

1.6.8 Copyright

Proposed by the Long-Term Information Technology Committee March 2013

Purpose: William Penn University sets forth the following policies to define and establish the respective rights and obligations of University employees and students regarding appropriate use of intellectual property.

1.6.8.1 Copyright Compliance

1.6.8.1.1 Scope

1.6.8.1.1.1 This policy affirms the obligation to observe copyright law in compliance with the Copyright Act, Title 17 U.S. Code.

1.6.8.1.1.2 As a non-profit educational institution, William Penn University is dedicated to disseminating knowledge through teaching, research and service. The University provides high-quality resources, delivery systems and services for students both residential and distance. Guided by the principles of intellectual freedom, WPU sets forth these policies for all employees and students to foster an environment of respect for intellectual property and compliance with the law.

1.6.8.1.2 Policy

1.6.8.1.2.1 It is the policy of William Penn University to comply with all applicable laws regarding copyright. These copyright laws apply to all copyright-protected materials regardless of whether they are reproduced or distributed in digital, electronic, print or other format. All employees and students who use equipment, facilities, resources or funds administered by the University in the course of University-related scholarly and creative activities are required to respect the proprietary rights of owners of copyrights and refrain from actions that infringe the rights of copyright owners.

1.6.8.1.2.2 Works are protected by copyright laws in the U.S. even if they are not registered with the U.S. Copyright Office and even if they do not carry the copyright symbol (©). Copyrighted works include, but are not limited to, printed articles from publications, TV and radio programs, videotapes, music performances, photographs, training materials, manuals, documentation, software programs, databases and World Wide Web pages. In general, the laws that apply to printed materials are also applicable to visual and electronic media and works transformed into digital format.

1.6.8.1.2.3 The unauthorized distribution of copyrighted material, including peer-to-peer file sharing, may subject individuals to civil and criminal liability according to federal copyright law. A summary of civil and criminal penalties for violation of federal copyright laws is included at the end of this section.

1.6.8.2 "Fair Use" Policy

1.6.8.2.1 Scope

1.6.8.2.1.1 This policy affirms provisions regarding the use of copyrighted materials in the classroom, based on the "fair use" section of the United States Copyright Act of 1976. The policy:

Addresses why the issue of "fair use" is of importance to the WPU academic community;
Outlines for the WPU academic community the set of "fair use" factors, based on the "fair use" section of the U.S. Copyright Act of 1976. See 17 U.S.C. § 107 (2006).

1.6.8.2.2 Policy

1.6.8.2.2.1 Section 107 of the copyright law (17 U.S.C. § 107 (2006)) commonly known as the doctrine of "fair use" provides the opportunity to make use of copyrighted materials without

authorization from the copyright holder. This includes such use as news reporting, comment, criticism, teaching, research, and other scholarship. Employees and students are prohibited from copying materials not specifically allowed by copyright law, by “fair use” guidelines, by licenses or contractual agreements, or by express permission from the copyright holder(s).

1.6.8.2.2.2 The “fair use” provision of the copyright law is an important exemption to the exclusive rights of copyright owners. Because there is no blanket exemption in copyright law for educational or scholarly use of copyrighted works, each use must meet the “fair use” test. (See, 17 U.S.C. § 107 (1)-(4) (2006).) The University encourages members of the WPU academic community to exercise “fair use” rights appropriately in their teaching, research, and service activities.

1.6.8.2.2.3 17 U.S.C. § 107 (1) – (4) (2006) sets out four factors that should be collectively considered in determining whether or not a particular use is fair:

“The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;” Id. at § 107 (1).

“The nature of the copyrighted work;” Id. at § 107 (2).

“The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and” Id. at § 107 (3)

“The effect of the use upon the potential market for or value of the copyrighted work.” Id. at § 107 (4).

1.6.8.2.3 Procedure

1.6.8.2.3.1 Faculty will use the provisions of the “fair use” doctrine in determining the extent to which copyrighted material will be used in the classroom. Permission shall be obtained for each use of a copyrighted work that does not fall clearly within the guidelines or when a clear and convincing finding of “fair use” cannot be made.

1.6.8.2.3.2 Employees or students who require assistance with “fair use” questions are encouraged to refer to the Resources section of this policy.

1.6.8.2.3.3 Course syllabi should include a statement that “materials used in connection with the course may be subject to copyright protection.”

1.6.8.2.3.4 For the use of copyrighted work used as part of mediated instructional activities transmitted via digital networks such as course materials in the University's learning management systems. 1.6.8.3 TEACH Act Policy

1.6.8.3.1 Scope

1.6.8.3.1.1 This policy outlines the terms and conditions under which copyrighted materials can be used as part of mediated instructional activities transmitted via digital networks under exemptions of the Technology, Education, and Copyright Harmonization (TEACH) Act of 2002. (See, 17 U.S.C. § 110(2) (2006) and 17 U.S.C. § 112(f) (2006).)

1.6.8.3.2 Policy

1.6.8.3.2.1 The following works are not infringements of copyright by the TEACH Act (17 U.S.C. §110(2) (2006), provided that certain conditions (listed in 1.6.8.3.2.3 below) are met:

☐ A performance of a non-dramatic literary work

☐ A performance of a non-dramatic musical work

☐ A performance of any other work, including dramatic works and audiovisual works, but only in “reasonable and limited portions” Id.

☐ A display of any work in an amount comparable to that which is typically displayed in the course of a live classroom session

1.6.8.3.2.2 The following works are excluded by the TEACH Act (17 U.S.C. § 110(2) (2006):

☒ Work produced or marketed “primarily for performance or display as part of mediated instructional activities transmitted via digital networks.” Id. Examples include course cartridges prepared by publishing companies that require institutions to purchase licenses for student access.

☒ Work “not lawfully made and acquired” under the U.S. Copyright Act if the instructor or the institution know or reasonably should know materials were not lawfully made or acquired.

1-20 ☒ Work originally produced in analog format cannot be digitized except under the following circumstances: See, 17 U.S.C. 112 (f) (2006)

☒ The amount converted is limited to the amount appropriate for the instructional activities Id. at §112(f)(2); and

☒ A digital version of the work is not “available to the institution,” (Id. at §112 (f)(2)(A)) or is secured behind technological protection preventing accessibility in the distance-education program (Id. at §112(f)(2)(B))

1.6.8.3.2.3 The use of materials permitted under Section 1.6.8.3.2.1 above may be used under the following condition:

☒ The work or performance used is “at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic, mediated instructional activities” of the University. 17 U.S.C. §110(2)(A) (2006).

1.6.8.3.3 Procedure

1.6.8.3.3.1 Faculty will adhere to the requirements of the “TEACH Act” for the use of copyrighted works used as part of mediated instructional activities transmitted via digital networks.

1.6.8.3.3.2 In order to apply provisions of the TEACH Act, course syllabi must include the following Copyright Notice: “Many of the materials posted to this course site are protected by copyright law. These materials are only for the use of students enrolled in this course and only for the purposes of this course. They may not be further retained or disseminated.”

1.6.8.3.3.3 Works that do not meet the above conditions must qualify as “fair use” or qualify as a permitted use because permission has been granted from the copyright holder(s), or because the use is covered by a license or contractual agreement. 1-21

1.6.8.3.3.4 Guidelines regarding the use of copyrighted works to be used as part of mediated instructional activities transmitted via digital networks can be found in the Resources section for TEACH Act.

1.6.8.4 Addendum

1.6.8.4.1 Summary of Civil and Criminal Penalties for Violation of Federal Copyright Laws

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under the Copyright Act, 17 U.S.C § 106 (2006). These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.

Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or statutory damages affixed at not less than \$750 and not more than \$30,000 per work infringed. 17 U.S.C. §§ 504 (a) and (c)(1) (2006). For “willful” infringement, a court may award up to \$150,000 per work infringed. Id. at §504(c)(2). A court can, in its discretion, also assess costs

and attorneys' fees. Id. at §505. Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense. Id. at §506, 18 U.S.C. 2319 (2006).

1.6.8.4.2 Resources

Everything that you need to know about copyright – www.copyright.com

Code of Best Practices in fair use for online video – www.centerforsocialmedia.org/remix

Code of Best Practices in fair use for open course ware – www.centerforsocialmedia.org/ocw

Wilcox Library LibGuide on copyright (really helpful) -

wmpenn.libguides.com/aecontent.php?pid=438026