

Copyright and your electronic thesis

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1. Introduction

This guide aims to introduce you to:

- copyright issues in relation to your research
- publishing your thesis electronically as Open Access in the SHU Research Archive (SHURA)

It will first introduce you to the concept of copyright (section 2) and any copyright considerations you need to take into account **whilst conducting your research** (section 3).

The guide then introduces the concepts of electronic theses and Open Access, as well as the University's policy with regards to publishing your thesis electronically as Open Access (section 4). It then outlines any copyright considerations you need to take into account **whilst writing up your thesis** (section 5). This may include contacting any copyright holders of third party items you wish to include. It is important to start seeking permissions as soon as you are aware that you need to because this may take longer than expected.

Finally the procedure for submitting your thesis electronically is outlined (section 6). You will also find your **thesis deposit agreement** that you need to fill out when depositing your thesis in the SHU Research Archive (SHURA).

Legal disclaimer

These pages are intended to provide guidance to members of Sheffield Hallam University on matters of copyright and the copying of materials for learning, teaching and research at the University. Whilst we have endeavoured to ensure the accuracy of these guidelines, they should not be construed as definitive legal opinion on such matters and should not be taken as legal advice.

2. Copyright

It is likely that you will want to include materials by other authors (third party materials) in your thesis. This material will be copyrighted. You may also want to include materials that you created yourself but for which you are no longer the copyright holder, eg a published article.

2.1 What is copyright?

Authors automatically have copyright in anything they write or create. Under UK law, they do not need to apply for it, nor do they need to mark their work with the copyright mark ©. However, copyright does not last for ever. If the published item is from a country in the European Economic Area, copyright lasts until 70 years after the end of the calendar year in which the author (or the last surviving author if there is more than one) dies. If the item is published elsewhere, it gets the same protection as it would get in its home country.

Copyright applies to content: it does not apply to ideas and facts, but the presentation of these ideas and facts are subject to copyright. Not only content may be copyrighted, the format or layout of an item (typography) may have rights associated with it as well. Images in a work (such as a book or article) may also have copyright over and above that embodied by the work as a whole.

Authors can assign parts of their copyright to others, eg a publisher. Indeed, in most cases, the publisher owns the copyright for the academic articles and books they publish.

The rights holder, ie the current owner of the copyright of an item, is an individual or corporate entity that holds the exclusive right to exploit and reuse the item. This includes the right to:

- copy the work
- issue copies to the public
- perform, show or play the work
- broadcast the work
- adapt the work
- rent or lend the work

If you want to do any of these things, you will need permission from the copyright holder.

3. Gathering information: copyright considerations whilst conducting your research

The Copyright, Designs and Patents Act, whilst protecting the rights of copyright holders, makes provision via 'exceptions' when a certain amount of copying may be done. These exceptions are always subject to 'fair dealing', which requires a judgment to be made. This will for example depend on whether the copy could be a substitute causing the copyright owner to lose revenue, and whether the amount copied is reasonable and appropriate to the context. According to Jisc's *Copyright Law Overview* it may be relevant to consider:

- the length and importance of the extract
- the amount used in relation to the commentary
- the extent to which the work competes with or rivals the work quoted
- the extent to which the work is commercial rather than academic¹

Furthermore, in order to qualify for any of the exceptions:

- the work must have been made available to the public
- the extent of the extract is no more than required by the specific purpose for which it is used
- the extract is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise)

3.1 Fair dealing for research and private study

The exception 'fair dealing for research and private study for non-commercial purposes' allows you to make a personal copy from any format of materials (this applies to all types of published copyright works, thus including sound recordings, films or broadcasts). Although the Act does not give any guidance on amounts, the following are generally considered to be 'fair dealing':

journals	one article or 5%, whichever is the greater
books	one chapter or 5%, whichever is the greater
anthologies	a short story or poem, not exceeding 10 pages

Where proportions can't be identified (e.g. websites), you should use your best judgement to estimate an extract of a fair and reasonable length. Systematic copying of an entire website is clearly not permitted.

3.2 Supplying copies to commercial partners

The Copyright, Designs and Patents Act states that the research must be for non-commercial purposes, ie not done under contract for a commercial company. However, if your research is of a commercial nature, for example a contract or collaborative research project or consultancy, copying may be allowed under the so-called Copyright Licensing Agency (CLA) Higher Education Licence. This license grants extra rights over and above the aforementioned exception in the Act. It states that in the case of commercially funded research, copies can be supplied to:

¹ <http://www.jisclegal.ac.uk/ManageContent/ViewDetail/ID/3588/Copyright-Law-Overview-12-June-2014.aspx>

- members of the University's research team
- a third-party organisation that wholly or partly funds the research, although copies may not be supplied to companies who are simply engaged in sponsoring studentships, fellowships, honorary posts and placements

When supplying copies to a commercial third party, certain conditions apply:

- the amount copied must not exceed that allowed under the License (similar to the amount that can be considered 'fair dealing' as outlined under 3.1 Fair dealing for research and private study)
- copies can only be made from publications included in the licensing scheme, which are outlined in the CLA's user guidelines²
- copies may only be made by Sheffield Hallam University staff and students
- copies (whether paper or digital scans) that are supplied to a commercial third party are subject to strict conditions prohibiting further use and must incorporate the form of words of the Copyright Legend that outlines those conditions as set out in the CLA License (see text box)

CLA Copyright Legend

Use this copyright legend when supplying copies to commercial third parties.

Copies distributed in electronic form

The following item is a copyright work which has been supplied by [Licensee] and transmitted by electronic means.

The following are NOT permitted, unless you have the permission of the copyright owner or of The Copyright Licensing Agency Ltd or save as permitted by statute:

- a) printing more than a single paper copy, which itself may not be further copied;
- b) retransmitting the article to anybody else, other than to enable a single paper copy to be printed out by or for the individual who originally requested the item;
- c) electronically storing any copy of the article.

Copies distributed in printed form

The contents of this document are copyright works and unless you have the permission of the copyright owner or of The Copyright Licensing Agency Ltd or save as may be permitted by statute may not be copied (including storage in any electronic medium) or otherwise reproduced (even for internal purposes) or resold.

3.3 Text and data mining

Text and data mining is the use of automated analytical techniques to analyse text and data for patterns, trends and other useful information. This usually requires copying of the work to be analysed. The Copyright, Designs and Patents Act has an exception that allows researchers to copy works for this purpose if they already have legal access to the copyrighted work (eg via a subscription to a journal). The exception applies under two conditions:

- the analysis must be for the purpose of non-commercial research
- sufficient acknowledgement should be made, but if it is impractical to do so — e.g. in a large scale analysis — then the researcher could refer to the database in which the works are contained

You are also not allowed to transfer your copy to another person, or use it for purposes other than text and data mining.

It is important to note that the exception cannot be overridden by contract terms set by publishers or content providers. So if there are contractual terms that stop researchers making copies for the purpose of text and data mining as outlined by this exception, and you have legal access to the work (such as via a subscription to a journal), then those contractual terms will be unenforceable.

² <http://he.cla.co.uk/wp-content/uploads/2013/08/CLA-Higher-Education-Licence-User-Guidelines.pdf>

4. Electronic theses

Many universities have adopted a policy of promoting the production of an electronic copy of a PhD thesis in order to broaden access to the research. The policy varies according to the institution. Some allow for the print copy submitted for examination to be made available electronically, whereas others require submission in electronic format. Some institutions have a mandate which makes electronic submission mandatory, whereas others make it optional.

Before this change towards increased availability of electronic theses, UK theses were held locally in paper format at the awarding institution and mostly were available for consultation only. Historically the British Library offered a microfilming service to help provide access for researchers, but this was costly and time-consuming and has now been abandoned as more and more doctoral theses become available electronically through EThOS (Electronic Theses Online Service) and through institutional repositories. In most cases access to electronic theses via these routes is available free of charge to the requester; any costs are borne by the awarding institution. There is no additional cost to the author.

4.1 The University's policy

At SHU we require both a print copy and an electronic copy to be submitted. The print version is used for examination purposes and that is the copy that is deposited in the Library. The electronic copy will be added to our open access repository for publications, the SHU Research Archive (SHURA). Your thesis will also be made available via the British Library's Electronic Theses Online Service (EThOS).

4.2 What is Open Access?

Open Access means that the content is available free of charge to anyone with an internet connection.

The Open Access movement is international and aims to make the outputs of research freely available. The potential audience for open access research is global and far greater than if the item was restricted to paying subscribers only. Most universities have an institutional repository and some have mandated deposit for their researchers in order to capture outputs as soon as they are produced. Increasingly, research funders are mandating open access for any publications emanating from their funding. As from 2016, Open Access is also a condition for any articles and conference proceedings that are submitted to the quality assessment exercise of research conducted at UK universities that is conducted every 5 or 6 years (the so-called Research Excellence Framework or REF).

Access to subscription journals is increasingly a problem because journal prices have risen above the level of inflation for many years, with the result that most universities can no longer afford subscriptions to all of the journals that their academics need. Even if a journal is available online, this does not mean it is freely available. University libraries pay large subscriptions to allow their academics to easily access journal materials on-line. Price rises are in a spiral and fewer subscriptions are sold each year, further restricting access to journal articles and the results of vital research.

Depositing your work in an Open Access repository does not replace traditional publishing and peer review. The two publishing routes operate in tandem: articles are peer-reviewed and published in journals in the normal way as well as being deposited in an open access repository. Publishers' copyright policies determine whether an item can be made available in an Open Access repository and which version can be deposited. Many publishers allow immediate deposit, whilst others enforce an embargo period for newly published items. The version that most allow is the author-produced final version of the text after peer review, but not the published item with the branding and formatting added as part of the publication process.

Some authors have feared that wider availability will increase plagiarism. In fact, if anything, Open Access serves to *reduce* plagiarism. When material is freely available the chance that plagiarism is recognised and exposed is much higher.

4.3 Benefits of electronic theses available via open access

For authors of theses

- Your thesis can be read and accessed by anyone without having to visit the host library. This means that many more people will read your thesis. Indeed, it has the potential to be read by a global audience. Usage data can be provided to show how many times your work is accessed
- It potentially enhances your reputation as a researcher and allows you to disseminate your research more widely with minimal effort. This could lead to your research contributing more visibly to related research on the topic, making it easier for other researchers to include your work in their literature reviews or otherwise cite your thesis in their work. The increased exposure of your research thus has the clear potential to increase the number of citations
- An openly available electronic thesis may also increase your chances for further publications, funding opportunities and it may even lead to enquiries from other researchers or institutions who would like to collaborate further
- Finally, making your thesis available open access contributes to the emerging open research agenda. Through making research papers and theses available without barriers to the public, it is hoped that the impact of research on social, economic and cultural levels will increase, and that cross-institutional and interdisciplinary connections will be made. Part of the open research agenda is also the move to not only make the thesis available via open access, but also the underpinning research data on which your findings are based, which contributes to the increasing demand for transparency and research integrity

For other researchers

- Researchers can access electronic theses from their desktop as soon as they are required and at any time
- A researcher can obtain access to an electronic thesis regardless of the number of other academics using the same material at the same time
- Researchers can undertake full content searches of electronic theses on the Web, without having to judge from an abstract whether it is worth requesting a copy of the full text hard-copy on inter-library loan
- Increased use of electronic theses leads to increased publicity for supervisors as well as students

For institutions

- It enhances their research profile
- It makes it easier for research to gain international recognition
- It improves the visibility of and access to their research outputs
- It attracts research students and opportunities for new research collaborations

4.3 SHURA (Sheffield Hallam University Research Archive)

SHURA is an Open Access repository containing scholarly outputs and publications of researchers at Sheffield Hallam University: <http://shura.shu.ac.uk/>.

The content of SHURA is currently mostly journal articles, together with conference papers, book chapters and monographs. It is important that PhD theses are also included as they form an important part of the research outputs of the University and are an indicator of research quality.

4.4 EThOS (Electronic Theses Online Service)

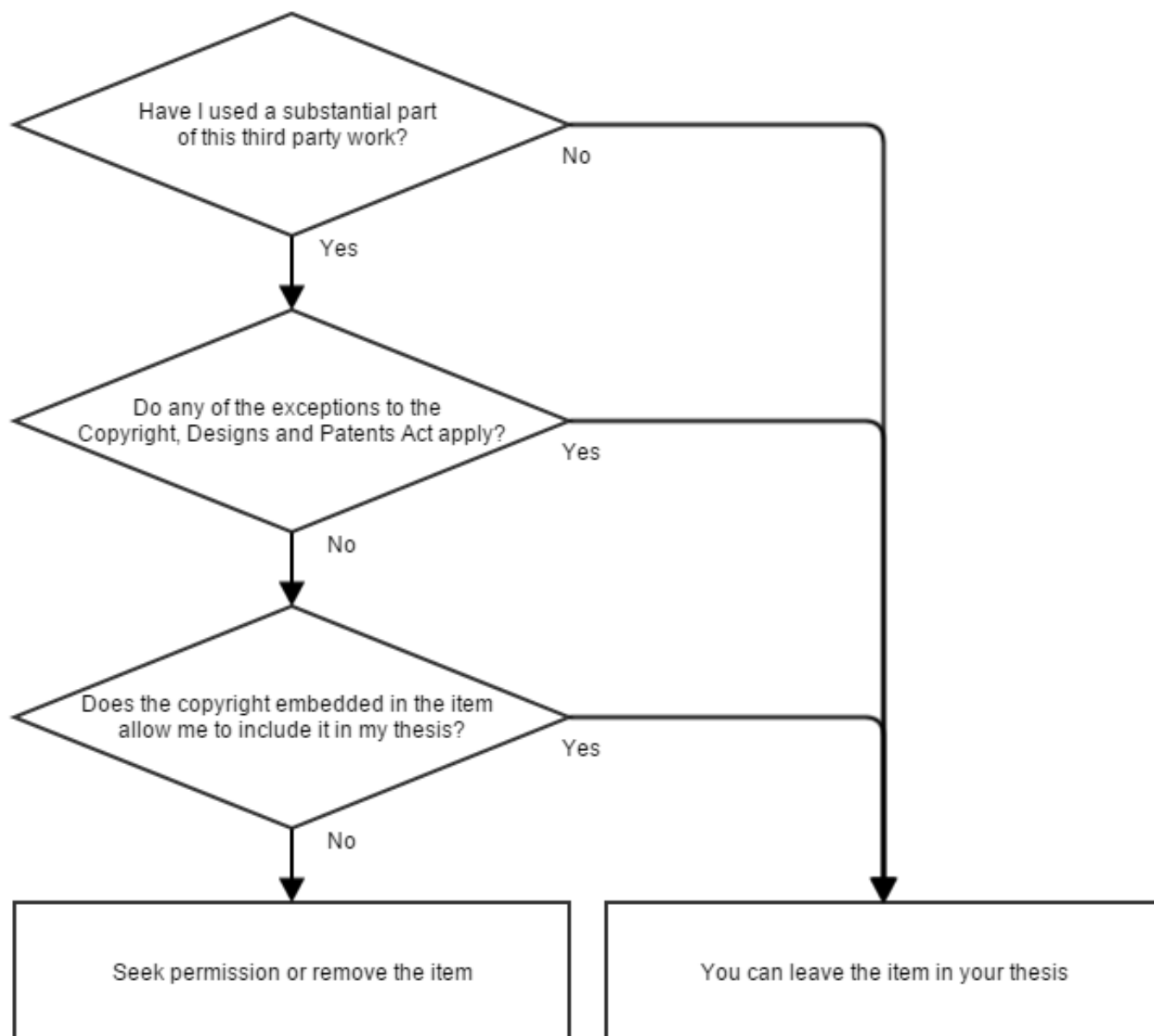
EThOS is the Electronic Theses Online Service which allows individuals to find, access and archive electronic theses that are produced in UK Higher Education institutions: <http://ethos.bl.uk/>.

It is a national database maintained by the British Library and follows the Open Access principle by aiming to provide electronic access to doctoral theses at no cost to the end user.

5 Including third party materials in your thesis: copyright considerations whilst writing up

When including third party materials in your thesis, you need to answer the following questions for each of these items:

1. Have I used a substantial part of this third party work? (see 5.1)
2. If yes, do any of the exceptions to the Copyright, Designs and Patents Act apply? (see 5.2)
3. If not, does the copyright embedded in the third party item allow me to include it in my thesis? (see 5.3.1)
4. If not, seek permission to use the item, or remove it from your thesis (see 5.3.2)



5.1 Less than a substantial part

As a general rule, the Copyright, Designs and Patent Act allows you to copy or quote without permission or infringement of copyright less than a 'substantial part' of a third party work. However, 'substantial' is not defined. It will depend on the significance of the part within the whole item. For example, copying a report's recommendations and conclusions could potentially be classed as copying a substantial part, even if your copy constitutes only three paragraphs from an 80 page report.

The following items may be classed as a substantial part:

long extracts of text from works by other people
illustrations or images
figures or tables
maps and charts, even those you have redrawn yourself
material of your own that have been previously published

If you have included any of these items in your thesis, then permission from the rights holder may be required if you cannot claim a defence based on one of the exceptions to the Copyright, Designs and Patents Act (see 5.2 Exceptions to the law).

5.2 Exceptions to the law

Even if you think you used a substantial amount of material, you may still be able to include it in your thesis: the Copyright, Designs and Patent Act has a number of exceptions (permitted acts) — always subject to 'fair dealing' (see p. 4) — of which three may apply to third party material in your thesis.

5.2.1 Instruction

The exception for 'illustration for instruction' covers the use of third party materials for setting or answering exam questions, which includes use in non-published theses. The exception does not cover the use of third party materials such as images for pure aesthetic purposes to make your work look more attractive. The material must be accompanied by sufficient acknowledgement (usually at least the author and title), and the use must be for non-commercial purposes.

However, it only applies to your *non-published* thesis, i.e. the paper copy that you submit. It does *not* apply when you publish your thesis, for example by making it electronically available via the University's open access research archive (SHURA).

When publishing your thesis in SHURA, using substantial parts of third party materials may be covered by any of the following two exceptions.

5.2.2 Criticism or review

If you use a long extract of text, or if you use an illustration or figure, and it is integral to your argument, then this may count as criticism or review, provided that the use is 'fair'. These third party materials can remain in the published thesis. However, it may be difficult to establish whether the exception applies: a court will consider 'what proportion of the user's work consists of quotation, and what proportion consists of comment and analysis.'³

5.2.3 Quotation

This exception states that copyright is not infringed by the use of a quotation, whether for criticism, review or otherwise, provided that the use is 'fair'. Unlike the exception for criticism and review, this exception allows for

³ T. Padfield (2007). *Copyright for Archivists and Managers*, 3rd ed. London, Facet Publishing, p. 116.

illustrative use of extracts. The requirement of 'fair' use means that the quote must be relevant and necessary, the amount used no more than required for the purpose, and the original work acknowledged. This applies to all formats of material, for example for extracts of texts and excerpts from a performance or recording.

5.3 What to do when using a substantial part and no exceptions apply?

If you are using a substantial amount of a third party work and your use is not covered by one of the exceptions above, then you would need to:

- check the copyright in the item to see what you are allowed to do with it
- if necessary, seek permission to use the item, or remove the item from your thesis

5.3.1 Check the copyright in the item

It could be that the third party materials you would like to include may be reproduced in your thesis without asking permission:

- the item may be out of copyright
- copyright has been waived (ie the item is in the public domain)
- permission has been granted by license, eg by a Creative Commons license

Creative Commons (CC) licenses are one of the most popular licenses to allow third parties to reuse and share the work under certain circumstances without the need for seeking permission. Licenses are generally selected by combining one or more elements from the CC license mix:

BY	Attribution	The original source and author must be cited
SA	Share Alike	The work that uses this material should also be shared under the same CC license
NC	Non-Commercial	The materials cannot be republished or shared in an item that is sold or otherwise used in any commercial work
ND	No Derivatives	The material cannot be changed, paraphrased, built upon or incorporated in any way to other publications

If an item is shared under an NC license, it cannot be included in a commercial publication such as a book, but you are allowed to include it in your electronic thesis that is available for free via Open Access.

5.3.2 Seek permission

If permission is required, you will need to actively ask the rights holder for permission. This may be the author, or more likely the publisher. Please do the following:

- In your request, give the precise details of the materials you wish to include, and how they will be used (eg in your electronic thesis). You will find a template on the next page.
- Keep copies of any letters or emails received from the copyright holder.
- If permission is granted, indicate this in your thesis by adding the words 'Reproduced with permission from' and the name of the copyright holder. You should place this text in close proximity to the third party item. Include copies of any letters or emails documenting that you have this permission when you submit your electronic thesis to SHURA.
- If permission is not granted, it is SHU policy that you must edit your electronic thesis, removing the third party materials and replacing them with a reference and the phrase 'Removed for copyright reasons'.

Seeking permission is about ensuring that you have the necessary documentary evidence that you are allowed to include certain third party materials in your thesis. This evidence needs to be in the form of written

documents, eg a letter on paper or a dated email — verbal agreements are not sufficient. If a fellow researcher grants you permission to reuse portions of their work during a telephone conversation, you need to follow this up with a written formal request.

It is important to start seeking permissions as soon as you are aware you need to. This is because this can take longer than expected. The responsibility for seeking permission is entirely yours. You may find it easiest to start seeking permission as soon as you know that you will be including a specific third party item in your thesis. If you have received permission but you decide later on not to include the item in your thesis, you do *not* need to inform the rights holder.

Template⁴

Dear [NAME],

I am currently in the process of finalising my PhD thesis on [TOPIC OF YOUR THESIS], which I am shortly due to submit to Sheffield Hallam University.

During my research, I came across the following article/image: [DESCRIBE THE ITEM]. I would like to request your permission to include it in an electronic copy of my thesis.

Sheffield Hallam University requires students to submit an electronic copy to their institutional repository, the Sheffield Hallam University Research Archive SHURA (<http://shura.shu.ac.uk>), which is a digital archive of research outputs from the University. I would like my thesis in SHURA to be available in full, to anyone, free of charge ('open access').

I believe that the inclusion of [DESCRIBE THE ITEM] is integral to my thesis and would therefore be extremely grateful if you could grant permission for me to use this in the manner detailed above. Naturally, I would fully reference your work and include any acknowledgement you deem appropriate.

Please let me know if you require any further information, otherwise thank you in advance for your kind permission.

⁴ Based on G. Johnson et al. (2014). *Keeping your thesis legal*. The University of Leicester, University Library, p. 11.

6 Making your thesis available electronically

6.1 Procedure for submission

To submit your thesis to SHURA you will need to:

- send an electronic copy of your thesis to shura@shu.ac.uk as one single file in PDF format, fully prepared as outlined in 5.3.2 Seek permission on p. 10
- together with the completed deposit agreement (see Thesis deposit agreement on p. 13)
- together with any documents with copyright permissions for any third party items for which you have obtained permission

Your thesis will be added to SHURA and will then subsequently appear in EThOS. This process will be handled by the SHURA administrators who will send you a link to your thesis as confirmation that this has been completed.

6.2 Embargo of theses

Under certain circumstances it may be necessary to place an embargo on making your thesis publicly available; usually this applies for a specified period of a year or two. The following are general embargo conditions which will affect both the printed and the electronic copy:

- It contains information about a company or sponsor which is commercially sensitive
- A patent application is pending
- The content is politically sensitive or could affect national security
- It contains material about or references to individuals (e.g. interviews) which have not been anonymised

In addition there may be an embargo on making an electronic copy available where there is a publisher agreement which prohibits prior publication.

Adding your thesis to SHURA is unlikely to harm your ability to publish your work commercially. Studies have shown that making work available through a repository like SHURA may in fact help you to secure a publishing contract.

Thesis deposit agreement

I would like to deposit my thesis in the Sheffield Hallam University Research Archive (SHURA).

Author	
Title of thesis	
Date of award	
Award	

Rights granted to Sheffield Hallam University

Non-exclusive rights are granted to the administrators of SHURA to store and make the thesis available, and to translate the thesis to any medium or format for the purpose of future preservation and accessibility.

Theses deposited in SHURA will be accessible to a wide variety of people and institutions, including automated agents, via the World Wide Web. At a later stage, if required, the thesis can be removed following discussion with the service administrators, however, once deposited a citation of the thesis will always remain visible.

An electronic copy of the thesis will also be included in The British Library's EThOS (Electronic Theses Online Service). The aim of EThOS is to offer a 'single point of access' where researchers the world over will eventually be able to access all theses produced by UK Higher Education institutions. A thesis can be taken down from EThOS at any time should the author or Awarding Institution wish to do so, and EThOS would then restrict access to the metadata only.

You are free to publish the thesis in its present version or future versions elsewhere.

Inclusion of third party materials

Whilst it is permissible under copyright law to include works created by another person and protected by copyright (third party materials) for the purposes of examination, it is not permissible to include these materials if the thesis is subsequently published online, unless permission is obtained from the rights holders.

Please indicate which of the following applies:

- ☐ I have not included any third party materials
- ☐ I have included third party materials and obtained permission from the copyright holder to include them in my thesis deposited in online repositories like SHURA and EThOS
- ☐ I have included third party materials but I have not obtained permission from the copyright holder to include them in my thesis deposited in online repositories like SHURA and EThOS. I have removed these items.

Name	
Signature	
Date	

Please print, sign and post or email a scan of the completed form to shura@shu.ac.uk or to the Metadata Services Team, Sheffield Hallam University, Level 7, Adsetts Learning Centre, Howard Street, Sheffield S1 1WB.

Thesis deposit agreement version 2 (27 October 2015)

More information

A copyright guide, giving a general overview of copyright as it affects teaching, learning and research in the University, is available on the Library Gateway: <http://libguides.shu.ac.uk/copyright/>.

The following links may be useful:

- <https://www.gov.uk/guidance/exceptions-to-copyright>
- <http://he.cla.co.uk/your-he-licence/your-he-licence/about-the-cla-higher-education-licence/>