

# William Paterson University Policy

## University Policy

<b>SUBJECT:</b>	University Policy	<b>TITLE:</b>	Copyright		
<b>CATEGORY: Check One</b>	<b>Board of Trustees</b> <input type="checkbox"/>	<b>University</b> <input checked="" type="checkbox"/>	<b>Functional</b> <input type="checkbox"/>	<b>School/Unit</b> <input type="checkbox"/>	
<b>Responsible Executive:</b>	President and Cabinet Members		<b>Responsible Office:</b>	Information Technology	
<b>CODING:</b>	00-01-	<b>ADOPTED:</b>		<b>AMENDED:</b>	05/28/20
				<b>LAST REVIEWED:</b> 05/28/20	

### I. PURPOSE

William Paterson University holds faculty, staff and students responsible for complying with all Federal laws regarding copyright (Title 17, United States Code) and the University policy and guidelines enclosed herein.

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.". 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.

### II. ACCOUNTABILITY

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 committee made up of faculty members and administrators who address issues concerning the proper interpretation of the Policy.

### III. APPLICABILITY

This copyright policy delineates the rights and responsibilities of the University and its faculty, staff, and students.

### IV. DEFINITION(S)

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.

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.

## V. BACKGROUND

Copyright attaches automatically to nearly all original works of authorship. Certain works are outside of copyright protection, and some copyrights vest automatically in the University rather than in the author herself.

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.

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

## VI. REFERENCE(S)

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.

## VII. POLICY

Faculty, staff, and students are 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.

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 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.

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.

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.

## VIII PROCEDURE(S)

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.

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.

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.

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.

By Direction of the President and Cabinet:

Date

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(Title of Executive or Vice President(s) whose area of responsibility the policy covers.)