CAN I USE THAT IN MY DISSERTATION?

*Tips on Copyright and Permissions*
While you are working on your thesis or dissertation you are making use of a wealth of different resources, published articles, books, images, software, datasets, etc.
And ALL, or almost all, of these things are protected by intellectual property laws like trademark and copyright, or perhaps shared with creative commons licensing....
Today:

• Top 5 myths about © content in ETDs
• Using © content
• Documenting your use
• © of your dissertation
Myth #1: I can use it because I'm the author... While it’s true that whatever you create is copyright to you as soon as it is ‘fixed in a tangible medium,’ authors often sign away their copyright during the publication process for articles, proceedings, and book chapters. If you intend to use material that you have published in articles while working on your degree in your dissertation, you need to pay attention to your publishing contracts.
Traditionally, authors signing over their copyrights to publishers was seen as a way to enable publishers to best support the author by lifting limits on how the publisher may use the material in marketing and publicity. …many publishers are expanding on the ‘author’s retained rights’ in their publishing contracts, and some are adopting agreements where the author retains copyright and licenses their work to the publisher, but it is important to read contracts carefully. If you sign a contract that transfers ownership of the copyright to the publisher or puts limits on how you may use the material in the future you will most likely need to seek permissions from the publisher in order to use the work. And the publisher will have the right to deny your request if they so choose…
The library has created a guide to help with some of the most common publishers with which USF graduates have published. Each entry links to the publisher’s author rights policy, and, if possible, directly to the part that references use in a thesis or dissertation. If you do not find your publisher on the list, please feel free to ask your copyright librarian. I can help you locate the information and new publishers will get added to the guide as we get requests about them.
You may also run into issues of work for hire. The law says, a work prepared by an employee within the scope of his/her employment OR a work ordered or commissioned with the understanding that the work is made for hire is copyright to the employer.

Creating/publishing a report under contract (e.g. to the department of transportation) may require surrendering your copyright interest in the report to the contracting agency. Likewise, work created during ‘USF supported effort’ may be owned by USF. Here we have some excerpts from USF policy:
Myth #2: if I properly cite my sources, I’m not infringing...While citation is an important part of academic integrity and avoiding plagiarism, and attribution was one of the very first issues discussed by authors and printers alike in the creation of copyright law, it is not a very prominent part of US Copyright law.
US Copyright law is most concerned with how copyrighted material is used and shared after its creation. Creators of books, film, painting, sculpture, computer code, architectural rendering, photographs, music, and choreography (to name a few) are granted exclusive rights of duplication or making copies, distribution which includes sharing and selling, performance, display and creation of derivatives which can include translations, sequels, new editions, etc. These rights are immediate upon publication and do not require any copyright notice or registration. Even if you cite your sources, if you are using content in a way that violates these exclusive rights, you could be infringing.

You’ll notice that these rights do not list attribution or being credited. Attribution was added in 17 U.S. Code §106A – to make sure that visual artists are granted attribution but authors of other works, like computer code and choreography do not get the same protection.

So, you may be thinking, if all copying, display, and sharing of information is exclusively a right of the creator, how are we able to directly quote other authors in our papers or include pictures of paintings that we are comparing and criticizing? There are exceptions built into copyright law that balance the rights of the creator with those of the user. One of the most powerful and misunderstood is fair use.
Which leads to our next myth: #3 – all educational uses are fair uses

Firstly, a little clarification on the vocabulary: ‘educational’ uses in copyright have to do with teaching only..., so use of material in your dissertation or thesis is not usually ‘educational’ though it could be ‘scholarly’ and for ‘research’...the fair use exception to copyright law also considers whether a use is for research, but the purpose of the use alone is not enough to make a fair use argument.
Fair use is an exception written in to copyright law to outline that certain uses of copyrighted content are not an infringement to the creators exclusive rights. For example, in the case of criticism, news reporting, teaching, research, and scholarship a use may be a fair use when weighed against four factors... the four factors must be considered all together...one factor is not usually more important than the others.

The USF library created a checklist to help you figure out and document your fair use argument.
The purpose and character of the use refers to your work and how your work incorporates the material. Teaching and research, parody, whether your use transforms the original support a fair use argument under this factor. The Nature of the original material refers to whether the original is purely creative, like a poem, a novel, fiction or if the work is factual. Factual materials get less or ‘thinner’ protection under copyright law so use of a dictionary in your research is a stronger argument than use of a novel to entertain.

Factor three: the amount you use in relation to the whole. The less of a work that you need to use to make your new point the better your argument. And finally, the effect of your use on the original’s market – does your use replace a sale of some kind? Does it create something that the author could have created and monetized? You’ll see that the factors rely on each other some extent too: under nature of the original –the original work should be non-consumable. Copying consumable materials like workbooks or test books would most definitely replace a sale since they were made to be used up. Under amounts – you’ll want to avoid using the ‘heart of the work.’ This is the most important part, or the part that people would most want to know about like a spoiler. If you include the ‘heart of the work’ you may also be negating a potential sale.
Lest you get discouraged about the possibility of using the fair use exception under copyright in your work: consider all the ways you are already using fair use...

How are you using fair use?

- Quoting articles in your research papers
- Including copyrighted content in class presentations
- Scanning an article in the library to take home and study
- Using copyrighted content in your dissertation
  - Recording a TV show to watch later
  - Forwarding email
  - Sharing an article with your research partner
  - Writing fan fiction
  - Cosplaying as Batman
  - Making tardis cookies
Moving on to myth #4: government documents are in the public domain....Let’s start with ‘what is the public domain’...
The public domain is made up of works for which the protections of copyright law do not apply. This usually happens for one of three reasons:

1. Expired: Copyright protection for *Pride and Prejudice* by Jane Austen, first published in 1813, has expired. It is in the public domain.
2. Forfeit: Copyright protection for *Sita Sings the Blues* has been forfeited by the creator Nina Paley in a public announcement updated in 2011. Except for third party content included within it, *Sita Sings the Blues* is in the public domain. ([Public announcement by Nina Paley](https://nina-paley.org/))
3. Inapplicable: U.S. Federal Government publications are not granted copyright protection at all. All U.S. Federal Government publications fall immediately into the public domain. This is where they myth comes in....

While materials created by the US Federal government are not granted copyright protection (‘Inapplicable’), publications by state governments, by non US governments and by third parties contracting with government agencies may be protected....*For example: Florida department of transportation does not assert copyright over publications funded and made in cooperation with them, however, they do allow universities whose faculty and students are researching and creating those publications to retain copyright over the material.*
Often, ‘Terms and Conditions’ (sometimes terms of use or terms of service) are the best place to look for whether the agency claims copyright over the materials they produce. Many US Federal Government agencies clearly state that copyright does not apply to the products of the agency’s work, thus material can be freely used. State governments and international organizations may post a similar notice or make clear that they claim copyright over their products. Like this example, the United Nations, terms and conditions may have a space dedicated to copyright with references to how you should make permissions requests.
Myth #5: if it’s really old, there is no copyright protection...It is true that age of material has something to do with whether it is copyrighted; as we just discussed – copyright protection expires. If copyright has expired, then the materials is in the public domain and free for you to use, however,
Copyright protection in the U.S. is currently the life of the author + 70 years. And because of various amendments to copyright law, some of which are shown in this image, all material published from 1923 onwards may be protected by copyright law.

I said published, copyright law treats published and unpublished material differently. Unpublished material from 1920 for example, would be protected for life of the author + 70 years. If this material is, for example, a letter written by a 12 year old girl to her grandfather, and this girl died at the age of 91 in 1999, that letter would not enter the public domain until 2069.

It’s important to note that international materials should be treated the same as US materials with respect to duration of copyright law. The Berne convention and the TRIPS agreement, of which the US is a signatory, require all cooperating countries to treat foreign produced works as they would treat their own works. However, international agreements do not allow us to evaluate the public domain status of a work based on US laws. In the US certain materials published between 1923 and the 1970s had to abide by certain formalities of copyright law, like posting material with a © notice or registering the work. This does not apply to foreign born works, so like unpublished works, most foreign born works would be protected for the life of the author +70 years regardless of publication date.
Using © Content

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There are plenty of ways you can use copyrighted material without infringing. You can request permissions from the copyright owner which may also include requesting permissions from your publisher to use your own previously published content. This request can be informal, like an email to a friend, or formal, where you obtain a license contract for your use.

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Though seeking permissions is the quickest and often the easiest method to ensure that your use of copyrighted content is a responsible use, sometimes obtaining permissions is not the answer. You can consider a fair use argument for the copyrighted material you use in your dissertation. The library has created a checklist to help you do this; this checklist can be added to your appendixes to document your argument.

Examples of a strong fair use argument: if you are comparing/critiquing artwork/illustrations and your text’s foundation lies in the image that you are referring to.

And remember that an argument is simply that. The only way to find out for sure if you’ve balanced your understanding of fair use and copyright law correctly is to be taken to court and have the argument examined by a judge. If a rights holder takes exception to the way you have used their copyrighted content without permissions, their complaints and whatever legal action they want to take will be directed at you as the responsible party.
Documenting your use

However you use copyrighted material in your thesis, you need to document your use.
When following the RightsLink process I talked about earlier you will end up with a multi-page license that describes your use request in very thorough contract language. This would be added to your permissions appendix. Similarly an email response from an author to your permissions request would also be added to your appendix.

Terms and conditions and author rights statements can all be changed by the copyright owner over time. The creative commons license with which an author releases their work in a new venue may also change. By capturing the license and conditions of use statements when you submit your ETD you can guarantee to show that you abided by the terms as they were if in the future your use comes under question.

When relying on a fair use argument for the inclusion of material in your ETD, including a fair use checklist or explanation of that argument is also a good idea to show that you were careful and considerate about your use at the time. Your intentions to use material within copyright law by developing your fair use argument can only help you in the event your use is ever questioned.
In addition to your permission appendix, you need notify the reader each time you use material that has been previously published or for which the copyright is owned by another. A figure note or note to the reader should come alongside or in advance, in the case of a whole chapter, of the copyrighted material. It usually includes the full citation of the original publication in the style of your paper, the copyright notice, and, if you are using it with permissions.…

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