

# The University of Latvia ETD program: a Case Study of Local Practice

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## Abstract

In the year 2005, the University of Latvia started a program to create a full text database of all successfully defended theses at all levels - Bachelors' papers, Masters' papers, PhD dissertations. On average, 55% of the graduates allowed the publishing of their thesis, although there are some study programs with almost 0% dissertations published. This paper analyses why it happened. The most confusing is the case of PhD dissertations. According to national legislation, PhD theses have to be electronically published in order to make them available for general public. This legal provision reveals a clash between copyright requirements, which prohibit publishing anything without the consent of its author, on the one hand, and academic principles, which demand that all scientific work be publicly available, on the other hand. The Constitution of Latvia declares that the state protects copyright, so it is questionable whether the aforementioned legal provision on doctoral theses is constitutional.

## Introduction

Efforts to make students' theses and dissertations available on-line are being undertaken by universities all over the world, from Europe and America to Asia and Australia. Basically, all of these projects focus on broadening the accessibility and availability of previously unpublished material and on fighting plagiarism. However, many of these initiatives are limited to collections of graduate theses. In many cases, submitting a thesis for on-line publication is voluntary, thus hiding the full spectrum of information.<sup>1</sup>

Unlike many other universities, the University of Latvia has, since 2005, started to collect and provide open access to theses at all levels, including those of undergraduates. The range of its collection extends from undergraduate (Bachelors' and diploma papers of five-year professional programs) to graduate papers, including Masters' and PhD dissertations and papers that lead to the awarding of professional qualifications. To ensure the completeness of this collection, the University has adopted a policy of mandatory submission for all successfully defended theses (about 6 thousand per year) and seeking the authors' consent for publishing them. The full-text versions of the dissertations and theses whose authors have given consent for publication are available with a Latvian Academic Network (LANET) password via local University Catalogue and the State Union Catalogue, consisting of eight

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<sup>1</sup> E.g.: Thesis Canada (<http://www.collectionscanada.ca/thesescanada>), Australasian Digital Thesis Program (<http://adt.caul.edu.au>), University of Helsinki e-thesis program (<http://ethesis.helsinki.fi/>).

libraries of national importance.<sup>2</sup> The number of those allowing the publishing of their theses varied from program to program. According to 2006 data, free access to students' theses was given by almost all (94%) of BSc students of Chemistry. In other programs, the number was lower; for instance, 43% for MSc in Computer Science and 0% for the Certificate Program on Labor Protection.<sup>3</sup> Summing up the data, 74% of spring 2006 graduates agreed to publishing of their works while number of winter 2007 graduates was just 55%.<sup>4</sup>

## The Pros and Cons of Electronic Theses and Dissertations

There are both positive and negative facets to Electronic Theses and Dissertations. The **positive aspects** might include the following:

(1) The theses become available to an unlimited number of people, who may read them, learn from them, reference them, use them in their own research<sup>5</sup> etc. Thus, a thesis may cause the most good to the further development of science: to keep a science developing, one must know what has happened in the past.<sup>6</sup> Upon obtaining their doctoral degree, a person would actually be obliged to make their thesis as accessible as they can.<sup>7</sup> The process of publicly defending a thesis is itself a testament to the fact that the thesis should be available publicly.<sup>8</sup> If a thesis remains in print format only, at the university library, a comparatively very small fraction of society gets acquainted with it.

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<sup>2</sup> Available at <http://www.lu.lv/biblioteka/index.html>. The LANET currently has about 60 000 users, including the employees and students of major academic institutions in Latvia, such as universities and research institutions.

<sup>3</sup> See Karlsons G. and Gudakovska I. Providing on-line access to students' dissertations: shared responsibility concerns. <http://www.library.uiuc.edu/ica-suv/PAGES/frameset.html>. Data on Certificate Program on Labor Protection differs from those mentioned in referred publication as they are corrected.

<sup>4</sup> Рампане И. Обеспечение доступа к интеллектуальной собственности Латвийского университета в электронной среде. In: Preservation of cultural heritage in electronic environment: Proceedings of the 8th Congress of Baltic Librarians (May 17-19, 2007 Tallin, Estonia). Tallin, 2007. pp. 47-50.

<sup>5</sup> Weisser C.R., Walker J.R. Electronic Theses and Dissertations: Digitizing Scholarship for Its Own Sake. <http://www.press.umich.edu/jep/03-02/etd.html#walker>

<sup>6</sup> Reeves S., Hagen J., Jewell C. Unlocking Scholarly Access: ETDs, Institutional Repositories and Creators. Highlights of ETD 2006, the 9<sup>th</sup> International Symposium on Electronic Theses and Dissertations. *Library Hi Tech News*, November 2006. [http://www.wvu.edu/~thesis/Presentations/ETD2006\\_Article\\_Library\\_hi\\_tech\\_news.pdf](http://www.wvu.edu/~thesis/Presentations/ETD2006_Article_Library_hi_tech_news.pdf), p. 14

<sup>7</sup> In accordance with the legislation of Latvia, by defending a doctoral thesis, a person obtains scientist status, and scientist status entails the obligation to inform society of the results of one's scientific research. See Zinātniskās darbības likums: LR Likums [Law on Research Activity: Law of the Republic of Latvia], *Latvijas Vēstnesis*, 2005, May 5, No. 70, Article 6 Part 2, Paragraph 10, Section 1

<sup>8</sup> Shalini R. Urs. Copyright, academic research and libraries: balancing the rights of stakeholders in the digital age. *Program: electronic library and information systems*, vol. 38, No. 3, 2004, pp. 201–207

From a university standpoint, this may be the most important positive feature of Electronic Theses and Dissertations, as it relates to universities' primary goals – the creation and dissemination of knowledge.<sup>9</sup>

(2) If the works are made available to everybody, it becomes much easier to control plagiarism, or the unreferenced usage of ideas expressed by other authors in one's own research, e.g. by introducing ideas expressed in an unpublished thesis, or passing all or part of its text as one's own. Student plagiarism is a serious issue for universities, and the University of Latvia has faced this problem as well. It is much easier to establish borrowings from theses published electronically, by using software designed specifically for this purpose<sup>10</sup>, as well as by having authors themselves or their readers follow the theses and latest publications in the respective branch of science. Thus, supposedly, the malicious borrowing from theses published electronically is lower because potential offenders realise that their plagiarism would be discovered with a high enough probability.<sup>11</sup>

(3) Electronic Theses and Dissertations can secure their authors greater recognition, and they may expect acclaim in their branch of science. This may ensure them future career options in science or another industry.

On the other hand, as the **negative aspects** of the Electronic Theses and Dissertations the following should be mentioned:

(1) If a thesis is not of a high enough quality, making it accessible to a wide audience, the reputation of the university and the thesis author themselves may suffer. A university's goal is to have its graduates be the best, and their achievements the greatest. Poor-quality theses may lower universities' reputation, the number of students who would like to study there may also fall, government funding may be reduced etc. In this case it is not in the author's interest either to have a wider audience know their thesis. However, there is a solution to this problem. One may use the database for publishing only those theses that have received a high enough evaluation (agreement may be sought as to what mark exactly). At the same time, it would be in society's interest to identify the number of theses of unsatisfactory quality, revealed as a percentage breakdown of the theses published and not published.

(2) Putting Electronic Theses and Dissertations in a university database may negatively affect the author's economic interests. If an author had wanted to, for instance, compile and publish

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<sup>9</sup> Magna Charta Universitatum. Bologna, 18 September 1988. [http://www.magna-charta.org/pdf/mc\\_pdf/mc\\_english.pdf](http://www.magna-charta.org/pdf/mc_pdf/mc_english.pdf)

<sup>10</sup> E.g. *Turnitin Plagiarism Prevention*, *SNITCH*, *EVE Plagiarism Detection System (EVE2)*, *EssayFraud*, *Pl@giarism*, *LexisNexis CopyGuard*, *WCOPYfind*, *CopyCatch*

<sup>11</sup> Kreicbergs J. Promocijas un augstskolu studentu pētniecisko darbu autortiesību aizsardzība datu bāzēs un plaģiāta novēršana. [Doctorate and Tertiary Education Students' Research Paper Copyright Protection in Databases and Preventing Plagiarism] Latvijas Universitātes raksti. 2006, vol. 699, pp. 226–227

a book based on their thesis, it might face lower sales and lower royalties paid to the author if the text of the thesis were available on the Internet free of charge.<sup>12</sup>

However, this most probably only refers to a certain fraction of all the theses, since far from every person developing a thesis intends to later publish it as a book. In many cases, that would even be inexpedient, as the branch of science is so complicated or the content of the thesis so specific that only a limited number of enthusiasts would buy the book. The problem may be resolved in part by providing that those theses on which books will later be based should not be included in the public database at all, or be extracted from the database once stores start selling the book, and perhaps reintroducing it to the database once the books are sold out and no reissue is planned; or restricting access to a specific circle of people, such as university students or academic staff.<sup>13</sup>

In assessing the potential losses to a thesis author, one must consider the fact that with research – and writing of a thesis confirms a person's interest in research – it is not only imprint income that counts, but also impact income<sup>14</sup> – impact, gained by the publication of the dissertation, attracting further research grants, making one's carrier in science etc. It is therefore plausible that an author, in fact, loses nothing from having their thesis published, and may actually benefit from it.

Upon reviewing the positive and negative aspects of Electronic Theses and Dissertations, one must conclude that, at least from the point of view of universities and public interest, Electronic Theses and Dissertations would be the best solution. In certain cases, this might restrict the authors' interests, but the restriction would be commensurate with the gains to society.

## **The Copyright of a Thesis Author**

The assessment of the interests of each party is not reason enough to decide for or against Electronic Theses and Dissertations. One must also assess the legal implications that a university faces in such a situation.

The most significant legal aspect relating to Electronic Theses and Dissertations (i.e. limiting the universities' freedom to publish theses electronically) comes from issues of thesis author

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<sup>12</sup> Still, as the facts show, Electronic Theses and Dissertations have actually magnified the print volumes of books in certain cases. Weisser C.R., Walker J.R. Electronic Theses and Dissertations: Digitizing Scholarship for Its Own Sake. <http://www.press.umich.edu/jep/03-02/etd.html#walker>

<sup>13</sup> Fox E.A., Eaton J.L., et al. Networked Digital Library of Theses and Dissertations. An International Effort Unlocking University Resources. *D-Lib Magazine*, September 1997. <http://www.dlib.org/dlib/september97/theses/09fox.html>

<sup>14</sup> Harnad S. For Whom the Gate Tolls? How and Why to Free the Refereed Research Literature Online Through Author/Institution Self-Archiving, Now. Highfield, Southampton: University of Southampton, August 2001. <http://www.ukoln.ac.uk/events/open-archives/presentations/harnad.pdf>, p. 6

copyright.<sup>15</sup> There is a contradiction between society's interest in publishing theses on the Internet and the authors' possible interest in protecting their copyright and prohibiting free access to their theses.<sup>16</sup>

Copyright establishes an author's exclusive right to publish their work, an author's right of ownership.<sup>17</sup> Electronic Theses and Dissertations allowing access to an unlimited or limited audience<sup>18</sup> amount to publishing in the understanding of the *Law on Copyright*. In accordance with the law, an author has the right to themselves decide whether to publish their work, when and where to publish it, and on what terms – for instance, with or without compensation. Usually, the student who has written a thesis is deemed its author. Therefore, it is they who shall decide whether to publish that thesis electronically.<sup>19</sup>

Occasionally, the thesis supervisor's rights to a thesis are also open to discussion, which might aid in resolving the issue. If one assumes that the supervisor of a thesis also has rights to it, the supervisor would have to be deemed its co-author. There are a number of reasons why the supervisor of a thesis usually cannot be deemed its co-author:

(1) A thesis makes the basis for awarding a doctoral degree. Doctoral degrees are awarded for works developed independently<sup>20</sup>: the goal of developing a thesis is to prove that the person who authored it is worth a doctoral degree. In admitting that a thesis is the product of collaborating with the supervisor, one would also have to admit that the thesis is not a work developed independently by the doctoral candidate.

(2) Copyright protects mainly the author's personal way of expression and not the individual ideas, propositions or methods that the developer of a thesis as its independent author, receives as aid from the thesis supervisor. To acknowledge a thesis as a collaboration of the doctoral candidate and their supervisor, one must admit that the thesis supervisor has directly

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<sup>15</sup> During the development of a thesis, other forms of intellectual property may appear, such as inventions. This is not so important concerning Electronic Theses and Dissertations, as the author may submit a patent application well before the publication of the thesis, thus ensuring priority right to the patent

<sup>16</sup> Bride M. Open Archives and Intellectual Property: incompatible world views? Bath: The University of Bath, November 2002. [http://www.oaforum.org/otherfiles/oa4\\_d42\\_cser1\\_bide.pdf](http://www.oaforum.org/otherfiles/oa4_d42_cser1_bide.pdf)

<sup>17</sup> Copyright protection in Latvia is ensured by Autortiesību likums: LR likums [Law on Copyright: Law of the Republic of Latvia]. *Latvijas Vēstnesis*, April 27, 2000, No. 148/150. An author's right of ownership is established in Article 15 of the *Law on Copyright*

<sup>18</sup> For instance, only to university students and academic staff, or to academic staff only.

<sup>19</sup> One must also consider the fact that the author may have already published part of the text of their thesis in scientific journals as separate articles. The rights to such articles may be transferred to the journal's publisher in accordance with an agreement. In such cases, consent to publishing the already-published part of the thesis must be obtained from the journal's publisher. Moreover, the university cannot be sure that the thesis does not utilise another author's work without reference or excessively, i.e. that the student has not submitted a plagiarism. In this case, the rights of the original author would also be involved. See Weisser C.R., Walker J.R. Electronic Theses and Dissertations: Digitizing Scholarship for Its Own Sake. <http://www.press.umich.edu/jep/03-02/etd.html#walker>

<sup>20</sup> Doktora zinātniskā grāda piešķiršanas (promocijas) kārtība un kritēriji: MK noteikumi nr. 1001 [On the Procedure and Criteria for Awarding a Doctoral Degree (Doctorate): Cabinet of Ministers' Regulation No. 1001]. *Latvijas Vēstnesis*, December 30, 2005, No. 210, Paragraph 2

participated in preparing the text of that thesis, which, in accordance with the aforesaid, contradicts the purpose of developing the thesis.

Moreover, acknowledging the supervisor of a thesis as its co-author would not resolve the situation. From a copyright standpoint, the situation would only become more complex. If a thesis were recognised as the collaboration of the doctoral candidate and their supervisor, its publication on the Internet would require the consent of both these persons.

However, the normative acts of Latvia does envisage an exception relevant to Electronic Theses and Dissertations. The Cabinet of Ministers' Regulation No. 1001 of December 30, 2005, *On the Procedure and Criteria for Awarding a Doctoral Degree (Doctorate)*<sup>21</sup>, stipulates that, at least two weeks before the defence of a doctoral thesis, the Doctorate Council making the decision on awarding the doctoral degree, shall ensure its public availability on the Internet. This procedure is not provided for Bachelor papers and Master papers but seemingly resolves the issue with respect to doctoral theses. However, from a copyright standpoint, this is most likely not the case.

*The Law on Copyright* of Latvia (Art. 19), like copyright laws elsewhere in the world, does envisage restrictions on an author's right of ownership. In exceptional cases specified in the law, it is allowed to use the author's work without their consent and without compensation. Before the defence, however, Electronic Theses and Dissertations do not conform to any of the exceptions mentioned in the law. The law also does not establish the right to determine any additional cases of exception for any other normative acts which would allow using an author's copyright without the author's consent and without compensation.<sup>22</sup> The regulation of the Cabinet of Ministers envisaging the Doctorate Council's right to publish Electronic Theses and Dissertations without compensation to their authors is most likely unlawful.<sup>23</sup>

It can be supposed that the manner in which the state of Latvia has selected to ensure the availability of theses in electronic databases, is not suitable. The situation might possibly be resolved by, for instance, determining another restriction of an author's right of ownership in

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<sup>21</sup> Doktora zinātniskā grāda piešķiršanas (promocijas) kārtība un kritēriji: MK noteikumi nr. 1001, *Latvijas Vēstnesis* [On the Procedure and Criteria for Awarding a Doctoral Degree (Doctorate): Cabinet of Ministers' Regulation No. 1001], December 30, 2005, No. 210, Article 16.5

<sup>22</sup> In the hierarchy of normative acts of Latvia, regulations of the Cabinet of Ministers have less legal force when compared to the law issued by the Parliament (Saeima). Therefore, if a provision in a Cabinet of Ministers regulation contradicts a provision in the law, the latter is applicable. See: Par likumu un citu Saeimas, Valsts prezidenta un Ministru kabineta pieņemto aktu izsludināšanas, publicēšanas, spēkā stāšanās kārtību un spēkā esamību: LR likums [On the Announcement, Publication, Coming into Force and Validity of Laws and other Regulations Approved by the Saeima, the Head of State and the Cabinet of Ministers: Law of the Republic of Latvia], *Latvijas Vēstnesis*, March 25, 2003, No. 46, Article 8, Part 1

<sup>23</sup> Although the aforementioned provision in regulation No. 1001 of the Cabinet of Ministers establishing the Doctorate Council's right to secure the electronic availability of theses on the internet remains valid, it will most likely be revoked. Certain doctoral candidates who have almost developed their theses actually plan on turning to the Constitutional Court of Latvia to challenge the provision's compliance with provisions at a higher level, i.e. the provisions of the *Law on Copyright*

the *Law on Copyright*, i.e. the publication of theses – and perhaps of Bachelor papers and Master papers developed at universities as well – in electronic databases without authors' consent and without compensation. However, no such regulation exists in the law at present, and none are expected to be adopted in the near future.

Universities have to resort to seeking alternative approaches to resolving the issue. Two possibilities exist:

(1) One of the ways that universities might resolve the situation would be to specify it in the agreement concluded between the university and the student before commencing the study process, that the final paper (thesis) developed in the course of one's (doctoral) studies may be published electronically without the student's consent. Thus, by signing the study agreement, a student would give their consent that the thesis developed in the future would, once it has been developed, be published in an electronic database and made freely available to everyone. The consent for publishing the theses on the Internet would then be the precondition for a student to even commence their studies at the university.

However, this would only resolve the situation with students who will only commence their studies in the forthcoming academic years. Securing the electronic publication of theses already developed remains an open issue. The same goes for the final papers (theses) of (doctoral) students who have already begun their study process and concluded the study agreement.

Furthermore, this solution might, in a sense, actually limit a student's wish to study at a given university. Knowing that one university will introduce a provision about the mandatory publishing of their thesis, a student may select another university that does not pose such requirements, or refrain from university studies entirely.

(2) Another way for a university to ensure that theses are published electronically would be through later agreements with authors. A university might ask the student permission to publish their paper on the Internet, making it available to an unlimited (limited) audience, once they have already developed the thesis, or even after its defence (this would concern former university students who have defended earlier but whose papers are not yet in the university's Electronic Theses and Dissertations database or in its public section). In this case, the university would obviously have no way of forcing its (doctoral) student or former (doctoral) student to give consent to the electronic publication of their thesis. The author has no obligation to give such consent to the university. If the author refuses, the university has no right to publish the thesis on the Internet.

Regardless of whether consent to publishing a thesis in electronic format is given before or after its writing, it may obviously involve various other provisions. For instance, one may consent to publish the thesis for a certain time, or that it should be available to a limited audience, or that the thesis should only be available for a certain fee etc.

Universities have no further lawful opportunities for publishing theses electronically. If a university places a thesis in a public database without first obtaining the author's consent, its author may sue the university for copyright infringement.

One must conclude that, at least presently in Latvia, thesis author copyright is a sufficiently formidable obstacle to universities' free implementation of Electronic Theses and Dissertations. Universities can and do make use of the opportunities to partly negotiate the obstacle, but a great many theses still cannot be published. The Parliament (Saeima) could fully resolve the situation by amending the *Law on Copyright* accordingly. Looking hopefully upon the developments at universities in other countries of the world, where thesis texts are freely available at university websites<sup>24</sup>, Latvia's universities hope that the obstacles to publishing as many theses as possible in electronic databases will be averted in Latvia as well.

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<sup>24</sup> See e.g. University of Johannesburg Electronic Thesis and Thesis Database., <http://etd.rau.ac.za>; Western Michigan University's Electronic Thesis and Thesis (ETD) Home Page, <http://etd.wmich.edu>; Tampere University Theses, <http://acta.uta.fi/english>; Rhodes University Theses and Dissertations, <http://www.ru.ac.za/library/theses>; Väitekirjade Kaitsmised Tartu Ülikoolistartu [Master Papers and Theses of Tartu University], <http://www.utlib.ee/ee/index.php?cat=disser&kood=nimestik>