



# From Apprehension to Comprehension: Addressing Anxieties about Open Access to ETDs

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[Accessibility](#)

[From Apprehension to Comprehension: Addressing Anxieties about Open Access to ETDs](#)

[History of the dissertation](#)

[OA ETD anxieties and antidotes](#)

[Anxiety: Scooping](#)

[Antidote: Actual impact and “planting of the flag”](#)

[Author rights and copyright, untangling the tangled web](#)

[Anxiety: High-risk contractual liability](#)

[Antidote: Modern 21st-century contracts: New uses and negotiation](#)

[Anxiety: Future publication](#)

[Antidote: Evidence-based decision making](#)

[Anxiety: Using third-party material](#)

[Fair use and public domain](#)

[Anxiety: Community practice](#)

[Antidote: Changing the conversation, working with estates and archives](#)

[Conclusions](#)

[References](#)

## From Apprehension to Comprehension: Addressing Anxieties about Open Access to ETDs

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In the discussion that follows, we will share both evidence-based arguments and observations of student concerns and behavior from Harvard University’s ETD implementation. We will then address these concerns with proposed recommendations for forthright information sharing that may ease student anxiety and help them make more reasoned decisions about the distribution of their dissertations, and future work.

Let’s begin with a tale of two dissertations.

The first dissertation, completed by a graduate student in a microrobotics laboratory at Harvard, addresses the challenges of, and successes in, developing a robotic bee. The student, who was interviewed as part of an outreach effort by the library’s Office for Scholarly Communication, spoke of the importance of making his work openly available in the University’s open-access repository, Digital Access to Scholarship at Harvard (DASH). He mentioned the absurdity of the exorbitant cost of some toll-access, peer-reviewed literature, and cited the benefits of distributing his thesis publicly through DASH. He felt this choice was an important one, because he was providing open access to information from government-funded projects to the taxpaying public, and he was personally benefitting from the increased discoverability of his own research.

Since becoming available in DASH almost three years ago, this student's work has been downloaded over 450 times. Details of the full interview may be found in Dodson (2013a).

The second dissertation, completed by a graduate student in Comparative Literature, offers a critical reading of Plato's dialogues. This student requested an indefinite embargo at the point of submission, meaning only the metadata associated with the text would be available. The embargo was approved by the department chair, contrary to University policy (a standing 1951 Corporation policy requires the University Librarian and department head to approve longer embargoes; Harvard University Archives, 2016). The work does not appear in DASH with the rest of the dissertations from the student's graduating cohort - not for reasons of sensitive or risk-based material, but out of concern for what open distribution would mean for her future publishing prospects. How would providing open access to her dissertation affect her future in a time where there are more PhDs than there are tenure-track openings (Iasevoli, 2015)? Would a book publisher not consider the work because it appeared online first? How would this impact her academic future, her tenure and promotion?

One might say these two stories clearly illustrate the differences between disciplinary cultures and needs, and that the behavior of both graduates is emblematic of their mentors' and colleagues' behavior. This is undoubtedly true. However, it also illustrates the current state of affairs of electronic theses and dissertations, with all of its pitfalls and opportunities.

As we begin, let's first get our bearings by looking back at the origins of the present-day dissertation, its purpose, lifecycle, and the behaviors associated with these works.

## **History of the dissertation**

At its heart, the dissertation is intended as a public contribution to the new PhD's field of study. This is a simple concept, but one that is tied to the evolution of the history of scholarship.

The dissertation is born out of the Medieval tradition in which students established themselves as skilled colleagues to their faculty through "dialectical argument" based on canonical texts (Barton, 2005, p. 36). By demonstrating deft argument rooted in a mastery of rhetorical technique and textual exegesis, students would be recognized as peer scholars.

This oral system shifted with the advent of the printing press. Following this new technology, knowledge became "easier to objectify" (Barton, 2005, p. 40) and share, and authors became valued creators of unique ideas. This shift to authors as creators, coupled with the invention of mail systems, supported the rapid distribution of ideas. Later, this enabled the foundation of the first journal, which made subsequent changes in scholarly communication and education an inevitable by-product.

By the 19th century, led by Humboldt University (Shieber, 2011), the modern notion of the PhD was born. There was a profound shift in German universities from mastery of the cannon to the production of new knowledge, an effort to which students were expected to contribute: "The dissertation, as a result of such inquiries, was valuable precisely because it would make a valid and useful contribution to scientific knowledge" (Barton, 2005, p. 48). This model crossed the Atlantic and was adopted at U.S. institutions, establishing the dissertation as the pinnacle of a PhD's scholarly endeavor. From its inception, then, at the heart of the conferral of the PhD is an affirmation of an individual's substantial, original, and public contribution to one's field.

In the early days, dissertations were distributed as bound copies. With the arrival of microfilm in the late 1930s, however, dissertations found a new form. In their analysis of ETD management and publication, Clement and Rascoe (2013) noted that the benefits that the new technology of microfilm afforded - that is, low first copy costs and on-demand duplication - were ideal for the specialized scholarship that dissertations represented.

Clement and Rascoe (2013) further explained that University Microfilms, Inc. (UMI), one particular microfilm company, saw an opportunity to leverage this content in an innovative way by targeting libraries as consumers. UMI distributed abstracts, along with ordering information, to libraries. Copies of the full text could then be purchased on fiche. A handful of universities joined this experimental distribution pilot in the 1930s, and over the next several years, UMI expanded its dissertation indexing program. A subsequent 1951 Association of Research Libraries report that recommended thesis distribution as a book, article, and micropublication, helped to cement UMI's market dominance of theses and dissertations distribution. UMI became the default standard thesis indexing and abstracting service for U.S. institutions.

In the 1990s, another disruptive technology, the Internet, shifted the dissertation once more. The physical moved to the virtual. Dissertations, submitted as bound copies for approval and then for preservation in an institution's library or archive following a student's defense, moved to the digital realm. With this shift, the Coalition for Networked Information (CNI) helped launch "one of the first ETD conferences in 1993 in order to explore the potential of electronic theses and dissertations as new forms of scholarly communication and as drivers for the development of digital libraries" (Lippincott and Lynch, 2010, p. 7). CNI also conducted a survey to discover "whether ETD programs were being treated as a way to simply manage paper dissertations by other means (much like the situation today with scientific journal articles, which are distributed and stored digitally, but still conform very close to the historical printed articles in terms of content and organization)" (Lippincott and Lynch, 2010, p. 8).

In 1996, ProQuest launched its "first Internet accessible instance of UMI" (ProQuest, 2016b). Today, ProQuest both processes theses and dissertations from over 700 institutions (ProQuest, 2016c) and indexes over 2.3 million entries (ProQuest, 2016a). With their ETD Administrator submission tool and theses and dissertation subscription databases, which are only available to paying subscribers, ProQuest UMI has a relative monopoly on dissertation processing and distribution. The services UMI offers students include a pay-for-OA option, where students can pay ProQuest a fee to distribute their dissertation openly in the theses and dissertations database, and copyright registration, through which UMI assumes responsibility for registration with the Copyright Office. UMI similarly offers institutions services that are spun out of the submission tool, including bound preservation copies and delivery of the electronic files and metadata for distribution in an institutional repository (IR). While this is not a comprehensive list of ProQuest's service offerings, their commercial priorities are clear. Dissertation collection, storage, and distribution have been almost entirely in the control of this commercial vendor since they first emerged in the market.

Another key consideration in the evolution of the scholarly landscape is the appearance of institutional repositories. Over the past decade and more, inspired by Raym Crow's (2002) "Case for Institutional Repositories" and Clifford Lynch's (2003) "Institutional Repositories: Essential Infrastructure for Scholarship in the Digital Age," universities began to invest time and resources on building IRs. Universities recognized the untapped potential - and critical need - for taking an active role in showcasing the wealth of their scholars' research output by collecting, preserving, and sharing their community's work within these new systems. By serving as the

steward to this content and preserving it as an essential piece of their scholarly record, universities began to regain control over the contributions their faculty, students, and staff created. In an environment where publishing houses are either merging or closing and the pricing for content is increasing at a rate higher than inflation (Bosch and Henderson, 2012), gathering and distributing content through IRs openly represent a very real, complementary distribution stream to institutions, authors, and readers, alike.

Institution-managed ETD programs present a similar opportunity. By pulling the processing and management of dissertations internally, a university can both increase the discoverability and usage of their student's work, and regain control of their institution's unique scholarship. Distribution through ProQuest would no longer be essential and could then be an optional service.

Data from a survey by Dorothea Salo (2015) indicates that theses and dissertations are increasingly being included in the material that universities began collecting for distribution in IRs. The earliest ETD collection effort recorded in Salo (2015) started in 1997 at Virginia Tech. Of the 100 plus institutions that have provided data on their ETD programs, most require theses and dissertation distribution both through the local IR and through ProQuest's indexes. McMillan, Stark, and Halbert (2013) find similar results from their survey, with 69% of their respondents indicating that submission to the ETD program, which were managed in house by 66% of the institutions surveyed, is mandatory.

The implications of moving from print-based distribution to the often open-access distribution in IRs are at the heart of what has become a hot topic in academia these days: access to student work.

As academic institutions have established IRs, which have often become a default access point for student work, this new technology has welcomed a broader audience, and, in response, some students' anxiety levels have spiked. In what follows, we will explore some of the issues students often raise as barriers to OA distribution: from concern about their work being scooped to publication issues and the pressure of their community's norms of practice. Following the rollout of the University's new ETD submission system, we have learned that the strongest antidote to student anxieties has been a persistent and multifaceted education and outreach effort to ensure that students are making informed and well-considered decisions about their work. We will share student stories and offer responses that have helped to allay student concern and instill a confidence in their rights - and responsibilities - as scholars and authors operating in a world where access to content is easier than ever and copyright law, contracts and licensing, and distribution decisions can easily become muddled with misinformation.

## **OA ETD anxieties and antidotes**

Writing on the subject of open access to ETDs, Peter Suber (2006) notes,

Dissertations are not just good, they're largely invisible. Libraries rarely hold dissertations not written by their own students. Dissertations are not well indexed. They're available for purchase, but difficult to evaluate before purchasing. Moreover, many details from dissertations never make it into journal articles, and many dissertation topics are too narrow to justify book publication.

In short, dissertations are high in quality and low in accessibility, in fact, I'd say they constitute the most invisible form of useful literature and the most useful form of invisible literature.

The increased access that open distribution through IRs affords student work is powerful: Suber (2006) continues, "By making ETDs visible, OA helps the readers who wouldn't otherwise have ready access. But it also helps the ETD authors, boosting their visibility and impact just as it does for the authors of journal articles." While readers and institutions benefit from opening access to ETDs, it is students who feel the results of this increased access acutely - experiencing the benefits most personally, along with the misgivings and pressures. In this new, open world, the institution has a responsibility to provide comprehensive outreach to students, educating them on author rights, copyright, and open access, so they can be empowered to make informed decisions about their work.

Below follow some of the most common student concerns that we have encountered in our outreach and education efforts. As much as all of these potential challenges to students and their careers loom during the creation, submission, and distribution of their ETDs, there are as many arguments for opportunities inherent in OA ETDs. Concerted efforts to dispel student anxieties can yield often surprising results; below we identify common student anxieties we have encountered and then share our complementary arguments to address these fears about open distribution.

Understanding that there are differences between fields, this is intended to provide broad-stroke scaffolding for leading conversations or developing resources that may help to ease student fears.

### **Anxiety: Scooping**

A common concern students raise, particularly in STEM fields, is the having their work "scooped." The potential downstream results of being scooped range from the scooper receiving the impact of the dissertation's argument (along with the attendant implications for tenure and promotion) to the scooper gaining patent rights to the novel thing within the dissertation (thereby getting rights to commercial exploitation).

In 2011, Karen Hume opens her blog post by clearly illustrating the anxiety that students may feel over the prospect of being scooped if one's dissertation is openly available:

Once upon a time, dissertations were "available" through UMI as microfilm or through Interlibrary Loan as bound copies...Since you knew the material was unusable without permission, you felt free to ignore dissertations, except to make sure that a recent one was not too similar to the one that you hoped to write, lest it get published before yours and scoop you. Yes, such documents were technically "available," but they were definitely not published or easily consultable.

The distinction that Hume draws, while seemingly rooted in an incomplete sense of copyright and fair use, is one that students often raise. If their work is discoverable, then others will use it and be the recipient of the credit for the idea.

Hume, and many others, see the exclusive availability of bound dissertations in archives and through interlibrary loan as a hurdle that makes them "unusable." Their relative inaccessibility makes them dark literature, effectively, and safer somehow. They are to be consulted only to make sure they are not "too similar to the one that you hoped to write." By extension, rather than being viewed as a valuable contribution to a body of knowledge, openly accessible dissertations become a potential threat.

Underlying this notion of the hidden dissertation, which is not easily “consumed” for fear of scooping, is the idea that one’s years of research and writing are best approached as a solitary exercise. Rather than being available for research and study, a hidden dissertation ensures that one’s ideas are not easily accessible, thereby curtailing the opportunity for unethical behavior, from improper attribution to losing out on first publication or patenting opportunities.

While this runs counter to the idea of scholarship as an ecosystem that builds upon itself incrementally, students have persistent concern over their ideas being available - and usable - before being formally published in a peer-reviewed form. They feel open-access distribution of their work makes their ideas vulnerable to misuse and misappropriation.

### **Antidote: Actual impact and “planting of the flag”**

As noted by Gary King, Albert J. Weatherhead III University Professor at Harvard, “[W]hen you’re a junior faculty member and pretty much throughout your career the thing that people worry about the most is being scooped and the thing that matters the least is being scooped. The thing that matters the most is being ignored” (Dodson, 2013b).

While one could assert that this is a statement from an established faculty member at the height of his career, the sentiment is one that should be well considered: it is only by sharing work that a researcher establishes herself and has impact in her field.

In addition to fulfilling the obligation of the public contribution to one’s field by distributing one’s work openly, dissertations that are OA are more visible and, therefore, more likely to be cited. Students who are early career researchers, in particular, are concerned with the impact of their work. With impact comes tenure and promotion, funding, and prestige.<sup>1</sup> The sooner a student can establish the importance of her work, the better.

While impact is clearly a student concern, the threat of one’s ideas being scooped often is enough of a deterrent for students to shy away from OA ETD distribution. To challenge this assumption, students should be reminded that another tangible side effect of providing open distribution to a dissertation is the “planting the flag” phenomenon. By making one’s work very publicly available in an IR with a timestamp and permanent link, the student can establish the research within the dissertation as one’s own work. The ideas therein become defensible as original, should someone, in fact, try to “scoop” the student’s ideas. OA ETDs are inherently “safer” in this way.

### **Author rights and copyright, untangling the tangled web**

Underlying the fear of being scooped is the unruly world of copyright and author rights. For even the most well-seasoned authors copyright has the potential to be confusing. Publication agreements tend to have an implied up-front finality to them. More often than not, a student’s interest and energies are focused elsewhere, which either leads to an information vacuum or potential misapprehension about author rights and contracts, and use and reuse of third-party material. This confusion can lead to misinformed decision making that can unnecessarily constrain a student’s work.

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<sup>1</sup> Articles in DASH display individual download statistics. One recent graduate has used his ETD download statistics in his tenure and promotion review; another graduate used her ETD download statistics to convince a museum to launch an exhibit based on her research.

The best solution is early and often outreach that emphasizes an author's right to amend a publishing agreement; informs the student about fair use, the public domain, and the balance inherent in copyright; and engages with data about publisher practices around dissertations.

#### Anxiety: High-risk contractual liability

A common fear among students is contractual liability when they have published all or part of the dissertation in peer-reviewed publications prior to the submission of their complete work for their degree. Underlying this concern is a certain helplessness.

As suggested in Hume's (2011) assertion about reuse, there is a great deal of insecurity and confusion around the use and reuse of previously published and third-party content in dissertations. There is also a fair amount of misinformation about and unfamiliarity with licensing agreements, author rights, and scholarly practice. As publishing has shifted into the digital age, there are new considerations when authors sign publishing agreements. While reuse is still a right about which authors should be vigilant when signing publishing agreements, the scope of reuse feels magnified when work is available online. And as early career researchers, students feel particularly vulnerable.

An example of the scope of this challenge is in fields where it is common practice for students to use a previously published journal article as a chapter in their dissertation. This is often work that is the result of collaboration within a lab group, with the findings being something that is written as a distinct piece from the larger dissertation but is then folded into the dissertation as a chapter. For example, at Harvard, the T.H. Chan School of Public Health's dissertations are composed of three separate publications that have already been published or soon will be (Harvard T.H.Chan School of Public Health Registrar's Office, 2015). Because of the very nature of these works, understanding the publisher's licensing terms is critical to reuse in the student's dissertation and - oftentimes - completion of the degree.

Because journal articles that students produce and then reuse in dissertations are often some of the first work they produce, they may be signing publishing contracts without a confidence in their ability to negotiate the terms to ensure reuse. Often, they are pleased to be published, are distracted with other pressing deadlines, and don't want to hold up the process to sharing their - and their principal investigator's (PI's) - results. Additionally, they may or may not remember to hold onto their contract. In cases of clickthrough agreements, which are becoming a standard in the industry, the barrier to amending an agreement is engineered for authors to accept the publisher's default terms, whether or not they best serve their needs.

Combined with the stress associated with dissertation defense and potentially last-minute submission for their degree requirements, students have a high level of concern, which may be reinforced by their PI or colleagues, about contract liability and repurposing their own work. This anxiety persists across disciplines, affecting those students who may only reuse a figure or small extract from their previously published work. Students often perceive this use, and the public display thereof, as asking for trouble.

#### Antidote: Modern 21st-century contracts: New uses and negotiation

What is an alternative solution for students who use a previously published work in their dissertation? As much as clickthrough agreements are de rigueur, and as much as amending contracts may seem to be either a tedious or intimidating activity, there is a great deal to be gained by being a well-informed and active participant in this exchange.



Publishers need content, and, once a work has been accepted, then the publisher is committed to distributing it. The author, student or otherwise, does have the latitude (and one might assert responsibility) to advocate for terms that best serve their needs.

Publishers do not operate in a vacuum and most certainly understand the collaborative practices of today's researchers. They recognize that authors expect to be able to distribute their work online, on a personal or departmental website, or through an IR. Publishers also recognize that content that may be distributed through their journal or monograph may be fodder for a subsequent work by the author or an element in a course site. Publishers also recognize that students may need to reuse their previously published content in a thesis, and many publishers explicitly grant an author this right in licensing terms.<sup>2</sup>

Because sharing and reuse are easier in the digital world, in general, publishers often address these issues in licensing agreements. Before signing any agreement, authors should ensure that they are retaining the rights that they need in their work: to post their work online, use it in conference presentations or teaching, and make use of it in future work (e.g., their thesis). In cases where the publisher's terms are less than optimal or don't speak to a particular need of the author, there is a twofold way to remedy the situation: use an addendum or update the contract's language.

Students should be reassured that amending the publishing agreement can be as simple as crossing language out of the contract and updating it with more preferable terms. This assumes that you have the complete language of the agreement and a clickthrough isn't required. When faced with a clickthrough agreement, the author should feel comfortable sending the publisher's editor an addendum that enumerates the terms that the author would like to change. Both methods are perfectly reasonable and ensure that the author's future needs for the work are accommodated. Occasionally, institutions will have in-house amendments that authors may use. For those who are looking for help with this sort of request, the Scholarly Publishing and Academic Resources Coalition (SPARC) provides an addendum that serves the needs of most authors well (SPARC, 2016).

Again, whether the author amends the agreement or not, the licensing agreement with the publisher is a legally binding contract and should be treated as such. The author should hold onto the reference copy of the agreement once they have secured the rights they would like to maintain over their publication's future.

#### Anxiety: Future publication

The other side of the publication coin is student concern around the desire to publish work they have included in their dissertation.

Much as with issues around reuse, addressed above, these fears are wrapped up in publisher practice and licensing agreements. An additional worry in this arena, however, is the need to publish in high-impact journals or with a reputable monograph publishing house for successful tenure and promotion. The tenure and promotion process is a different discussion, but it is important to recognize that as early career researchers, PhD students may have very visceral reactions to institutional policies requiring them to provide open access to their dissertations. Inherent in this response is the notion that a dissertation and future journal article, book chapter, or monograph based on the dissertation are seen as the same document by publishers

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<sup>2</sup> For example, see MIT's list of publishers that allow "[r]euse of author's previously published article in author's thesis" (MIT Libraries 2016).

and that distribution through an IR qualifies as “prior publication,” making it a less likely candidate for publication (see Patton, 2013). For publishers, original research drives prestige and subscriptions.

Certainly the scope of this concern depends on the specific discipline and its publication habits. STEM students are most concerned with journal publication, whereas the Humanities and Social Science students are looking at long-form publications and the longer timescale of the monograph. Either way, some students may see OA distribution in a repository as a threat to the future life of their research and career. Students tend to make the assumption that the availability of their dissertation online is comparable to publication - that the very public nature of their work’s availability in an IR would prevent their shopping this work to a journal or monograph publisher in the future. This is neither an accurate nor complete picture.

#### Antidote: Evidence-based decision making

The dissertation is the starting point for future publications, and, as such, students should be reassured that availability in an IR is not equivalent to publication. There is no peer review process, there is no house style or formatting process. A completed dissertation is not a final product that will be published in the same form.

This is not merely anecdotal. As early as 2001, Gail McMillan shared survey results about STEM publishers and their responses to the question of whether they could consider publishing openly available dissertations. Only 14% of the survey respondents indicated that they would not be “willing to accept articles from ETDs” (McMillan, 2001). More recently, Ramirez, Dalton, McMillan, Read, and Seamans (2013) conducted a survey to explore publisher behavior related to OA ETDs in the social sciences, humanities, and arts. In this study, “75 percent of the respondents representing the social sciences indicated they would either accept or consider, without prejudice, submissions derived from openly available ETDs,” with only 4.5% reporting they would not consider an ETD for publication (Ramirez, Dalton, McMillan, Read, and Seamans, 2013, p. 377). One additional datapoint: MIT Libraries (2016) produced a table illustrating publisher behavior related to new work derived from thesis content; the vast majority of these publishers are similarly responsive to considering OA ETDs.

In light of this data, one can infer that much of the publishing industry will consider publishing dissertations that have been openly distributed in an IR. While this number is not 100%, the odds of having a publisher reject a paper because of its open access status is unlikely. Students should be reassured and faculty advisors should be made aware of these trends. As noted by Ramirez, Dalton, McMillan, Read, and Seamans (2013, p. 377), “Publishers recognize that a book or journal article must be adapted to a new audience and conform to peer review, so the final work will be different in many ways from the original ETD.” Additionally, the publishing industry is starting to take note of the advantages of open access distribution. Harvard University Press’s acquisitions editor noted recently, “If you can’t find it, you can’t sign it” (Harvard University Press, 2013). Open access can help publishers find important voices.

### Anxiety: Using third-party material

Another important point of student concern related to copyright is making use of work that is not their own without securing permission.

Scholarship is an incremental process, where new ideas are built upon the prior work of others. Any dissertation will use content from other scholars and creators, either as a reference point or as a launching point for commentary or criticism. Well-considered use of such third-party material is most always fair use (which we will explore further below). This practice of leveraging third-party material to scaffold an argument is standard and speaks to the very nature of scholarship, but students often have concern about making such material in their dissertation openly available.

From the use of figures and images - a particularly sensitive point of concern - to text itself, many students are under the impression that they need to seek permission for every use of third-party material, and that without permission, distributing their use of this content publicly would open them to the specter of litigation. Open access distribution compounds this concern: some students may perceive their OA ETD's attendant larger audience as a threat, particularly if they are worried about being penalized for their fair use of third-party work. Thankfully, this can be addressed by informing students about their rights and offering alternatives for situations where they may not be able to claim fair use.

### Fair use and public domain

There is one very powerful provision of copyright law that students should be comfortable exercising: fair use.

As a critical right inside the copyright law, fair use allows for the use of a certain amount of copyrighted material without seeking permission. This may be the student's own work or her use of third-party material. As established above, nearly every dissertation includes some example of a fair use of copyrighted works, including brief quotations, figures, or images from other sources. In fact, students often utilize fair use without even realizing it. This is because it is commonplace for quotations or images to appear in a thesis. When you actually mention the phrase and identify a use as "fair" is when some of the concern emerges; however, this is truly a customary doctrine underpinning all scholarship.

Summarizing the fair use statute, there are four factors to consider when determining whether or not a use of a copyrighted work qualifies for this fair use exemption:

- 1) For what purpose would the work be used?
- 2) What is the nature of the work to be used?
- 3) How much of the work would be used?
- 4) What effect on the market for that work would the use have?

Applying this four-factor test is not a clear-cut process. Students need to weigh all four factors to decide whether a fair use exemption seems to apply to each proposed use within their work.

Recent court decisions have further emphasized the unique transformative nature of a fair use, especially in non-profit education research, such as a thesis or dissertation. Courts have boiled down the complex four factor fair use test into the following two questions:

- Does the use *transform the material* by using it for a different *purpose*?
- Was the *amount taken appropriate* to the new *purpose*?

To make a claim of educational, transformative fair use (which is use without the copyright holder's permission), the third-party copyrighted material (image, clip, quote) must be necessary to the student's analysis and serve a different purpose than the original. The image or text should be a part of the dissertation's pedagogical point – in other words, absolutely necessary to prove that particular point in the dissertation. A classic example of transformative use is a quotation from an earlier work in a critical essay to illustrate the essayist's argument.

A question students can ask to measure this transformative use is: Does the student analyze, study, or criticize the third-party copyrighted material? If so, it may be a transformative fair use. In the words of the Supreme Court, which founded the notion of a transformative fair use, the use of that third-party copyrighted material “adds something new, with a further purpose or different character, altering the first with new expression, meaning or message.”

If the use of the work is more aesthetic, that is, simply “window dressing” rather than critical to the dissertation, then it may not be necessary to the argument and is, therefore, less likely to be a transformative fair use. In such cases where the student's use does not fulfill an important point in the dissertation and is merely a decorative expression, and, therefore, is less likely to be a fair use, then the student would need to seek permission from the creator. Occasionally this may be a publisher, if the work is the student's own and the licensing agreement doesn't allow for this sort of reuse.

The “amount taken” factor of fair use is also worth a discussion. How much of the copyrighted material is necessary to prove the argument in the thesis? Students should use no more of a third-party copyrighted work than is reasonably appropriate to serve their educational purpose. Students should understand what amount is reasonable and what may be too much. Obviously, short quotations or clips help the cause for making a fair use. But, again, the four-factor test clearly provides for whatever amount is necessary in the use. If a student needs to use the entire work, for example, a painting, because she is analyzing it from top-to-bottom, then she should feel comfortable using the whole work. However, if a student can make her point with 47-second music clip, instead of the full 2-minute-long song, then she should do that - use only the amount necessary.

This powerful provision, and its modern-day transformative test, is something that students are often hesitant to use. However, it is a right that serves their scholarship. By exercising this right, they are asserting the balance inherent in copyright law: to both protect copyright holders and promote the creation of new knowledge.

In instances where the student is unable to make a confident fair use of a work, but she wants to provide some illustration or flourish, there may be additional options that are free, or nearly free, of copyright or licensing.

One such robust area is the public domain. Works in the public domain are those whose intellectual property rights have expired, have been forfeited, or are inapplicable. While sometimes difficult to ascertain, the rule of thumb in the U.S. is that materials published before 1923 are in the public domain, and therefore can be utilized in any document without permission.

Second, the Creative Commons licensing schema (Creative Commons, 2016) offers students a variety of options for use of copyrighted materials. Creative Commons licensing allows the copyright holder to release her work to the public for a specific type of use, provided certain licensing restrictions are followed. The advantage for the copyright owner is that she does not have to wait for copyright to expire, and the advantage for the user is that she does not have to seek permission. Everything is included in the license. By way of example, the most basic Creative Commons license is CC-BY, which requires simple attribution. Anyone may use the copyrighted work, but, according to the license, the creator must be cited in the form she wants. For theses and dissertations, this is a mere extension of a well-established practice for good scholarly work: properly citing your sources.

Last, the open access movement isn't just about ETDs in institutional repositories. Students should be reminded that there are hundreds of open access repositories arranged by institution, subject, or discipline that are available under an open license. This means the content has the same liberal type of use provisions similar to Creative Commons, with the same attribution standards. You can find a plethora of photos, images, figures, and other work inside any of these repositories.

Admittedly, these sources may not solve all ills; however, when a student may use a substitute, in instances where fair use does not apply, public domain, Creative Commons, or open access works may be a preferable solution to removing a reference to an image or text altogether.

### **Anxiety: Community practice**

The source of the last of the most common student fears around OA ETDs is found in their discipline's attitudes toward this sort of distribution.

As discussed above, throughout the history of the academy, students are immersed in the canon and culture of their particular field. As they progress through their studies and gain a mastery of and begin to contribute to their field, becoming a colleague to their once mentors, they often inherit the language and habits of that community. Until such time as they have established their own scholarly identity, students often rely on mentors to help them navigate any number of concerns, including the creation and distribution of their dissertation and other publications.

Students, as newcomers to their fields, look to faculty and other students from their cohort to help inform them about the mores of their community. This is a powerful force in a student's development and eventual emergence as a scholar. As noted by McMillan (2001, sidebar), "The majority of graduate student authors at Virginia Tech reported through a survey administered at the end of the ETD submission process that the decision to limit access to their ETDs was based on advice from their faculty advisors." Community impressions about open access, author rights, licensing agreements, citation and reuse, embargoes, and more have a profound effect on many students' decisions.

The nature of these impressions depend greatly on the field. The Physics community has different ways of creating and distributing research compared to Comparative Literature. These cultures are decades in the making and are a by-product of the larger scholarly communication environment in which they operate. Publishers, disciplinary organizations and scholarly communities, and libraries, archives, and cultural institutions help to color these impressions, as well.

By way of example, from one particular submission period: A History of Art & Architecture student approached the Office for Scholarly Communication to ask for the redaction of images in his dissertation. Because the images were from a very restrictive archive, he had concerns about their being publicly available in his dissertation in DASH, per the recommendation of his mentor. Within a hour after his call, four colleagues from his cohort called with similar concerns. Word of mouth is a powerful, if somewhat blunt, tool.

As much as local communities can affect a student's behavior, so, too, do their parent communities. This is perhaps best exemplified by the very public statement in 2013 by the American Historical Association (AHA), calling for embargoes of at least six years for History dissertations. The reason for doing so relates to the misconception, discussed above, of an OA ETD being considered as previous publication:

...an increasing number of university presses are reluctant to offer a publishing contract to newly minted PhDs whose dissertations have been freely available via online sources. Presumably, online readers will become familiar with an author's particular argument, methodology, and archival sources, and will feel no need to buy the book once it is available. As a result, students who must post their dissertations online immediately after they receive their degree can find themselves at a serious disadvantage in their effort to get their first book published... (American Historical Association, 2013)

As poorly informed as this statement is, it has had a very real impact on discussion on campus and decision making by students. Professional organizations, as representative of a field's perspective, can thus very quickly shape a student's attitudes and behavior.

Similarly, certain professional organizations and archives in the arts and humanities, in particular, have the power to sway a student's behavior. Another local example is of a Music PhD who was working with a particular composer's archive in her dissertation. She resisted OA distribution of her work out of fear of the archive cold-shouldering her future use of the work they held if she did so. This is a concern that has been raised on multiple occasions by other students in the arts. For students whose work depends on access to the rich resources in these archives, such a threat can shape a pattern of behavior quickly.

### **Antidote: Changing the conversation**

Much like with publishers, there is an opportunity when working with estates and archives. While the power dynamic is a bit different, there is still a symbiotic relationship between an archive or estate and its users. Without users, an archive has less use, potentially less funding, and less reason to collect work. Without archives and estates, an incredible richness to scholarship would be lost.

If an archive or estate requires users to sign a consent or permissions form for use of material, there may be an opportunity to have a conversation at the point of use, rather than asking for permission after the fact. It should be noted that use of estate and archival work does fall under the confines of copyright law and fair use, and, as such, a student may be able to make an argument for fair use of such work, if applicable.

Some specialized archives or estates do not fully comprehend the copyright law themselves. Some believe an age-old myth that possession of a work constitutes rights in that work. As a result, students may find themselves dealing with a contract that allows them a certain amount

of access to a work, only to then be presented with another “Permission to publish” contract for when they want to use the material, or a copy of the material, in their thesis or dissertation. Students should be wary of signing these contracts, especially if there are fees involved.

In cases where an archive or estate is being particularly challenging, students may be interested in exploring whether the archive or estate is the rightsholder to the work in question. A subject librarian would be particularly well suited to help in this endeavor. If a search reveals that the archive or estate is not the rightsholder, then this has downstream implications for who to contact for permission, such as an heir or executor.

Regardless of these myriad possibilities, there is always space for negotiation. Dissertations are scholarly, non-commercial works, and such a use may be less threatening to a fully commercialized archive or estate. Additionally, these communities may realize the value in bringing new attention to the archive or estate holdings, particularly if their collections are supporting interdisciplinary work that they had not previously considered. In the end, a student always has the potential, and should be encouraged, to create a well-crafted argument for limited, open use that would benefit both parties.

Last, students should be reminded that these archives or estates may be owning work from or collecting in scholarly fields that a student may spend their life studying. It is important that a student foster good communication from the beginning. Students should be encouraged to be open and honest at all times, especially if they plan on forming a long-term academic relationship with the archives or estates for continued access and use.

## **Conclusions**

ETD programs have become more established with more institutions mandating the open distribution of dissertations. What was standard practice in the days of distribution through bound copies feels like new, unstable ground. Student research opportunities and professional futures feel a little more vulnerable in an open world.

While these concerns can more often than not be addressed with reasoned approaches, it is the university’s place to help students get to the place where they feel confident with decisions they are making about their work and access to it. Once properly informed, a student will be empowered to make reasoned choices related to their scholarship - not only for their dissertation, but into their academic future.

We have not yet addressed the relevance of the strategic embargo. Contrary to the American Historical Association’s exhortation otherwise, default lengthy embargoes do not necessarily serve student needs. As Salo (2015) finds, 6-month, 1-year, and 2-year embargoes are common (likely due to these being the default embargo options in ProQuest’s submission tool), with the upper limit usually capping at 5 years, often with provisions for extensions. Shorter embargoes with the potential for an extension afford students the best of both worlds: protection from journal and monograph publishing constraints and the benefit of open-access distribution, with its broader audience and increased impact. Rather than requesting lengthy embargoes that may not be necessary, students should be advised to look at the publishers with which they hope to distribute their work, account for revision time, and take the embargo that will serve their needs and not needlessly constrain their work’s use.

We have learned a few lessons from Harvard's relatively recent rollout of an in-house ETD submission system. These mirror some of the key findings of the Council of Graduate Schools (2007) report on "policies and practices to promote student success": articulate expectations, provide resources to scaffold student efforts, and offer comprehensive orientation to help students prepare for their graduate school career.

We want to emphasize that critically important to this effort are strategic partnerships across campus. From program deans and administrators to faculty, Registrars, and library staff, it is imperative that constituents that work with students across the institution are aware of, understand the reasons for, and recognize the benefits of the institution's OA ETD program and policies. By ensuring that there is a team of well-informed and engaged people that will help students consider their options and make the best choices possible for their work, there will be opportunities for education from the beginning of their time in the program to the point of their submission of the dissertation.

Implicit in such a distributed network of support is the idea of sustained education and outreach. While students matriculate through a program, complete one dissertation, graduate, and move on to their career, faculty and relevant staff sustain a robust OA ETD program. These "expert" contacts need to be easily identifiable and provide documentation and programming that gives students information at their point of need.

Only with their help will it be possible to deliver critical information to early career researchers that will not only help them to make reasoned decisions about their ETD, but also form productive habits for their scholarly life going forward. Having an understanding of author rights and copyright, fair use and negotiation are critical to an academic, and by delivering this information early in a researcher's career, universities have the potential to help scholars adopt informed, productive, and open publishing behavior. By doing so, as Lippincott and Lynch (2010) assert, ETD programs can change the landscape of scholarly publishing.



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