. If you assign your copyright to a publisher it means they can, at their discretion, enter into agreements with other parties to use your work. Your publisher could enter an agreement to include your work into a database; it also means that if you later wish to re-use or edit the work you will need permission from your publisher.

## **Exclusive licence**

An exclusive licence means you retain copyright but grant your publisher certain rights over your work for the term of the agreement. These rights can include the right to publish, communicate and distribute online and to sublicense. These rights are given only to the publisher, or whoever is named on the licence agreement, and you cannot give them to anyone else during the term of the agreement.

## **Non-exclusive licence**

This licence is similar to the exclusive licence but allows you to also give the same rights to other parties as well. This type of licence can sometimes be referred to as a 'permission' to use or reproduce because the copyright owner is allowing another party to use their work for a certain purpose or purposes.

## **Addendums:**

Using the SPARC Author Addendum can help you secure some rights as the author of an article.

Go to <http://www.sparc.arl.org/resources/authors/addendum-2007> for more information about these documents. If you wish to add your thesis to the university repository where it is made accessible but you have included published articles which have been assigned to the publisher but are a part of the thesis, then you may need to use the addendum to retain some rights for including your work in the repository.

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## Conferences

Any research paper presented at a conference, symposium, public forum or lecture given as a researcher or student will require you to manage the copyright.

You will need to get permission for the use of any third party material in your presentation and you will need to manage your copyright in your original work.

If the conference presenters wish to publish your paper or presentation they will need to seek your permission and you may be asked to sign an agreement. You should read any agreement carefully as you may be required to place an embargo on you publishing the material presented. It is your responsibility to ensure that you are not breaching any confidentiality agreements, privacy or the terms of your funding agreement.

When presenting in another country you will need to ensure that you are not infringing any copyright laws of the country where the conference is held. It is always wise to check with the conference organisers as to what your copyright obligations may be and how they will treat your work for any further publication.

## Research data

**Research data** is not necessarily protected by copyright as ideas and information in themselves are not protected unless expressed in material form.

- Research data expressed in a table or graph would be covered by copyright.
- Research data can include photographs, interviews, surveys, questionnaires, field notes, laboratory notebooks, sound recordings or films.

## IP for Data and compilations

- Copyright covers a proportion of research data unless it is just factual information.
- Compilations of data, for example datasets or databases are protected as 'literary works' as long as they are considered as original work by law.
- Original works are judged by the level of skill, judgement, knowledge, creativity or labour used to compile the data.

For information about research data and the management of your data at VU go to

[Research Integrity Policy](#)

For information about Intellectual Property at VU go to:

[IP Policy](#)

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## Third party permission template

[today's date]

Dear Sir/Madam,

**Re: Request for permission to reproduce copyright protected material**

My name is [enter your name] and I am completing a [enter course type here ie MA/PHD] in [enter name of course] at Victoria University.

I understand that you are the owner of the copyright of the following work.

Title of work: [enter title]

Date published: [date published]

Publisher or author name and details:

URL if applicable: [URL]

If you do not control the copyright to this item, I would appreciate it if you could advise me of the person to whom I should write.

I would like to include [describe the part of the copyright work to be reproduced] in my thesis. The use is non-commercial as it will only be used for my research and study. I will be making four print copies of the thesis which are retained at Victoria University. Also one electronic copy would be made available on the Internet via VUIR, Victoria University's Institutional Repository.

The material will not be changed in any way, but it will appear as originally published. You will be acknowledged as the copyright owner with a full citation.

Your return email replying "I agree" will constitute your permission for the use of your copyright work (as described) with respect to my thesis

Please let me know if you have any questions.

Thank you for your help with this matter and I look forward to hearing from you.

Yours faithfully,

[your name]

[your phone number]

[your email address]

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## Copyright References

**VU information for submitting work to Research Repository:**

<http://www.vu.edu.au/library/researcher-support/research-repository/submitting-a-paper>

**Creative Commons or other free materials:**

<http://search.creativecommons.org/>

<http://creativecommons.org>

<http://www.gnu.org>

<http://piotrpeszko.com/post/97713676827/9-new-sources-for-free-stock-images-that-you-dont-know>

**Author Addendum:**

<http://www.sparc.arl.org/resources/authors/addendum-2007>

**General copyright information:**

<http://www.copyright.org.au/find-an-answer/>

**Publishing information:**

<http://www.sherpa.ac.uk/romeo/>

**Social media and web 2.0:**

*Blog, Podcast, Vodcast and Wiki Copyright Guide for Australia* by Anthony Austin, et al (2009), ARC Centre for Excellence for Creative Industries and Innovation.

**Victoria University policies:**

[Copyright Policy](#)

[Research Integrity Policy](#)

[IP Policy](#)

For any queries or help and assistance with your copyright issues you can contact the University's Copyright Officer for advice. You can email them on [library.copyright@vu.edu.au](mailto:library.copyright@vu.edu.au) or ring 9919 5958.