

THESES & COPYRIGHT - Q & A

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1. DO I NEED THE PERMISSION TO USE WORKS OF OTHERS IN MY THESIS?

You need permission to use works of others in your thesis, if

- 1.1. the work is protected by copyright, and
- 1.2. the protection has not yet expired, and
- 1.3. you cannot rely on a legal exception, and
- 1.4. you cannot rely on an open license (such as a Creative Commons-license)

1.1. the work is protected by copyright

“Literary and artistic works” are protected by copyright. This includes every production in the literary, scientific and artistic domain, such as articles, books, lectures, music, audiovisual works, paintings, sculptures, photos, illustrations, maps, plans etc.¹ Also computer programs² and databases³ can be protected. In other words, all kinds of works can be protected by copyright. On two conditions:

¹ article 2 (1) of the [Berne convention for the protection of literary and artistic works](#) and article XI.165 of the [Belgian economic code](#)

² [European directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs](#) and article XI.294 of the [Belgian economic code](#)

Computer programs include operating systems (DOS, Windows, OS X,...), word processing programs, email programs, videogames and apps.

³ [Directive 96/9/EC of 11 March 1996 on the legal protection of databases](#) and article XI.186 of the [Belgian economic code](#). Article 1.2 of the directive defines a database as “a collection of independent works, data or other materials, arranged in a systematic or methodical way and individually accessible by electronic or other means”

- a. The work is concrete (a text, an illustration, a photo etc.). Abstract ideas, concepts, styles, methods etc. are not protected⁴.

For example, the idea to do research on a certain subject, to apply a certain research method, or to develop a computer program to solve a specific problem⁵, will not be protected. Ideas and methods can be freely copied, regardless of how new or original they may be. However, the elaboration of the idea or method, for instance in a book or a computer program, can be protected.

On the other hand, if you use someone else's idea, you need to give proper credit.⁶

- b. The work is original, i.e. the author has made free and creative choices⁷.

“Free” means that the choice is not dictated by, for instance, logic or a technical effect.

Examples:

- a photo is protected, if
 - the photographer has made creative choices (regarding the framing, the exposure, ...), or
 - the subject of the photo (e.g. a work of art, an original building) is original

PS: In case of a portrait, the person shown in the portrait might oppose to its use, depending on the circumstances.
- rough data, such as historical or natural facts, are not protected (the researcher did not create them; they already existed and the researcher merely may have discovered them)
- bibliographical metadata are not protected
- abstracts will often be protected

If the work is protected, but the part of the work that you want to use is not (idea, facts, lack of originality, ...), you do not need to ask permission.

1.2. the protection has not yet expired

The copyright expires 70 years after the death of the author (or surviving co-author), more precisely in the beginning of the next year. This duration will apply in the EU to works created by residents of all [member states of the EU](#) and of the [Berne convention](#).

⁴ Article 2 [WIPO Copyright Treaty](#) and article 9.2 [TRIPS Agreement](#): Copyright protection extends to expressions and not to ideas, procedures, methods of operations or mathematical concepts as such.

⁵ Article 1.2 [European directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs](#) and article XI.295 par. 2 of the [Belgian economic code](#): Protection shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright.

⁶ European Code of Conduct for Research [Integrity](#), art. 3.1

⁷ Court of justice, 1 December 2011, C-145/10, Painer v. Standard, 87-94

Example: Albert Einstein died on 18 April 1955. His articles etc. will be in the public domain as from 1 January 2026.

1.3. you cannot rely on a legal exception

There are numerous exceptions on copyright⁸, including:

- **quotations for scientific research**, in accordance with fair practice, and to the extent required by the specific purpose

“To the extent required by the specific purpose” means that the quote should not be longer than necessary (e.g. to illustrate what you want to explain).

Works of visual arts, such as illustrations or photos, can be “quoted” entirely⁹.

The purpose of this exception is not to allow you to use other people’s texts or figures, just because that is easier than to create your own. The quotation should have an added value for your thesis.

- partial or entire **reproductions** of protected works (on paper, digital, ...), **within the scope of scientific research** with a **non-profit** purpose

Funding of scientific research by the industry, or research resulting in a patent, will not prevent the application of the exception.¹⁰

The exception relates to reproductions, not to public communications (e.g. via the Internet).

Digital archiving, for instance in a repository, is possible, if this is justified for scientific reasons, and if the access to the archive is secured (cf. the next exception).

Reproductions of sheet music are excluded.

- **secured communications** of protected works **within the scope of scientific research**, with a **non-profit** purpose, **by officially recognized institutes**

The access must be secured (e.g. with login and password), and limited to scientific and academic staff members of the institute.

In all the above cases, **the source and the name of the author(s) must be mentioned** (unless if this is in all fairness not possible).

1.4. you cannot rely on an open license, such as a Creative Commons-license

With an open license, authors give a worldwide permission to copy their work, to communicate it to the public, and possibly to adapt and translate it, free of charge.

⁸ article XI.189 and the following of the [Belgian economic code](#)

⁹ M-C Janssens in Het Belgische auteursrecht - Huldeboek Jan Corbet, Larcier 2018, p. 206

¹⁰ M-C Janssens in Het Belgische auteursrecht - Huldeboek Jan Corbet, Larcier 2018, p. 267

Most common are the [Creative Commons licenses](#). There are specific open licenses for [software](#) and [databases](#).

It is a standard obligation to credit the author (BY). The authors may add other conditions, such as the limitation to non-commercial exploitations (NC), the prohibition to transform the work (ND = no derivatives), or the obligation to grant a similar open license on derived works (SA = share alike).

If you meet the conditions, you do not have to ask the permission to use the work.

2. HOW CAN I OBTAIN THE PERMISSION TO USE WORKS OF OTHERS IN MY THESIS?

To obtain the permission, you should contact the publisher, or the author(s), or a collective management organization (such as [CCC \(Copyright Clearance Center\)](#), [Unisono](#), [Sofam](#), [deAuteurs](#), ...).

The license should specify:

- the exploitations covered by the license (use of (parts of) the work in the thesis, publication of the thesis, (online) distribution of the thesis, granting an open license on the thesis, ...)
- the territory (preferably worldwide)
- the duration (preferably unlimited)
- the fee (or the absence of a fee)

You should have written proof of the license (contract, invoice, e-mail, ...).

Possibly, you do not know who the author (or rightsowner) is of the work you want to use. In that case, you cannot ask for the permission and you should in principle not use the work. If you want to use it anyway, you can limit the risk of being condemned to the payment of damages for infringement of copyright, if you:

- make reasonable efforts to find out who owns the rights (search on the Internet, contact collective management organizations, ...)
- document your search
- mention in your thesis that you have not been able to find out who owns the rights, and that you invite her or him to contact you to clear the rights.

3. DO I NEED THE AUTHORIZATION OF THE PUBLISHER TO COPY MY OWN PREVIOUSLY PUBLISHED WORK (ARTICLES, REVIEWS, ...) IN MY THESIS?

It should be no problem to copy your own previously published work in your thesis.

But if the publishing contract expressly provides that the publisher has the exclusive right to publish and/or distribute the article or review (online), you should ask his agreement to publish and/or distribute the thesis containing the article or review (online).

However, if the article results from research financed for at least 50% by a (Belgian or foreign) public institution, you have the right to distribute the final version (without the publisher's layout!) for free in open access, regardless of what is mentioned in the publishing contract,

after the expiration of a period of twelve months after publication for the human and social sciences, and six months after publication for the applied sciences. The source of the first publication must be mentioned.¹¹

If you want to use the publisher's layout, you should ask his permission.

This provision applies if there is a link with Belgium (the author is Belgian, the financing is Belgian, ...), even if the publishing contract is submitted to foreign legislation.

PS: This regulation concerns articles, not books!

If the publishing contract does not confer exclusive rights to the publisher, there is no problem.

Besides, if the part you want to use is not protected (e.g. rough data), or if a legal exception applies, or if an open license has been granted on the article or review and the conditions of the license are fulfilled, then there is no problem either (cf. question 1: Do I need the permission to use works of others in my thesis).

4. DO I NEED THE AUTHORIZATION OF THE CO-AUTHORS TO USE (ADAPT, TRANSLATE, COPY, DISTRIBUTE ONLINE) THESES, ARTICLES, REVIEWS, ... THAT WE HAVE WRITTEN TOGETHER?

In this case, you need the authorization of the co-author(s) to use the work (to adapt it, publish it, spread it online, ...). Except if it is possible to distinguish the contribution of each of the authors. In that case, each of them is allowed to use her or his contribution, on condition that this does not harm the exploitation of the entire work¹².

5. AM I ALLOWED TO DISTRIBUTE MY THESIS, FOR INSTANCE VIA A REPOSITORY, IF I HAVE SIGNED A PUBLISHING AGREEMENT?

it should be no problem to file your thesis in a repository in closed access.

If the publishing contract expressly provides that the publisher has the exclusive right to distribute the thesis, you will need his authorization to archive it in a repository with open access. If you archive it in restricted access, you need the authorization of the publisher to grant access.

If the publishing contract does not confer exclusive rights to the publisher, you may freely distribute your thesis (without the publisher's layout).

6. AM I ALLOWED TO TRANSLATE MY THESIS IF IT HAS BEEN PUBLISHED?

If the publishing contract expressly provides that the publisher has the exclusive right to translate (or adapt) the thesis, you cannot translate it without his agreement.

If the publishing contract does not confer exclusive translation (or adaptation) rights to the publisher, there is no problem.

¹¹ article XI.196. §2/1 of the [Belgian economic code](#)

¹² article XI.169 of the [Belgian economic code](#)

7. AM I ALLOWED TO GRANT AN OPEN LICENSE ON MY THESIS IF I HAVE SIGNED A PUBLISHING AGREEMENT?

If the publishing contract expressly provides that the publisher has the exclusive right to copy or publish the thesis or to distribute it online, you cannot grant an open license (such as a [Creative Commons license](#)) without his agreement.

If the publishing contract does not confer exclusive rights to the publisher, there is no problem.

We are aware that the above information is quite abstract and that it is not always easy to put it into practice. Do not hesitate to contact legalrd@vub.be for advice regarding your specific case.

<mailto:legalrd@vub.be> If your thesis will be published by a foreign publisher, contact legal.rd@vub.be.

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