

## **2.7 Copyright Policies**

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### **2.7.1 Copyright Law**

The copyright policy of Immaculata University (hereinafter "IU") affirms its commitment to comply with United States law relating to copyright; to respect the property rights of authors and their assignees; to educate members of the campus community about copyright law; and to exercise vigorously the rights and responsibilities granted under this law. The policy adheres to the long-standing academic tradition that creators of works own the copyrights in works resulting from their scholarly, pedagogical, and creative activities. This principle is the foundation of this policy on copyright. This principle also underlies the commitment of IU to fostering an environment of respect for and responsible use of the intellectual property of others. IU is committed to helping members of the community comply with copyright laws by providing resources to help individuals make informed, careful, and situation-sensitive decisions about the lawful and fair use of work created by others.

#### **2.7.1.1 Application**

This policy applies to all IU employees, students, contractors, and volunteers and all others who use computing resources, information technologies, networks, voice messaging equipment, computer software, data networking systems, including remote and wireless and electronically stored institutional data and messages owned or managed by IU or any third parties contracting with IU for the provision of hosting, network or other technology services (hereinafter "users"). Any person that has agreed to follow the IU acceptable use policy has, in effect, agreed to this copyright policy.

It is the policy of IU that all users must comply with U.S. Copyright Law. Copyrighted materials

may be copied freely by the owner of the copyright on the materials. In addition, copyright holders such as scholarly publishers, may explicitly release their published materials from strict observance of copyright laws for stated classroom or research purposes.

### **2.7.1.2 Compliance with Copyright Laws**

Using a computer to copy, download, or store any copyrighted material (text, images, music, movies, etc.) without authorization is a violation of the law, and leaves you liable, on conviction, to imprisonment, heavy fines, and/or damages. Owners of copyright have become much more assertive of their rights recently, and are taking legal action against those whom they believe are violating their copyrighted property. For information about copyright law, see

[www.copyright.gov](http://www.copyright.gov).

Before relying on the fair use exception to the Copyright Act, users should educate themselves regarding the limits of fair use and should, in each instance, perform a careful, good faith fair use analysis based on the factors identified in Section 107 of the federal Copyright Act.

Faculty and staff are permitted to use and duplicate copyrighted materials of other parties for educational and classroom uses, provided such activities are within the fair use standard, 17 U. S.

C. sect. 107. The fair use standard requires consideration and balancing by users of the following factors to determine if duplication or use by a third party constitutes a fair use:

#### **2.7.1.2.1 The Fair Use Factors**

1. *The Purpose and Character of the Use, Including Whether the Use is of a Commercial*

*Nature or is For Non-Profit Educational Purposes:*

A non-profit or non-commercial use weighs in favor of a fair use. Non-profit educational purposes, such as duplication for classroom purposes rather than commercial purposes, generally tend to support a finding of

fair use.

2. *Nature of the Copyrighted Work:* Works fall into categories such as published or unpublished, fact or fiction. Published factual works, such as form books, dictionaries or other factual works, by their nature more readily support a finding of fair use than do unpublished works or non-factual, fictional, creative works.

3. *Amount and Substantiality of the Portion Used in Relation to the Copyrighted Work as a Whole:*

If the portion of the work copied or used in relation to the entire work is quantitatively and qualitatively insignificant that supports a finding of fair use. No specific

number of words or percentage copied of the work is set as being permissible. However, see

the "safe harbor" guidelines discussed. Copying of a minor portion of a work may be found

to be other than a fair use if the portion constitutes the essence or critical part of the copied or

used work. Users should post links to articles and materials whenever possible rather than duplicating complete works.

4. *The Effect of the Use upon the Potential Market for or Value of the Copyrighted Work:* This

factor is considered the most important element to be considered under the fair use analysis.

Duplication or use of a copyrighted work that is not detrimental to and does not diminish the

potential market for the work will support a finding of fair use.

### **Examples Of Acts That Do Not Constitute Fair Use:**

1. Duplication of materials for profit.
2. Duplication of material from published textbooks.
3. Duplication of unpublished materials.
4. Duplication of computer software for multiple use.
5. Duplication of the same materials for classroom use term after term.

### **2.7.1.3 File Sharing And Peer-to-Peer Software Programs**

Current technology easily allows personal computers to duplicate and distribute copyrighted

video images, audio recordings and other digital materials. Unfortunately this makes it is easy to violate the IU policy and US copyright law. For this reason the use of popular and freely distributed file sharing programs such as KaZaA, Gnutella (Morpheus, LimeWire, Gnucleus, Bearshare), Aimster, iMesh, and many other programs to download copyrighted music and video material, in almost every case, creates a violation of IU policy and US law. Most of these programs by default allow Internet users to copy files from a computer. Most programs do not provide alerts in advance or even ask the user's permission before turning a computer into an Internet file server. Some of these programs also install hidden components that allow file sharing to run in the background on a computer. As a result, whenever a computer is turned on, the file sharing application is also enabled, even if the application is not opened or actively used. Such an application places a user at a high risk of violating IU policy and copyright law by becoming an unlawful distributor of copyrighted material. For example, what you may believe to be a single one-time policy violation consisting of downloading a single track of music from a popular CD is actually an around-the-clock violation of IU policy and copyright law because anytime your computer is turned on it is publicly announcing to the Internet (perhaps unknowingly to you) that the single music track you previously downloaded is now available on your computer for distribution via the IU network. Because IU has a reliable and large capacity connection to the Internet and because these file sharing programs favor computers connected to fast reliable networks, thousands of other Internet users flock to your computer to download your file. IU does not monitor computer use on the IU network to look for copyright violations; however,

in the process of investigating network congestion or troubleshooting technical problems, IU may become aware of policy violations. In such cases immediate action may be taken by IU, including disconnection of network access.

The law enforcement agencies, the Recording Industry Association of America (RIAA), and other copyright holders of digital media are actively monitoring the Internet for users who are actively distributing copyrighted material. The recording, film and software industries have become very aggressive in their active pursuit of copyright infringement. Millions of dollars have been spent to develop and maintain software which is able to search the Internet and identify unauthorized distribution of their protected titles. This active monitoring is specifically designed to search for distribution of materials using the most commonly used software packages including KaZaA, Gnutella (Morpheus, LimeWire, Gnucleus, Bearshare), Aimster, iMesh, as well as many others.

#### **2.7.1.4 Software Generally Protected By Copyright Law**

The vast majority of all computer software is protected by copyright law. The exceptions to this rule are so few users should assume that all software on IU's computer system, on third party systems, or available through the Internet is protected by copyright, unless there is a clear indication to the contrary. Simply stated, copyright laws allow a user of software to use the software, load it onto the hard drive of a computer, and retain the original disk as an archive copy. Users are not allowed to modify the software, make more copies of it, simultaneously use a single copy on both a home and a campus computer, or distribute the software through the Internet, unless the license agreement explicitly permits those activities.

Possessing software for which an individual does not own a license is a violation of the Copyright Act, and may subject both IU and individual users to sanctions as set forth in the Copyright Act. For all practical purposes, the fair use exception does not apply to operating system and application software.

In addition to application software and operating systems, federal copyright protection also extends to the data files (content) created for use with or by applications and operating systems (e.g., spreadsheets, databases, quicktime video files, scanned images). Unauthorized creation, copying and distribution of these materials are violations of the federal copyright statute, unless they can be construed as fair use.

#### **2.7.1.5 Violation of Copyright Laws**

Upon obtaining knowledge that material residing on its systems or networks is infringing or that its systems or networks are being used for infringing activities (or upon becoming aware of circumstances from which infringing activity is apparent), IU will act expeditiously to remove or disable access to the infringing materials and may deny the users responsible further access to its systems or networks. In addition, users who willfully disregard or violate copyright law may be subject to disciplinary action in accordance with applicable disciplinary policies and procedures.

The IU acceptable use policy and the IU copyright policy state that the receipt of, possession of, or distribution of copyrighted material without the permission of the copyright holder is prohibited. Such acts are a violation of the laws of the United States (Title 17, U.S. Code).

Violators of copyright law could be subject to felony charges in state or federal court, and may also be sued by the copyright holder in civil court. Such civil suits could subject the violator to liability for infringement with damages up to \$100,000 per work.

### **2.7.1.6 Digital Millennium Copyright Act**

The Digital Millennium Copyright Act (DMCA) was signed into law by President Clinton in October, 1998. One of the provisions of the legislation provides an opportunity for universities such as IU to shield themselves from liability for the actions of users that infringe on the copyrights of others. Any use of the IU network, email system, or websites to transfer copyrighted material including, but not limited to, software, text, images, audio and video is strictly prohibited. As indicated above, acts of piracy are violations of state and federal laws, and as such, may result in criminal charges.

In accordance with the Digital Millennium Copyright Act, P.L. 105-304 ("DMCA"), Immaculata

University has designated the following individual to receive and respond to reports of alleged copyright infringement on IU's website:

Vice President for Finance and Administration Immaculata University  
1145 King Road  
Immaculata, PA 19345  
Telephone: (610) 647-4400 ext. 3050  
Fax: (610) 251-1668

The Act requires the complainant to include certain information as specified below:

The Digital Millennium Copyright Act specifies that all infringement claims must be in writing (either on paper or electronic mail) and must include the following elements:

1. A physical or electronic signature;
2. Description of the work claimed to be infringed;
3. Description of the allegedly infringing work and the location on the University's web site;
4. Contact information for the complaining party;
5. A statement that the complaining party has a good faith belief that the use of the material in the manner complained of is not authorized by the copyright owner or law;
6. A statement that the information contained in the notification is accurate, and under penalty

of perjury, that the complaining party is authorized to act on behalf of the copyright owner.

For more information on United States Copyright Laws, see: The US Copyright Office.

### **2.7.1.7 TEACH Act**

The Technology, Education and Copyright Harmonization Act (TEACH Act) (Section 110(2) of the U.S. copyright law) is a copyright exemption that addresses teaching conducted through digital transmission.

Under the TEACH Act, instructors may use the following copyrighted materials when teaching a class through a digital transmission:

1. Performances of nondramatic literary works;
2. Performances of nondramatic musical works;
3. Performances of any other work, including dramatic works and audiovisual works, but only in "reasonable and limited portions"; and
4. Displays of any work "in an amount comparable to that which is typically displayed in the course of a live classroom session".

When using the copyrighted materials listed above in a digital transmission, the instructor has the following obligations under the TEACH Act:

1. The performance or display is made by or under the supervision of an instructor;
2. The use is limited to performances and displays. The TEACH Act does not apply to materials that are for students' independent use and retention, such as textbooks or other readings;
3. The work is part of systematic mediated instructional activities;
4. The transmission must be made solely for and limited to students officially enrolled in the course;
5. Only lawfully acquired may be used;
6. The instructor should use reasonable efforts to prevent copying and retention of the work (e.g., streaming for video; thumbnails, watermarks and disabling right click copy function for



images);

7. The materials to be used should not include those primarily marketed for the purposes of

distance education (i.e. an electronic textbook or a multimedia tutorial);

8. A digital copy may be made from an analog copy when no digital version is available or

when the digital version is technologically protected;

9. The work must carry a notice to students that the works are copyrighted.

Instructors should also be mindful that they might also consider fair use when using copyrighted

works in distance education settings. See Volume II: Compliance with Copyright Laws above

for additional information.

#### **2.7.1.8 Use of Copyrighted Video**

Immaculata University students, faculty and staff should be aware that it is a violation of federal

law and University policy to improperly present video materials. Those who show videos for

entertainment purposes without permission from the licensee in a public area are in violation of

the copyright law and University copyright policy. This restriction applies even if there is no

admission charge for the performance. Using copyrighted video material in a private or

classroom showing for educational purposes is not a violation of the law.

#### **2.7.1.9 Reporting A Violation**

Any issues or concerns related to the use of copyrights at IU should be directed to the copyright

officer, Gabriele Library, 610-647-4400, extension 3841.

#### **2.7.2 Intellectual Property**

This policy governs the protection and administration of intellectual property ("IP") developed in

support of IU's mission. It describes IU's policies pertaining to the ownership of IP. Its

objectives are:

1. To enable IU to foster the free and creative expression and exchange of ideas and comment;

2. To establish policies and procedures for sharing income derived from IP produced at IU; and

3. To protect IU's assets.

### **2.7.2.1 Policy Scope**

This policy applies to all IU faculty and employees ("Covered Individual") who make use of IU facilities, equipment, or other resources.

All IP developed in conjunction with organizations in partnership with IU resources/support/facilities shall be governed by the provisions of this policy. IP not governed

exclusively by this policy shall include the following:

1. All IP developed by faculty with support from a sponsor other than IU shall be governed by

the provisions regarding ownership in the applicable sponsorship agreement, grant or

contract. In the absence of such terms, the ownership of such IP shall be determined by this

policy;

2. IP that is the subject of a specific agreement between IU and the author(s)/creator(s) thereof

shall be owned as provided in such agreement;

3. Ownership and creative control of works made for hire will be governed by an agreement to

be made prior to commencement of work between IU and the author / creator. The

author/creator is one who receives payment from IU for the particular work.

Because all possible circumstances cannot be envisioned by this policy, each particular situation

will be evaluated to determine ownership interests and who may have the right to ownership and

use IP that is developed. This policy provides a general guide for determining ownership and

control of IP developed by IU faculty and employees. The provisions of this policy are subject

to any applicable laws, regulations or provisions of grants or contracts, which affect the rights of

IP, made in connection with the activity.

### **2.7.2.2 Definition of Intellectual Property**

For the purposes of this policy statement, IP is defined as any original work created by an

individual or group of individuals. This work might be written, oral, visual, recorded, or digital.

Content considered IP includes any works that are or may be protected by copyright law or patent law.

### **2.7.2.3 Duty to Disclose Inventions**

Although development of patents and commercial applications is not a primary goal of IU, patentable inventions and other marketable forms of intellectual property may result from IU related activities. Inventions conceived and/or reduced to practice which were made or conceived utilizing IU facilities, equipment, funds or other contributions of IU or were made or conceived during an IU administered program, research project or under an IU contract must be disclosed fully and in good faith to the president of the University.

### **2.7.2.4 Ownership of Intellectual Property**

In keeping with IU's general policy of not claiming ownership in the scholarly works of its faculty, educational materials produced in the normal course of IU's educational mission will, generally speaking, be owned by the creators of the materials. As identified below, certain circumstances, however, may give rise to a claim of ownership or other rights by IU.

IP ownership is related to factors including:

1. Whether the author/creator was hired specifically to produce IP "work for hire";
2. Whether the author/creator engaged in a collaborative effort to produce IP (in which case IP might be shared);
3. Whether or not the IP was created as part of sponsored research.

If a work product generates financial gain for either party, a written contract between IU and the author/creator may stipulate how funds will be distributed (see *Distribution of Funds* section and the ultimate status of ownership. In the absence of a written contract or prior agreement, IP rights are assumed to remain with the author/creator of the IP.

#### **2.7.2.4.1 Author/Creator Owns IP**

The following IP will generally be considered author/creator owned IP:

1. IP which is embodied in a professional-, faculty-, or researcher-authored work (see Volume II: Definition of Intellectual Property for the definition) even though such a work may be within the scope of employment. An exception may apply if substantial IU resources were used consistent with *Volume II: IU Owns IP* section;
2. IP not created in the course of, or pursuant to, a sponsored research or other agreement, wherein the work is developed by the author/creator under a research assistantship or sponsored project; and/or
3. IP is developed on the personal, unpaid time of the author/creator and without substantial IU resources as discussed in *IU Owns IP* section below.

#### **2.7.2.4.2 IU Owns IP**

The following IP will generally be considered IU owned IP:

1. IP created as "works-for-hire" or pursuant to a written agreement with IU providing for the transfer of any IP or ownership to IU;
2. IP developed in the course of, or pursuant to, IU sponsored research or other IU agreement (as determined according to the terms of such agreement); and/or
3. IP that is made or conceived utilizing the facilities, equipment, funds or other contributions of IU to a degree that is substantially in excess of what is normally provided. By way of example only, IU may require assignment of an ownership interest in IP in the following circumstances:
  - a. *Publication Subvention*: When IU pays the full or a substantial part of the cost of publication (including such costs as printing, editing, etc., but excluding the salary of the primary author(s)). In such case, IU may request that a formal agreement concerning the ownership of the copyright and the division of applicable royalties be made to ensure that

rights, responsibilities, and prospective revenues are shared equitably between the author/creator and IU;

b. *Software and Digital Resources*. The development of software and other digital resources

(such as website development, video production and digital content materials) developed

for the classroom typically receives extensive support from IU and are made possible

through the use of IU resources. In this circumstance, the tangible works developed (i.e.

the website or the video production) are owned by IU, while the creator maintains

ownership of the underlying creative content of the materials. Creators of this type of

educational materials grant to IU a paid-up, royalty-free, non-exclusive, irrevocable

license for the use, reproduction, and creation of derivative works of the underlying

creative content for IU's purposes. The tangible educational materials owned by IU may

be used by the creator while still employed by IU. For use of these educational materials

outside IU, however, specific written permission of IU is required. To encourage the

development of technology-based educational materials, IU may, at its sole discretion,

choose not to exercise its claim to such IP. In particular, IU may not require assignment

of ownership for basic web pages or entries in a course management system that are

created and maintained without substantial assistance, and that simply provide

information (including but not limited to reading assignments, other course requirements

and links to relevant external Internet resources) specific to a faculty member's course(s)

and/or information about or copies of publications and other professional activities of a

faculty member.

### **2.7.2.5 Use of Intellectual Property**

The question of intellectual property use is a function of:

1. Ownership: who owns the IP will determine use guidelines?
2. Application: how is the IP to be used/applied?

Authors/creators of IP are entitled to choose the course of disclosure.

There exists a historical tradition allowing authors/creators to retain ownership of IP rights from published books, textbooks, and works of art.

With the exception of IP which is considered a product of the instructor's teaching contract with

IU or as identified in *IU Owns IP* section, material created for ordinary teaching use in the

classroom, online, and in department programs, such as assignments, lectures, demonstrations,

and tests, shall remain the property of the faculty author/creator, but the faculty author/creator

grants IU a paid-up, royalty-free, non-exclusive, irrevocable license for IU to use such material

for internal instructional/educational purposes, and faculty-authored syllabi and course

descriptions as well as for documentation required by outside affiliation and accreditation

processes.

To the extent the faculty author/creator transfers any IP right of such works to a publisher;

faculty authors/creators must ensure that IU has rights to use such works for internal

instructional, educational, and administrative purposes.

### **2.7.2.6 Distribution of IP Funds**

1. Other than the IP addressed in *IU Owns IP* section above, in keeping with academic tradition,

IU will not claim any ownership, interest, or share of the proceeds in IP which are used or

created for instructional purposes or as a result of scholarly activities unless otherwise

determined by specific contracts for development of such work.

2. Other than the IP addressed in *IU Owns IP* section above, IU will not claim ownership,

interest, or share of the proceeds in IP created while on sabbatical leave unless there was substantial use of University resources/support/facilities as defined by contractual or other binding written agreement between IU and author/creator.

#### **2.7.2.7 Dispute Resolution**

When a copyright or patent is assigned or licensed to IU because of the provisions of this policy, the creator of the copyrighted material may make a request to the President of IU that ownership be reconveyed back to the creator. Such a request can, at the sole discretion of the President and approval of the Board of Trustees, be granted if it does not:

1. Violate any legal obligations of or to IU;
2. Limit appropriate IU uses of the materials;
3. Create a real or potential conflict of interest for the creator; or
4. Otherwise conflict with IU's goals or principles.

#### **2.7.2.8 Licensing and Income Sharing**

1. Licensing: IU seeks the most effective means of technology transfer for public use and benefit and, toward that end, handles the evaluation, marketing, negotiations and licensing of IU-owned inventions or copyrightable materials with commercial potential. Computer databases, software and firmware, and other copyrightable works owned by IU, are licensed through the office of the President. The President must approve in advance exceptions to this procedure.

2. Royalty Distribution: Where IU elects to share royalties for IU-owned IP, the President will allocate such royalties assigned to IU, upon approval of the Board of Trustees. If copyright protection alone is claimed, royalties normally will be allocated in a similar manner, with the "inventor's share" allocated among individuals identified by the Vice President for Academic Affairs, based on their relative contributions to the work. Where royalty distribution to

individuals would be impracticable or inequitable (for example, when the copyrightable material has been developed as a laboratory project, or where individual royalty distribution could distort academic priorities), the "inventor's share" may be allocated to a research or educational account in the laboratory where the copyrightable material was developed.

#### **2.7.2.9 Assignments**

No assignment, license or other agreement may be entered into or will be considered valid with respect to copyrighted works owned by IU except by an official specifically authorized by the President or Board of Trustees to do so.

#### **2.7.2.10 Consulting**

Problems may attend the disposition of Intellectual Property that results from activities of Covered Individuals while engaged in the service or at the direction of a firm or institution other than the University. The University is concerned about conflicts of interest that may arise from such activity. (Please refer to *the Immaculata University Policy Manual*, Volume III, *Conflict of Interest, Outside Employment* section, and Volume IV: *Outside Employment and Activities*.) In addition, the University is concerned not only about the potential loss of revenue but also about the imposition of non-compete clauses that may hinder Covered Individuals from pursuing the University's mission of teaching and research or prevent Covered Individuals from participating in University-sponsored research-and-development projects. If faculty is involved in consulting activities relating to the use of IP developed with IU resources, any consulting agreement must be reviewed in advance by the vice president for academic affairs. If a non-faculty IU employee is involved in consulting activities relating to the use of IP



developed with IU resources, any consulting agreement must be reviewed in advance by the president of the University.

Consulting contracts cannot restrain IU-related activities, including but not limited to the following:

1. Non-compete clauses that may hinder faculty from pursuing IU related work; or

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2. Clauses which restrain or inordinately delay publication of IU related faculty work, publications or IP.

#### **2.7.2.11 Use of the IU Name in Copyright Notices**

The following notice should be placed on IU-owned materials in order to protect the copyright:

Copyright © [year]. The Board of Trustees of Immaculata University. All Rights Reserved. No

other institutional or departmental name is to be used in the copyright notice, although the name

and address of the department to which readers can direct inquiries may be listed below the

copyright notice. The date in the notice should be the year in which the work is first published,

i.e. distributed to the public or any sizable audience. Additionally, works may be registered with

the United States Copyright Office using its official forms.