

POLICY STATEMENT

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Subject: Copyright Policy

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Date: 11/7/2013

Distribution Code:

Reference Number:

Revision Date: 10/26/2012

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Addition

Originating Office: UIP Libraries

President's Approval

Deletion

New Item

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1. PURPOSE:

This policy addresses the use of any copyrighted resources at Indiana University of Pennsylvania ("the University") in compliance with all applicable copyright laws, including the standards of Fair Use; the Digital Millennium Copyright Act (DMCA); and the Technology, Education, and Copyright Harmonization (TEACH) Act. The purpose of this policy is to facilitate legitimate use of copyrighted materials by members of the University community while carrying out educational, research, creative, and scholarly pursuits.

2. SCOPE:

This policy applies to all members of the University community who use copyrighted materials in their educational, research, creative, and scholarly pursuits. This policy does not supersede any

applicable federal, state, or local laws; PASSHE policies or Collective Bargaining Agreements; or IUP's Acceptable Use Policy.

3. OBJECTIVE: The objective of this policy is to ensure that the University is in compliance with applicable federal, state, and local laws governing copyright and that the University provides the appropriate educational resources and guidelines to facilitate compliance with copyright laws.
4. POLICY: It is the policy that all members of the University community must comply with U.S. copyright law. Copyright law includes, but is not limited to, provisions of copyright ownership, Fair Use, the DMCA, and the TEACH Act. Copyrighted materials may be copied freely by the copyright owner. Faculty and staff are permitted to use and duplicate the copyrighted materials of other parties for educational and classroom uses with permission of the copyright holder or provided such activities are within the Fair Use standard, 17 USC §107. The Fair Use standard requires consideration and balancing of four factors to determine if duplication or use constitutes a Fair Use by Users of Copyrighted Materials. The DMCA includes prohibitions against the circumvention of technological preventative measures applied to copyrighted works (e.g., anti-piracy encryption or encoding) or the manufacture or use of software to circumvent protection measures. The TEACH Act expands provisions of Fair Use for the purposes of distance education under strict conditions, including the adoption of a university copyright policy, access to copyright information, and limitations on access to copyrighted materials.
5. DEFINITIONS:
 

Copy—The material object, other than a phonorecord, in which the copyrighted work is first fixed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device (U.S. Copyright Office)

Copyright— A form of protection provided by the laws of the United States for "original works of authorship," including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. "Copyright" literally means the right to copy but has come to mean that body of exclusive rights granted by law to copyright owners

for protection of their work. Copyright protection does not extend to any idea, procedure, process, system, title, principle, or discovery. Similarly, names, titles, short phrases, slogans, familiar symbols, mere variations of typographic ornamentation, lettering, coloring, and listings of contents or ingredients are not subject to copyright (U.S. Copyright Office).

**Copyright Infringement**—The unauthorized reproduction, distribution, performance, public display, or creation of derivative works of a copyrighted work without the permission of the copyright holder.

**Digital Millennium Copyright Act (DMCA)**—1998 legislation that includes prohibitions against the use of software for the circumvention of encryption or encoding to protect copyright and/or the creation or use of measures for circumventing copyright protections.

**Fair Use**—The right to reproduce materials for the purposes of criticism, comment, news reporting, teaching, scholarship, and research following the limitations in Sections 107-118 in U.S. copyright law (title 17 U.S. Code).

**TEACH Act**—2002 law that governs the use of copyrighted materials for the purposes of distance education delivery.

**Use**—The reproduction, distribution, performance, public display, or creation of derivative works of copyrighted materials. Use may qualify as authorized or unauthorized, given the provisions of copyright law.

**Users of Copyrighted Material (Users)**—Herein defined as any faculty, staff, or student member of the University community using materials for which he or she does not hold the copyright in carrying out educational, research, creative, and scholarly pursuits.

## 6. RESPONSIBILITIES:

It is the responsibility of the Users of Copyrighted Materials to respect the intellectual property of authors, contributors, and publishers in all media and to understand and comply with the provisions of this University copyright policy.

The Dean of the University Libraries, or his or her designee, will serve as the copyright compliance officer. The compliance officer's duties shall include ensuring compliance in the provision of educational and training resources and opportunities, maintaining the appropriate registration with the Library of Congress, receiving notices of infringement, contacting the infringing parties in the event of violations, and addressing questions regarding compliance with the policy.

7. PROCEDURES:

**A. Copyright Holders.** Users may freely duplicate works for which they maintain copyright.

**B. Fair Use.** Fair Use standards require the User to consider and balance all of the following factors to determine if duplication or use by a third party constitutes a Fair Use:

1. *What is the character of the 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. *What is the nature of the work to be used?* Is the work 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, or creative works.
3. *How much of the work do you intend to use?* 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. 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.
4. *What is the market effect from the use of this material?* This factor is perceived as the most important element to be considered under the Fair Use analysis. Duplication or use of a copyrighted work that does not diminish the potential market or infringe upon the revenues generated from the sale or distribution of the work will support a finding of Fair Use.

Fair Use analysis is, in many circumstances, difficult and complex. Additionally, when the balancing test does not support Fair Use, Users should consider the following:

**C. Educational Licensing.** Copyright holders may explicitly release the published materials from strict observance of the law. Frequently publishers, particularly associations and scholarly entities, will exempt educational uses of their materials from strict observance of the copyright law. Exemptions must be stated within the published materials. In such cases, it is permissible to use the materials without permission or recompense, up to and including the limits set by the publishers, even when they exceed Fair Use requirements.

**D. Copyright Holder Permission.** The User may obtain permission in writing from the copyright holder(s) to use the materials for an explicitly stated purpose. Notwithstanding the limitations of the law, publishers generally have established copyright clearance offices and standard practices to allow for uses in excess of legal limitations. Frequently, publishers will not ask for payment and all that is required is a written request for permission to use materials for classroom purposes. Furthermore, members of the IUP community are reminded to be diligent regarding agreements the University has with vendors of electronic services and software. The Library makes available selected databases and e-journals, and IT Services offers licenses for selected software. Behind each of these services are license agreements which govern how the material can be used by individuals. These are, in effect, contracts, which are legal and binding documents between you and the software/service provider. Some carry specific limitations as to the purposes for which downloaded material may be used or the number of pages, articles, or records that can be downloaded at any one time. It should be noted that the contractual provisions IUP has signed overrule the provisions of Fair Use.

**E. Copyright Violations.** Copyright holders are becoming increasingly sophisticated in monitoring use of their products; their ability to detect violations should not be underestimated. Additionally, use of University resources and networks to violate copyright are contrary to IUP's acceptable use policies and may result in sanctions being imposed

or revocation of network privileges by the University. The IUP Libraries provide notice to Users about licensing limitations through its web page. Furthermore, electronic resources carry click-through licensing terms that must be accepted before proceeding.

Violations of this policy will be reported to appropriate levels of administrative oversight, depending on the statutes and policies violated. A User who violates this policy risks a range of sanctions imposed by relevant University disciplinary processes. He or she also risks referral for prosecution under applicable local, state or federal laws.

8. REVISION: This policy supersedes the IUP Copyright Policy approved by the Council of Trustees on May 12, 1995.
9. PUBLICATIONS STATEMENT: Not Applicable
10. DISTRIBUTION: All Employees annually (by the Dean of the Libraries) and via the IUP Library website (updated within 60 days of any modification to the policy)

<u>Distribution Code</u>	<u>Description</u>
A	All Employees
C	All Non-Instructional Employees
E	All Managers
F	All Faculty