

## **Marshall University Information Technology Council**

### **Administrative Procedure ITP-1**

#### **MARSHALL UNIVERSITY COPYRIGHT PROCEDURE**

##### **1. General information:**

- 1.1. Scope: This procedure applies to all Marshall University faculty, staff, and students as designated and defined throughout the procedure and includes all Marshall University campuses.
- 1.2. Authority: Marshall University Information Technology Council
- 1.3. Passage Date: April 18, 2014
- 1.4. Effective Date: April 18, 2014
- 1.5. Controlling over: Marshall University
- 1.6. History: This policy replaces Marshall University Comprehensive Copyright Procedure ITP-1 (effective 11/24/2003)
- 1.7. Background: The Comprehensive Copyright Procedure of Marshall University seeks to:
  - 1.7.1. Provide guidance to faculty, staff, and students of Marshall University and its campuses, concerning the proper use of copyrighted material under the federal Copyright Act;
  - 1.7.2. Ensure that any copyrighted material in which Marshall University has an equity interest is utilized in a manner consistent with the public interest;
  - 1.7.3. Balance fairly and reasonably the rights of authors, composers, sponsors, and Marshall University;
  - 1.7.4. Protect and promote the traditional academic freedom of Marshall University's faculty, staff and students in matters of publication.

##### **2. Definitions:**

- 2.1. Author – as used in this Procedure, a person who creates copyrighted material in any form.
- 2.2. Copyright – the exclusive right to reproduce, distribute to the public (by sale, rental, or other method), perform, publicly display, revise, or prepare a derivative work from a product for artistic or intellectual effort, or to authorize another to perform any of these

actions; also, the procedure by which one legally secures this right. Copyright exists from the time of creation and the length of time of protection depends on the nature of the work and when it was copyrighted. Certain actions can assist in enforcing protection of the rights of the copyrighted work. Such actions include placing an adequate copyright notice on the work, and registering copyright with the U.S. Copyright Office.

- 2.3. Copyright Notice– an appropriate copyright notice includes the word, *Copyright*, or the symbol©, along with the year of creation and the name of the copyright owner. For copyright works owned by the University under this procedure, an appropriate copyright notice example is: © 2014 Marshall University.
- 2.4. Copyright License– written permission for use of copyrighted material, usually limited to a particular period of time and a specified type of use.
- 2.5. Copyrighted Material – may include any tangible work that is eligible for copyright under U.S. copyright law including (but not limited to) written works, lectures and other works prepared for oral and online delivery; musical and dramatic works; motion pictures, webpages, photographs, drawings, and other pictorial representations; sound recordings; computer programs, instructions, and other software. Copyright protection does not extend to ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries, even if presented in a copyrighted form.
- 2.6. Fair Use – a use of copyrighted material, for purposes of criticism, comment, news reporting, teaching, scholarship, or research that is not an infringement of copyrights. Demonstration of such a purpose is not, by itself, sufficient to sustain a claim that the use is fair. The four fair use factors must be reviewed to determine if the faculty, student, or staff member is in compliance with the spirit of the law.
  - 2.6.1. What is the purpose of the use?
  - 2.6.2. What is the nature of the work to be used?
  - 2.6.3. What amount of the work will be used?
  - 2.6.4. What effect will use have on the market for this work?
- 2.7. Infringement – exercise by another of any of the exclusive rights of a copyright owner except as explicitly authorized by law or the copyright owner or as encompassed by the concept of fair use. Federal law provides both civil and criminal penalties for infringement of copyright.
- 2.8. Marshall University Resources – Marshall University-controlled funds, staff, equipment, and facilities including those of technical production units such as academic computing, photographic services, recording services and radio and television services.
- 2.9. Marshall University Employee – any person hired as an employee of Marshall University either full or part time. In addition, a student is a Marshall University Employee for purposes of this Copyright Procedure if the student receives support in the

form of wages, salaries, tuition waivers, stipend or grant from funds administered by Marshall University.

- 2.10. Public Domain – describes very few items that exist outside copyright protection; a work is said to be in the public domain if it is available for use by anyone at any time without explicit authorization (e.g., government publications). (Note: Works posted on the Internet enjoy copyright protection and are not necessarily in the public domain. Unless the author of a work clearly relinquishes copyright protection, a user must seek the author’s permission before copying, distributing or publishing.)
- 2.11. Publication – the public distribution of copies of a work (including the original) by sale or other transfer of ownership or by rental, lease, or lending; although public performance or display of a work does not itself constitute publication, the offer to distribute copies to a group of people for purposes of further distribution, public performance, or public display does constitute publication.
- 2.12. Royalty – a payment made to an author or the owner of a copyright, usually based on numbers of copies sold, in return for the right to distribute a work.
- 2.13. Work-for-Hire – a work prepared by a University employee within the scope of his or her employment; or, a specially ordered or commissioned work that is expressly agreed by the parties concerned to be a work for hire.

### **3. Procedure:**

- 3.1. Use of Copyrighted Works - It is the procedure of Marshall University to follow the United States Copyright Law of 1976, as amended, (Title 17, United States code, hereinafter, the Copyright Act). Accordingly, all faculty, staff and students of Marshall University should follow these Procedure guidelines.
- 3.2. Only copyrighted materials are subject to the restrictions in this procedure. Uncopyrighted materials may be copied freely and without restriction; however, most works (except those authored by the United States Government) should be presumed to be copyright protected.
- 3.3. Copyrighted software may be copied without the copyright owner’s permission only in accordance with the Copyright Act. Section 117 of the Act permits making an archival back-up copy.
- 3.4. Copyrighted materials may be copied or otherwise used without the copyright owner’s permission, within reasonable bounds and for educational purposes only, where such copying constitutes “fair use” under the Copyright Act and/or complies with The Technology, Education, and Copyright Harmonization Act (TEACH Act) provisions for use of digital works in an online or distance learning environment.

3.5. Marshall University academic units and administrative offices are responsible for posting notices reflecting this procedure at all computer and photocopying stations which may be used for reproducing copyrighted materials, e.g., departmental copy rooms and libraries, and at or near all computer stations.

#### **4. Copyrighted Material:**

- 4.1. The ownership of copyrighted material authored by Marshall University faculty and staff is determined according to the following provisions.
- 4.2. If the copyrighted material is prepared pursuant to a contractual or partnership arrangement between Marshall University and a third party (e.g., a Federal agency, a publisher or another university), ownership is governed by the provisions of that arrangement.
- 4.3. If the copyrighted material is prepared within the scope of normal employment duties or as a result of a special project funded by Marshall University, the copyrighted material is a work for hire and shall be the property of Marshall University.
- 4.4. The faculty or staff member is the author and owner of the rights to a work created outside the scope, time, and place of employment and on his or her own initiative.
- 4.5. In cases where the University retains copyright ownership under this procedure, it may transfer such ownership to the work's creator(s) by written agreement signed by the Vice President for Research.
- 4.6. This procedure does not preclude Marshall University's assignment of complete or partial ownership rights in copyrighted material to the employee-author (i.e., the granting of a copyright transfer or license).
- 4.7. Copyrighted material, generated by research which is performed, in whole or in part, by ~~the~~ a student with financial support in the form of wages, salaries, stipend, tuition waiver, or grant from funds administered by Marshall University, is the property of the University unless it is determined otherwise in the terms of the support agreement.

#### **5. Use and Sale of Copyrighted Material:**

5.1. Developers should consult MUBOG GA-4 Intellectual Property Policy.

#### **6. TEACH Act Requirements:**

6.1. Compliance with TEACH Act Provisions for use of copyrighted works in digital formats transmitted within a digital medium through Marshall University or learning/course management systems is required by all employees.

- 6.2. The four fair use factors must be used to determine if content distributed in digital format on Marshall University-owner networks and platforms is in compliance with TEACH Act provisions.
- 6.3. The material must be provided at the direction of or under the supervision of an instructor and must be an integral part of the course curriculum (i.e., not merely entertainment or unrelated background material).
- 6.4. Faculty must provide notice to students that materials distributed in the course may be subject to copyright protection.
- 6.5. Technological measures must be employed so that:
  - 6.5.1. To the extent technologically feasible, the transmission of material is limited to students currently enrolled in the course through password-restricted access or other similar measures.
  - 6.5.2. The material is available to students for a limited duration no longer than the established term dates i.e., the period during which a student is logged on to the server. Students may not be permitted to retain a permanent copy of the material for further dissemination or retain access to the content within the learning management system beyond the term dates.
- 6.6. Institutional Requirements
  - 6.6.1. The university ensures compliance to technological requirements described in the TEACH Act to secure copyrighted content;
  - 6.6.2. The university provides policies and procedures regarding copyright;
  - 6.6.3. The university provides information to faculty, staff, and students that accurately describes and promotes compliance with copyright law;
  - 6.6.4. Information about copyright best practices for faculty, students, and staff is provided through live and online workshops and university copyright education webpages (<http://www.marshall.edu/it/copyright-education/>).
  - 6.6.5. The university provides copyright training for designated employees to serve as a resource for other employees who have questions regarding their fair use interpretation.
- 6.7. Exclusions
  - 6.7.1. The TEACH Act excludes the use of works specifically created for use as distance learning products;

6.7.2. The TEACH Act excludes the use of works that you know or have reason to believe are pirated i.e. not lawfully made.

6.7.3. The TEACH Act excludes the conversion of print or other analog versions of works into digital formats unless no digital version of the work is available.

## **7. Conclusion:**

7.1. All Marshall University employees are expected to comply with university procedures regarding copyright.

7.2. When the four fair use factors are applied and ambiguity still persists, employees are encouraged to seek assistance from designated members of the staff.

7.3. When details of a specific situation fall outside of conventional copyright best practices, the designated staff will consult the university's Office of General Counsel on behalf of the employee.

## APPENDIX

### A. Fair Use Guidelines

NOTE: These are guidelines only and do not necessarily apply to all situations. Specific fair use questions should be directed to the University's Office of General Counsel in order to avoid personal or institutional liability for a Copyright violation. These guidelines are based on U.S. Copyright law and may not be applicable to the laws of other countries.

The four fair use factors can be found in Section 107 of the Copyright Act. An individual who is in the process of determining if his/her use of a copyrighted work is within fair use parameters should meet the conditions of all four factors prior to use. The following was prepared by the Copyright Clearance Center (CCC) and is adapted for this appendix with permission.

Before you begin, determine if the content being used is for criticism, comment, news reporting, education, scholarship or research:

1. If the answer is no, obtain copyright permission to use the content.
2. If the answer is yes, review the four fair use factors.

### B. Four Fair Use Factors

#### 1. The purpose and character of the use (including commercial or nonprofit educational purposes).

*Generally, the typical faculty or student purpose for using a copyrighted work is to support the educational activity in a classroom environment. The court cases in which these actions have been challenged do favor educators—especially within a public institutional setting like Marshall University. Commercial use is almost always excluded from factor one; however, there have been situations in which educational use has been challenged AND commercial use has been permissible. The facts of any situation must always be provided when considering fair use to ensure that you are operating within the spirit of compliance to copyright law.*

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

*When considering the nature of the work in question, utilize the fair use checklist to determine if your use is acceptable. In a typical university environment, the resources selected by an instructor for classroom use punctuate the activities and lessons presented. As a result, factor two overwhelmingly favors non-profit educators and libraries. Unpublished works or fictional or imaginative works fall under more stringent copyright parameters as this content tends to be of a creative or inventive nature. Classroom tools and reference works such as dictionaries, encyclopedias, atlases, workbooks, lab manuals, or research reports are of a more factual nature and designed for an educational support purpose. Classroom or campus use of these kinds of sources falls under fair use.*

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

*The decisions rendered thus far in Cambridge U. Press v. Becker, 2008, concentrate on a factor analysis framework that provides the higher education community with a rudimentary method of assessing the amount one may use under the third factor. Compare your use of a portion of a copyrighted work to the work in its entirety. If your use exceeds 10%, the use may not fall under fair use.*

*While the “10% or less” rule is not definitive, it serves as a guideline for faculty to review portions used for educational purposes. If a book has ten chapters or more, a faculty member may be permitted to provide students with an entire chapter providing this chapter is not the crux of the work. Additionally, homemade course packs or deliberate attempts to circumvent the textbook industry standard for your discipline does not fall within the 10% rule. Additional license agreements and established markets for course supplements may apply to these situations.*

**4. The effect of the use on the potential market for or value of the copyright-protected work.**

*Since the publishing industry does have established markets in place to provide the higher education community with course supplement materials, e-packs, and/or subscriptions to aggregated publisher content, a faculty member must review his/her use of a copyrighted work to ensure that his/her actions are not having a negative impact on the content creator’s ability to reap monetary benefit from his/her original work. Working with the library personnel on campus and/or reviewing the “shrink-wrapped” license agreements that usually accompany a textbook, supplement, manual, test bank, or online module will help you avoid an infringement.*

**C. Fair Use Checklist**

Marshall University employees are encouraged to use a copyright checklist when assessing fair use. A fair use checklist will help you establish the circumstances that pertain directly to the use of a particular work. An assessment of fair use will rely on the facts gathered and serve as a paper trail that could help determine you acted in good faith in the event of a copyright challenge. The following is used under a creative commons license (<http://creativecommons.org/licenses/>) with credit to the original creators of the checklist, Kenneth D. Crews (Columbia University) and Dwayne K. Butler (University of Louisville).

Compile and keep the following with the online or print records relating to the project in question:

<p><b>Name:</b> <b>Institution:</b> <b>Project:</b> <b>Date:</b></p>
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**Prepared by:**

**PURPOSE**

<b>Favoring Fair Use</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Teaching (including multiple copies for classroom use)</li><li><input type="checkbox"/> Research</li><li><input type="checkbox"/> Scholarship</li><li><input type="checkbox"/> Nonprofit educational institution</li><li><input type="checkbox"/> Criticism</li><li><input type="checkbox"/> Comment</li><li><input type="checkbox"/> News Reporting</li><li><input type="checkbox"/> Transformative of productive use (changes the work for new utility)</li><li><input type="checkbox"/> Restricted access (to students or other appropriate group)</li><li><input type="checkbox"/> Parody</li></ul>	<b>Opposing Fair Use</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Commercial activity</li><li><input type="checkbox"/> Profiting from the use</li><li><input type="checkbox"/> Entertainment</li><li><input type="checkbox"/> Bad-faith behavior</li><li><input type="checkbox"/> Denying credit to original author</li></ul>
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**NATURE**

<b>Favoring Fair Use</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Published work</li><li><input type="checkbox"/> Factual or nonfiction based</li><li><input type="checkbox"/> Important to favored educational objectives</li></ul>	<b>Opposing Fair Use</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Unpublished work</li><li><input type="checkbox"/> Highly creative work (art, music, novels, films, plays)</li><li><input type="checkbox"/> Fiction</li></ul>
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**AMOUNT**

<b>Favoring Fair Use</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Small quantity</li><li><input type="checkbox"/> Portion used is not central or significant to entire work</li><li><input type="checkbox"/> Amount is appropriate for favored educational purpose</li></ul>	<b>Opposing Fair Use</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Large portion or whole work is used</li><li><input type="checkbox"/> Portion used is central to or is the “heart of the work.”</li></ul>
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**EFFECT**

<b>Favoring Fair Use</b> <ul style="list-style-type: none"><li><input type="checkbox"/> User owns lawfully purchased or acquired copy of original work</li><li><input type="checkbox"/> One or few copies made</li></ul>	<b>Opposing Fair Use</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Could replace sale of copyrighted work</li><li><input type="checkbox"/> Significantly impairs market or potential market for copyrighted work or derivative</li></ul>
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<input type="checkbox"/> No significant effect on the market or potential market for copyrighted work <input type="checkbox"/> No similar product marketed by the copyright holder <input type="checkbox"/> Lack of licensing mechanism	<input type="checkbox"/> Reasonably available licensing mechanism for use of the copyrighted work <input type="checkbox"/> Affordable permission available for using work <input type="checkbox"/> Numerous copies made <input type="checkbox"/> User has made it accessible on the web or in other public forum <input type="checkbox"/> Repeated or long-term use
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#### D. Copyright Notices

Marshall University employees are encouraged to include the following notice of copyright with every distribution or reproduction of copyrighted materials in documents or resources such as course syllabi or within an online course shell or entry page:

***Fair Use of Copyrighted Works:** Please note that the instructor may use some works that are copyrighted by the publisher or original author. These works are provided to students under the Educational Fair Use provision of Title 17 of the US Code and are not to be shared with individuals who are not enrolled in this course.*

#### E. Marshall University Library Use

Section 108 of the Copyright Act governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified within Section 108, ~~by law~~, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for or later uses, a photocopy or reproduction for purposes in excess of “Fair Use,” that user may be liable for copyright infringement.

1. **Library Copying** - Marshall University libraries may copy unpublished works of any sort, including photographs, motion pictures and sound recordings, solely for the purpose of preservation and security or for deposit for research use in another library or archive that makes its collection open or available. Such copies may only be in facsimile form. The copies may not be digitized for storage in a computer database.
2. **Orphaned Works** - Marshall University libraries may also copy in facsimile form any sort of out-of-print published work in order to replace a damaged, lost, deteriorating or stolen copy if the library has reasonably, but unsuccessfully, attempted to replace the work at a fair price from the "the trade," including reprint houses and out-of-print sources.

3. **Photocopying by Marshall University Library Patrons** - All Marshall University libraries shall post a version of the following notice in the copying machine area of the library:

*Notice: The copyright law of the United States (Title 17, U.S. Code) governs the making of photocopies or other reproductions of copyrighted material; the person using this equipment is liable for any infringement.*

## **F. Intellectual Property**

Questions relating to an employee's rights to his/her intellectual property and issues pertaining to ownership rights for content created while employed by the university should be referred to the MUBOG GA-4 policy on Intellectual Property.