Images in ETDs FAQs

Images in ETDs: Fair use or seek permission?

In addition to the resources available from the Office for Scholarly Communication about retaining rights to your work and fair use, the FAQs below address fair use and the use of images in your dissertation.

What is fair use?

Fair use is a provision in copyright law that allows the use of a certain amount of copyrighted material without seeking permission. Fair use is format and media agnostic, which means that graphs, drawings, video, etc., may be used without permission, as long as the user’s fair use analysis is sound.

How do I determine whether my use of an image in my dissertation is fair use?

There are four factors you will need to consider when making a fair use analysis:

1) For what purpose is your work going be used?

Nonprofit, educational, scholarly, or research uses favor fair use. The opposite, commercial, non-educational uses, does not favor fair use.

A transformative use (repurposing or recontextualizing the copyrighted material) favors fair use. A work is transformative if, in the words of the Supreme Court, it “adds something new, with a further purpose or different character, altering the first with new expression, meaning or message” [find details in the decision of Campbell v. Acuff-Rose Music, Inc. 510 U.S. 569 (1994)]. Examining, analyzing, and explaining the copyrighted material you are using helps your fair use argument. The transformative use must add meaningfully to the audience’s understanding of the argument, and the contribution the third-party material is making to the paper should be clear to the reader. In other words, can you make the point in the thesis without the image? Is it necessary to your dissertation? If not, perhaps, for copyright reasons, you should not include the image.

2) What is the nature of the work to be used?

Published, fact-based content favors fair use. It is the author’s prerogative to make a work available for public consumption; as a result, unpublished works have more protection and therefore would be less eligible for fair use claims. Similarly, creative works are afforded more protection under copyright; as noted in Nimmer on Copyright, “the more creative a work, the more protection it should be accorded from copying…Notwithstanding that general pronouncement, this second factor more typically recedes into insignificance in the greater fair use calculus.” [M. Nimmer & D. Nimmer, Nimmer on Copyright § 13.05(A)(2)].

3) How much of the work is going be used?

Small or less significant amounts favor fair use. A good rule of thumb is to use only as much as necessary to serve your purpose. Can you use a thumbnail rather than a full-resolution image? Can you use a black-and-white photo instead of color? These simple changes can help bolster your fair use of the material.

4) What effect on the market for that work would the use have?

If there would be no effect on the market, or if it is not possible to obtain permission to use the work, then this favors fair use. If there is a market for licensing this exact use, or type of educational material, then this weighs against fair use.

Columbia University Libraries provides a checklist that you may find helpful when you are analyzing whether your use of an image is fair use.

What are my options if I don’t have a strong fair use analysis?

You have a couple of options: you could seek permission or you could find an alternate public domain or openly licensed image. We recommend
this LibGuide, which is a great resource for finding images without copyright restrictions.

*Are there any resources available to me if I have questions?*

Yes. You may contact your Copyright First Responder. S/he will be able to help you if you have questions about copyright, fair use, and images in your work.