

COPYRIGHT GUIDELINES
FOR RESEARCH STUDENTS

Prepared for

LCoNZ : Library Consortium of New Zealand

by

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1. THE PURPOSE OF COPYRIGHT

- 1.1 Copyright is a form of intellectual property – which is a generic term for a range of property rights that provide protection for “creations of the mind”. Copyright does not, however, exist until a work is recorded, in writing or otherwise. Copyright protects the recorded expression of a work – it does not protect the ideas or knowledge incorporated in the work. Among other things, copyright law gives to the creator of a work the exclusive right to do certain specified things in relation to the work, including to copy it. But copyright is not only about copying: it includes a number of other rights relating to a work as well – to perform, play or show the work in public, to broadcast the work, to communicate the work, or to make an adaptation of the work, for example. These exclusive rights of the copyright owner are, however, qualified by the provision of certain legislative exceptions, which permit others to make use of the copyright work under specified conditions without first getting permission. The Copyright Act 1994, which is the New Zealand law governing copyright, calls these exceptions “permitted acts”.
- 1.2 The first copyright legislation, known as the Statute of Anne, was introduced in Britain in 1710. The purpose of that Act, which is true of most subsequent legislation, was “to support learning and the sharing of ideas”. This phrase draws attention to the inherent tension that underlies copyright law: the need on the one hand to encourage the creativity and protect the rights of authors and publishers, balanced on the other hand by the needs of members of society to benefit from and make use of the ideas and knowledge incorporated within publications, whether these are in printed, audio-visual or electronic form.
- 1.3 Students are both users and creators of copyright work, and so have a particular obligation to respect and comply with copyright law. Students need to know about copyright, because as authors they will be owners of copyright; and as researchers they will be users of copyright works and must avoid infringing the copyright of other people.

2. COVERAGE OF COPYRIGHT

- 2.1 Copyright applies to a very wide range of literary, dramatic, musical and artistic works, irrespective of their quality or merit: books, periodical articles, newspapers, personal papers, musical and art works, sound recordings, films, videos, DVDs, photographs, multi-media works, communication works, sound and television broadcasts, computer programs and software, computer databases, CD-ROMs, maps, charts, diagrams, tables, graphs, sheet music, paintings, works of architecture, and typographical arrangements of published editions.
- 2.2 These works are covered, whether published in New Zealand or overseas.

3. COPYRIGHT OWNERSHIP

- 3.1 Copyright is normally owned by the author, so students are the copyright owners of their theses or dissertations. However, if a work is made by an employee in the course of his or her employment, that person's employer owns the copyright. And if someone commissions a work such as a photograph, sound recording, painting, model, map or computer program to be made, then the person who commissions and pays for the work is the copyright owner.
- 3.2 There may be separate copyright ownership in illustrations, photographs, maps, diagrams, tables, charts and graphics that are included in a book, periodical article, CD-ROM or computer database.
- 3.3 In New Zealand you do not (and can not) register copyright ownership. Rather, copyright automatically exists as soon as a work is published, which is defined as "issued to the public" and includes making a work available by means of an electronic retrieval system. However, in some other countries such as the U.S., copyright is normally registered. Some people print a ©, the name of the copyright owner, and the year of publication on the verso of the title-page to indicate that there is copyright in the work, but this is not required to assert copyright ownership under New Zealand law, and its absence does not mean that the work does not have copyright protection.
- 3.4 Copyright ownership may be passed to others by contract or agreement: many authors of periodical articles or books pass copyright ownership to their publishers, as part of the contract for getting their work published. Thus, a student who publishes a periodical article based on his or her thesis research is likely to pass copyright in the article to the publisher, while retaining copyright in the original thesis. Copyright ownership may also be passed by bequest.
- 3.5 The copyright owner may waive copyright in a work, place a work in the public domain, or make copyright in a work subject to an open content licence.
- 3.6 Copyright ownership is quite separate from ownership of a work – copyright does not pass to the purchaser when a work is sold.

4. DURATION OF COPYRIGHT

- 4.1 For most works (including unpublished works), copyright does not expire until 50 years after the end of the year in which the author died or the work was first made available to the public. For typographical arrangements of published editions, copyright expires 25 years after the end of the year in which the edition was first published. For most Crown publications, copyright continues for 100 years, although there is no copyright in certain types of Crown publications such as bills, acts, regulations, bylaws, parliamentary debates, judgments of courts and tribunals, and reports of select committees, royal commissions, commissions of inquiry, ministerial inquiries and statutory inquiries.
- 4.2 On the expiry of its copyright a work passes into the public domain, and it may then be freely used without the need for any permissions to be sought.

- 4.3 Until copyright has expired, permission to copy or make other use of a work must be sought from the copyright owner, unless the use is permitted under the provisions of the Copyright Act 1994.

5. COPYRIGHT INFRINGEMENT

- 5.1 Copyright is infringed by anyone who, without permission of the copyright owner, does any of the following restricted acts: copies a work or any part of it; publishes a work; issues copies of a work to the public; performs, plays or shows a work in public; makes a work available to the public by means of an electronic retrieval system; broadcasts a work; communicates a work or makes it available via a computer network to the public; makes an adaptation of a work; imports an infringing copy; possesses or deals with an infringing copy; or authorises another person to do any of these things.

6. PERMITTED ACTS

- 6.1 The Copyright Act 1994 does, however, permit certain exceptions to these restricted acts under specified conditions. Two main areas of exception relate to copying for educational purposes¹, and copying by librarians². The main exceptions applying to students relate to copying for criticism, review and news reporting; copying for research or private study; and copying for educational purposes. These are considered further (below).
- 6.2 It should be noted that the Copyright Act's definition of "copying" includes digital copying:
- "Copying means, in relation to any description of work, reproducing, recording, or storing the work in any material form (including any digital format), in any medium and by any means" (s.2(1)).
- 6.3 Transient copying – the display of a work on a computer screen when accessing the Internet or other computer file – does not infringe copyright in the work (s.43A).

7. CRITICISM, REVIEW, AND NEWS REPORTING

- 7.1 Section 42 of the Copyright Act 1994 makes clear that fair dealing with a work for the purposes of criticism, review, or news reporting does not infringe copyright in a work. "Fair dealing" in this context is not defined. It must be accompanied by due acknowledgement, and does not apply to photographs.

¹ See Millett, Tony. *Copyright Guidelines for Academic Staff and Students*. 2nd edition, June 2008. <http://www.waikato.ac.nz/copyright>; Millett, Tony, *Questions and Answers on Copyright for Academic Staff and Students*. 2nd edition, June 2008. <http://www.waikato.ac.nz/copyright>

² See LIANZA. *The Copyright Act 1994 and Amendments: Guidelines for Librarians*. Edited by Tony Millett. 4th edition, June 2008. <http://www.lianza.org.nz/about/governance/copyrightact.html> .

8. RESEARCH OR PRIVATE STUDY

(a) Fair dealing

- 8.1 Section 43 of the Act states that fair dealing with a work for the purposes of research or private study does not infringe copyright in a work. In determining what is “fair dealing”, users must take into account:
- the purpose of the copying – it must be for research or for private study
 - the nature and significance of what is copied, taken in relation to the work as a whole
 - whether the work can be obtained within a reasonable time at an ordinary commercial price
 - the effect of the copying on the potential market for, or value of, the work – if, for example, the copying deprives the copyright owner of a legitimate sale, the copying will not be fair dealing
 - the amount and substantiality or importance of the part copied, taken in relation to the whole work.
- 8.2 Provided that these fair dealing guidelines are observed, it is permissible to copy the whole of a periodical article. It is not permissible, however, to copy more than a small portion of a book or other work, and it is never permissible to copy the whole of a book, without the prior permission of the copyright owner. Only one copy of the same work, or the same part of a work, may be copied on any one occasion.
- 8.3 These provisions apply to all works that are capable of being copied, including artistic works, graphic works and sheet music.

(b) Application to student theses

- 8.4 Under the fair dealing provisions, students may quote brief passages from other in-copyright works in their theses or other research, without obtaining permission from the copyright owners. However, prior permission from the copyright owners must always be obtained if more substantial passages are to be quoted. Note that “substantiality” is determined by the qualitative importance or significance of what is copied, rather than by the simple amount of what is copied – there is no “ten percent rule” allowing copying of a specified number of pages or quantity of material.
- 8.5 All quotations must be duly acknowledged by citing the full bibliographic details, including the page -numbers of the quoted works, as is standard academic practice.
- 8.6 Students may also paraphrase the ideas and opinions of other writers, provided that the sources are acknowledged and there is no plagiarism.
- 8.7 Because artistic works, drawings, photographs, diagrams, tables, charts, maps, etc. constitute individual works in which there is likely to be separate copyright, permission should be obtained from copyright owners before these are reproduced in student theses. The same applies to excerpts from sound recordings, films, videos, radio or television broadcasts, performances, etc.

- 8.8 Students should always obtain prior permission from copyright owners where there is any doubt regarding the legality of including in-copyright materials in theses.
- 8.9 Publication of student theses on the Internet does not change these requirements. It does, however, reinforce the need for considerable care to be taken in observing copyright rights – if only because such theses are very visible to the academic community and copyright owners.

9. OBTAINING PERMISSION FROM COPYRIGHT OWNERS

- 9.1 Copyright in most commercially-published books and periodicals is owned by their publishers. Many publisher web-sites provide information about copyright policies – what is permitted, who to write to for permissions, licence requirements, fees payable, etc.
- 9.2 Material included in electronic databases subscribed to by libraries is almost always subject to licence agreements signed by libraries with database providers, aggregators or e-journal publishers. These licence agreements may provide information about use of the materials in student theses.
- 9.3 Copyright in books published by private or non-commercial publishers or by individuals is usually owned by their authors. Addresses are sometimes printed in the front of the books, or may be obtained from web-sites, telephone directories, electoral rolls and the like.
- 9.4 Copyright in reports published by government departments, universities, societies and associations, etc is usually owned by the issuing bodies, although it may be held by the individual authors if these are identified.
- 9.5 Web-sites often include a link to a copyright statement, for example in the web page footer. Materials on web-sites sometimes have licence statements attached to them.
- 9.6 Students should write or email to the likely copyright owner, stating name and university, the degree being studied for, the title and theme of the thesis, the work for which permission to copy for inclusion in the thesis is required, and the use to be made of the material. Full bibliographic details of the work should be given, including the amount of material that is to be copied. A sample permissions letter is given in Appendix 1 (below).
- 9.7 A permissions log should be kept of all permissions that have been requested. If no response is received within a reasonable time, a follow-up letter or email should be sent, and this too should be recorded in the log. When a response is received, this should be noted in the log, together with any conditions that are required by the copyright owner. If no response is received to the follow-up, it may be necessary to look for an alternative person or organisation to write to, or consider not including the material in the thesis. A sample permissions log is given in Appendix 2 (below).
- 9.8 Permissions logs, together with responses received, should be retained for at least five years. Some students include a list of copyright acknowledgements at the front of their theses.

- 9.9 Copyright owners may give different permissions for print and for digital versions of theses. For example, permission to include a quotation from an in-copyright work may be given for the print version but not for the digital version of a thesis. Care must be taken to ensure that the terms and conditions of such permissions are complied with – for example by replacing quotations in a digital thesis with a statement such as “This text (or, this image) has been removed for copyright reasons”, while still including the bibliographic citations so that users of the digital thesis are able to go to the original sources to view the omitted passages or images.
- 9.10 A summary of the steps in obtaining copyright permissions is given in Appendix 3 (below).
- 9.11 Copyright owners may ask for a payment for use of their materials. Some university departments are prepared to pay copyright fees. If not, a decision must be made by the student whether to pay the fee, remove the material from the thesis altogether, reduce the amount of material quoted so that it falls within fair dealing, or paraphrase the material so that it is no longer a direct quotation (while, of course, still referencing the original source).
- 9.12 All materials used in theses must be properly acknowledged. Where illustrations, diagrams, tables, charts, maps etc are reproduced, it is usual to include the phrase “reproduced with permission” as part of the bibliographic citation.

10. COPYING FOR EDUCATIONAL PURPOSES

- 10.1 A student giving a class or seminar at an educational establishment may copy the whole or part of a work, provided that the copying is to assist the student in preparing and giving the class, and provided that only one copy is made on any one occasion (s.44(1)).
- 10.2 If multiple copies of a work are required, for example as a handout for a class, the copies must either be made by hand (s.44(2)), or be restricted to no more than the greater of 3% or 3 pages of the work (s.44(3-4)), or be copied under the terms of the educational establishment’s licensing agreement with a reproduction rights organisation such as Copyright Licensing Ltd (CLL). The CLL licence applies to copying by students only where the students are undertaking the copying on behalf of and at the direct request of a staff member.
- 10.3 A number of educational institutions have a licence with Screenrights: the Audio-Visual Copyright Society Ltd, which permits staff and students to make recordings of radio or television broadcasts, and to make copies of such recordings, for the educational purposes of the institution. While the Screenrights licence covers only some broadcasts, all other broadcasts, including broadcasts emanating from overseas, are covered by s.48 of the Copyright Act, which permits the making or communication of a broadcast or other communication work by or on behalf of an educational establishment, and the subsequent communication of the work within the educational establishment, for its educational purposes.

11. COPYRIGHT AND THE INTERNET

- 11.1 There is copyright in most types of material on the Internet – email messages, postings to bulletin boards and news groups, articles, books and other publications, reports, databases, web sites, etc. The fact that something is posted on the Internet does not automatically give anyone the right to store, copy or disseminate it, unless the author or copyright owner has waived copyright or specifically granted permission.
- 11.2 It has been argued that placing material on the Internet without restrictions is an implied licence to view, download and/or print the material. However, it has also been argued that viewing, and subsequently printing or downloading a work from the Internet, infringes the copyright owner's exclusive right to reproduce or communicate the work. When in doubt, it is wise to seek permission from the copyright owner.
- 11.3 There may be separate copyright in trade-marks, logos, photographs, illustrations, sound, video and images, and so separate multiple permissions may be required.
- 11.4 Material published by students on web-sites, blogs, wikis, etc must not include in-copyright material without the prior permission of the copyright owners.

12. ELECTRONIC RESOURCES

- 12.1 Electronic resources have the same copyright protection as print or audio-visual resources.
- 12.2 For electronic databases there is copyright in the database itself, and in the resources included in the database.
- 12.3 Almost all informational databases subscribed to by libraries are subject to the provisions of licence agreements signed by the libraries with database providers, aggregators and e-journal publishers, and copies from the databases may be made only in terms of those license agreements.
- 12.4 CD-ROMs are compilations, having the same copyright protection as literary works. There is likely to be separate copyright, owned by different people, in each of the components – text, photographs, films, sound, music, dramatic work, artistic work and literary work etc. There may also be restrictions on use – for example networking, printing, or using for commercial purposes – which must be complied with.

13. AUDIO AND VISUAL RESOURCES

- 13.1 Sound recordings, videos, and other audio-visual materials may not be copied, downloaded, or distributed using file-sharing software unless authorised by the copyright owners or permitted under the provisions of the Copyright Act 1994.
- 13.2 A sound-recording may be copied for personal use, provided that the copy is made from a legal copy that is owned by the person making the copy (not from a copy that is borrowed or hired), and is copied only for the personal use of the owner or a member of

the owner's household (s.81A). This provision permits format-shifting of sound-recordings. Format-shifting of other types of media is not permitted.

- 13.3 A recording of a radio or television broadcast or of a communication work may be made for the purposes of time-shifting, but only for the personal use of the person making the recording or a member of that person's household, and provided that the recording is retained for no longer than is reasonably necessary for viewing or listening to the recording at a more convenient time (s.84).

14. TECHNOLOGICAL PROTECTION MEASURES

- 14.1 A technological protection measure (TPM) is "any process, treatment, mechanism, device, or system that in the normal course of its operation prevents or inhibits the infringement of copyright" in a work (s.226(a)). The Copyright Act 1994 specifically states that a TPM must not prevent or restrict the exercise of an act that is permitted by the Copyright Act (s.226D(1)). A student who is impeded from exercising a permitted act by a TPM should first approach the copyright owner for assistance. If the copyright owner refuses the request for assistance, or fails to respond within a reasonable time, the student may ask an appropriate person from the educational establishment (for example, a member of the IT department) or a librarian to exercise the permitted act on the student's behalf using a TPM circumvention device (s.226E).
- 14.2 It should be noted that a process, treatment, mechanism, device, or system that controls market segmentation by preventing the playback in New Zealand of a non-infringing copy of a work is not a TPM (s.226(b)), so these provisions do not apply to this.

15. MORAL RIGHTS

- 15.1 Moral rights are rights that attach to authors, rather than to copyright owners in general. They include the right to be identified as the author or director of a work (a right which must be asserted in writing); the right to have works treated in a way that is not derogatory; and the right not to have works falsely attributed. "Derogatory treatment" means any addition to, deletion from, alteration to, or adaptation of a work, or any distortion or mutilation of a work, which is "prejudicial to the honour or reputation of the author or director" (s.98(1)).
- 15.2 There is also a right to privacy in relation to photographs or films commissioned for private or domestic purposes. Students must take care not to offend against these rights, particularly in their theses or other publications.

16. PERFORMERS' RIGHTS

- 16.1 Part IX of the Copyright Act 1994 sets out the rights granted to performers, including authorisation of the recording or broadcasting of performances, and prohibition of the copying, sale, distribution or importation of unauthorised recordings. Students, particularly those in creative or performing arts disciplines, must ensure that they comply with these provisions.

17. COPYRIGHT AND STUDENT THESES PUBLISHED ON THE INTERNET

- 17.1 Students whose theses are to be published in digital format in their institution's research repository are required to sign a deposit licence authorising this. These theses are accessible through the Kiwi Research Information Service (KRIS)³, the Australasian Digital Theses Program (ADT)⁴, institutional repositories, library catalogues, or search engines such as Google.
- 17.2 Copyright ownership in theses is retained by their student authors. Students may wish to reserve these rights to themselves, so that full copyright protection is retained and others making use of and quoting from their theses may do so only within the provisions of copyright law. Alternatively, students may make their theses available under the terms of an open content licence such as a Creative Commons licence⁵, which permits users of the theses to make use of them more freely than is permitted under copyright law, provided that no profit is derived from the use.
- 17.3 Students wanting to publish periodical articles derived from the research undertaken for their theses should check that their chosen publishers do not have policies prohibiting publication of theses as "prior versions". Most major publishers now allow "prior versions" such as pre-prints, post-prints, final versions and theses to be included in digital repositories.
- 17.4 Students must also ensure that permissions given by copyright owners to include in-copyright materials in theses permit the materials to be published on the Internet.
- 17.5 Because theses published on the Internet are widely available, it is the more imperative that very considerable care has been taken to ensure that the copyright rights of others have not been infringed in the theses or in publications derived from them.

18. COPYRIGHT LICENSES

- 18.1 Most educational institutions have entered into licensing agreements with reproduction rights organisations (RROs). These agreements allow for the copying of in-copyright works in a more generous way than is provided for under the Copyright Act.
- 18.2 Examples of such license agreements, not all of which may be applicable in a specific institution, include:

Copyright Licensing Ltd (CLL) – enables copying beyond the multiple copying limits set by the Copyright Act, mainly for print or electronic course-packs issued or made available to students. See <http://www.copyright.co.nz/>.

Print Media Copying Agency (PMCA) – allows both print and electronic copying from New Zealand newspapers. See <http://www.pmca.co.nz/>.

³ See <http://nzresearch.org.nz/>

⁴ See <http://adt.caul.au/>

⁵ See <http://www.creativecommons.org.nz/>; <http://creativecommons.org/>

Screenrights: the Audio-Visual Copyright Society Ltd – permits staff and students to make recordings of radio or television broadcasts, and to make copies of such recordings, for the educational purposes of the institution. See <http://www.screenrights.org/copyright/newzealand/educational-copying/universities.php>.

18.3 Organisations which administer performing rights in New Zealand include:

Australasian Performing Rights Association Ltd (APRA) – administers the rights of the world’s songwriters, composers and music publishers in Australia and New Zealand. APRA also administers the licensing business of the **Australasian Mechanical Copyright Owners Society (AMCOS)**. See <http://www.apra.co.nz/>.

Phonographic Performances NZ Ltd (PPNZ) – administers the rights of local and international record labels and recording artists within New Zealand. See http://www.rianz.org.nz/rianz/ppnz_introduction.asp.

19. FURTHER INFORMATION

19.1 A number of web-sites provide information about New Zealand copyright law and related issues. These include:

Copyright Council of New Zealand <http://www.copyright.org.nz/>

Copyright Licensing Ltd <http://www.copyright.co.nz/>

Library and Information Association of New Zealand Aotearoa (LIANZA)
<http://www.lianza.org.nz/about/governance/copyrightact.html>

Ministry of Economic Development
http://www.med.govt.nz/templates/Page_____7290.aspx

Te Papa National Services <http://www.tepapa.govt.nz/NR/rdonlyres/6A8EAEBD-5EDD-4DF9-AF09-C13A7C7BC8CF/0/Copyright.pdf>

University of Waikato <http://www.waikato.ac.nz/copyright/>

19.2 Some educational institutions provide copyright information on their websites, and students should familiarise themselves with this information.

APPENDIX 1: EXAMPLE OF COPYRIGHT PERMISSIONS LETTER⁶

[Your contact details]

[Date]

[Copyright owner's details]

Dear [Copyright owner's name]

My name is [your name]. I am a [Masters / Doctoral] student at [your academic institution], and am writing a thesis on [subject of thesis] for [degree or qualification]. A print copy of this thesis when completed will be deposited in the University Library, and a digital copy will also be made available online via the University's digital repository [name of depository]. This is a not-for-profit research repository for scholarly work which is intended to make research undertaken in the University available to as wide an audience as possible.

I am writing to request permission for the following work, for which I believe you hold the copyright, to be included in my thesis:

[Bibliographic details of the source work]

[Description of the portion to be included, paging, use of the work, etc]

I am seeking from you a non-exclusive licence for an indefinite period to include these materials in the print and electronic copies of my thesis. The materials will be fully and correctly referenced.

If you agree, I should be very grateful if you would sign the form below and return a copy to me. If you do not agree, or if you do not hold the copyright in this work, would you please notify me of this. I can most quickly be reached by email at [your email address].

Thank you for your assistance. I look forward to hearing from you.

Yours sincerely,

[Your name]

I _____ agree to grant you a non-exclusive licence for an indefinite period to include the above materials, for which I am the copyright owner, in the print and digital copies of your thesis.

Date: _____

⁶ Adapted from Swinburne University of Technology Copyright Office. *Sample permission template*
<http://www2.swinburne.edu.au/copyright/training/permissionletter1.0.doc>

APPENDIX 2 : EXAMPLE OF COPYRIGHT PERMISSIONS LOG⁷

Record here details of permissions requested, and responses received, to assist with your personal record-keeping.

Page number in thesis	Details of in-copyright material	Date permission requested	Permission granted for <u>print</u> thesis (Y / N and date)	Permission granted for <u>digital</u> thesis (Y / N and date)	Conditions

⁷ Adapted from Swinburne University of Technology Copyright Office. *Copyright material log*.
<http://www2.swinburne.edu.au/copyright/training/copyrightmateriallog1.0.doc>

APPENDIX 3 : COPYRIGHT PERMISSIONS CHECKLIST

- 1) Determine if permission from the copyright owner is required
- 2) If so, send a permissions letter to the copyright owner (*see* Appendix 1)
- 3) Record the letter in the permissions log (*see* Appendix 2)
- 4) If no response is received, send a follow-up letter to the copyright owner, and record this in the permissions log
- 5) If there is still no response, look for an alternative copyright owner to write to, or remove the material from the thesis
- 6) When a response is received, record details in the permissions log
- 7) If permission is granted, include the quotation, extract or image in the thesis, and reference with full bibliographic citation
- 8) If permission is granted for the print version but not for the digital version of the thesis, replace the quotation, extract or image in the digital version with a statement such as “This image (or, this text) has been removed for copyright reasons”, but reference with full bibliographic citation
- 9) If permission is not granted:
 - reduce the amount of material quoted so that it falls within fair dealing, and reference it
 - paraphrase the material so that it is no longer a direct quotation, and reference it
 - remove the material from the thesis altogether
 - if appropriate, replace the removed material with an alternative quotation or extract for which copyright permission has been obtained, and reference it
- 10) Before final publication of the thesis:
 - check that permission has been obtained from copyright owners for all in-copyright material included in the thesis, and that all stipulations and conditions have been complied with
 - ensure that the inclusion of such material in the thesis is in accordance with the permissions granted by the copyright owners, with licence agreements, or with the relevant provisions of the Copyright Act 1994
 - confirm that the integrity of the in-copyright material has been preserved, and that the moral rights of the authors of that material have not been infringed
 - check that all quotations, extracts and images included in the thesis have been correctly referenced with full bibliographic citations

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