

Intellectual Property and Electronic Theses.



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The role of this briefing paper is to raise awareness of the main issues involved when converting paper-based theses into a digital format. This change of media has many implications for the way theses are created, stored, organised, managed and accessed. This briefing paper specifically examines the agreements required by an institution when managing and storing theses in electronic format. This includes existing theses held by institutions in paper format and those presented by students electronically (born digital). These agreements typically involve those which may need to be obtained from the author, the institution or some other third party. A number of sample agreements are presented, which are intended to be adapted to suit an individual institution's circumstances.

This paper will be of interest to those:

- responsible for overseeing postgraduate studies within the University environment,
- accountable for legal compliance and formulating/amending postgraduate regulations and policy,
- responsible for the implementation and oversight of electronic theses programmes in their institutions.

JISC Legal would like to remind you that the information provided in this document is for guidance and should not be considered as legal advice.

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1. Introduction

1. This briefing paper is concerned with outlining the issues which arise for an institution which is considering adopting electronic theses and dissertations for student work. It is also concerned with how existing theses accumulated over the years can now be converted to electronic documents and stored in repositories which can be accessed on the internet.

The practice of making theses and dissertations available online is growing internationally. Repositories of Electronic Theses and Dissertations (ETDs) are now common in universities in North America, Australia and in many European countries. In the UK, the Joint Information Systems Committee (JISC), as part of the Focus on Access to Institutional Resources (FAIR) programme, has funded three projects to study the issues and challenges associated with the deposit and management of theses in electronic format. This briefing paper represents the shared knowledge acquired during the FAIR programme, whilst implementing electronic theses programmes across several institutions, including the University of Edinburgh (Theses Alive! Project (1)), the University of Glasgow (Daedalus project (2)) and The Robert Gordon University (Electronic Theses project (3)).

2. In addition, the FAIR programme has been instrumental in addressing the technological and intellectual property issues arising through the adoption, use and delivery of other digital documents, for example, peer-reviewed journal articles, pre-prints and book chapters, via the internet. These documents share a number of characteristics with electronic theses and dissertations, thus the research findings and outcomes from several other projects (specifically the SHERPA (4), TARDIS (5) and RoMEO (6) projects) have also been valuable in increasing our understanding of the intellectual property issues, surrounding digital documents and the internet.

3. Traditionally, the thesis literature has sat uncomfortably on the boundary of the educational process and research publication. Fundamentally, in the UK the examination process is a private affair between the students, examiners and the university. Additionally, access to theses and dissertations is patchy at best, limited by physical lending restrictions. As a consequence, theses and dissertations have gained a reputation for being intractable, and despite their obvious value they remain part of the *'grey literature'*. The advent of digital media offers the possibility to open up both processes of examination and dissemination, further blurring the distinctions between them. Policy discussion coming out of this debate suggests that there may be no single answer to what should be open public knowledge and what should remain private. Any outcome will be guided by the departmental teaching style, institutional norms and practices. Certainly the majority of institutions in the UK that have begun the process of adopting electronic theses have taken the middle-ground by electing to place their ETDs online reflecting the ethos of Open Access; to maximise research visibility, usage and impact, without changing their present format of thesis examination.

4. At its most mundane an ETD is a digital image of the print distribution object, being still firmly grounded in the traditions of print. However, the digital format offers

a unique opportunity to create an electronic document unrestricted by conventional limitations. It is now possible to author a document that contains both aspects of multimedia and the dynamic presentation of large data sets that previously were unattainable in print format. These enhancements of the traditional thesis or dissertation do however present certain intellectual property difficulties which must be avoided.

2. Copyright

5. In order to protect intellectual creation a number of intellectual property rights (IPR) have been created. Several different types of IPR exist, including copyright, trademark law, designs and models and patent law. Literary, artistic, dramatic and musical works are mainly protected by copyright. Within the meaning of the *Copyright, Designs and Patents Act (CDPA)*, 1988, (s.175), a British thesis is an unpublished work, and is protected under the act as such. The Act prohibits re-publication of any significant part of a thesis by a third party without the copyright owner's consent. Furthermore, copies of a thesis cannot be issued to the public without the copyright owner's consent (s.16).

6. There is a common misconception that any material made available via the internet is in the public domain and not subject to any restrictions on use. However any work published on the internet is subject to the same copyright protection that works distributed by other media enjoy.

7. Through copyright, the author of an intellectual creation gains rights which enable them to control the use of their work. Primarily, authors hold the exclusive right to control how their work is used. Copyright will be infringed by anyone who reproduces, adapts or distributes the work without the prior consent of the author.

8. A number of exceptions are permitted by law under the 'Fair Dealing' defence. Although there is no precise definition of 'Fair Dealing' and interpretation is ultimately decided by the courts, it essentially allows limited copying without permission provided it is fair and the commercial interests of the rights holder are not damaged (7). The principal purposes for which the 'Fair Dealing' defence may be used are 'Research and Private Study' (excluding sound recordings and films in both cases), 'Criticism/ Review and News Reporting'. It is a condition of the Fair Dealing defence that the source of the work is acknowledged in all cases.

The reader is referred to the Intellectual Property section of the JISC Legal website for a more comprehensive coverage of Fair Dealing and Permitted Actions - <http://www.jisclegal.ac.uk/ipr/fairdealing.htm> .

9. No formal registration is required to enjoy copyright protection. In the UK, as long as the work is original (paragraph 10 below) and is expressed in a particular form (paragraph 11 below), copyright protection is granted as soon as work is recorded in a permanent manner. Furthermore, the author is also not required to indicate their ownership through the adoption of the copyright symbol; however, this may be useful in determining priority if disputed.

Originality

10. A work is defined to be original if it has been marked by the personality of its creator in some way. In other words, it must be apparent that the creator has played an integral role in the production of the form of the work. There are no precise criteria to assess originality, however, since it is accepted that the work in a doctoral thesis presented for examination must make a significant contribution to knowledge in or understanding of the field of study and contains material worthy of publication, doctoral theses are therefore likely to be considered original for the purposes of copyright law.

11. To promote innovation and creation, copyright does not protect specific ideas *per se*, but rather their expression in a particular form. For example, the original story of “*Little-Snow White*” was first written in 1812 by Jacob and Wilhelm Grimm derived from traditional folk stories. However, the art, animation and musical score from the 1937 Disney film “*Snow White and the Seven Dwarfs*”, although derived from the original production, are protected by separate copyright as it is a new expression of ideas in a different form to the original.

12. a. Copyright grants the author a negative right, rather than a privilege. The copyright owner may authorise or prevent certain restricted acts (e.g. use, copying, and distribution). In addition the author is recognised as the owner of the economic and the moral rights to the work. The possession of economic rights enables the author to take revenue from the exploitation of his/her work through the exclusive rights to reproduce and communicate his/her work to the public, with or without any material embodiment. A third party attempting to do so requires prior consent from the author.

12.b. The moral rights grant the author the paternal right to be recognised as the creator in perpetuity, the right for the work not to be subjected to derogatory treatment, and the right not to be identified as author of something they didn't create. The right of paternity must be asserted by the author, whilst the other two are automatic. After death, any moral rights are retained by the heir/s.

13. In common use, the economic and moral rights differ in their practical application. Currently, for works created in the UK after 1 January 1996, economic rights expire 70 years after the death of the author. For further information on the duration of copyright see the information on the UK government backed home of intellectual property - http://www.intellectual-property.gov.uk/std/faq/copyright/how_long.htm. These economic rights may be transferred to another legal entity if the creator wishes to transfer all or part of his/her rights. This is common practice when academic authors publish in peer-reviewed journals. Only the economic rights can be transferred in this fashion. The creator always retains the paternal right to his/her work if s/he has asserted that right.

Determining copyright ownership in theses

14. As stated in paragraph 7, copyright is originally owned by the person who created the work. However, the law states that copyright in a work created in the normal course of employment belongs to the employing institution. Custom and practice in the UK may differ for HE institutions (i.e. copyright is usually kept by the

author) and custom and practice would probably be upheld unless the employment contract specifically states otherwise. Even then, it may be challengeable if the contract were deemed unreasonable. The majority of British theses are not authored during the course of employment and are instead subject to the regulations set out in the degree rules and regulations of the host institution. Thus, the typical scenario for most UK higher education institutions is that the author's (i.e. the student's) copyright subsists in the thesis and in the abstract of the thesis, or, in the case of a PhD for Musical Composition, in the portfolio of musical compositions and in the list of compositions.

15. It is normal practice that upon submission each candidate will be asked to grant the University the right to publish the abstract or list of works, and/or to authorise its publication for any scholarly purpose with proper acknowledgement of authorship (8).

16. Not all universities allow the author to retain copyright upon completion and submission of their thesis so it may be necessary to check the Postgraduate Study regulations of each institution to confirm the copyright ownership. However, where an institution does own the copyright over submitted theses and dissertations then it makes the process of adopting an electronic theses programme that much easier by not requiring a deposit agreement from the creator.

17. An additional complexity that may arise when determining copyright ownership is the question of whether any third parties may own any claim to the intellectual property arising from the doctoral research. The major research councils in the UK who fund postgraduate research, including the Economic and Social Research Council (ESRC), the Engineering and Physical Sciences Research Council (EPSRC) and the Natural Environment Research Council (NERC), make no claim to the intellectual property rights arising from research that they support. In general these research councils do not lay down any rules about the identification, ownership and management of intellectual property, but rather delegate responsibility to the funded institution in each case.

18. Problems in determining the copyright ownership may occur with research studentships participating in the Collaborative Awards in Science and Engineering (CASE) scheme. CASE studentships are partly funded by industrial sponsors, who may have a legitimate claim to any intellectual property arising from the research. The major research councils assert that the responsibility for safeguarding the student's rights is deemed to rest with the higher education institution. This position is clearly shown in the conditions of grant offered by the ESRC (9), EPSRC (10) and NERC (11).

In a CASE-funded research studentship it is the norm to include an agreement which covers ownership of any potential intellectual property rights during submission of the project proposal. There are many different kinds of exploitation agreements, so it is possible that each individual CASE-funded studentship may have different circumstances surrounding the copyright ownership. Therefore, it is important that each agreement is checked to make sure there is no confusion. During drafting of such an agreement there should be included a clause asserting the right of the

student to publish the thesis in an electronic repository. This would not necessarily require the student to assert ownership of copyright.

Patent Law in theses

19. In exceptional circumstances, where the thesis research has been particularly innovative, and there is potential for commercial exploitation, it may be desirable for the author to apply for a patent. A patent application may be successful only if the invention has never been made public in any way before the date on which an application for a patent is filed. It also must involve an inventive step and be capable of industrial application. For more detailed information on patents the reader is referred to the information available from the Patent Office (12).

20. Any public disclosure of material, including thesis publication via the internet, could have an adverse effect on a patent application. Currently, in order to avoid prior publication and risk jeopardizing the patent application, thesis authors are advised to restrict access to their research by applying for a restriction order if they are considering applying for a patent (see paragraphs 40 – 42 below). Similarly it is advised that authors of electronic theses do likewise.

Database rights and electronic theses

21. With the introduction of The Copyright and Rights in Databases Regulations 1997 ('Database Regulations') (13), databases have extended protection beyond copyright. In this amendment to the CDPA 1988, a database is defined to cover collections of independent works, data or other materials which are systematically or methodically arranged and can be individually accessed by electronic or other means (section 3A(1)). This right protects collections of materials which, although expensive to compile and commercially valuable, may lack any element of human intellectual creativity. This UK implementation restricts databases to collections which are literary works only.

22. This has implications for electronic theses and dissertations in that any datasets presented in appendices may be afforded these extended database rights. Similarly a thesis may have reproduced part of an existing database, thus when the thesis is published via the internet permission is required from the database owner (see paragraphs 26 - 27 for factors to be taken into account when including the work of third parties). Finally, any electronic thesis repository will intrinsically have a collection of bibliographic data relating to the deposited theses. The repository owners will be protected against unauthorized use by third parties of this information. However, it is worth remembering that not all readers of such information are human. Most new digital repositories have adopted the Open Archives Initiative Protocol for Metadata Harvesting (OAI-PMH) (14). This protocol supports interoperability among digital repositories and explicitly makes it possible to harvest and share metadata about the repositories resources. Thus third party aggregators of metadata, generally known as service providers, routinely harvest the database metadata records. Any repository must specifically allow service providers to do this, whilst being mindful of any future reuse of their metadata records.

3. Elements of the Licence Agreement

23. In all cases where copyright is owned by the creator an agreement is required to cover the special requirements necessary to store, organise, manage and access electronic theses, irrespective of whether the creator chooses to make them available via the internet. A comprehensive deposit and end user's licence agreement should cover a number of core topics, including a depositor's declaration, the repository's rights and responsibilities and the end-user's terms and conditions. The following sections discuss the individual elements required for each of these agreements before a suitable licence is constructed. Examples of appropriate Deposit Licences and End User Licences are then presented in the final section to help prepare documentation.

Depositor's Declaration

24. Ownership rights issues arise both with the content coming in (sometimes called upstream rights) and also with the content going out at the other end (sometimes called downstream rights).

The main function of the depositors declaration is to ensure that the depositor is the copyright owner, or has the permission of author/copyright holder (if by proxy) to deposit. The second function is for the author and any other rights holders, to grant permission to the host institution to distribute copies of their thesis via the internet. This is critical as under the *Copyright, Designs and Patents Act, 1988*, copies of a thesis cannot be issued to the public without the copyright owner's consent (paragraph 5). Equally important is the notion that the author has sought and gained permission to include any subsidiary material owned by third party copyright holders. The repository, as publisher, also needs the depositor to warrant that the content does not breach any laws including defamation, libel, copyright, and to accept liability for any legal action arising from any such breaches.

25. Often a thesis is a composite piece of research that comprises many strands, usually building upon and quoting previous research, or including diagrams, pictures or music produced by other creators. Traditionally in the UK, for the purposes of examination, inclusion of such copyright material held by a third party has been tolerated, (see paragraph 8), as the thesis has not been considered as formally published. Unfortunately there exists ambiguity about the status of publication when a British thesis, officially classed as unpublished (paragraph 5), is placed online and is thus made available to the general public. In any legal sense, making something available on the internet is publishing. Thus, permission would be required for this material to be included in the electronically published thesis. Practically, only the authors know what material in their thesis requires copyright clearance. It is unrealistic for an institution to verify each thesis for breach of third party copyright, to seek permissions if necessary, all on top of the ancillary checks that need to take place. We suggest that authors should have the responsibility for this task as they are in the best position to do so. However, placing the onus on authors can be a huge burden without support. Therefore it may be necessary to provide training during the writing process to inform authors of copyright responsibilities. Such training could be incorporated into existing Thesis Workshops that many institutions run as part of their transferable skills programmes for postgraduate students (15). In

addition it may be difficult to persuade the authors of theses which are part of an institutions bank of existing theses to go back and clear third party material for electronic conversion and internet publication. Some incentive to these authors may be that only by doing so will their theses work become part of the corpus of materials which are available to coming generations of researchers who increasingly see the internet and electronic materials as the main source of material for study.

26. Before applying for permission to include third-party copyright material in a thesis, a number of factors should be considered including:

- Identifying the set of individual elements in the thesis that *may* call for copyright clearance and their required use. Such elements may be extracts of text, diagrams, music, film or photographs.
- Considering the duration of the copyright protection. If the material used is more than seventy years old then it may not be necessary to apply for permission. (see paragraph 13 above)
- Examining whether the use in a thesis falls under the *fair dealing* defence and thus exempts the user from requiring a prior authorisation.
- Identifying all of the copyright owners of the remaining elements.
- Contacting the copyright holder to authorise the element for the specific use which has been defined.

27. Each permissions request should incorporate a number of key components and should address the following points:

- Contact information, to include postal address, telephone and e-mail.
- Item details, to include the full title of journal or book, author/s, article title, ISBN/ISSN number, volume, issue, year, pages.
- Precise details of material usage, e.g. the entire article, certain pages, certain figure numbers.
- Details of how/where the requested material will be used (including that it will be included in a repository and published on the internet if applicable).
- Any additional information or comments which may help in processing the copyright permissions request.

28. With copyright permission granted it should be a straightforward task to admit the electronic thesis into the digital repository. One outstanding concern is how and who retains the documentation for future reference. With the latest digital repository software it is a relatively simple matter to archive a digital copy of the permissions document alongside the thesis. Any permissions request should include a request for permission in electronic form to facilitate this. We would recommend this course of action to counter any future disputes. Such a policy decision is likely to depend upon the individual institution's circumstances and background.

29. If permission is not granted for an item to be included then it is still possible to proceed by either removing or obscuring the offending element from the electronic version of the thesis. The print version should remain unaffected by this decision.

30. The repository administrators should safeguard against third-party copyright material being inadvertently deposited by clearly indicating that reasonable care has been taken to prevent such occurrences and that any work will be removed if it is found to violate any copyright or other rights of any person.

Repositories' Rights and Responsibilities

31. Traditionally the stewardship of thesis literature is the preserve of the university library. Consequently many electronic theses programmes have been initiated and run from university libraries. To facilitate correct procedure a number of agreements already exist between these university libraries and the thesis authors, which allow the library to carry out this function. The agreements between a university library and author will vary from institution to institution; however each agreement will share some core commonality to authorise the university library to carry out some of the following acts including:

- Publishing the abstract of the thesis, and/or authorise others to do so, for scholarly purposes with proper acknowledgement of authorship.
- Providing personal data and thesis data to appear in catalogue records and other alerting media.
- Providing access *in situ* for consultation by registered users, either from the host institution or other academic establishments.
- Either supplying copies on request to other libraries or individuals, or if part of the British Thesis Service, authorising the British Library to produce copies for loan or sale.

32. The storage, management and dissemination of electronic theses and dissertations require the host repository to perform a series of additional acts that are not currently covered by the existing agreements between thesis authors and university libraries.

33. Initially it must be made clear to the submitting author that through submission of their electronic thesis the copyright ownership is unaffected. One way of doing this is for the deposit licence to begin with the author granting the repository the non-exclusive right to carry out the additional acts, and in the process not compromising the author's rights whilst implementing the rights and responsibilities detailed.

Digital Preservation

34. A number of recent reports stress the importance of digital preservation in maintaining access to and the usefulness of electronic documents. It is apparent that;

“Unlike the situation that applies to books, digital archiving requires relatively frequent investments to overcome rapid obsolescence introduced by galloping technological change.”(16)

Without dwelling on the technical aspects of digital preservation, a comprehensive solution is not likely to be reached in the near future. A number of precautions can be taken to reduce the risk of inadvertently losing access to digital resources, which include data migration and emulation.

35. Even though individual requirements may differ between institutions, it is recommended in a report jointly commissioned by Resource, the Arts and Humanities Data Service (AHDS) and the Joint Information Systems Committee (JISC), that any deposit licence for digital materials must consider the following clauses to allow for future digital preservation efforts (17):

- Permissions needed for copying for the purposes of preservation.
- Permissions needed for future migration of content to new formats for the purposes of preservation.
- Permissions needed for emulation for the purposes of preservation.

36. Currently there is little UK case law to clarify who owns the separate rights of a digital object derived from originally copyrighted work. The legal presumption is that if creating the digital form is a skilled piece of work, then that should demand protection. Thus, any rights to the new formats should remain with the original author as defined in the *Copyright, Designs and Patents Act, 1988*; however any additional value-added material, e.g. enhanced metadata records, should belong to the host repository/institution (paragraph 38).

Access and distribution

37. The depositing author needs to grant to the host repository a number of permissions and conditions with respect to online access to the thesis. In particular it needs to be agreed that any work deposited will be available to a wide variety of people and institutions. As not all readers of scholarly information are human, the author also needs to agree that readers may include automated agents, for example, web indexing robots, or automated text processing and data mining methods.

Metadata

38. The next significant permission that any electronic thesis repository requires is to determine the access, distribution, removal and ownership rights to any catalogue or metadata records associated with the thesis. Metadata is structured information that describes, explains, locates, or otherwise makes it easier to retrieve, use or manage an information resource (18). Firstly, the repository needs the right to incorporate metadata into public access catalogues and to determine protocols for the removal of such records from the catalogues should the need arise. Secondly, the host repository may wish to claim copyright in any additional data created during the submission and subsequent archiving of the thesis. It is common practice for repositories to routinely enhance simple bibliographic records to provide quality metadata, which enables the improved search and retrieval of documents to occur. Examples of metadata enhancement could include the assignment of Library of Congress subject headings, or the application of rights management information in

the metadata. Such enhancements usually require the dedicated time of a metadata editor and are often labour-intensive activities.

Legal responsibility

39. It may be desirable for the host institution of a repository to protect itself legally in case of any future dispute as to the repository content. The deposit licence should clearly indicate that the repository is not responsible for any mistakes, omissions or infringements in the deposited thesis. Furthermore, in the event of a breach of intellectual property rights, or other rights, in the material deposited, the repository should not be under any obligation to take legal action on behalf of the original author, or other rights holders.

Thesis restriction and the Freedom of Information Act

40. In exceptional circumstances, it may be necessary for authors to restrict access to the print copy of their thesis for a limited period. Restrictions may be considered when the thesis is concerned with topics that are politically, commercially or industrially sensitive. The precise nature of the thesis embargo time period will depend on the individual educational establishment's rules and regulations. Typically such restrictions last for one year and are extendable for a finite period of time. Restricting a thesis for a finite period only reflects the desire of most institutions to make their research publicly available.

41. Because the adoption of electronic theses and dissertations may substantially increase general thesis reference and use, it is likely the incidences of restrictions will increase, partly to protect sensitive data sets from the public domain whilst the author formally publishes their work, either in a journal article or monograph.

42. We have identified that complications start when an author wants to restrict their thesis, even if the restriction is just a short-term one. The Freedom of Information Act 2000 (FOIA), (in Scotland the Freedom of Information (Scotland) Act 2002 (FOISA)), gives anyone a right of access to any information held by an institution, unless an exemption applies, regardless of who owns the intellectual property rights in that information. This means that anyone has the right to see the information held in any format by any part of the Library, unless refusing access can be justified in terms of a FOIA, or FOISA, exemption. Thus, it is not sufficient for the author to indicate that they want to restrict an item; they must also explain the reason for that restriction in terms of a FOIA, or FOISA, exemption. Regarding theses I, a number of possible exemptions may apply under the Act including where:

- the material is due for publication, or the author is actively seeking to publish this material.
- the release of the material would prejudice substantially the commercial interests of any person.
- the material includes information that was obtained under a promise of confidentiality.

43. When someone asks to see the restricted material it will be critical for the institution to have the appropriate supporting information to enable it to decide whether or not the request can be lawfully refused. If the restricted material does not have appropriate exemption information wording then the host repository is likely to be obliged to release the information to the requester. Thus, any deposit licence which offers an option to restrict theses should indicate that supporting exemption wording is required from any depositor who expects the repository to withhold theses material when a request to release it is received.

For further information on the Freedom of Information acts and their application to the work of the education sector please refer to the information on the JISC Legal Information Service website at – www.jisclegal.ac.uk .

End User Licence Agreement

44. An End User Licence Agreement is important to clearly define what rights end users have to downloaded material, for example reproduction and access, and to remind end users of any restrictions placed on the item, thereby giving authors/institutions some protection against plagiarism or changes to the content.

45. Most current use licences for print versions of British theses are concise. A typical declaration that a user would have to sign if they wanted to consult, loan or photocopy a thesis is:

"I undertake fully to observe the author's copyright in this thesis, not to publish the whole or any part of it without the author's written permission, and not to allow any other person to use the copy made for me." (19)

46. Similarly, the British Thesis Service supplies each copy of a thesis with the following statement:

"This copy has been supplied on the understanding that it is copyright material and that no quotation from the thesis may be published without proper acknowledgement." (20)

47.a. These user declarations were developed before the widespread use of networked computing, so may not be comprehensive regarding the full range of scenarios that may arise from online access to theses and dissertations. It is recommended that the approach to the use of copyright taken by the Budapest Open Access Initiative be adopted. Generous rights for users combined with content protection for authors and institutions is advocated:

"The only constraint on reproduction and distribution, and the only role for copyright in this domain, should be to give authors control over the integrity of their work and the right to be properly acknowledged and cited." (21)

47.b. To achieve this position it is suggested that the current solution advocated by the Creative Commons licences is adopted, specifically the British implementation of

the *Attribution-NonCommercial-ShareAlike* licence (22), developed in conjunction with the Programme in Comparative Media Law and Policy at Oxford University (23). This gives the user the rights to copy, distribute and display the work, and to make derivative works, only if the original author is given credit and the work is used for non-commercial purposes. Additionally, any derivative work must be distributed under a similar licence. The licence is flexible, in that any of these conditions can be waived if permission from the copyright holder is granted.

4. Other Agreements

48. So far this document has looked at collecting agreements from recently completed and submitted theses. However, institutions may be interested in retrospectively digitising all, or part of, their thesis collection. If this is the case then similar agreements previously discussed need to be reached with the author or other rights holders. A singular exception to this is where copyright may have lapsed. Copyright in a literary, dramatic, musical or artistic work lasts for the life of the author plus 70 years from the end of the year in which he/she died.

49. If no contact can be made with a copyright owner, then depending on the library's assessment of the risk, it may wish to proceed without having gained the permission to host the material. If this action is taken then it is imperative to show that enough steps have been taken to show reasonable efforts towards locating the copyright holder, and that the material is for an educational, non-commercial, purpose. This option, taken at the risk of infringement, should not be considered lightly and is something that depends on individual institutional circumstances. Background information on the practical aspects involved in tracing copyright holders can be found in two case studies by the AHDS (24). Even though the case studies highlight tracing rights holders from different types of materials, the same principles still apply to theses and dissertations.

5. Conclusions

50. The adoption of electronic theses and dissertations in a university will require a number of alterations to the existing copyright agreements between the rights holders, usually the primary author, and those responsible for theses management, usually the university library. Before entering into any agreements it is critical to determine who actually owns the copyright to the work as there are a number of key stakeholders in the production of theses, including the author, host institution and perhaps the funding bodies and CASE-partners.

51. Deposit and end-user agreements perform an essential role in determining the respective rights and responsibilities that users and institutions hosting digital repositories have with regard to electronic theses, through creating a formal legal framework by which each party can abide.

52. In the following appendices a number of licence agreements are presented, for a range of scenarios, including thesis deposition, restriction and use. These can be

used to replace the standard agreements sent with digital repository software. The sample *Deposit Licence* presented here may be adapted and used to replace any default licence which is distributed with repository software packages. The sample *conditions of restriction* information (Appendix B) should be presented to the submitting author only if they wish to restrict access to their thesis in any way. The *End User Agreement* (Appendix C) is a human readable version of the Creative Commons Attribution-Non Commercial-Share Alike 1.0 Licence. In user-group studies the full-text legal version of the licence was deemed too long and inhibitive to be readily understood. It is important that the terms and conditions of use are understood so it is recommended that the human readable version is initially presented to the user when accessing an electronic thesis. It should be made clear that the terms and conditions of use are a brief version only. A reference and a link to the full text should be readily available.

Acknowledgements

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6. Appendices

Appendix A: Sample Deposit Agreement

SAMPLE LICENCE DEPOSIT AGREEMENT

COVERED WORK

I would like to deposit my material in the [*Institution's Name*] digital repository. Research referred to below as "Work" is covered by this agreement and when I deposit my Work, whether personally or through an assistant or other agent, I agree to the following:

NON-EXCLUSIVE RIGHTS

Rights granted to the digital repository through this agreement are entirely non-exclusive. I am free to publish the Work in its present version or future versions elsewhere.

I agree that [*Institution's Name*] may electronically store, copy or translate the Work to any medium or format for the purpose of future preservation and accessibility. The [*Institution's Name*] is not under any obligation to reproduce or display the Work in the same formats or resolutions in which it was originally deposited.

DEPOSIT IN [*Institution's Name*] DIGITAL REPOSITORY

I understand that work deposited in the digital repository will be accessible to a wide variety of people and institutions - including automated agents - via the World Wide Web.

I understand that once the Work is deposited, metadata will be incorporated into public access catalogues. This citation to the Work will always remain visible, although the author retains the right to update the Work. Removal of the item can be made after discussion with the digital repository administrators.

I AGREE AS FOLLOWS:

- That I have the authority of the authors to make this agreement and to hereby give [*Institution's Name*] the right to make available the Work in the way described above.
- That I have exercised reasonable care to ensure that the Work is original, and does not to the best of my knowledge does not breach any laws including defamation, libel and copyright.
- [*Institution's Name*] does not hold any obligation to take legal action on behalf of the Depositor, or other rights holders, in the event of breach of intellectual property rights, or any other right, in the material deposited.

Appendix B: Conditions of Restriction.

INFORMATION AND CHOICES FOR RESTRICTED ACCESS OPTIONS

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- 3) The material includes information that was obtained under a promise of confidentiality
- 4) Other (please specify)

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Appendix C: End User Licence Agreement

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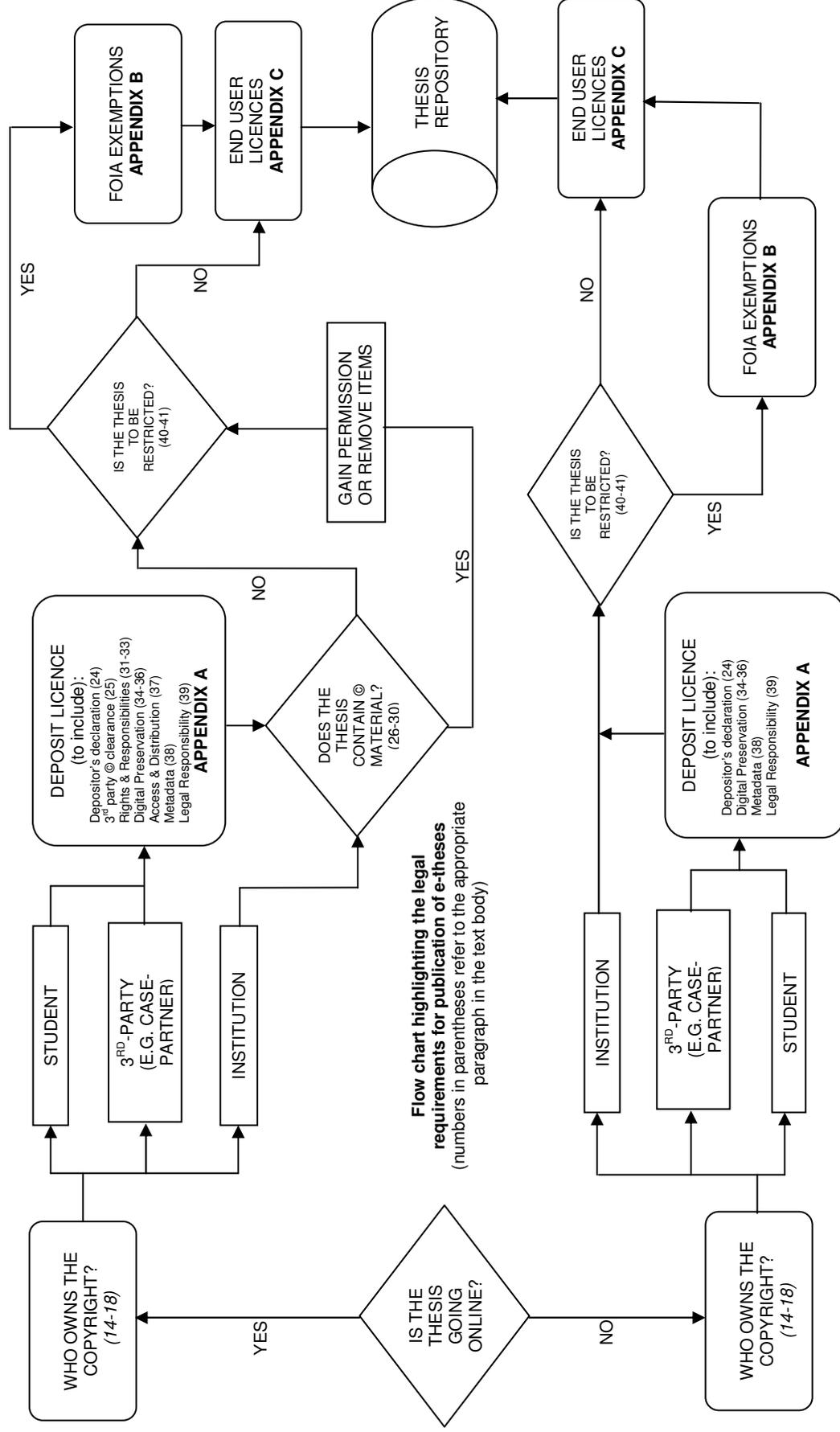
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Appendix D: Flow chart highlighting the legal requirements for publication of e-theses (numbers in parentheses refer to the appropriate paragraph in the text body)



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<http://ahds.ac.uk/creating/case-studies/tracing-copyright/index.htm>

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After completing his doctorate in Geology/Tectonics at the University of Edinburgh, Theo became interested in investigating the role of digital media in enhancing scholarly communication. His work in the JISC-funded Theses Alive! project helped initiate the successful electronic theses programme at the University of Edinburgh. This has led him into a number of related activities, including, as part of the SHERPA project, investigating policy, workflow and intellectual property issues in setting up Institutional e-print repositories.

The right of Theo Andrew to be identified as the author of this work has been asserted by him in accordance with the Copyright Designs and Patents Act 1988 (as amended)"

22 September 2004