

Third Party Copyright

In June 2010 UCL conducted a sector-wide survey into thesis deposit and open access in UK universities and HEIs. A rich body of data was provided by respondents describing how they approach the issues surrounding open access deposit of electronic theses. The data was analysed and evidence is presented here of consensus and best practice. A survey summary report and full text responses are available on the project website¹.

Of 144 survey respondents, 89 (62%) are aware of concerns within their institution surrounding IPR and third party copyright in theses. Adherence to copyright is primarily a concern for administrators, who are responsible for making the work available:

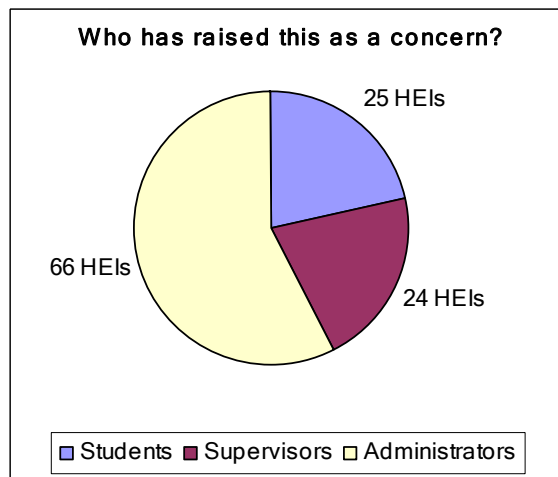


Figure 1: Third party copyright: Number of HEIs where concern raised

A total of 22 respondents (15%) report this as a frequent or top concern:

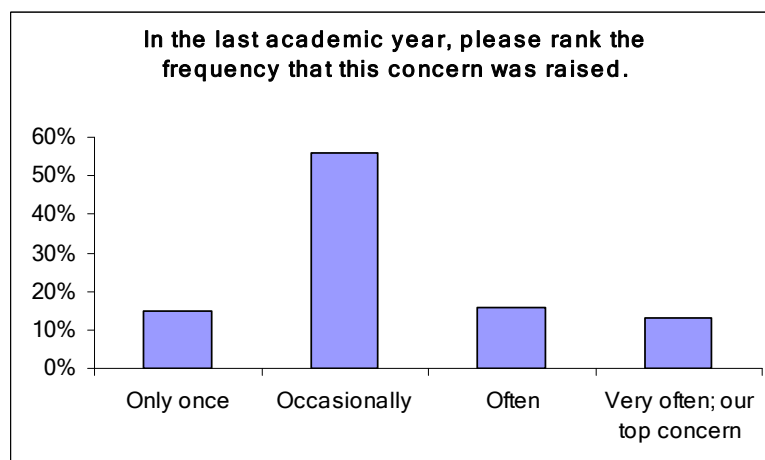


Figure 2: Third party copyright: Frequency of concern

¹ Project website <http://www.ucl.ac.uk/ls/etheses>

Examples of concerns raised

- “Not sure that students and supervisors are aware of the implications of including third party copyright material in what is essentially a published work.”
- “Theses in arts subjects including lengthy quotations from authors under study; theses in science subjects including diagrams, plans and maps.”
- “All art history theses are awash with images, most of which need copyright clearance”
- “By having to exclude 3rd party material, including music, it can unreasonably affect the integrity, cohesiveness or plain logic of the awarded theses if 3rd party material has to be blanked out of an online version.”
- “Material from difficult publishers e.g. Faber”
- “Copyright law does not define 'a short quotation' so students occasionally have concerns about exactly what they must seek permission for.”
- “With theses available electronically any copyright infringement is more easily visible”
- “Owners of 3rd party copyright may sue us”
- “Legal Services and insurers concerned about this matter”
- “Does any permission obtained for use in thesis cover electronic open access?”
- “The issue of having to contact people to obtain copyright is seen as onerous and unfair to expect this work to be performed by the student.”
- “May reduce/slow down submissions.”
- “The concern is a management one, based on our lack of resource to check that the student disclaimer holds out”

Mitigating actions

Respondents were invited to describe in their own words what actions they take to address these concerns. Only three take no action at present or are developing their procedures. Of those taking action, most respondents combine several approaches, for example:

- “Exhaustive education and training, thorough checking, tight policies and a rigorous Take Down policy”
- “We have research training at the beginning of the process, and a takedown policy at the end. We are not able to inspect each thesis to ensure compliance.”

Notable examples of each measure are discussed below.

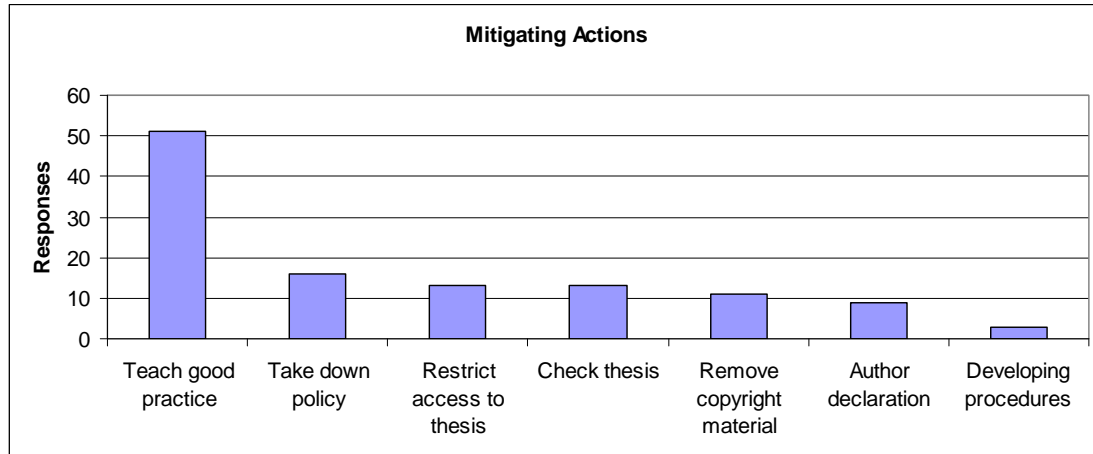


Figure 3: Third party copyright: Mitigating actions

Teach good practice:

70% of mitigating actions revolve around teaching good practice and provision of guidance. 26 responses advocate education and training, 12 mention guidance documentation and 4 respondents offer information via their websites:

- “Educate students to take charge of their copyright material.”
- “Training sessions and online help.”
- “We strongly suggest that a good copyright habit is a good academic skill and goes beyond etheses.”
- “We offer all sorts of hints on how to edit a thesis so that it can be made publicly available minus uncleared material.”
- “Training sessions including asking for concerns beforehand so there can be written answers given out at the session.”
- “Students receive instructions to omit third party material, eg copyright training, web pages.”
- “Seek publisher permission as you go along - don't leave until end”
- “We raise awareness by giving talks and providing extensive information about rights management on the repository support web site.”

- “For current students, 3rd party copyright regulations are referred to in institutional repository guidelines”

Several respondents collaborate with their legal departments and copyright officers to ensure the importance of copyright clearance is conveyed:

- “We do a lot of training. I do joint training sessions with the university copyright officer. We offer info. re. copyright law, exemptions, fair dealing etc.”
- “We have a copyright expert in the Library team and would seek advice in case of doubt or concern.”
- “We collaborate with the Legal services department who have provided us with guidance notes etc.”

A useful complement to the education offered is to provide a template for use by authors when seeking copyright permission:

- “We also have a template letter which students only have to make small amends to in order for it to be appropriate to be sent to the copyright owner of any 3rd party material.”
- “We offer pro forma letters to request permissions from rights holders.”
- “Information is available via the website, including a permission seeking template, to make it as easy as possible for authors to obtain permission.”

While there is an expectation of due diligence by the student to obtain permissions wherever they can, it may be recognised that acquiring copyright clearance might still not be possible and alternative measures such as embargo would then be necessary:

- “We also let students know that they will in no way be penalised if they are unable to obtain permissions, or if it's too onerous to do so”

Take down policy:

Alongside educational measures, the second most popular mitigating action (16 respondents) is to implement a notice and take down policy, whereby if an infringement is reported the thesis will be immediately withdrawn from open access:

- “Clear notice and take down policy and statement on a pop up and PDF first page directed at any possible 3rd party rights holders”
- “Rapid take-down policy on repository home page.”
- “We have a strict take down policy - if any copyright concerns are raised, we will immediately withdraw the item from public view and investigate”

Restrict access to thesis:

Twelve respondents restrict access to the thesis, for example via embargo or opting out altogether:

- “In flagrant cases we don't make the e-thesis publicly available”
- “We embargo theses which appear to contain third party copyright material”
- “Suspend digitisation of item until matter resolved”
- “Indefinitely embargo a thesis with such material present, or take steps to excise it from the version made available.”

Check thesis:

Twelve HEIs mention checking the thesis, variously by the student, repository staff, subject librarians or the rights department:

- “All theses requested by EThOS are checked by our Rights Department.”
- “Checking by the Digital Library Team”
- “Occasional sample checking of theses”
- “Repository administrators make a quick check of thesis contents before uploading to the repository and will query any obvious infringements.”
- “Subject Librarians check theses for level of third party copyright”
- “We thoroughly check each thesis for quotations and illustrations which might be in copyright and refuse to supply or flag sections for exclusion, where it does not render research meaningless.”

Remove copyright material:

Only 11 HEIs mention creation of a separate digital edition with copyright material removed.

- “Allowing for edited versions of theses (with offending sections left out) to be deposited”
- “Removal of... the copyright infringing section (if easily identifiable)”
- “Some excerpts may have to be removed from online theses.”

Author declaration:

Where the author is expected to arrange copyright clearance, it is likely that a signature will be required upon deposit of the thesis verifying that permission has been obtained:

- “Signed confirmation on delivery of the e-thesis from the student to confirm they have the appropriate permissions.
- “Authors of theses are asked to sign letter/licence saying 3rd party permission obtained.
- “When letters are sent to successful students asking them to submit electronic copies of their thesis, there is a paragraph flagging their responsibility to ensure any third party content has been cleared with the owners.

Although author declarations are useful and reinforce the author’s responsibility for copyright clearance, they are rarely the only measure employed: they are often used in conjunction with a takedown policy or embargo option.

Author declarations also pose problems for those wishing to digitise their theses retrospectively:

- “Difficulties in covering this for retrospective theses where we can no longer get a declaration form from the author to cover copyright concerns.”
- “We have tried to contact the authors of these theses in case they have concerns re third party copyright (mainly unsuccessfully as have no contact, not in our alumni)”

Other responses:

Other responses, while not specifically practical measures, indicate a pragmatic approach to the risk:

- “If permission is not forthcoming, we would decide what to do to manage the risk on a case by case basis.”
- “Perhaps unlikely that anyone would pursued aggressively?”
- “We suggest that this is a relatively low risk educational environment but not to be complacent.”
- “Support reasonable and informed risk.”

Actual occurrences

When asked to quantify incidents where action had to be taken to remove access to a thesis, 64% of respondents had none to report, with two respondents attributing this to the success of their system/procedures. Eight HEIs had between 1 and 3 theses removed. Only three HEIs reported higher figures (12, 15 and 50).

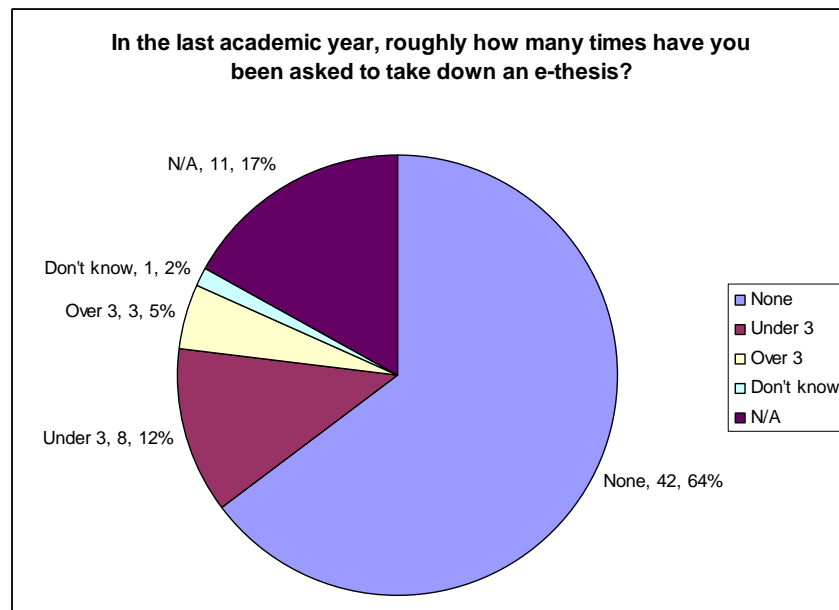


Figure 4: Third party copyright: Actual occurrences

Conclusion

Although the educational arena might be regarded by some as low risk, copyright infringements when visible on the web would pose difficulties for all concerned. If copyright material is either cleared or omitted from the outset, then the task of managing infringements is much reduced. Teaching good practice, providing permission seeking templates, and an author's declaration that permission has been secured, should engender responsibility and good scholarly discipline in doctorate-level students.

Practical measures may still be required however, either for older theses whose authors have made no declaration or where even after diligence by the author the relevant permissions could not be obtained. A notice and take-down policy ensures swift response if infringements are spotted; however in extremis it may be necessary to embargo or redact unavoidable infringements. In most cases though, this should be a last resort and most infringement can be avoided by good scholarly practice.