

COPYRIGHT ISSUES

(And How to Deal With Them)



SCHOOL
FOR ADVANCED
STUDIES
LUCCA

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CONTENTS

BEFORE STARTING	4
COPYRIGHT AND LIBRARY SERVICES	5
COPYRIGHT AND IMAGES	6
COPYRIGHT AND PHD THESES.....	9
GLOSSARY	12
USEFUL LINKS AND BIBLIOGRAPHY.....	14

BEFORE STARTING

What is copyright? What is it for? How long does it last?¹

The **Law for the Protection of Copyright and Neighbouring Rights** (henceforth, LPC) is the most important copyright regulation effective in Italy.²

This law protects “works of the mind having a creative character and belonging to literature, music, figurative arts, architecture, theatre or cinematography, whatever their mode or form of expression, shall be protected in accordance with this Law” (art. 1, LPC).³ Database and software are protected as well as “works of the mind” (art. 2, LPC).

The **creative character** of the work is the most important and essential requirement to obtain copyright protections. This protection concerns the **particular expression** of an intellectual effort (not the idea itself) and it is acquired in the very same moment we create our “work of mind” (art. 6, LPC). **No registration or official submission is required** to benefit from this law.⁴

The exploitation rights of a work subsist for the lifetime of the author and **until the end of the seventieth calendar year after his death** (artt. 25- , LPC). At the end of this period, the work usually enters the public domain.⁵

This means that reproduction and use of copyrighted work **have to be expressly authorised** by the author. A payment could be also necessary.⁶

However, LPC has established some **exceptions** and limitations to this rule. These exceptions concern some very specific cases, in which the reproduction or the communication to the public of copyrighted works is permitted in order to promote the free circulation of ideas.

Many of these exceptions concern your life in the library as a student and researcher (artt. 65- , LPC). Our guide will explore them.

¹ There is a slight difference between the English term *copyright* and its Italian translation *Diritto d'autore* (literally: “the author’s right”). In fact, the European copyright tradition (Italy, France and the majority of EU countries) focuses more on the author’s moral rights than the British/American copyright, which in turn gives more importance to the distribution and editorial aspects (copyright literally means: the “right to print”). However, in this guide we will use the term *copyright* to describe the Italian *Diritto d'autore* regulation.

² Law No. 633 of April 22, 1941.

³ Translations are taken from WIPO (World Intellectual Property Organization) website: <https://www.wipo.int/edocs/lexdocs/laws/en/it/it211en.pdf>

⁴ Unlike patents, which usually need to be registered to be protected.

⁵ In the case of joint-authorship, the duration of the exploitation rights is determined by the lifetime of the last surviving joint-author. In the case of anonymous works, the duration of the exploitation rights shall be seventy years from the date of first publication (artt. 26-27, LPC).

⁶ It is a *closed by default* system.

COPYRIGHT AND LIBRARY SERVICES

Can I xerox library materials?

Yes, you can xerox **up to 15%** of each volume or issue of a magazine, for **personal use** (e.g. research reasons) without asking permission. Without explicit consent of the author, reproductions cannot be distributed to others (not even for teaching purposes), uploaded online or commercialized.

Multiple partial reproductions of the same volume/issue are not allowed if they exceed the 15%.

Can I scan library materials?

Transition from paper to digital (and vice versa) is a **format change**. Author's or/and publisher's permission is always required, even if the user is going to respect the 15% limit.

Why can't I receive the articles/chapters of the Document Delivery (DD) service in pdf?

Most of the required documents arrive at our library via Nilde. Nilde is a network of libraries created to improve document circulation in Italy and Europe.

Unless the document licence states otherwise, the library is obliged to deliver to the user only one single copy in paper format, and to destroy the digital one. The user has to use the copy for research or study purposes, and is obliged to make a personal use of it (e.g. distribution to others is not allowed).



Il presente documento viene fornito attraverso il servizio NILDE dalla Biblioteca fornitrice, nel rispetto della vigente normativa sul Diritto d'Autore (Legge n.633 del 22/4/1941 e successive modifiche e integrazioni) e delle clausole contrattuali in essere con il titolare dei diritti di proprietà intellettuale.

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Can I print a library eBook in full?

No. Even if the eBook is available on the library collection, you cannot print it in full. eBooks are protected by copyright laws like any other library material. Moreover, explicit permission is required to convert materials from a digital to a paper version (and vice versa).

It is a good practice always to refer to the licence released by the publisher. Many user licences allow a partial printing, and explain how to use and consult eBooks properly.

COPYRIGHT AND IMAGES

Can I use photos found on the internet?

It depends on the photo. Not all photos we find on the internet are under public domain.

The LPC makes a distinction between artistic and non-artistic photos (e.g. a Robert Capa photo vs. a simple photo without any artistic intention), but the law protects both.⁷

You always have to ask permission if you decide to use a photo that is not already under public domain, or that has been released without an extensive licence.

→ Even if the photo is freely available to use, **you must never forget to cite the author and the source.**

I didn't find any information about the photo on the website or wherever I found it. What am I supposed to do?

The LPC allows the free reproduction of photos that do not bear information such as: the name of the photographer or of the person who commissioned the photograph, the year of production, the name of the author of the work of art which has been photographed (art. 90, LPC). In this case, their reproduction shall not be deemed abusive.

→ Be careful! Usually this information is available on the photo itself (*watermarks*), or on the website page *credits*. It is up to the user (and their responsibility) to make sure, after a careful research, that information is actually not available.

Can I use photos and images that I found on institutional websites or on newspaper websites?

It depends. Usually images rights are reserved, and an explicit authorisation is required to use them. Check the licence, if the images have been released with one.

Can I use copyrighted images without asking any permission if I'm doing it for teaching or research purposes?

You always have to ask for permission if you are going to reproduce copyrighted images, unless you are using them for personal purposes only (no distribution to others, non-commercial purposes).

→ E.g. There is no need to ask for permission to reproduce an image for a classroom presentation,⁸ but you cannot make a brochure and distribute it to your students without the author's permission.

The LPC allows the publication of low-resolution images for teaching and research purposes (non-commercial) without asking the author for any permission (art. 70, comma 1-bis, LPC). PhD students and researchers often call upon this exception, when they are about to publish an article or their thesis.

Please note that, in order to make use of this exception, you have to fulfil all the law requirements: low resolution, upload on the internet, teaching and research purposes, non-commercial purposes.

⁷ The exploitation rights of an artistic photo subsist for the lifetime of the author and until the end of the seventieth calendar year after his death. They subsist for twenty years in the case of a "simple" photo (artt. 2 and 87, LPC).

⁸ Remember always to cite the author and the image source.

→ E.g. If you are going to publish an article, you always have to ask the author for permission to reproduce images. In fact, a commercial purpose is involved in the publication itself (if not yours, the publisher's).
 → E.g. The reproduction of images in your thesis needs to be authorised, even if they are low-resolution. These are public documents and are available for public consultation in digital and print versions.

Can I use the picture of a work of art I have personally taken in an Italian museum?

Yes, if you have non-commercial purposes. The *ArtBonus Decree* (June, 2014) has liberalised photographic shoots inside **Italian museums** for personal, teaching and research purposes.⁹

If you have taken the picture in a non-Italian museum, you have to refer to any specific museum policy.

Many of them allow the free reproduction and distribution of images for teaching and research purposes, as Italian museums do. In some cases however, you may need to obtain a release and pay for image reproduction.

Can I use photos of manuscripts I have personally taken in a library or in an archive?

Bibliographic and archive materials are not mentioned in the *ArtBonus Decree*.

It is necessary to obtain a written permission from the library or the archive where the photo was taken.

I can't go to the museum/library/archive to take a photo in person. What should I do?

You can request a photo reproduction directly from the institution that holds the material you would like to photograph.

Remember to specify your purposes in your request. The authorisation you will receive will state the terms and conditions for the image use.

Asking the institution to provide you with a picture is also the best option to obtain a HQ photo (especially in the case of a museum artwork).

Can I use manuscript/journal/article reproductions that I have downloaded from a digital library or a digital archive?

There is always one golden rule: check the licence that has been released with that material.

Ask for permission if it is required, or if there is no licence.

To whom should I address my request of permission? And how?

Your request has to be addressed to whomever holds the copyright (it could be the author or the publisher; the database or website owner; the museum or the archive...).

We suggest that you **specify details about the material, and your usage purposes in your request**.

Forms, receipts, emails: they are all fine to prove you have obtained an authorisation from the rights owner.

→ E.g. You should ask for: pages reproduction for personal purposes, or permission to include a picture of the *Venere di Botticelli* in your next publication on a journal.

⁹ A publication on a journal has a commercial purpose. In this case, you always have to ask the museum/institution for permission.

→ Some archives and libraries make *Permission Forms* available to researchers. It could be very useful during your research period to keep up with terms and regulations of the institutions you attend. This will make your work easier at the end.

Where can I find freely available or public domain images?

You can: make an advanced search on Google (Settings > Usage rights); select the licence you are looking for when using the CreativeCommons Search bar; browse the Wikimedia Commons website or other similar aggregators.

COPYRIGHT AND PHD THESES

If I consent to deposit my thesis in OA to the IMT institutional repository (E-theses), will I lose my usage and exploitation rights on it?

No. By signing the *PhD Thesis Commitment*, you allow your thesis to be deposited to E-theses, the institutional repository of the IMT School for advanced studies Lucca, immediately or after an embargo period (up to a maximum of 36 months), but you do not lose any right on it.

PhD students keep all their rights to reproduce, distribute and publish their work whenever and wherever they want **without asking the School for any permission**.¹⁰

When is it possible to ask for an embargo period?

Our School supports the OA movement and the free circulation of all scientific achievements. For this reason, we also uphold the *Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities* (2003).

The Berlin Declaration encourages public access to publicly funded researches. PhD theses are part of this category and access to them should be ensured by all institutions. Theses should be made temporarily not available only for limited and specific reasons.¹¹

This is the reason why our policy provides the possibility to ask for **a temporary embargo for a maximum of 36 months**, if there are some proven reasons.

You can ask for an embargo period:

- a) If the content of the thesis **is being published**, and the publisher does not allow the upload of the thesis to an institutional repository before publication.
- b) If the thesis is **part of a publicly or privately funded project** the results of which are subject to dissemination restrictions.
- c) If the thesis is the subject of a **patent or copyright claim**.¹²
- d) for **privacy** reasons, and/or if the thesis contains **data that must be temporarily classified** (e.g. public safety reasons).

Embargo requests will only be accepted if one or more of these conditions apply, and if they are accompanied by the advisor's signature.

During the embargo period, only thesis metadata will be available on the School's Institutional Repository, E-Theses. A hard copy of the thesis will be available for consultation at the IMT Library, and a copy will be available via the catalogue of the Central National Libraries of Rome and Florence.

At the end of the embargo period, the full text of the thesis will be made available for consultation online also via E-Theses.

¹⁰ Unless the thesis is part of a publicly or privately funded project the results of which are subject to restrictions on dissemination. In this case, it depends on the agreements that have been made within the parts.

¹¹ CRUI- Linee guida per il deposito delle tesi di dottorato negli archivi aperti, 2007.

¹² Patent requests have to be made before your thesis discussion. Otherwise, after you discuss your thesis, it will be considered as public.

What does it mean to apply the CC BY-NC-SA 3.0 IT Licence to my thesis?

Theses are associated with a user licence on our Institutional Repository, E-Theses.

By choosing a licence, authors define what users can do with their work, without having to ask the author for permission in advance.

In your thesis template, we suggest you use the **CC BY-NC-SA 3.0 Licence** (*Attribution-NonCommercial-ShareAlike*)

Thanks to this licence, your work can be shared and reused,

Share — copy and redistribute the material in any medium or format

Adapt — remix, transform, and build upon the material

The licensor cannot revoke these freedoms as long as you follow the license terms.

but *only* if these conditions are fulfilled:

Under the following terms:



Attribution — You must give [appropriate credit](#), provide a link to the license, and [indicate if changes were made](#). You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.



NonCommercial — You may not use the material for [commercial purposes](#).



ShareAlike — If you remix, transform, or build upon the material, you must distribute your contributions under the [same license](#) as the original.

On the CC Creative Commons website you can find further information about this licence and its use.

Can I use sensitive data or copyrighted materials that have not been authorised in my thesis?

No. Doctoral theses are public documents: they are freely accessible, and they **must not contain sensitive data** or copyrighted materials that have not been authorised.

Can I use other researchers' works in my thesis? How?

The LPC allows “the abridgment, quotation or reproduction of fragments or parts of a work and their communication to the public for the purpose of criticism or discussion [...] if they are made for teaching or research” (art. 70, comma 1, LPC).

Obviously, you have to cite your sources correctly in order to avoid plagiarism.¹³

¹³ For further information about this subject see the Library Guide: “Plagiarism: what it is and why you should avoid it”.

Can I reuse my previous work?

Yes, **you can reuse and build part of your thesis upon your previous work** if it is explicitly stated and if it does not overlap with most of your thesis.¹⁴ It is strongly suggested not to reuse an entire article, and to avoid copy-and-paste. It is advised to always quote your previous work in your notes or in the bibliography.¹⁵

Is it necessary to ask for copyright permissions, even if I request an embargo period for my thesis?

Yes, doctoral theses are public documents and they are freely accessible to anyone. Moreover, the embargo period is temporary (up to a maximum of 36 months). After the end of the embargo, the full-text of your thesis will be available on our Institutional Repository, E-Theses.

Sensitive data and copyrighted materials have been collected in another country. Which legislation should I refer to?

According to the EU *assimilation principle* (EU Directive 2006/116/CE), copyrighted materials which are protected in one European country should also be protected in all other EU countries. Generally, as your thesis is going to be discussed in Italy, you have to refer to the Italian copyright legislation.

¹⁴ Unless restrictive agreements have been made with the publisher of your publication.

¹⁵ For further information about this subject see the Library Guide: "Plagiarism: what it is and why you should avoid it".

GLOSSARY

[Glossary entries are from Wikipedia]¹⁶

Digital library: a digital library, digital repository, or digital collection, is an online database of digital objects that can include text, still images, audio, video, or other digital media formats.

Copyright: the exclusive right given to the creator of a creative work to reproduce the work, usually for a limited time. The creative work may be in a literary, artistic, educational, or musical form. Copyright is intended to protect the original expression of an idea in the form of a creative work, but not the idea itself. A copyright is subject to limitations based on public interest considerations, such as the fair use doctrine in the United States. [Ed.: the concept of copyright first developed in England and consolidated in the USA. Now it's worldwide diffused as "author's rights" translation also in the European countries, even if there are some differences between the two legal orders]

Creative Commons licences: one of several public copyright licences that enable the free distribution of an otherwise copyrighted "work". A CC licence is used when an author wants to give other people the right to share, use, and build upon a work that they (the author) have created. CC provides an author flexibility (for example, they might choose to allow only non-commercial uses of a given work) and protects the people who use or redistribute an author's work from concerns of copyright infringement as long as they abide by the conditions that are specified in the licence by which the author distributes the work.

Sensitive data: in the Italian law some types of private information, including records of a person's health care, sexual and political orientation, religious life and others. In the European Union, the General Data Protection Regulation (GDPR), provides a rigorous standard for privacy protection legislation across all member states.

Legal deposit: a legal requirement that a person or group submit copies of their publications to a repository, usually a library. The requirement is mostly limited to books and periodicals. The number of copies varies and can range from one to 19. Typically, the national library is one of the repositories of these copies. In some countries there is also a legal deposit requirement placed on the government, and it is required to send copies of documents to publicly accessible libraries.

Author's rights: a term frequently used in connection with laws about intellectual property. The term is considered as a direct translation of the French term *droit d'auteur* [ed.: *diritto d'autore* in Italian]. It is generally used in relation to the copyright laws of civil law countries and in European Union law. Authors' rights are internationally protected by the Berne Convention for the Protection of Literary and Artistic Works and by other similar treaties. "Author" is used in a very wide sense, and includes composers, artists, sculptors and even architects: in general, the author is the person whose creativity led to the protected work being created, although the exact definition varies from country to country. Italian copyright law is based strongly on authors' rights.

Embargo: in academic publishing, an embargo is a period during which access to academic journals is not allowed to users who have not paid for access (or have access through their institution). The purpose of this is to ensure publishers have revenue to support their activities, although the impact of embargoes on publishers is hotly debated, with some studies finding no impact.

Metadata: "data that provides information about other data". In other words, it is "data about data." Many distinct types of metadata exist, including descriptive metadata, structural metadata, administrative metadata, reference metadata and statistical metadata.

¹⁶ Last access on Wikipedia: April 10, 2020. *Nilde* entry has been got from <https://nildeworld.bo.cnr.it/>.

Nilde: (Network for Inter-Library Document Exchange) a software that allows libraries to exchange documents requested by users in a quick and easy way. Moreover, it is a network among libraries and librarians who cooperate and make this service useful and valuable.

OA: (Open Access) a set of principles and a range of practices through which research outputs are distributed online, free of cost or other access barriers. With open access strictly defined (according to the 2001 definition), or libre open access, barriers to copying or reuse are also reduced or removed by applying an open licence for copyright. The main focus of the open access movement is "peer reviewed research literature." Historically, this has centered mainly on print-based academic journals. Conventional (non-open access) journals cover publishing costs through access tolls such as subscriptions, site licences or pay-per-view charges. Open access can be applied to all forms of published research output, including peer-reviewed and non peer-reviewed academic journal articles, conference papers, theses, book chapters, and monographs.

Plagiarism: the representation of another author's language, thoughts, ideas, or expressions as one's own original work. Plagiarism is considered academic dishonesty and a breach of journalistic ethics. It is subject to sanctions such as penalties, suspension, expulsion from school or work, substantial fines and even incarceration.

Policy: a deliberate system of principles to guide decisions and achieve rational outcomes. A policy is a statement of intent, and is implemented as a procedure or protocol.

Public domain: all the creative work to which no exclusive intellectual property rights apply. Those rights may have expired, been forfeited, expressly waived, or may be inapplicable.

Institutional repository: an archive for collecting, preserving, and disseminating digital copies of the intellectual output of an institution, particularly a research institution. For a university, this includes materials such as monographs, eprints of academic journal articles—both before (preprints) and after (postprints) undergoing peer review—as well as electronic theses and dissertations.

[Ed.: IMT School has two institutional repositories. 1) E-theses, an archive with all bibliographic information of discussed theses and full-text theses; 2) IRIS, an archive that contains articles, books, contributions to publications or conferences and other type of materials published by professors, researchers, PhD students and administrative staff of the School]

Digital watermarks: a kind of marker covertly embedded in a noise-tolerant signal such as audio, video or image data. It is typically used to identify ownership of the copyright of such signal.

USEFUL LINKS

LPC (unofficial translation on WIPO): <https://www.wipo.int/edocs/lexdocs/laws/en/it/it211en.pdf>

Blog Simone Aliprandi: <http://aliprandi.blogspot.com/>

CC Creative Commons: <https://creativecommons.org/>

CC Search: <https://ccsearch.creativecommons.org/>

Wikimedia Commons: <https://commons.wikimedia.org/>

CC commons deed: <https://creativecommons.org/licenses/by-nc-sa/3.0/it/deed.it>

CC Legal Code: <https://creativecommons.org/licenses/by-nc-sa/3.0/it/legalcode>

CRUI – Gruppo tesi <https://www.cruai.it/linee-guida-per-il-deposito-delle-tesi-di-dottorato-negli-archivi-aperti.html>

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