

## Copyright and Embargo Issues - an Unconference Discussion:

A scenario was described whereby a faculty advisor for three graduate students now wishes to have their theses removed from the public record. S/he wishes to pursue patent possibilities. Masters theses/degrees were published/granted in 2012, 2013, and 2014. The May 2012 thesis has been available through the local IR. The May 2013 thesis was available through the IR and ProQuest (The University began an agreement with ProQuest in December of 2012). The 2014 thesis author requested and was granted a two-year embargo from both the IR and ProQuest. How would you advise the faculty advisor?

Two questions were asked to the sub-group at the Unconference:

1. Who owns the copyright of a thesis or dissertation? Author? School? Faculty Advisor?
2. Does your institution honor a request for an embargo of the thesis or dissertation? If so, what is the time frame for this embargo?

A1: Almost unanimous consent by the schools present that the AUTHOR holds the copyright. Neither the school nor the faculty advisor holds the copyright. Texas A&M's Legal Counsel's interpretation is that even though a Graduate Assistantship may pay a stipend for research that leads to the dissertation or thesis, it is necessary for educational purposes and the work in question is NOT a "work for hire" and neither the school nor the faculty advisor can claim copyright. Also, a faculty advisor may place a non-disclosure agreement on the research leading to the thesis or dissertation (for patentability), but this agreement cannot be retroactive.

A2: Most schools indicated that an embargo would be honored. This agreement is usually part of the degree awarding process and agreed to in advance of the thesis being placed in the local IR or being sent to ProQuest. Several schools had varying time periods for embargos and embargos were granted for various reasons.

Examples of embargos:

- 1-2 years for ANY reason – Texas A&M and others
- Indefinite or Permanent: If corporate or government (defense or homeland security) related research – (commercial possibilities or national security reasons) In extreme cases, even metadata may be suppressed. – Stanford, Texas A&M
- 1, 2, or 5 years – University of Washington (5 years for literature or other creative writing)
- 3, 6, or 9 months – RPI
- It was strongly suggested to look at your Peer Group and your Aspirational Peer Group and see how those schools are handling embargos – VCU

Note: Patent and copyright law are very different regarding ownership. Librarians should avoid giving legal advice.