

Guide to Intellectual Property & Copyright

Copyright rules for academia have grown more stringent in recent years and it is best to err on the side of caution when using material from other sources. As the author of the dissertation, you are personally responsible for following copyright law. Though this may seem like a burden, in fact the copyright laws you comply with now will, after the dissertation is published, protect your work from copyright infringement. You would not want to receive a cease-and-desist notice regarding the dissertation after it is completed; neither would you want your own dissertation to be copied indiscriminately by other researchers without crediting it as their source.

The following discussion is a guideline regarding current practices in intellectual property, principles that protect you and all other authors.

Definition of Terms

Intellectual Property

The term “intellectual property” refers to all ideas, information, images, forms, and knowledge protected by law. Intellectual property concerns everything that human minds have created as opposed to physical property. For example, the Microsoft® butterfly is not a physical object, but it is a fixed form protected by intellectual property rights.

Copyright Law

Copyright law is designed to protect the works of authors and creators of art, music, poetry, prose, etc., from unauthorized republication, reproduction, duplication, or distribution. Original copyright law was drafted to foster creativity and inspire new, original, academic, cultural or economic contributions. Any work, in a fixed, tangible form, is automatically protected by copyright the moment it is completed; registration with the Copyright Office offers additional benefits to copyright holders, but it is not necessary for protection under the law. Copyright is one more specific type of the many intellectual property rights.

What else might be protected by intellectual property rights? Such items include patents, trademarks, registered trademarks, registered designs, company logos, cartoons, created scents, trade dresses, performances, maps, spoken recordings, and lectures. All are examples of items or ideas that can be protected from unauthorized use.

Fair Use

Fair use is a copyright exemption that has, in the past, allowed some latitude for scholars and critics engaged in non-commercial use. Increasingly the fair use exemption has been challenged, particularly for images.

ProQuest, the digital publisher of dissertations and theses, now assumes all images are protected and requires students to provide permission statements for every one of them used in the work. Because all Pacifica dissertations must be published by ProQuest, the most efficient way to learn these rules is to read ProQuest’s own proprietary guide to copyright, which is available at http://www.proquest.com/assets/downloads/products/UMI_CopyrightGuide.pdf.

Public Domain

Public domain concerns anything published/produced in the United States prior to 1923, anything published between 1923 and 1977 without copyright notice, and anything published from 1923 to 1964 with copyright notice but without copyright renewal. It also includes works whose authors have expressly dedicated them to the public domain.

Works in the public domain may be freely used, with proper citations, of course. As a practical and prudent matter, students should consult the U. S. Copyright Office on public domain issues (<http://www.copyright.gov>). Cornell University has an excellent web page on materials available through Public Domain (<http://www.copyright.cornell.edu>).

Open Licensing

Students also have the option of seeking images that may serve their research purposes through openly licensed materials. Openly licensed materials are those that an author has granted an open license to use even though the work is not in the public domain. Creative Commons is one service that provides a variety of such licenses. For more, go to <http://www.creativecommons.org>.

Using Protected Materials

Books, Manuscripts, and Printed Materials

No more than 10% or 1,000 words of a single work may be reproduced without authorization. Though the boundaries of fair use are often unclear, anything in the 15-20% range is considered pushing your luck, and anything greater than 15-20% of the entire work will likely be considered unacceptable. Proper attribution and citation are always required (anything else is plagiarism). Most students do not quote more than 10% of a book within their own papers, theses, or dissertations, so this is not often an issue.

Poetry

An entire poem may be quoted if its length is less than 250 words; if the poem is longer, you may use up to 250 words. Additionally, you may use no more than five poems or poem excerpts by different authors from the same anthology, and no more than three poems or poem excerpts by any one poet.

Music or Lyrics

For academic, educational fair use, 10%, but not more than 30 seconds, of a musical work may be copied. Furthermore, students may not alter or change the fundamental musical structure or character of the work. Even if you intend academic or educational applications of copying or distributing complete songs, you are not protected under fair use. Please note: This means that students may not submit entire songs or copied CDs to accompany their papers, theses, or dissertations without expressed permission from the copyright holders. CD art work, designs and lyrics may also be protected by copyright law, and you should seek permission to use these if you intend to reproduce them.

Photographs, Art Work, and other Illustrations

To use photographs, works of art, or other images in the dissertation, students must gain written permission. For example, if you wish to use a strip from *Calvin and Hobbes*, you must obtain

explicit written permission from Bill Watterson to do so. This extends to photographs of protected architecture, and buildings/architecture created on or after Dec. 1, 1990—in some cases, even if you snapped the photo. So, if you wish to use a picture of the Guggenheim, you may be required to obtain written permission to use the image. If you intend to use a photograph of a person, you will need to possess (written) permission to do so. As mentioned earlier, the link to the PDF file describing ProQuest’s copyright guidelines, which govern all Pacifica dissertations, is this: http://www.proquest.com/assets/downloads/products/UMI_CopyrightGuide.pdf.

For paintings, students are required to obtain permissions from the governing/owning body, such as the Tate, the Huntington, the Getty, the National Gallery, and so on, as well as the copyright holder. (As with music, you may not alter the integrity of copyrighted art work or make your own modifications.)

No more than five images by an artist or photographer may be used in any one work, and no more than 10%, or up to 15 images, of a collective work (periodical issue, anthology, encyclopedia, etc.).

Students often believe that an image found on the internet, especially when it is advertised as free, may be used without the permission of the artist or creator of the work. This is not true. Plan on seeking written permission from the creator or the governing/owning body of every image and submit these written permissions along with the dissertation. Also include a list of illustrations (“List of Figures”) as part of the front matter of the dissertation.

Videos, Movies and Multimedia

The 10% rule applies here as well: You may use up to 10%, but not more than 3 minutes, of a copy protected video, movie, motion picture, etc. For copyrighted databases, data tables, and datasets, up to 10%, or 2500 fields, or cells (whichever is less) may be used.

Failure to comply with copyright and intellectual property laws can result in a variety of legal consequences. In addition to cease-and-desist letters, lawsuits from copyright holders or companies, individuals may be subject to federal penalties such as injunctions, federally assessed damages and profits, seizures, forfeitures, recovery of legal costs, and criminal prosecution. For additional information on the full range of federal actions that may be taken, please review Sections 501 - 513 of U.S. Copyright Law.¹

Failure to comply also has important scholarly consequences. Without the appropriate and necessary permissions in the manuscript, Pacifica cannot publish the work. Since one of the degree requirements across all PhD-granting programs at Pacifica is a published dissertation, non-compliance means that students will not receive an official transcript or formally earn their doctorate. You will, in effect, have wasted the time, effort, and money you have invested in pursuing a doctoral degree.

¹ Available here: <http://www.copyright.gov/title17/92chap5.html>