

Copyright and Intellectual Property Policies

Issues of copyright compliance potentially impact the work of all faculty, students, and staff at Union University. In the contemporary academic environment, copyright questions may impact one's work from three perspectives: as *a user* of copyrighted material, as *a creator* of new intellectual property, or as *a manager* of legal compliance. For this reason, the institution establishes the following copyright and intellectual property policies. These go well beyond the mere recitation of applicable statutory language or referencing specific guidelines (i.e. fair use). These policies address the legal use of others' works, the ownership of our own intellectual property, and management of institutional liability.

I. Legal Use of Others' Works

It is the policy of the University that all employees and students strictly adhere to the laws regulating the use of copyrighted works. When necessary, one may want to examine **U. S. Code Title 17** for statutory details. In the academic setting, most questions of copyright from the user's standpoint involve application of the **fair use** principle. Fair use is a somewhat flexible provision in the statute that allows for the limited use of some copyrighted work for education, research, or private study. This provision should never be construed as an absolute exception to the rules governing use of copyrighted works.

Educational use is not necessarily fair use. When questions arise with regard to fair use, there are a number of established guidelines for determining the appropriate course of action. There are four main factors evaluated by courts in determining whether the use made of a work is a "fair use." (See Appendix M) Unfortunately, the test does not always give clear guidance and is open to interpretation. In addition to the provisions of fair use,

there is a specific **face-to-face teaching exemption** within copyright law. It allows for legally reproduced work (e.g. articles, small portions of books, short video clips, etc.) to be used in a classroom setting or similar place devoted to instruction in the course of face-to-face teaching activities of a non-profit educational institution. The exemption applies only when such use involves no direct or indirect admission charge, is part of regular instructional activities, and is directly related to the teaching content. This special exemption is not to be viewed independently of fair use, but rather, as an extension of fair use. Instructors should always apply the four-factor test to assist in evaluating whether use of any work in the classroom is legal. In the event that an instructor is unsure about a use, the Library Director should be contacted.

The adoption of the **Digital Millennium Copyright Act** amended copyright law with regard to the use of digital media. This law placed new restrictions on the copying of digital media without including any provision for fair use in the digital realm. Because of the negative effect of this law on the classroom, particularly with regard to distance education Congress has adopted the **Teach Act** in order to make some provision for legal use of digital media in the classroom setting. However, such use is not unlimited and is tightly regulated in the law. Therefore, all employees should follow the principles outlined within the four-factor test and the face-to-face teaching exemption in order to show good faith effort in complying with these new regulations.

For the use of copyrighted works that go beyond the provisions of fair use and the face-to-face teaching exemption, **permission** from the copyright holder must be obtained. There are numerous agencies that coordinate the granting of permission to use copyrighted works. Two services commonly used by educators are

the **Copyright Clearing House** for print copies and the **American Society of Composers, Authors, and Publishers** for musical performance; however, these companies may not represent the copyright owner at issue. In the old print environment, certain rights to lend, copy, or perform a copyrighted work were granted to the owner of a book, journal, or score. In the digital realm, **licensing agreements** have become the key to access rights. As the various departments of the University have become more dependent upon the licensing of data and software, the management of access rights has become an important administrative task. Therefore, the University requires *Union University employees* to negotiate license agreements with appropriate care, maintain files of all licenses, and establish processes that will ensure compliance. For further information on the use of copyrighted material within the classroom, contact the Library Director. Privacy Issues: In all cases, the privacy rights of individuals must be protected. For example, if the identifiable voices or images of students or staff will be used in works to which this policy applies, appropriate consent must first be obtained.

II. Ownership of Our Own Intellectual Property

In the course of pursuing its stated institutional mission the University may provide support for the creation of imaginative and authentic intellectual property. When it does so, it shall assert ownership and/or other rights to such works in accord with applicable law.

III. Creation of Patents, Copyrights, and Other Valuable Creative Works

The faculty is encouraged to perform research and other academic or scholarly pursuits leading to the creation of patentable, copyrightable, and other valuable creative works, including but not limited to, inventions, computer programs, scientific, industrial, or business processes or methods, books,

art work, musical compositions, films, musical or stage productions or recordings, literary collections, manuscripts, and other creative works that have economic value. Such efforts generally benefit both the University and the faculty member performing such work. Therefore, unless a faculty member is derelict in performing his or her assigned duties with the University and assuming normal (as opposed to substantial) use of University resources, the faculty member has a right to patent, copyright, publish, or otherwise *establish ownership* of any such creative and legally protective works, which the faculty member creates by means of his or her expertise or labor. Any use of the University name (other than to identify the creator as a faculty member) in a work must be approved by the Provost. When a faculty member creates such a patentable, copyrightable, or other valuable creative work, the faculty member shall have all of the exclusive rights to own, market, publish, use, and economically exploit the patent, copyright, or other valuable creative work. The University shall have no ownership rights therein except as follows:

1. If a faculty member is hired by the University (a) to create a patentable, copyrightable, or other valuable creative work or (b) to perform a specific task which directly leads to the creation of a patentable, copyrightable, or other valuable creative work, and **provided** the faculty member has expressly agreed in writing signed by the faculty member relinquishing his or her ownership rights to the creative work, then the University shall be the exclusive owner of such creative work and any resulting patent or copyright thereon. However, the faculty member and university may agree in writing to a shared ownership.
2. Any creative works created by the faculty member pursuant to or under the sponsorship of an outside agency or governmental grant shall be subject to the copyright, patent, and exploitation terms

and conditions of such grant, contract, or agreement. If no such conditions are stated in the grant, contract, or agreement, then ownership of any such creative works generated therefrom shall be determined pursuant to the provisions stated in such a grant or contract. When the faculty member creates a copyrightable, patentable, or other valuable creative work either (a) as part of his or her job duties or (b) using substantial institutional resources, he or she must immediately notify the Provost, dean and department chair of the existence and nature of such created work and must obtain prior consent. All employees are encouraged to take appropriate steps to protect their personal private intellectual property. General information about securing copyright, patents, or trademarks is available from the Library Director. Specific questions relating to the implementation of these policies should be directed to the Provost.

IV. Management of Institutional Liability

The establishment of the foregoing policies is only the beginning point of the University's effort to effectively manage its liability in the areas of copyright and intellectual property. It is important that all administrators, faculty, and staff bring their respective areas of work into compliance. Toward this end, the pertinent portions of these policies are published in faculty, staff, and student handbooks. In addition, the Library Director has been designated as the point of contact for information regarding compliance issues. The Director maintains copies of all pertinent documents and is available for consultation.

Source: Union University Faculty Handbook 2009-2010, statement dated August 2008.