

## Check list: How to use images in academic theses (master's, diploma, doctoral theses)

### A. Which images are protected by copyright?

'Images that are **individual and original results created by humans** and are, therefore, considered artistic works' are protected by copyright. This also applies mutatis mutandis to other categories and types of works. (Guideline 1.2.)

The following information refers to Austrian copyright law. Generally, Austrian copyright law is applicable if at least one co-author is an Austrian citizen or a citizen of an EEA country or if the work was first released in Austria (see § 94f of the Austrian copyright act (*Urheberrechtsgesetz, UrhG*) for detailed information). Works that are not protected under § 94f of the Austrian copyright act are subject to § 96 of the Austrian copyright act.

The following images are subject to these conditions and are, therefore, **protected** by copyright:

- Artistic works (e.g. aquarelle, oil paintings, drawings, graphics, illustrations, photos)
- Films (including screenshots)

Photos are subject to the following special rules:

- **Original** photographs (photographic works) are protected by copyright and **related rights (*Lichtbildherstellerrecht*)**.
- **Simple** photographs are only protected by related rights (*Lichtbildherstellerrecht*).

The following works are **not subject to** copyright and related rights:

- **Works** or photographs which have exclusively or primarily been **created for official use** (e.g. publications by the Austrian Federal Press Service, radar photos).
- Images whose terms of **protection have expired**:
  - a) Copyright expires 70 years after the death of the author.
  - b) The related right *Lichtbildherstellerrecht* expires 50 years after the creation of the photograph or, if the photograph was published within this period, 50 years after its publication.

Copyright **does not protect** images that are not created by humans (e.g. selfie of a monkey, pictures painted by elephants).

**Please note:** Even if images are not protected by copyright and related rights (*Leistungsschutzrecht*) and are thus in the public domain, sources as well as authors must be cited in accordance with the rules of good academic practice (but not due to copyright law). Conversely, simple source references cannot replace an (in some circumstances required) official permission (license) to use protected images that must be obtained beforehand.

## **B. Can I use images/photographs protected by copyright and related rights in my thesis or do I have to obtain the permission of the author first?**

Using images protected by copyright in **academic theses** is subject to the **freedom to quote** (§ 42f para. 1, sub-paras. 1 and 5 of the Austrian copyright act) and is therefore permitted.

However, you must ask yourself the following three questions; only if you can answer all three of them with “yes”, you may use the images in accordance with the freedom to quote and by indicating the source and the author (for detailed information, see § 42f para. 1, sub-paras. 1 and 5 and § 57 of the Austrian copyright act):

### **1. Has the image/photograph been released with the consent of its author?**

It is your responsibility to check if the image/photograph has been released with the consent of the author. You should take particular care when using images from the Internet. Images on the Internet are often being used without the consent of the author. In case of official publications by well-known publishers, it can be usually assumed that images/photographs have been released with the consent of the author. The terms ‘released’ and ‘published’ are to be interpreted according to §§ 8 and 9 of the Austrian copyright act.

### **2. Does the use of the image exclusively aim at explaining the content rather than solely at illustration/embellishment?**

The image must serve the academic purposes of your thesis. You have to address the image, e.g. it has to support the academic argumentation of your thesis. It does not suffice if the image simply fits the text or is only used to improve your thesis visually.

### **3. Does the purpose justify the extent of the citation?**

Especially if you plan to use more than one image in your thesis, you have to check whether all images are needed for serving the academic purposes of your thesis and whether the number of images used is justified.

**Example 1: In my master’s thesis, I want to use a figure that was published in an academic publication. Is it enough to only mention the source and the author?→** If the academic publication was released according to § 9 of the Austrian copyright act and if you can answer questions 2 and 3 with “yes”, you can use the illustration.

**Example 2: I am writing a thesis about crop plants. Am I allowed to use images of these plants solely for the purpose of illustration?→** You can use images of these plants. However, they might not be subject to the freedom to quote. Alternatively, you can take your own photographs or make drawings of the plants. If you want to use images created by others, it is recommended to obtain the legal permission of the rights holder (see Guideline 1.12. for detailed information).

**Example 3: My master's thesis is about an Italian photographer. I use about 100 of his photographs in my thesis. Is it enough to mention the author and the source of the photographs?** → As the freedom to quote is limited to individual works, the jurisdiction might not consider the use of these photographs as limitations to copyright (*freie Werknutzung*). Therefore, it is recommended to obtain the legal permission of the rights holder (see Guideline 1.12. for detailed information).

**Example 4: Can I use a screenshot of a film in my doctoral thesis?**

→ If you can answer all three of the questions above with “yes”, you may also use a screenshot of a film.

**C. You may also use the image if:**

- the rights holder has given their consent (right to use a work or permission to use a work, *Werknutzungsrecht* or *Werknutzungsbewilligung*; § 24 of the Austrian copyright act), e.g. by providing a traditional license or a Creative Commons license.

**D. Alternatively:**

If images are protected by copyright and related rights (*Leistungsschutzrecht*), and their use is not subject to the freedom to quote or to limitations to copyright, and you did not obtain the legal permission of the rights holder, you have the following options:

- You can create your own image (plants, animals, landscapes). Pay attention to images of objects that are themselves protected by copyright (pictures, buildings).
- You can describe the image in your own words.

**Please note:** If one or more person(s) is/are identifiable in an image, publication is prohibited if it would violate legitimate interests of this/those person(s) (protection of portraits (*Bildnisschutz*) = rights to one's own image; § 78 of the Austrian copyright act; see Guideline 1.13.).

## Appendix: Extracts from the Austrian copyright act

**(This is not an official translation. The only legally binding version is the German version.)**

### **Published works.**

**§ 8.** A work is deemed to have been published when it has been made available to the public with the consent of the rights holder.

### **Released works.**

**§ 9.** (1) A work is deemed to have been released when copies of the work have been offered, with the rights holder's consent, to the public or put into circulation after their production in sufficient quantity.

(2) A work that has been released in Austria and abroad within 30 days is considered to be a national work.

### **Quotations**

**§ 42f.** (1) It is permissible to reproduce, distribute, broadcast and make available a published work to the public and to use it in public lectures, productions or performances for the purpose of quotation so far as such use is justified to this extent by the particular purpose. This is permissible in particular if

1. individual released works are included in an independent academic work; works pursuant to § 2, sub-para. 3 or works considered artistic works may only be used for the purpose of explaining the contents;
2. published works considered to be artistic works are presented in a mainly educational academic work or instructive lecture for the sole purpose of explaining the contents publicly and the necessary copies are produced for this purpose;
3. individual passages from a published literary work are quoted in an independent new work;
4. individual passages from a published musical work are quoted in a literary work;
5. individual passages from a released work are quoted in an independent new work.

(2) For the purpose of this clause, released works have the same status as works that have been made available to the public in a way accessible to the general public with the consent of the author.

### **Protection of intellectual interests and limitations to copyright (*freie Werknutzungen*).**

**§ 57.** (1) The permissibility of abridgements, supplements or other alterations of a work, its title or designation of authorship has to be assessed pursuant to § 21 of the Austrian copyright act also in the case of limitations to copyright (*freie Werknutzungen*). The meaning and essence of the work must not be distorted in any way.

(2) If a work or part thereof is reproduced pursuant to §§ 42f, 45, 47, 48 or 51 or pursuant to § 54, para. 1, sub-para. 1 to 3, the source must be clearly acknowledged in any case. In the source reference, the title and the designation of authorship of the work pursuant to § 21, para. 1 must be indicated. If parts of literary works are used in schoolbooks pursuant to § 45, the title of the work must only be acknowledged if it does not include the author's name or pseudonym. If individual passages or parts of literary works are reproduced pursuant to § 42f, para. 1, sub-para. 1 or 3, their source must be clearly acknowledged in a way that the cited passages or parts can be found easily in the literary work used. If a permissible reproduction pursuant to § 42f, para. 1, sub-para. 1 or 3 uses a literary work that is part of a collection, the collection must be acknowledged. In this case, the title of the work can also be replaced with a reference to the relevant passage in the collection.

(3) In the cases described in § 44, paras. 1 and 2, besides clearly acknowledging the name or pseudonym of the article's author, the newspaper or journal where the article can be found, or if another newspaper or journal is cited as source this must be clearly acknowledged as well. If a person fails to acknowledge the newspaper or journal, the editor or (if the editor is not mentioned) the publisher, is entitled to the same claims as the author in case of illegal failure to acknowledge the designation of authorship.

(3a) Furthermore, the source, including the name of the author, must be acknowledged in the following cases unless this is impossible:

1. if works or parts thereof are reproduced pursuant to § 42c, unless they only play a secondary role in news reporting;
2. if works or parts thereof are reproduced pursuant to § 42f, para. 1, sub-para. 2, § 43 or § 56a;
3. if individual passages of a work are reproduced on audio or video recordings pursuant to § 42f;
4. if a work is reproduced pursuant to § 56e.

(4) If and to what extent the obligation to acknowledge the source does not have to be met in cases that are not subject to the limitation to copyright (*freie Werknutzung*) described in paras. 2, 3 and 3a, has been decided on the basis of usual honest customs and practices.

#### **Works by citizens.**

**§ 94.** If the author (§ 10, para. 1) or a co-author of a work is a citizen of Austria, this work is protected by this copyright act regardless of where and if it was released.

#### **Works released in Austria and associated with real estate in Austria.**

**§ 95.** All works released in Austria as well as artistic works that are associated with or are part of an Austrian real estate, unless not already protected by § 94, are also protected by this copyright act.

#### **Works by foreign citizens not released in Austria and not associated with Austrian real estate.**

**§ 96.** (1) Works by foreign authors (§ 10, para. 1) not protected by § 94 or § 95 enjoy copyright protection notwithstanding treaties, provided that works by Austrian authors enjoy corresponding protection in the state of which the foreign author is a citizen, and in any case to the same extent as the works by citizens of this state. This principle of reciprocity is assumed only if it has been established in an announcement by the Federal Minister of Justice and with regard to the legal situation in the relevant state.

Furthermore, the competent authorities may agree on the principle of reciprocity in an agreement with another state if it is deemed to be necessary to safeguard the interests of Austrian authors.

(2) To calculate the period of the copyright protection that works by foreign authors enjoy in Austria, article IV, sub-para. 4, para. 1 or article IV, para. 4, lit. a of the Universal Copyright Convention of 6 September 1952, published in the Federal Law Gazette no. 108/1957, or the Universal Copyright Convention as amended on 24 July 1971, published in the Federal Law Gazette no. 293/1982 apply.