

# **Model Guidelines for the Use of Copyright Protected Materials West Chester University**

**By**

**The Faculty Senate, Communications Committee  
Stephen Marvin, Chair, July 22, 2003**

*Adopted -2/5/04 by Senate; 4/30/04 by Provost*

*Amended -*

*Revised -10/29/03by APSCUF*

## **West Chester University Mission Statement**

*West Chester University, a member of the Pennsylvania State System of Higher Education, is a public, regional, comprehensive institution committed to providing access and offering high-quality undergraduate education, selected post-baccalaureate and graduate programs and a variety of educational and cultural resources for its students, alumni, and citizens of southeastern Pennsylvania. [from BUILDING ON EXCELLENCE, West Chester University Strategic Plan, 2013 through 2022]*

## **West Chester University Vision Statement**

*West Chester University is dedicated to academic excellence. University faculty and staff will create a dynamic and supportive learning environment that prepares students for successful and rewarding personal, professional and civic lives. Moreover, WCU is committed to partnering with other schools, government, businesses and nonprofits to enhance economic development and the quality of life for all. [from BUILDING ON EXCELLENCE, West Chester University Strategic Plan, 2013 through 2022]*

## **Relevant Sections from West Chester University's Values Statement**

...We treasure what we believe to be the highest principles of American society: the worth and uniqueness of each individual, the belief that success is to be earned by individual effort put forth in an environment founded on equality of opportunity, and the appreciation of the ideal of an inclusive society. We believe that it is incumbent upon all members of our community staff, students, faculty and administrators to conduct themselves with civility toward one another at all times. We value the special talents and contributions of each member of our community. We further affirm the worth and dignity of each member and the shared responsibility of all to treat each other as individuals, with respect and courtesy. ... West Chester University's community strongly supports the principles of academic integrity and academic responsibility, viewing both as the province of every member of the campus community. We hold the highest esteem for teaching directed toward student learning and affirm that mastery of content as well as mastery of teaching skills necessary to communicate such content are paramount.

This values statement is intended to be a living document which will serve West Chester University as it changes and evolves in the coming years.

## **Implementation of Copyright Use Guidelines at West Chester University**

Guidelines for copyright protection are in compliance with the **Digital Millennium Copyright Act of 1998** (<http://www.copyright.gov/legislation/dmca.pdf>) and

**Technology, Education and Copyright Harmonization (TEACH) Act** – Copyright Law and Distance Education: Overview of the TEACH Act, see pg. 2 with specific requirements to "government body or an accredited nonprofit educational institution."  
<http://copyright.columbia.edu/copyright/files/2010/08/teach-act-summary-by-kenneth-crews.pdf>

### **Requirements in order to use Digital Millennium Copyright Act (DCMA) Provisions:**

Service providers must have filed with the Copyright Office a designation of agent to receive notification of claimed infringement. They must also have made available online a copy of the updated service provider copyright policy. Relevant selection of interest for campus compliance from Storch, Joseph, Wachs, Heidi and Wada, Kent. (2011). DMCA FAQ: FAQ for DMCA Designated Agents at Higher Education Institutions. Educause. <http://www.educause.edu/focus-areas-and-initiatives/policy-and-security/educause-policy/issues-and-positions/intellectual-property/dmca-faq>.

### **SECTION 512 - 11. Are there different requirements for claims relating to student-owned computers (e.g., in residence halls) than for computers owned by the institution?**

Resources owned by an institution—such as faculty, staff, or computer lab computers—fall under 17 U.S.C. Section 512(c). This section provides a safe harbor for an ISP so that it is not liable for monetary damages for infringing materials on its servers provided it does not have “actual knowledge” of the infringing material, does not receive a direct financial benefit from the infringement, and, when notified, responds “expeditiously” to remove the infringing material or disable access to such material.

Most student and guest activity on university networks occurs through personally owned equipment and thus falls under 17 U.S.C. Section 512(a). This section provides immunity to the ISP for information that simply transits the ISP’s networks, with no direction, input, or interference from the ISP itself, and is not stored anywhere on the ISP’s network. Notably, no additional proactive steps are required for an ISP to avail itself of this immunity. However, for a variety of reasons, some institutions have made a policy decision to treat these notices as if they fall under Section 512(c), terminating users from the network unless and until the infringing content is removed. Often such activity is handled through a student affairs process, rather than as a legal or IT matter, so as to seize upon a “teachable moment” for students. And while there may be no legal requirements under this section of the DMCA, the HEOA requirements still apply.

According to the *U.S. Copyright Office Summary*, for the other two contexts--liability limitations for material residing on networks at the direction of users and for information location tools--the knowledge or awareness of the faculty member or student will not be attributed to the institution, provided the following conditions are met:

- The faculty member or graduate student's infringing activities do not involve providing access to course materials that were required or recommended during the past three years.
- The institution has not received more than two notifications over the past three years that the faculty member or graduate student was infringing.

The institution provides all of its users with informational materials describing and promoting compliance with copyright law.

Since the adoption of the Model Guidelines on Copyright, West Chester University has implemented recommendations from the Copyright Office to:

- **Ensure appropriate campus expertise and resources to deal with copyright issues.**

WCU has appointed a Campus Copyright Coordinator as part of the PASSHE system.

<https://secure.passhe.edu/asa/copyright/default.aspx>. Tools and clear presentations with links to each of the Campus Copyright Coordinators in addition to recent court cases, sample webinar presentations and other copyright resources. This site is secure access to only current validated members of the PASSHE system.

[WCU Copyright home page](http://www.wcupa.edu/_admin/provost/copyright/) - [http://www.wcupa.edu/\\_admin/provost/copyright/](http://www.wcupa.edu/_admin/provost/copyright/)

[WCU's Model Copyright Guidelines](http://www.wcupa.edu/_Admin/Provost/forms/Copyright_Guidelines.pdf) - [http://www.wcupa.edu/\\_Admin/Provost/forms/Copyright\\_Guidelines.pdf](http://www.wcupa.edu/_Admin/Provost/forms/Copyright_Guidelines.pdf)

- **Keep current with changes:** <http://ramble.wcupa.edu/copyright>

Fair Use evaluator - <http://www.librarycopyright.net/resources/fairuse>

Resource Guide on Copyright and Intellectual Property:  
<http://subjectguides.wcupa.edu/intellectualproperty>

[Student IP Guide](http://wcupa.edu/research/students.aspx) - <http://wcupa.edu/research/students.aspx>

- **Determine who will be the campus agent to receive notifications of copyright infringement from the Copyright Office.**

<http://www.copyright.gov/onlinesp/agents/w/wchstupa.pdf>

West Chester University has assigned a campus agent with the Copyright Office To notify claims of infringement - Frank J. Piscitello, Jr. Office of Information Security, 014 Allegheny Hall, West Chester, PA 19383 610-436-3192, fax 610-436-3110, [abuse@wcupa.edu](mailto:abuse@wcupa.edu).

Megan K. Kampf is the current West Chester University Legal Counsel on the campus of West Chester University. Contact: [MKampf@passhe.edu](mailto:MKampf@passhe.edu) – <http://www.passhe.edu/inside/legal/Pages/Counsel.aspx>

- **Develop or update campus policy and procedures on copyright**

[WCU Copyright home page](http://www.wcupa.edu/_admin/provost/copyright/) - [http://www.wcupa.edu/\\_admin/provost/copyright/](http://www.wcupa.edu/_admin/provost/copyright/)

[WCU's Model Copyright Guidelines](http://www.wcupa.edu/Admin/Provost/forms/Copyright_Guidelines.pdf) - [http://www.wcupa.edu/Admin/Provost/forms/Copyright\\_Guidelines.pdf](http://www.wcupa.edu/Admin/Provost/forms/Copyright_Guidelines.pdf)

- **Post the campus policy online**

[WCU Copyright home page](http://www.wcupa.edu/_admin/provost/copyright/) - [http://www.wcupa.edu/\\_admin/provost/copyright/](http://www.wcupa.edu/_admin/provost/copyright/)

[WCU's Model Copyright Guidelines](http://www.wcupa.edu/Admin/Provost/forms/Copyright_Guidelines.pdf) - [http://www.wcupa.edu/Admin/Provost/forms/Copyright\\_Guidelines.pdf](http://www.wcupa.edu/Admin/Provost/forms/Copyright_Guidelines.pdf)

- **Register the campus agent with the Copyright Office**

<http://www.copyright.gov/onlinesp/agents/w/wchstupa.pdf>

West Chester University has assigned a campus agent with the Copyright Office to notify claims of infringement - Frank J. Piscitello, Jr. Office of Information Security, 014 Allegheny Hall, West Chester, PA 19383 610-436-3192, fax 610-436-3110, [abuse@wcupa.edu](mailto:abuse@wcupa.edu).

- **Educate the community about the law and promote compliance**

Tools and presentations with links to each of the Campus Copyright Coordinators in addition to recent court cases, sample webinar presentations and other copyright resources are available from <https://secure.passhe.edu/asa/copyright/default.aspx>. This site is secure access to only current validated members of the PASSHE system.

WCU has appointed a Campus Copyright Coordinator as part of the PASSHE system.

[WCU Copyright home page](http://www.wcupa.edu/_admin/provost/copyright/) - [http://www.wcupa.edu/\\_admin/provost/copyright/](http://www.wcupa.edu/_admin/provost/copyright/)

[WCU's Model Copyright Guidelines](http://www.wcupa.edu/Admin/Provost/forms/Copyright_Guidelines.pdf) - [http://www.wcupa.edu/Admin/Provost/forms/Copyright\\_Guidelines.pdf](http://www.wcupa.edu/Admin/Provost/forms/Copyright_Guidelines.pdf)

WCU hosts a blog for updates on copyright information with links to the Model Copyright Guidelines and video tutorials. <http://ramble.wcupa.edu/copyright>.

Though every effort is being made to be thorough in the respective use of copyright protected works of all forms and genre's, technological measures are employed to safeguard intellectual property. There are regulations which may not be covered by these guidelines for circumventing technological protective measures, licensing restrictions agreed by West Chester University or PASSHE or other legislation. Public domain, open access and rights licensed under Creative Commons License are also not fully covered under these guidelines.

### **Requirements in order to use TEACH Act Provisions:**

TEACH Act is enacted as Section 110(2) of the U.S. Copyright Act (<http://www.copyright.gov/title17>)

- A. The institution's accreditation status must apply in order to use the TEACH Act provisions.
- B. There is a requirement qualifying institutions have copyright policies in place, provide information and education about copyright and provide notice materials may be protected by copyright.
- C. Application of reasonable technological measures preventing distance learners from retaining copyright materials beyond class applications and prevent unauthorized distribution is required.
- D. Performance and display of copyrighted materials has some requirements attached to it including:
  - Use must be a regular part of the class activities and directly related to class content.
  - Instructor is to be the one to make, direct or supervise the performance or display and the use must be technologically limited to only students enrolled in the class.
- E. Digital copies of analog works needed to perform and display works in a digital environment can only be kept by the institution and used only for authorized activities described in Section 110. Exclusions include: materials which are specifically developed and marketed for the distance learning market, illegal copies, materials usually purchased by students (i.e. coursepacks, textbooks...)

The duties and responsibilities placed upon institutions, IT officials, and instructors are described. For a more descriptive detail of duties and responsibilities, see Copyright Checklist: from Crews, Kenneth D. (2010). Compliance with the TEACH Act. Copyright Advisory Office, Columbia University Libraries, New York City, NY. <http://copyright.columbia.edu/copyright/files/2010/08/checklist-for-teach-act-and-distance-education.pdf>

**Disclaimer:**

These Model Copyright Governing Guidelines (Guidelines) are intended to assist campus departments in writing more specific guidelines related to the use of copyright protected materials.

These Guidelines serve as a starting point for the individual departments to customize their guidelines to meet their individual department needs.

This is not a definitive statement of all issues related to copyright.

Nor do these Guidelines intend to alter current intellectual property under collective bargaining agreements.

Nor are these Guidelines an attempt to address broader, global concerns to the risk of losing or submitting to controls of access, increased costs, licensing, limits in variety of sources from different media, etc.

These Guidelines set the minimum guidelines and the following goals:

- Guidelines serve established standards or practices for campus use.
- Guidelines for West Chester University are developed as such for broad assistance related to:
- Reasonable guidelines for access and use of materials
  - Educational guidelines for purpose of compliance, and
  - Informative guidelines for cooperation
- APSCUF retains the right of consultation to these Guidelines  
Administration retains the right of review to these Guidelines
- Furthermore, action will keep current through:
    - Review of the legal literature
    - Review of other SSHE guidelines, if available
    - Review APSCUF CBA manual section 39

Information has been retrieved from materials on copyright including: the University of Texas Copyright Crash Course (2007) by Georgia Harper <http://copyright.lib.utexas.edu/l-intro.html> and the Copyright Checklist of the University of Rochester (<http://www.library.rochester.edu/copyright/checklist>). In addition to these sources, professional literature, legal resources from statutes, acts and cases should be monitored regularly to identify new trends in the area of copyright. As of March 2015, The Pennsylvania State System of Higher Education (PASSHE) maintains a wealth of resource on their secure server. To access, you will need to have a current valid ID and PW - <https://secure.passhe.edu/asa/copyright/default.aspx>. There are links to documents for copyright education, TEACH Act checklist and FAQ's, sample copyright permission letters and how to investigate the status of a work (<http://www.copyright.gov/circs/circ22.pdf>).

A time limit should be in place to consider the use of materials in a fair manner. Excessive use of materials beyond an established set practice can not be accepted as a fair use and permission must be obtained.

### **Definitions:**

#### **Affiliated organizations:**

Those organizations integrally connected with West Chester University, such as the Student Services, Student Organizations, Boards, Commissions, Committees, Foundations, Institutes, Associations including the Alumni Association, Friends Groups and other recognized organizations and programs as defined by the University.

#### **Author**

As defined in federal copyright law, a copyrighted work is an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship (including some computer programs) include the following categories: literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works (photographs, prints, diagrams, models, and technical drawings); motion pictures and other audiovisual works; sound recordings; and architectural works.

Copyright protection does not "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." See 17 U.S.C. §102.

**Copyright** – an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship (including some computer programs) include the following categories: literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works (photographs, prints, diagrams, models, and technical drawings); motion pictures and other audiovisual works; sound recordings; and architectural works.

Copyright protection does not "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." See 17 U.S.C. §102.

It is no longer required to make any special claim or file in the Copyright Office for a copyright to be valid. [Note: A work written by a student for a class has copy protection and should not be used beyond the fair use guidelines. Nor if available freely from the Internet, e.g. the concept of public domain, an accurate determination of the protection provided by copyright.]

**Department:** Any unit of the University.

### **Digital Millennium Copyright Act (DCMA)**

Act passed in 1998 setting limitations on infringement liability for "service providers," and prohibitions on circumvention of technological protection measures (TPMs). Several issues related to this were reviewed and revised in the TEACH Act of 2002. Both require specific actions and development of institutional copyright guidelines.

**Employees/staff:** Anyone on the University payroll.

### **Faculty/faculty member:**

Group of people or person who teaches a class or perform non-classroom instructional, support or information services and use movies, filmstrips, videos, computers, and related technologies.

**Fair Use** – a reasonable and limited use of a copyrighted work without the author's permission, such as quoting from a book in a book review or using parts of it in a parody. Fair use is a defense to an infringement claim, depending on the following statutory factors [P.A.N.E.]:

- the Purpose and character of the use,
- the Amount of the work used, and
- the Nature of the copyrighted work,
- the Effect on economic impact of the use. 17 USCA 107

**Permission** - a documented approval for the proposed and actual use made by a copyright protected item.

**Public performances:**

Any performance or display at a place open to the public, as well as those campus groups and organization which might make use of copyrighted materials, e.g., use of video tapes by groups in dormitories, radio broadcast, theatrical, lecture, webinars or other video or audio productions.

**Service Provider** is defined as "a provider of online services or network access, or the operator of facilities therefor." To be eligible for any of the limitations, service providers must also (1) adopt a policy of terminating the accounts of repeat infringers, and (2) accommodate and not interfere with "standard technical measures" (defined as standardized measures used by copyright owners to identify or protect copyrighted works).

**TEACH Act** - revised and permits performance and display of almost all types of works with some exceptions.

Distance learners may be reached at any site by accredited nonprofit institutions as stated in the language that the benefits apply only to a "government body or an accredited nonprofit educational institution."

Digitization of analog works in order to facilitate digital transmission is permissible for some digital works IF the work is not available already in digital format and as long as it is free from TPM (technological protection measures) prohibiting Section 110 applications.

TEACH allows retention of content and student access for a time and allows for the copying and storage needed for technical maintenance for digital transmissions systems.

(Note: Under review for ADA compliance of copying complete texts of books)

TEACH clarifies that participants in authorized distance learning situations and programs are not liable for infringement for any transitory or temporary reproductions that happen in the automatic technical processes of digital transmission.

**University community:**

All full-time and part-time University employees, including faculty, students, and staff, as well as the employees and members of affiliated organizations of the University.

**Unusual University resources** - are resources such as financial, technical, personnel, or other forms of support beyond the type or level of resources commonly provided to similarly situated faculty. Unusual University resources may include, for example, an extraordinary quantity or quality of media development, significant research assistance, or access to or use of other special, limited University facilities or resources.

**Objectives of the Guidelines:****A. Approval Procedure**

Faculty members, instructors or other authorized personnel should carefully review any copyrighted material to be used and determine whether they need to seek permission from the copyright owner. Unless some other exception under the copyright law clearly applies, this determination involves carefully considering the four fair use factors for each copyrighted work.

**B. Documentation Requirements**



Any fair use determination must be documented by completing and signing a Fair Use Analysis Worksheet developed by the American Library Association’s Office of Information Technology and Policy, <http://www.librarycopyright.net/resources/fairuse> (see also the Fair Use Analysis Worksheet from <https://www.lib.umn.edu/copyright/usemap> under creative commons license with much appreciation to the Libraries of the University of Minnesota) a copy of which should be kept with the course material or other relevant file.

West Chester University acknowledges and encourages the appropriate use (i.e., reproduction, distribution, performance, and display) of copyrighted works and materials for teaching, scholarship, and research purposes consistent with federal copyright law and the standards for fair use. Reliance upon the fair use exception should be limited to those cases that clearly meet the fair use balancing test in favor of the intended use, and are carefully documented to support that conclusion. Furthermore, materials used under fair use should never exceed two years. Beyond this time period, permission should be sought for continued use.

Materials to which West Chester University claims ownership, should also adhere and be compliant with federal copyright law and the standards for fair use. Materials, not otherwise covered by collective bargaining agreements under intellectual property rights or licensing, such as those produced by students, faculty or staff, productions made whether by means of musical performance, theatrical, exhibition, broadcast or widely disseminated by any other means, should be considered, weighed, and balanced when making a determination of fair use. A balanced interpretation of Fair Use is available from the referenced web sites, specifically, <http://www.copyright.gov/help/faq/faq-fairuse.html>. An additional factor to include, that has not been clearly addressed, is placing a limitation on time for the use. The maximum time recommended is two years and conforming to fair use.

**C. Seeking Permission(s) – Ownership Principle**

Beyond the recommended two years and conforming to fair use, faculty, staff and students should obtain permission for continual use of a copyright protected work. These four factors appear below in a format to assist in making this determination. In all cases, considerations on the left side tend to favor fair use while considerations on the right side tip the balance in favor of seeking permission. All four factors must be taken into account before reaching a conclusion. Please note these considerations can be interpreted in your favor or not in your favor.

**The Four Factors**

***1. The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes.***

Nonprofit Teaching Scholarship/Research Criticism Commentary		Clinical/Health care Parody Personal		Commercial
--	--	--	--	------------

Uses on the left tend to tip the balance in favor of fair use. Commercial use tends to tip the balance in favor of seeking permission from the copyright holder. The uses in the middle, if they apply, are favorable to fair use: they add weight to the tipping force of uses on the left.

**2. *The nature of the copyrighted work.***

Factual	A mixture of factual and imaginative	Imaginative Consumable materials (e.g., workbooks, answer sheets)
---------	--------------------------------------	--

Again, uses on the left tend to tip the balance in favor of fair use while uses on the right favor seeking permission. In this case, uses in the middle have little effect on the balance.

**3. *The amount and substantiality of the portion used in relation to the copyrighted work as a whole.***

Small amount relative to the entire work. Examples might include one chapter of a book or the lesser of either 10% or 30 seconds of audio.	Using only ‘a reasonable amount’, chunks from a music or video work.	More than a small amount or the "heart" of the work. Examples might include an entire poem, essay, journal article, or song.
--	--	--

The amount of material should be measured both quantitatively and qualitatively. Quantity should be evaluated relative to the length of the entire work and the amount needed. The reproduction of an entire work weighs against fair use. A reproduction that is relatively small, but still uses the “heart” of the work will weigh against fair use. Evaluating the "heart" of a work can be difficult. If in doubt, seek copyright permission.

**4. *The effect of the use upon the potential market for or value of the copyrighted work***

Original is out of print or not available and reasonable attempts have been made to obtain a copy or permission to copy.	There is a market for permission fees.	Use substitutes for purchase of the original work.  Item has been used in this course before.
--	--	---

Reproduction that substitutes for purchase of the original weighs heavily against fair use. This factor is closely linked to the other factors. If a use is tipping the balance in favor of fair use after the first three factors are evaluated, lost permission fees need not be considered. However, if after the first three factors, the balance is tipping toward seeking permission, *potential* lost permission fees must be taken into account in determining market impact.

Even after fair use has been determined and documented, there are other guidelines which should be followed whenever feasible, including the following:

-The number of copies should be limited to the number of students in the class or, in an electronic environment, passwords or some other authentication method to insure should be used to insure that only students enrolled in that class have access to the copyrighted material;

-Web pages that contain copyrighted material for classroom use should be deactivated or made inaccessible when the class is over or the material no longer needed;

-Duplicated, distributed, or displayed material should always include available bibliographic and copyright information;

-Students should not be charged more than the actual cost of copying, producing, or other wise making the material available;

-Faculty should generally obtain permission for materials that they use repeatedly for the same class.

If it is determined that neither fair use nor any other copyright exception applies, permission must be sought from the copyright owner for each specific use (unless a blanket permission has been secured).

The University's exclusive seller of textbooks, coursepacks and other course material can assist in obtaining copyright clearance. Persons wishing to procure their own permissions may also apply directly to the copyright owner. Complete and accurate information will facilitate any request and should include the owner of the copyright (consult the copyright page and/or the acknowledgment page), the address of the publisher or author, a complete bibliographic citation of the material to be used (including title, author and/or editor, copyright or publication date, volume and/or issue and/or edition of the publication, chapter or article title, and the exact page numbers of the material to be used), the number of copies to be made, and the exact nature and purpose of the intended use.

## **1. University Community Interests**

Even though individual faculty own the works, the University community as a whole has interests in being able to use such works for educational and administrative purposes, consistent with the University's educational mission and academic norms. Faculty members should keep these purposes in mind in creating and disseminating instructional materials and scholarly works.

The University shall be permitted to use materials created for ordinary teaching use in the classroom and in department programs (such as syllabi, assignments, and tests) for administrative purposes, including satisfying requests of accreditation agencies for faculty-authored syllabi and course descriptions.

Faculty members are encouraged to share their instructional materials and courseware with their University colleagues for internal instructional, educational, and administrative purposes. When publishing scholarly works, faculty creators are encouraged to provide rights for use for the University community.

The University also has an interest in ensuring that works created by its own faculty are not used to compete with or undermine the University's educational mission or activities. Consistent with conflict of interest and commitment principles, faculty with full-time appointments at the

University should not use (or permit others to use) their works (e.g. grant proposals, in progress committee work of a sensitive personnel nature, project in early development draft stages) in ways competing with the University's courses, or its educational programs or activities-unless prior written permission is obtained from the appropriate dean, unit director, or executive officer, or their designee(s). This provision applies to works developed for compensation at other educational institutions, including for-profit and online institutions. It does not apply to works created in conjunction with professional activities in conformance with University norms such as, but not limited to: sharing syllabi or other course materials with colleagues at other non-profit educational institutions; ordinary outside consulting; participation in professional or scholarly organizations; scholarly presentations and publications; pursuit of future employment opportunities; and public service.

## **2. Staff Works**

Although the University owns works created by staff within the scope of their employment duties or with unusual University resources, the University does not claim ownership of works created by staff members at their own initiative, outside the scope of their employment, and without unusual University resources (e.g., scholarly or artistic works).

## **3. University Works**

Article 39, pg. 108 of the Agreement between the Association of Pennsylvania State College and University Faculty (APSCUF) and State System of Higher Education (SSHE) current revision July 1, 2011 to June 30, 2015 contains specific language pertaining to intellectual property rights and ownership principles. Consistent with its legal and fiduciary responsibilities, the University owns particular works that are:

a. Created in whole or in part by faculty members, when creation of those works is dependent upon the provision of unusual University resources as specially authorized by University administrators such as deans, department chairs, unit directors, or their designees. "Unusual University resources" are resources such as financial, technical, personnel, or other forms of support beyond the type or level of resources commonly provided to similarly situated faculty. Unusual University resources may include, for example, an extraordinary quantity or quality of media development, significant research assistance, or access to or use of other special, limited University facilities or resources.

Pursuant to agreements with the creators, the University may decide to forego or modify its rights to such works.

b. Created as a specific requirement of employment or pursuant to an assigned institutional duty that may, for example, be included in a written job description or an employment agreement so as to qualify as works made for hire. Such works may include those whose creation is instigated or facilitated by a unit of the University for the express purpose of making such works available to individuals or entities other than, or in addition to, the creator(s) for use in teaching, research, patient care, public information, or other University activities.

The University does not, however, claim ownership of faculty-created instructional materials or courseware merely because it requires faculty members to teach courses as part of their regular responsibilities. The University may claim ownership of certain instructional materials or courseware, including online course materials, when the University has specifically requested

such materials and either invested unusual University resources in them as described in (a) above, or specifically compensated faculty-creators (e.g., with additional financial compensation, release time, etc.) for the development of the materials.

Similarly, the University does not claim ownership of faculty-initiated scholarly works based merely on general expectations that faculty members will publish such works.

c. Created in the course of an administrative assignment (e.g., a report for a university committee).

d. Created as part of sponsored projects, pursuant to the terms of the governing contracts. The University retains the rights to commercialize such works, as well as all other rights under copyright law.

#### **4. Faculty and Staff Interests**

Even though the University owns the works, individual faculty and staff may have interests in using them or receiving credit for their participation in such works, particularly works which they created or to which they contributed.

Faculty creators of University-owned instructional materials who are still employed by the University have the right of "first refusal" in making new versions. The creators of University-owned instructional materials who have left the University have the right to be consulted in good faith on reuse and revisions (e.g., for online instructional materials or courseware). In order to protect academic integrity, the creators may request that such works be withdrawn from use in University activities if they become obsolete or are otherwise deemed inappropriate for further educational use. Creators also have the right to have their names removed from such works if they so desire.

In accordance with academic tradition and any applicable legal considerations, the University will acknowledge creators and developers (including faculty, staff, and students) who have made a substantial contribution to University-owned works-unless those individuals request otherwise. For example, the members of a University committee would ordinarily be acknowledged in a committee report.

Creators and developers of University-owned works shall not undermine the University's efforts to commercialize those works.

Creators and developers of University-owned works may, however, share in the revenues in appropriate circumstances pursuant to written agreements with the University.

#### **5. Student Works**

Students who create academic works while at the University (e.g., dissertations, theses, student projects) own the copyright to such works, unless: (1) the works qualify as works made for hire in the course of employment at the University; or (2) a written transfer of copyright is obtained.

Students are frequently involved in the creation of works in consultation with, or under the supervision of, University faculty and staff. Such works may be related to coursework, research, extracurricular activities, or other University projects. In some circumstances, it is difficult to determine whether and to what extent students are acting as agents or employees of the institution. Accordingly, written agreements with students regarding copyright should be

executed whenever the University or its representatives have any doubt about copyright ownership of student-created works in which the University believes it has ownership or other interests.

## **6. Collaborative Works**

Works created collaboratively by students, staff, faculty, and/or others present special challenges with regard to copyright. Such works may be owned in whole or in part by the University if they fall within one of the categories described above. When works are created collaboratively with other entities or institutions, the University's interests and rights in such works shall be recognized and protected as consistent with this policy. If the parties intend for a work to be jointly owned for purposes of copyright, such an intent should be set forth clearly in writing and signed at the beginning stages of such a project.

Even if ownership is held by a single entity (such as the University), the rights to use such works can often be divided and shared so as to meet the needs of each party. For example, multiple parties may have non-exclusive rights to copy, display, or distribute a particular work.

In the case of some collaborative works, especially those involving members of different categories within the University community (e.g., faculty and students; staff and students), the parties involved may decide to assign copyright to the University in order to coordinate distribution, use, and (when appropriate) revenue sharing.

## **7. Sponsored Works**

Works created in the course of sponsored projects are governed by the terms of the sponsor agreements, when applicable. All agreements should be in writing and signed.

## **8. Works by Non-Employees/Contractors**

Generally, the University requires copyright as well as physical ownership of works prepared expressly for the University by non-employees, such as consultants or contractors retained by the University, or students who are compensated for such work. In order to claim copyright ownership, a written agreement should be executed in which the non-employee and the University both acknowledge University copyright ownership. All agreements should be in writing and signed.

## **9. Use of the University's Name, Seal, or Marks**

Use of the University's name, seal, or marks in connection with works, other than by way of identification of the creators as faculty members, researchers, other employees or students at the University, is itself use of a significant University resource, thus triggering an interest on the part of the University. Additionally, use of the University's name, seal, or marks can affect the reputation and academic standing of the institution. Faculty members, researchers, other employees, and students (as well as their respective departments and schools) may not participate in the creation or use of works that might give the impression of University sponsorship when there is none. Any use of the University name, seal, or marks (other than to identify creators by their titles or affiliations with the University) in connection with works created by faculty

members, researchers, other employees, or students must be approved in advance by the University in accordance with University policies. Similarly, the University must approve in advance the use of its name, seal, or marks in connection with any works created under collaborative agreements with outside entities (other than to identify creators by their titles or affiliations with the University).

## **E. Administration and Implementation**

Copyright to all University-owned works shall be held (and registered, when appropriate) in the name of the State System of Higher Education or of West Chester University.

Within the University, the individual departments, schools, or units in which works are created will ordinarily have primary responsibilities for the administration of copyright rights and permissions. Any commercial sale or licensing of University-owned, copyrightable works shall follow normal University procedures.

Copyrights may also be held separately by entities that are affiliated with the University, but legally independent or autonomous.

## **F. Policy Interpretation and Dispute Resolution**

This copyright policy and its implementation may require interpretation and review. Every attempt should be made to resolve disputes informally, with the assistance of one or more of the support services provided by the University as discussed below.

Policy Information: Compliance, questions and resolution of challenges to use of copyright material by members of the university will be reviewed by the following appropriate personnel resources: the Office of the Provost or Office of Administrative and Fiscal Affairs (for policy clarification), APSCUF (for general information) the Office of Internal Review (for legal clarification), and the Office of Sponsored Research & Faculty Development (for matters regarding patents and intellectual property). Departments on campus may create and display their own 'rules of thumb', tips or other information addressing Copyright (e.g. see <http://www.wcupa.edu/infoservices/clientServices/documents/FacultyTechQuickRef.pdf>) or from the West Chester University web site, <http://www.wcupa.edu/admin/provost/copyright>. Other recommended sources for academic copyright include:

**Copyright and Fair Use from Stanford University** - <http://fairuse.stanford.edu>

**The Center for Internet and Society Fair Use Project** - <http://fairuse.stanford.edu/#sthash.LlnkBg5P.dpuf>

Sider, Laura (2009) **Copyright Guidance and License** - <http://www.library.yale.edu/copyright>.

Informal Resolution: If an issue arises with regard to the interpretation of this policy and cannot be resolved by the parties themselves, one or more of the parties may go to the appropriate supervisor, department chair or unit head (or his or her designee(s)). If the matter cannot be resolved at the departmental or unit level, or if the parties involved are from different departments or units, it may be necessary to bring the matter to the attention of a dean or

director. At any time during this process, informal consultation regarding interpretation of this policy is available from the offices listed above under "Policy Information."

Formal Resolution: If informal procedures and consultation do not provide resolution of a dispute or policy issue, it may be necessary to resort to formal procedures for policy interpretation and dispute resolution. Any member of the University community may file a request for formal dispute resolution or policy interpretation with the Offices of the Provost. The Provost will appoint an ad hoc committee and designate a chair. The committee will consist of a combination of administrators, faculty, staff and/or students as appropriate given the nature of the complaint and the respective roles of the parties involved. Members of the committee will be selected from a pool of candidates nominated by the Senate Advisory Committee and by other appropriate governing and administrative bodies. The decisions of the committee may be appealed to the President (or his or her designee). The decisions of the President (or designee) shall be final.