

Copyright Policy at William Paterson University

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Preamble to the William Paterson University Copyright Policy

At the core of everything the William Paterson University (the University) does, the following five values define its ethos and fundamental beliefs: academic excellence, creating knowledge, student success, diversity, and citizenship (University Strategic Plan). In order to promote these values, the University holds faculty, staff and students responsible for complying with all Federal laws ([Title 17, United States Code](#)) regarding copyright and the University policy and guidelines enclosed herein.

This copyright policy delineates the rights and responsibilities of the University and its faculty, staff, and students. The University practice is that all copyright issues will be resolved prior to use. The Copyright Policy describes the various categories of works of authorship, addresses issues of ownership and assertion of rights in connection with those works, sets forth how the Policy will be administered, and provides for the creation of a Copyright Policy Standing committee made up of faculty members and administrators who address issues concerning the proper interpretation of the Policy.

This copyright policy contains elements that intersect with other existing policies at the University. The copyright policy does not replace those existing policies but rather it is meant to work in conjunction with them. Links to intersecting policies are provided herewith.

William Paterson University Copyright Policy

June, 2013

What Is Copyright?

Copyright is a set of limited rights vested initially in authors regarding their original creative works. Definitions regarding copyright are listed in [17USC § 101](#) It is outlined [in 17USC § 102](#) and refined in subject matter by [17USC § 103](#) Compilations and Derivative Works, [17USC § 104](#) National Origin, [17USC § 104A](#) Copyright in Restored Works, and [17USC § 105](#) United States Government Works. Today, copyright attaches automatically to nearly all original works of authorship. Certain works are outside of copyright protection (see exceptions below), and some copyrights vest automatically in the authors employer rather than in the author herself.

Subject Matter of Copyright: In General [17USC § 102](#)

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;

- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

Copyright ownership is generally given to the author of the work and includes the following rights ([17USC § 106](#)):

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease or lending;
- To perform the work publicly, in the case of literary, musical dramatic and choreographic works, pantomimes and motion pictures and other audio-visual works;
- To display the work publicly, in the case of literary, musical, dramatic and choreographic works, pantomimes, and pictorial, graphic or sculptural works, including the individual images of a motion picture or other audio-visual work; and
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission

Faculty, staff, and students are thus not able to exercise rights under copyright law in a work owned by others unless one of the following applies:

- 1.) Works in the public domain (expired copyright protection, ideas and/or facts, works of the US government, and certain compilations and databases)
- 2.) Use of the work qualifies as Fair Use under [17USC § 107](#)
- 3.) Reproduction and distribution of copies by Libraries are exempted by [17USC § 108](#)
- 4.) Use of the work is permitted under [17USC § 110](#) regarding performance or display in educational settings
- 5.) The copyright holder has granted permission to use the work, which permission may be in the form of a purchased license or in the form of a Creative Commons license or other open access arrangement granting use rights to the general public.

Section 109 covers limitations on the effect of transfer of copyright ownership for sound recordings and computer programs. Sections 111-122 of USC17 describe the scope of exclusive rights and exceptions of exclusive rights in regards to broadcast cable and satellite transmissions, sound recordings, pictorial,

graphic and sculptural works, computer programs, architectural works, and reproductions for blind or other people with disabilities. For further information, see the [United States Copyright Code](#).

Creation of Copyrighted Materials

Faculty Ownership of Course Material and Research

The creation of copyrighted works is one of the ways the University fulfills its mission of contributing to the body of knowledge for the public good. The University encourages the creation of original works of authorship and the free expression and exchange of ideas. This copyright policy is intended to maintain these values. Towards that end, the policy formulated here follows the **Agreement with the American Federation of Teachers, Article XXXIII entitled “Copyright Ownership” and Article XXXIV, “Online Courses.”** (<http://www.wpunj.edu/dotAsset/206174.pdf> pp. 84-88). Article XXXIII includes faculty and staff ownership of copyright, royalties and licenses, and appeals. Appeals are made to a Copyright Ownership Rights Committee as stated in the agreement.

Employees covered under the AFT Agreement are the owners of the copyrightable property if:

- 1) it is embodied in textbooks, manuscripts, scholarly works, works of art or design, musical scores and performances, dramatic works and performances, choreographic works, popular fiction and non-fiction works, poems, or other works of the kind that have historically been deemed in academic communities to be the property of their author, including lecture notes, course outlines, handouts, exercises and tests developed by employees to support their own teaching activities;
- (2) it is embodied in a storage medium such as films, videos, audio recordings, multimedia materials, distance learning materials, and courseware
- (3) it has been released by the College/University to the creator, or
- (4) it is created on sabbatical leave with no more than incidental use of College/University facilities.

All of the above is granted unless covered under institutional ownership.

However, the University reserves the right to use the copyrightable property royalty-free unless so doing would damage the creator’s right to commercialize the property. It is incumbent upon the creator to demonstrate harm.

Student Ownership

Student work created during attendance at the University (e.g., papers, theses, student projects) is owned by the student, unless:

- (1) the work was accomplished for their employment (paid or unpaid) by the University;
- (2) the student’s research, as an essential part of the faculty supervisor’s research, has not been transferred by the faculty member ;
- (3) the student’s research is an part of a grant and thus governed by the terms of the grant, research agreement, or materials transfer agreement, confidential disclosure agreement or other legal obligation affecting ownership; or
- (4) the student has agreed in writing to transfer the copyright.

University Ownership

The University owns the copyright if (1) there is a signed contract; (2) the employee was specifically assigned to create the copyrightable work; (3) the copyrightable property is the result of an alternate assignment and the University indicates at time of development in writing that ownership will be claimed; or (4) more than incidental use of University facilities or financial support was used in the creation. The University also reserves the right to use the copyrightable property without royalties for educational purposes unless the creator's right to commercialize it is significantly impaired.

Usage of Copyrighted Materials

If it is determined that exceptions from the Copyright Law are not applicable, permission must be obtained from the copyright owner for each use.

Fair Use Guidelines

The concept of "fair use," which is embodied in Section 107 of the copyright law, is the most widely used exception to seeking permission for uses of copyrighted works. Reliance upon the fair use doctrine is limited to those circumstances that meet the four-factor "fair use" balancing test. A use is not fair simply because it is for educational purposes. However, fair use does generally favor specific education-related purposes such as criticism, comment, news reporting, teaching, scholarship, and research. A use for these purposes will be favored under the first factor (the purpose of the use), but judges will also look at the other three statutory factors: the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect of the use on the traditional market for the work.

In recent years judges have often collapsed these four factors into a two-step test: they ask (1) is your use transformative, and (2) if so, did you use an appropriate amount for your transformative purpose? A use is transformative if it presents copyrighted material in a new context, for new purposes, and in the creation of new social value and insights, rather than as a mere substitute for the original work. Fair use determinations are made on a case-by-case basis, as both the four factor and the two-step tests are highly context-sensitive. In recent years, many communities have developed codes of best practice in fair use to help practitioners apply fair use to commonly recurring situations. These codes are based on community consensus and provide helpful advice on what sorts of uses are likely to be transformative. Many of these codes are relevant to academic practice, but perhaps the most important is the [*ARL Code of Best Practices in Fair Use for Academic and Research Libraries*](#). Other codes and information about fair use are collected at the [Center for Social Media](#) web site.

Copyright Online – the TEACH Act

The TEACH Act, 2002, codified at [17 USC § 110\(2\)](#), was passed to permit performance and display of copyrighted works in distance education. Although the Act allows many uses, it imposes significant restrictions on those uses. Restrictions apply when materials are uploaded, transmitted digitally, downloaded, altered, or further transmitted. "Distance education" here includes materials posted on a

server for a traditional course. The TEACH Act does NOT preclude usage of “fair use” factors or seeking permission.

For the TEACH Act to be applicable, *all* of the requirements of the different roles must be in place. It is the University’s practice to follow the requirements of the TEACH Act so that faculty/staff may apply it to their usage of copyrighted materials.

Copyright for Online Service Providers - the DMCA Act

The DMCA (Digital Millennium Copyright Act), 1998, provides protections for OSPs (Online Service Providers). The University is considered an OSP. Although the DMCA provides a “safe harbor” from much of the potential liability that OSPs might otherwise face for the activities of their users, it does not unqualifiedly exempt an OSP from such liability. Steps must be taken to fulfill the OSP’s obligations. The University has followed these steps and complies with the DMCA.

Higher Education Opportunity Act Compliance

The College Affordability and Opportunity Act (CAOA) of 2008 adds to the Higher Education Act of 1965 by requiring that all higher education institutions who receive Federal funding create copyright policies and educate their communities about copyright infringement. Section 488 of the law requires that institutions submit an annual disclosure informing students that unauthorized distribution of copyrighted material may be subject to civil or criminal liability and what those penalties may be as well as describing the institution’s peer-to-peer file sharing policies, including disciplinary actions that may be incurred. Peer-to-Peer (P2P) file sharing for William Paterson University students is covered by [IT Policies](#). A letter is sent every year to incoming students to advise them of these policies.

Use of the University’s Name, Signatures, Seal and Logos

Following University guidelines, usage of the University’s name, signature, seal or logos should only be used in identifying the creators of the copyrightable material by their titles or affiliations with the University. Any other use of the University Name, Signature, Seal and Logos by University members in connection with copyrightable material should be approved by the Provost and Senior Vice President of Academic Affairs, or his/her designee, prior to usage. Any commercial use of the University Name, Signature, Seal and Logos by non-University members in connection with copyrightable material, should be approved by the Associate Vice President for Marketing and Public Relations, or his/her designee, prior to use.

Reserves for Print and Electronic Research

US Copyright Law governs the use of copyrighted material, and therefore, has implications for the type of material, the number of copies made, and the amount of material that may be kept on Reserve. The Library upholds the US Copyright laws and makes material available on electronic reserve according to our [Fair Use Guidelines](#).

Library staff assists faculty in evaluating how copyright affects Reserve materials before including them in the University collection. A copyright notice appears on the first page of photocopied and/or scanned reserve material to indicate that materials may be covered by copyright law. Full citations and attributions to original sources are included. The Library seeks permission and may pay royalties for those Reserve submissions exceeding Fair Use guidelines. Library staff works with faculty to determine alternatives when costs become prohibitive or when copyright permission is denied.

A complete list of the guidelines for [Cheng Library Reserves and IRT's Media Services Reserves](#) are available.

Academic Integrity and Plagiarism

William Paterson University has an [Academic Integrity Policy](#) which includes plagiarism, cheating, collusion and lying. Remedies for academic integrity violations are available in the [Student Handbook](#).

Copyright Education Commitment

The University facilitates compliance with copyright law and, where appropriate, the exercise in good faith of all exceptions allowed in University teaching, learning, research, and service activities. Specifically the University assistance and education is identified in the Copyright Education Section.

Conclusion

This Copyright policy should be helpful in providing guidance and understanding for the University community. The Law begs obeisance, but the truth is that the real reason for copyright compliance should come from our fundamental values created by the University community for the Strategic Plan (academic excellence, creating knowledge, student success, diversity, and citizenship). Copyright is a balancing act and while following the law, we need to be mindful of the many copyright exceptions that assist us in our teaching and research. Please note that because copyright law is constantly changing, this Copyright Policy will be reviewed and updated every three years.

Glossary

Anti-circumvention – bypass a technological measure that controls access to a copyrighted work.

Blended Course – a course that meets approximately no less than 25% and approximately no more than 75% online.

Course Management Software – computer software such as Blackboard that is used to deliver online, blended, and supplemental courses.

DRM – Digital Rights Management – technologies that place limits on the transmission and reproduction of copyrighted digital materials.

Incidental Use – means normal academic use of resources commonly available to the employee such as the use of an employee's office, computer, Internet services, library facilities and/or office equipment.

Nonmembers of the University community – refers to all those who are not currently employed or enrolled students.

Online Course – an online course is a course taught 100% online. Instructors may supplement this course with non-mandatory in-person meetings.

Plagiarism - copying from a book, article, notebook, video, or other source material, whether published or unpublished, without proper credit through the use of quotation marks, footnotes, and other customary means of identifying sources, or passing off as one's own the ideas, words, writings, programs, and experiments of another, whether such actions are intentional or unintentional. Plagiarism also includes submitting, without the consent of the professor, an assignment already tendered for academic credit in another course.

Supplemental Course – a traditional course that meets in the classroom 100% of the time but uses Blackboard for supplemental posting of course materials, facilitating discussions, extending office hours etc.

For a complete list of definitions, please refer to [17USC § 101](#).

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Education Section

Copyright Education

The University facilitates compliance with copyright law and, where appropriate, the exercise in good faith of full fair use rights by faculty and staff in teaching, research, and service activities. Specifically, the University:

1. informs and educates faculty, staff and students about copyright law, including the limited exclusive rights of copyright holders as set forth in the [Federal Copyright Code](#);
2. develops and makes available resources for faculty and staff to help in determining copyright status and ownership and whether the use of a work in a specific situation would be a fair use;
3. facilitates use of materials currently licensed by the University and provides information on licensing of third-party materials by the University; and
4. identifies individuals at the University who can counsel faculty and staff regarding the use of copyright law.

The University makes available a [LibGuide](#) located on the Library's homepage to assist faculty and students with copyright information and guidance through FAQs.

Application of the Fair Use Guidelines

The Fair Use Guidelines enables the use of a copyrighted work for activities that serve the common good and foster debate, criticism, education, and scholarship. It serves to balance the rights of the copyright owner and the needs for a free society. Section 107, ([17USC § 107](#)) states that "in determining whether the use made of a work in any particular case is a fair use, the factors to be considered shall include:

- The purpose and the character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
- The nature of the copyrighted work.
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
- The effect of the use upon the potential market for, or value of, the copyrighted work."

The [Fair Use Check List](#) developed by Kenneth Crews, Ph.D., Columbia University, is a good place to start. It will help to record your process in determining the balance of the four factors.

The TEACH Act

The TEACH Act, 2002, codified in [17USC § 110\(2\)](#), was passed to permit opportunities for copyright exceptions in distance education. Although, there are many uses allowed, there are restrictions that must be followed. Restrictions apply when materials are uploaded, transmitted digitally, downloaded, altered, or further transmitted. Distance education here includes materials posted on a server for a traditional course. The TEACH Act does NOT preclude usage of “fair use” factors or seeking permission.

Requirements of the TEACH Act can be divided by role. The [checklist](#) from Kenneth Crews, Ph.D., Columbia University, delineates the roles and their responsibilities and can be used as an aid in developing compliance. For the TEACH Act to be applicable, *all* of the requirements of the different roles must be in place.

Copyright for Online Service Providers - the DMCA Act

The DMCA (Digital Millennium Copyright Act), 1998, provides protections for OSPs (Online Service Providers). The University is considered an OSP. Although, the DMCA provides a “safe harbor” from much of the liability, it does not unqualifiedly exempt an OSP. Steps must be taken to fulfill the OSP’s obligations. The University has followed these steps and complies with the DMCA. These steps include the following:

- a) Designation of a local agent responsible for receiving “take-down” notices and implementing the appropriate “take-down” of the infringing materials.
- b) Procedures must be in place to end the accounts of those found to be repeat infringers or who circumvent electronic safeguards of copyrighted content
- c) Measures must be taken to guard against illegal access and additional distribution of copyrighted materials.
- d) The OSP must have a copyright policy and copyright education program in place.
- e) The OSP must use only lawfully acquired copies

The DMCA criminalizes the development of anti-circumvention technologies and the act of circumvention itself. However, in 2010, the United States Court of Appeals for the Fifth Circuit ruled that just breaking through a digital security system to access software doesn't trigger the "anti-circumvention" provisions of the Digital Millennium Copyright Act. It's what you do afterwards that counts. If you do not use the copyrighted material in an act considered to be an infringement, you are not liable (<http://www.copyright.gov/1201/2010/>), although you may be in violation of other federal/state laws and university policy. Please note that one cannot break DRM to exercise Fair Use.

Open Access for Faculty, Staff and Students

It is necessary to establish an open access policy in order to promote the scholarly contributions of the University’s faculty, staff and students to the academy and the general public, while safeguarding copyright law compliance. Once an institutional repository is made available, the University requests that all authors deposit manuscripts accepted for publication in journal articles and electronic theses

and dissertations (ETDs) in its institutional repository available to the public. The University requests that faculty, staff, and students deposit monographs, book chapters, conference proceedings, working papers and research notes, non-textual works, such as datasets, audio or video recordings, and works of creative art or unrefereed materials, such as editorials or books for a popular audience. The University excludes classified research, patentable discoveries, and work rejected for publication.

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