



University Policies and Procedures

04-03.20 - TOWSON UNIVERSITY POLICY ON INTELLECTUAL PROPERTY

I. INTRODUCTION

The primary mission of universities is to create, preserve, and disseminate knowledge. When that knowledge takes the form of intellectual property, a university must establish a clear and explicit policy that will protect the interests of both its creators and the university while ensuring that society benefits from the fair and full dissemination of that knowledge.

II. EFFECTIVE DATE

This policy will be effective on July 1, 2002 ("Effective Date"). It will apply to all intellectual property disclosed to the University on or after July 1, 2002. Intellectual property disclosed to the University prior to the Effective Date will remain subject to the UMS Policy on Patents effective May 31, 1990 or the UMS Policy on Copyrights effective May 31, 1990, unless otherwise agreed by the University and all creators of the intellectual property (or the heir or assignee of any creator's share of Revenue).

III. DEFINITIONS

The terms defined in this section are given special meanings in this policy and appear capitalized throughout. Other terms used in this policy with generally accepted definitions are included in a Glossary, pages 21 -22.

- A. Personnel.** All University employees, full-time and part-time, including Student Employees acting within their Scope of Employment; non-employee consultants; visitors; and others using University resources.
- B. Resources Usually and Customarily Provided.** All resources provided unless specified otherwise, in advance and in writing, as a condition of using the resource.
- C. Revenue.** Consideration paid in cash or equity by a third party in exchange for specific intellectual property rights. Revenue does not include research support in any form (e.g., sponsored research agreements, restricted grants, unrestricted grants, or equity), tuition income, and contract income received by the University including contract income received in lieu of tuition.
- D. Scope of Employment.** All activities related to the field or discipline of the faculty member's appointment, including the general obligation of a faculty member to teach, to

do creative work, and to conduct research, or related to the employment responsibilities of non-faculty Personnel, and for which Personnel receive compensation from the University, where compensation is any consideration, monetary or otherwise, including but not limited to, academic title and the ability to use University resources.

- E. Sponsored Research Agreements.** Grants, contracts, cooperative agreements, and other agreements under which research or development activities will be carried out, or other agreements administered by the University that relate to intellectual property created under the agreement.
- F. Students.** Persons enrolled in a University, acting within the course of their academic work, including, but not limited to, undergraduates, graduate and professional students, non-degree students, and not-for-credit students.
- G. Student Employee.** A Student who is also a University employee, acting within the Scope of Employment.
- H. System Institution.** Any institution of the University System of Maryland
- I. University.** Towson University.
- J. University System of Maryland.** An entity composed of eleven constituent institutions, the University of Maryland Biotechnology Institute, the University of Maryland Center for Environmental Science and the University System of Maryland Office.

IV. GENERAL PROVISIONS

- A. Purpose.** The purpose of this policy is to set forth the terms, conditions, and procedures whereby the University, Personnel and Students establish and maintain their interests in intellectual property created by or used at Towson University, taking into account intellectual property laws governing patents, copyrights, trademarks, and other forms of intellectual property. This policy governs the ownership and protection of such property at the University.
- B. Scope of Application.** All Personnel and Students shall comply with this policy, as amended from time to time. This policy shall be included in the faculty handbook, as directed in Board of Regents Policy II - 1.00, Section I. B.2.
- C. Protecting University Interests.** Personnel and Students may not (1) sign agreements or take any action on behalf of the University unless they are authorized agents of the University, or (2) make unauthorized use of the name of the University. In cases where Personnel or Students take such actions in violation of this policy, the University shall not be required to honor such actions or agreements.
- D. Acquisition.** The University may acquire ownership or use of intellectual property by assignment, license, gift, bequest, or any other legal means. The University shall

administer such intellectual property in accordance with this policy unless otherwise required by the terms of the acquisition.

E. Administration of Intellectual Property which is not University-owned. At the request of the owner, intellectual property not owned by the University may be administered by the University. In such cases this policy shall govern that administration unless the University agrees otherwise in writing.

F. Sponsored Research.

- 1) **Ownership.** Sponsored research agreements shall provide that all intellectual property developed by Personnel or Students under such agreements shall belong to the University; however, the University, on a case-by-case basis (as circumstances warrant, and consistent with applicable private use restrictions e.g., under bond covenants), may agree to assign ownership or licensing rights to the sponsor, subject to the University's right to use and reproduce the intellectual property for research and educational purposes. The University's president or designee shall approve any such agreement.
- 2) **Federal Sponsorship.** Any research project that is funded, in whole or in part, by a federal agency is subject to specific federal statutes and regulations. Those regulations generally allow the University to elect title to any invention that is conceived of or first actually reduced to practice in the performance of federally funded research with the purpose of commercializing the invention, subject to the government's rights which include reservation of a nonexclusive license to use the invention world-wide for government purposes.

G. Implementation Authority. The University president shall have the authority and responsibility to implement and coordinate this policy. Subject to the other provisions of this policy and applicable law, the president may enter into agreements with respect to ownership, licensure, disposition of intellectual property, disposition of royalty income, resolution of disputes, and other matters related to intellectual property that University has an interest under this policy, and may register intellectual property; seek protection under copyright, trademark, and/or patent laws; and enforce, defend, manage, and take any action relevant to the University's intellectual property rights that is necessary for the proper administration of this policy.

V. COPYRIGHTS

A. Ownership by Creator. Personnel and Students shall have all rights in copyrights of their work, subject to section V.B below, with the following exceptions.

- 1) **Scope of Employment.** The University owns all rights in copyright for work produced by non-faculty Personnel within the Scope of Employment.

- 2) Sponsored Research Agreements. The University owns all rights in copyright for work produced by Personnel or Students under Sponsored Research Agreements.
- 3) Signed agreements. The University owns all rights in copyright for all work as stated in written agreements.
- 4) Computer Programs and Software. Ownership of copyrighted software and computer programs is addressed in Section VII.
- 5) Technology-mediated Instructional Materials. Ownership and use of technology-mediated instructional materials is addressed in Section VIII.

B. Right to Use.

- 1) University rights. The University shall have the right to use and reproduce for research and educational purposes scholarly and original works for which it has provided resources, whether owned by the University, Personnel, or Students.
- 2) Additional Rights. If the University wishes to secure additional rights in copyrighted work it shall so specify in writing at the time it first provides resources beyond Resources Usually and Customarily Provided or other consideration.

C. Responsibilities of Personnel and Students.

- 1) Assignment. For work to which the University has or had rights of ownership or use under this policy, Personnel and Students shall, upon request, execute all legal documents designed to assist the University, or its assignees, in proving or benefiting from such rights, as deemed appropriate by the University.
- 2) External Collaborations. See Section IV.C and the Policy on Professional Commitment of Faculty, BOR 41.0 II-3.10.
- 3) Use of Copyrighted Materials. All Personnel and Students are responsible for complying with University guidelines on the use of copyrighted material (see 'Towson University Guidelines for the Use of Copyrighted Materials,' Appendix A) and for complying with the requirements of copyright law, including obtaining required permissions to use copyrighted material.

D. Responsibilities of the University.

- 1) Agreement Regarding Use of Resources Beyond Resources Usually and Customarily Provided. When the University authorizes or directs efforts to create a work or works using University resources beyond Resources Usually and Customarily Provided, it shall enter into a written agreement addressing the extent of use of resources, the schedule for the project (if appropriate), control over the work and its revisions, and ownership of the work. When the work done by Personnel routinely involves

resources beyond Resources Usually and Customarily Provided, compliance with this section may be accomplished by including the required terms in an employment agreement.

- 2) Sharing of Revenue. The University shall remit to creators or their assignees or heirs, their share of Revenue from copyrights as specified in Section XI.A. of this policy.
- 3) Use of Copyrighted Materials. The University shall disseminate to Personnel and Students, guidelines on the use of copyrighted material (see ‘Towson University Guidelines for the Use of Copyrighted Materials,’ Appendix A) and direction for complying with the requirements of copyright law; including obtaining required permissions to use copyrighted material.

VI. PATENTS

A. Ownership

- 1) University Ownership.
 - a) Within Scope of Employment. The University owns inventions created by Personnel within the Scope of Employment.
 - b) Use of University Resources. The University owns inventions created by Personnel, Graduate Students, or Professional Students with the use of University resources.
 - c) Signed Agreements. The University owns all inventions made by Personnel or Students under Sponsored Research Agreements and as stated in written agreements.
- 2) Creator Ownership.
 - a) Outside Scope of Employment. Personnel, Graduate Students, and Professional Students own patent rights to inventions conceived and first reduced to practice outside the Scope of Employment and without the use of University resources and not subject to Sponsored Research Agreements or other written agreements
 - b) Student Ownership. Undergraduate, non-degree, and not-for-credit Students own inventions they create unless the invention is subject to another provision of this section.

B. Responsibilities of Personnel and Students.

- 1) Disclosure. Personnel and Students shall disclose inventions, which are subject to University ownership to the president or the Associate General Counsel in a timely

manner, fully, and in writing. When uncertain about the University's rights, Personnel and Students shall disclose.

- 2) External Collaborations. See Section IV.C. Personnel and Students may not: (a) sign patent agreements or other documents (e.g., invention reports, licenses, assignments, Material Transfer Agreements, or Confidential Disclosure Agreements) which abrogate the University's rights; (b) make unauthorized use of the name of the University; or (c) transfer material relating to intellectual property outside the University, except pursuant to a properly authorized Material Transfer Agreement. See also the Policy on Professional Commitment of Faculty, BOR 41.0 II-3.10
- 3) Assignment. As to an invention in which the University has a right to ownership or use, the inventor, upon request, shall execute promptly all contracts, assignments, waivers or other legal documents necessary to vest in the University, or its assignees, any or all rights to the invention, including assignment of any patents or patent applications relating to the invention.

C. Responsibilities of University.

- 1) Timely Evaluation. The University shall evaluate inventions disclosed in accordance with Section VI.B.1) and shall do so with reasonable promptness and in good faith. The University shall decide whether to seek legal protection of its ownership rights, such as filing for patent protection; the scope of patent protection; and whether and how to pursue, limit, or abandon commercialization. The University may at any time decide not to pursue or to abandon the pursuit of patenting and/or commercialization of any invention in which it has an interest.
- 2) Timely Information. The University shall inform inventors in a timely manner about substantive decisions regarding protection, commercialization and/or disposition of inventions disclosed in accordance with Section VI.B.1). Terms of agreements which constitute proprietary business information may be treated as confidential by the University in accordance with applicable law. The University shall notify inventors promptly when it decides either not to pursue, or to abandon pursuit of, all efforts to commercialize an invention.
- 3) Commercialization by Inventors. The University, at its discretion and consistent with the public interest, may license intellectual property to the inventors on an exclusive or non-exclusive basis. Inventors must demonstrate technical and business capability to commercialize the intellectual property. Agreements with inventors shall be subject to review and approval of conflict of interest issues in accordance with applicable University policy.
- 4) Assignment of Ownership. The University may assign ownership to the inventors as allowed by law, subject to the rights of sponsors and to the retention by the University of a license which at a minimum shall grant the University the right to use intellectual property in its internally administered programs of teaching, research, and public

service on a perpetual, royalty-free, non-exclusive basis. The University may retain more than the minimum license rights, and assignment or license may be subject to additional terms and conditions, such as Revenue sharing with the University or reimbursement of the costs of legal protection. The University shall negotiate promptly, upon written request by the inventors, the transfer to the inventors of the University's interest in any invention that it has chosen not to protect or commercialize, subject to any legal obligation to offer its interest to a sponsor, licensee, or another institution with rights to the invention before it can agree to negotiate the transfer of the University's interest in an invention to the inventors.

- 5) Sharing of Revenue. The University shall remit to the inventors or their assignees or heirs, their share of Revenue from inventions as specified in Section XI.B. of this policy.

VII. COMPUTER PROGRAMS AND SOFTWARE

A. Ownership.

- 1) University Ownership.
 - a) Within the Scope of Employment. The University owns computer programs and software created by Personnel within the Scope of Employment.
 - b) Use of University Resources. The University owns computer programs and software created by Personnel, Graduate Students, or Professional Students with the use of University resources.
 - c) Signed Agreements. The University owns all computer programs and software created or made by Personnel or Students under Sponsored Research Agreements and as stated in written agreements.
- 2) Personnel Ownership.
 - a) Outside Scope of Employment. Personnel, Graduate Students, and Professional Students own software and computer programs conceived and first reduced to practice, and/or authored, outside the Scope of Employment and without the use of University resources and not subject to Sponsored Research Agreements or other written agreements.
 - b) Student Ownership. Undergraduate, non-degree, and not-for-credit Students own computer programs and software they create unless the computer program or software is subject to another provision of this section.

B. Responsibilities of Personnel and Students.

- 1) Disclosure. Personnel and Students shall disclose computer programs and software that are subject to University ownership to the president or the Associate General Counsel in a timely manner, fully, and in writing. When uncertain about the University's rights, Personnel and Students shall disclose. Disclosure may include deposit of a digital-time-stamped copy of the software program, with appropriate annotations.
- 2) External Collaborations. See Section IV.C. See also the Policy on Professional Commitment of Faculty, BOR 41.0 II-3.10.
- 3) Assignment. As to a computer program or software in which the University has a right to ownership or use, the creator, upon request, shall execute promptly all contracts, assignments, waivers or other legal documents necessary to vest in the University, or its assignees, any or all rights to the computer program or software, including assignment of any patents, copyrights, patent applications, or copyright applications, relating to the work.

C. Responsibilities of University.

- 1) Timely Evaluation. The University shall evaluate computer programs and software disclosed in accordance with Section VII.B.1 and shall do so with reasonable promptness and in good faith. The University shall decide whether to seek legal protection of its ownership rights, such as filing for patent protection, the scope of patent protection, and whether and how to pursue, limit, or abandon commercialization. The University may at any time decide not to pursue or to abandon the pursuit of patenting and/or commercialization of any computer program or software in which it has an interest.
- 2) Timely Information. The University shall inform creators in a timely manner about substantive decisions regarding protection, commercialization and/or disposition of computer programs or software disclosed in accordance with Section VII.B.1. Terms of agreements which constitute proprietary business information may be treated as confidential by the University in accordance with applicable law. The University shall notify creators promptly when it decides either not to pursue, or to abandon pursuit of, all efforts to commercialize computer programs or software.
- 3) Commercialization by Creators. The University, at its discretion and consistent with the public interest, may license intellectual property to the creators on an exclusive or non-exclusive basis. Creators must demonstrate technical and business capability to commercialize the intellectual property. Agreements with creators shall be subject to review and approval of conflict of interest issues in accordance with applicable University policy.

- 4) **Assignment of Ownership.** The University may assign ownership to the creators as allowed by law, subject to the rights of sponsors and to the retention by the University of a license which at a minimum shall grant the University the right to use intellectual property in its internally administered programs of teaching, research, and public service on a perpetual, royalty-free, non-exclusive basis. The University may retain more than the minimum license rights, and assignment or license may be subject to additional terms and conditions, such as Revenue sharing with the University or reimbursement of the costs of legal protection. The University shall negotiate promptly, upon written request by the creators, the transfer to the creators of the University's interest in any computer program or software that it has chosen not to protect or commercialize, subject to any legal obligation to offer its interest to a sponsor, licensee, or another institution with rights to the intellectual property before it can agree to negotiate the transfer of the University's interest in intellectual property to the creators.
- 5) **Sharing of Revenue.** The University shall remit to the creators or their assignees or heirs, their share of Revenue from computer programs or software as specified in Section XI.B. of this policy.

VIII. TECHNOLOGY-MEDIATED INSTRUCTIONAL MATERIALS.

A. Definition. Technology mediated instructional materials are defined as instructional methods or products, made by or at the direction of an instructor, that: (a) require media or computer technology as an essential component for development and/or delivery; and/or (b) require development support from media, graphics or technology specialists, instructional designers or programmers. Technology is considered to be an essential component when the materials cannot effectively or practically be developed or delivered independent of the technology. Examples of technology-mediated instruction include (but are not limited to) videotaped programs, PowerPoint presentations, interactive CD-ROMs, computer games and/or simulations, dynamic websites, digital image banks, online tutorials and online courses, computer-based instruction, audio clips, and e-mail.

B. Ownership.

- 1) **University Ownership.** If any such materials are patentable (determined in accordance with federal statute and case law), they will be treated as computer programs and software subject to the provisions of Section VII.
- 2) **Ownership by Creator.** Personnel and Students shall have all rights in copyright of the technology-mediated instructional materials they create, subject to a license to the University as more fully described in Section B.3) and Section C below, with the following exceptions:
 - a) **Scope of Employment.** The University owns all rights in copyright of technology-mediated instructional materials produced by non-faculty Personnel within the Scope of Employment.

- b) Sponsored Research Agreements. The University owns all rights in copyright for all technology mediated instructional materials produced by Personnel or Students under Sponsored Research Agreements.
- c) Signed Agreements. The University owns all rights in copyright for all work as stated in written agreements.

C. Right of Use.

- 1) University Rights. The University shall have the right to use, adapt, reproduce, transmit, distribute, perform and/or display for research and educational purposes any technology mediated instructional materials for which it has provided resources, whether such materials are owned by the University or Personnel.
- 2) Additional Rights. If the University wishes to secure rights in technology mediated instructional materials in addition to those specified in section C.1) above, it shall set forth the additional rights in a written agreement signed by the creator(s) of the materials. The agreement should be entered into no later than the time the University first provides the creator(s) with consideration for the agreement (for example, when the University first provides resources beyond Resources Usually and Customarily Provided). Any such agreement may also include additional terms, such as revenue sharing with the University or reimbursement of the costs of resources beyond Resources Usually and Customarily Provided.

D. Ownership of Adaptations. When the University authorizes its employee(s) to exercise its right to adapt technology mediated instructional materials, ownership of the adapted portion of the materials will be determined pursuant to paragraphs section VIII.B. above. When the University employs a third party to exercise its license to adapt such materials, it will enter into a written agreement with that party, before the work is started, which specifies that the University will retain all copyright rights in and to the adapted portion of the materials.

E. Ownership of materials used in creation. Ownership of all intellectual property rights in any Web formats, authoring tools, or delivery media provided for use in developing technology mediated instructional materials, and for the delivery of such materials to students, remains unchanged. Personnel and Students cannot use these materials for any purposes other than those specified by the University, except with the University's express written permission, or pursuant to an agreement between the Personnel and/or Students and the copyright owner.

F. Responsibilities of Personnel and Students

- 1) Assignment. For technology mediated instructional materials to which the University has or had rights of ownership or use under this policy, Personnel and Students shall, upon request, execute all legal documents designed to assist the University, or its

assignees, in proving or benefiting from such rights, as deemed appropriate by the University.

- 2) External Collaborations. See Section IV.C. of the University System of Maryland Policy on Intellectual Property, BOR IV 3.20 and the University System of Maryland Conflict of Commitment Policy, BOR 41.0 II-3.10. Personnel and Students may not: (a) sign agreements or other documents which abrogate the University's rights; (b) make unauthorized use of the name of the University; or (c) transfer material relating to intellectual property outside the University, except pursuant to an agreement authorized in writing by the University.
- 3) Use of Copyrighted Materials. All Personnel and Students are responsible for complying with the "Towson University Guidelines for the Use of Copyrighted Materials" (Appendix A), and for complying with the requirements of copyright law, including obtaining required permissions to use copyrighted material as components of, or in the development or delivery of, technology mediated instructional materials.
- 4) Disclosure. Personnel and Students shall disclose technology mediated instructional materials to the president or the Associate General Counsel in a timely manner, fully, and in writing. When uncertain about the University's rights, Personnel and Students shall disclose.

G. Responsibilities of University.

- 1) Agreement regarding the use of resources beyond Resources Usually and Customarily Provided. When the University authorizes or directs efforts to create technology mediated instructional materials using resources beyond Resources Usually and Customarily Provided, it shall enter into a written agreement addressing the extent of use of resources, the schedule for the project (if appropriate), control over the work and its revisions, ownership of the materials, and any other relevant issues. When the work done by Personnel routinely involves resources beyond Resources Usually and Customarily Provided, compliance with this section may be accomplished by including the required terms in an employment agreement.
- 2) Sharing of Revenue. The University shall remit to the creators or their assignees or heirs, their share of Revenue from technology-mediated instructional materials as specified in Section XI.B. of this policy.
- 3) Assignment of Ownership. The University may assign ownership to the creators as allowed by law, subject to the rights of sponsors and to the retention by the University of a license which at a minimum, shall provide that the University has a perpetual, non-exclusive royalty free license to adapt, reproduce, transmit, distribute, perform, and/or display the technology mediated instructional materials to its students regardless of their location, and to use such materials in research. The University may retain more than the minimum license rights. The agreement may include additional

terms, such as revenue sharing with the University or reimbursement of the costs of resources beyond Resources Usually and Customarily Provided.

IX. OTHER TYPES OF INTELLECTUAL PROPERTY

- A. Tangible Research Property.** The principles in Section VI. that apply to inventions and patents also apply to tangible research property.
- B. Mask Works.** The principles in Section VI. that apply to inventions and patents also apply to mask works.
- C. Plant Varieties.** The University owns and may protect or commercialize plant varieties according to the principles of Section VI.
- D. Trademarks, Service Marks, and Trade Dress.** Trademarks, service marks, and trade dress may be created in association with an underlying license for another form of intellectual property, such as a patent or a plant variety (“associated with other intellectual property”), or independently, such as a university logo or symbol (“independently created”).
 - 1) Associated with Other Intellectual Property. The University owns a trademark, service mark or trade dress if it is associated with other intellectual property owned by the University.
 - 2) Independently Created. The University owns trademarks, service marks, and trade dress that are independent of intellectual property, created by Personnel within the Scope of Employment, unless the University agrees otherwise in writing.
 - 3) Commercialization: The University may commercialize or license its trademarks, service marks and trade dress.
 - 4) Registration. The president or designee shall approve registration of trademarks or service marks, at the state or federal level.

X. INTERINSTITUTIONAL AGREEMENTS

- A. Joint Appointments and Affiliations.** This section applies when an individual has an appointment in and receives support for research or creative work from two or more System Institutions and when a Student or Student Employee is earning a degree in one System Institution but doing research or creative work in another.
 - 1) Ownership. When more than one System Institution can claim ownership to intellectual property under this policy, they own it jointly.
 - 2) Management Agreements. System Institutions that are or may become joint owners of intellectual property shall enter into agreements stating which institution will be

responsible for management of the intellectual property. Universities are encouraged to negotiate standard agreements whenever possible. The president or designee shall be responsible for negotiating management agreements.

- a) **Terms to be Addressed.** The agreements shall state which institution will be responsible for prosecution of patent applications or other forms of intellectual property protection, which institution will license the intellectual property, how expenses and deductions from Revenue will be allocated, and how institutional net revenue will be shared. The distribution of each System Institution's share of Net Revenue, Project Specific Costs, and General Costs shall be addressed in the management agreement.
 - b) **Student Requirements.** With regard to Students and Student Employees, agreements shall specify whether the degree-granting institution or the supporting institution will be responsible for managing intellectual property they create when that property is subject to university ownership.
- 3) **Responsibilities of Managing Institution.** The university managing intellectual property under an agreement shall promptly inform the other institution or institutions about steps taken with regard to ownership. Such information shall include at minimum copies of the invention disclosure form, documents associated with filing for statutory protection, assignment of rights, and license agreements. If the managing institution decides not to proceed, the other owning university or universities shall have the right to assume responsibility as the managing institution.
 - 4) **Distribution of Revenue.** The managing institution shall distribute Revenue to the creators and share net revenue in all cases according to Section XI.
 - 5) **Disputes.** A president may ask the Chancellor to intercede if the System Institutions are unable to reach agreement or differ in their interpretation of an agreement.

B. Joint Creators. This section applies when Personnel or Students from two or more System Institutions collaborate.

- 1) **Early Notification.** As soon as collaborators from different System Institutions recognize that their efforts have resulted in, or are likely to result in, the creation of intellectual property subject to this policy, they shall inform their respective institutions that an agreement is needed. The president or designee shall be responsible for negotiating joint ownership agreements.
- 2) **Agreements Govern.** Signed agreements between System Institutions shall determine ownership of intellectual property, responsibility for managing it, and distribution of expenses and Revenue resulting from its development. System Institutions whose Personnel or Students are engaged in frequent collaboration are encouraged to negotiate standard agreements within the framework of this policy.

- 3) Disputes. A president may ask the Chancellor to intercede if the System Institutions are unable to reach agreement or differ in their interpretation of the agreement.

XI. REVENUE SHARING

Unless otherwise agreed to in writing by the creators of a work or inventors of an invention, each named creator or inventor shall receive equal shares of net Revenue.

A. Copyrights. The University shall share with the creators Revenue it receives resulting from copyrightable materials created by Personnel, subject to certain exceptions.

1) Exceptions:

- a) Scope of Employment. Revenue generated from work produced by non-faculty Personnel within the Scope of Employment is excluded from sharing.
- b) Contract. When a third party contract dictates apportionment of Revenue different from that specified in this policy, the terms of the contract govern.
- c) Technology-mediated Instructional Materials. Revenue from copyrightable technology mediated instructional materials shall be shared as prescribed in section XI.C.
- d) Interinstitutional Agreements. In cases where an interinstitutional agreement exists for joint ownership of copyrights, the formula for revenue sharing established in the University System of Maryland Policy on Intellectual Property, BOR IV -3.20 shall supersede the University policy.

B. Patents and Computer Programs and Software. The University shall share with inventors or creators Revenue that it receives from their inventions or creations as provided in this section.

1) Exceptions.

- a) Contract. When a third party contract dictates apportionment of Revenue different from that specified in this policy, the terms of the agreement govern.
 - b) Equity. Equity shall be distributed in accord with Section XI.G.
- 2) Deductions from Revenue. The University shall make the following deductions from Revenue before distributing net Revenue (Section XI.B.3).
- a) Creators' or Inventors' Share. First, ten percent (10%) of Revenue shall be distributed among the creators or inventors until the cumulative total reaches the limit set pursuant to this paragraph that was in effect during the fiscal year in which the University first received Revenue. The limit in FY2003 is \$10,000 to

be shared among the inventors or creators. The Chancellor shall establish a new limit for each succeeding fiscal year by adjusting the previous year's limit by an amount reflecting the change in the Consumer Price Index during the last calendar year completed, rounded to the nearest \$100.

- b) General Costs. Second, the University shall deduct thirty percent 30% of Revenue to cover the general cost of developing, obtaining, managing, and defending inventions or creative work, unless otherwise agreed to by inventors or creators and the University, in writing.
 - c) Project Specific Costs. Third, the remaining sixty percent (60%) of Revenue received from a creative work, patent, or invention shall be applied to reimburse any specific, incremental expenses incurred by the University in obtaining and maintaining the patent and in developing, marketing, licensing, and defending the patent or licensable invention or creative work. After reimbursement of the University's expenses, Revenue may be used to reimburse costs incurred by inventors or creators on behalf of their own works but only if the University had authorized such expenses in advance in writing.
 - d) Residual Creators' Share. Fourth, after project costs have been paid in full, any remaining Revenue shall go to the creators until the Creators' share described in section XI.B.2).a) above has been paid.
- 3) Distribution of Net Revenue. Net Revenue is the Revenue remaining after deductions under XI.B.2.
- a) Creators' Share. The University shall distribute among the inventors or creators fifty percent (50%) of the net Revenue it receives from their inventions or creations unless applicable laws, regulations, provisions of grants or contracts, or signed agreements with inventors or creators provide otherwise.
 - b) University's Share. The University shall distribute fifty percent (50%) of net Revenue received on account of an invention to the inventors' College to be dedicated to research and to the promotion of patenting and patents. Further distribution to the inventor's academic department is at the discretion of the College dean.
- 4) Timely Distribution. The University shall distribute Revenue due creators under this policy at least annually. Distribution will be made along with a statement of related income and expenses.

C. Technology-Mediated Instructional Materials. The university will share Revenue received from the commercialization of technology mediated instructional materials as provided in this section subject to certain exceptions.

- 1) Exceptions.
 - a) Scope of Employment. Revenue generated from technology mediated instructional materials produced by non-faculty Personnel within the Scope of Employment is excluded from sharing.
 - b) Contract. When a third party contract dictates apportionment of Revenue different from that specified in this policy, the terms of the contract govern.
 - c) Equity. Equity shall be distributed in accordance with Section XI.G.
- 2) Deductions from Revenue. The University shall make the following deductions from Revenue before distributing net Revenue as specified in XI C.3 below.
 - a) Creators' Share. First, ten percent (10%) of Revenue shall be distributed among the creators of the technology mediated instructional materials until the cumulative total reaches the limit set pursuant to this paragraph that was in effect during the fiscal year in which the University first received Revenue. The limit in FY2002 is \$10,000 to be shared among the creators. The President shall establish a new limit for each succeeding fiscal year by adjusting the previous year's limit by an amount reflecting the change in the Consumer Price Index during the last calendar year completed, rounded to the nearest \$100.
 - b) General Costs. Second, the University will deduct thirty percent (30%) of revenue to cover the general cost of developing, obtaining, managing, and defending creative works, unless otherwise agreed to by the University and creators, in writing.
 - c) Project Specific Costs. Third, the remaining sixty percent (60%) of the Revenue received from the technology mediated instructional materials shall be applied to reimburse any specific, incremental expenses incurred by the University in obtaining and maintaining the copyright, and in developing, marketing, licensing, and defending the technology mediated instructional materials. After reimbursement of the University's expenses, Revenue may be used to reimburse costs incurred by creators on behalf of their own technology mediated instructional materials, but only if the University had authorized such expenses in advance in writing.
 - d) Residual Creators' share. Fourth, after project specific costs have been paid in full, any remaining Revenue shall go to the creators until the Creators' Share described in section XI C.2) a) above has been paid.
- 3) Distributions of Net Revenue. Net Revenue is the revenue remaining after deductions under section XI. C.2) above.

- a) **Creator's Share.** The University shall distribute among the creators fifty percent (50%) of the net Revenue it receives from the technology mediated instructional materials they created unless applicable laws, regulations, provisions of grants or contracts, or signed agreements with creators provide otherwise.
- b) **University's Share.** Fifty percent (50%) of the net Revenue received on account of technology mediated instructional materials shall be distributed to the creator's College to be dedicated to research and to the promotion of technology mediated materials. Further distribution to the creator's academic department is at the discretion of the College dean.
- 4) **Timely Distribution.** The University shall distribute accrued Revenues due creators under this policy at least annually. Distribution will be made along with a statement of related income and expenses.

D. Tangible Research Property, Mask Works, and Plant Varieties. When tangible research property, mask works, or plant varieties are licensed, Revenue shall be distributed in the same manner that Revenue is distributed under Section XI.B.

E. Trademarks, Service Marks, and Trade Dress.

- 1) **Creators' Share.**
 - a) **Associated with Other Intellectual Property.** Revenue received from commercialization of a trademark, service mark, or trade dress that is related to an intellectual property license shall be shared with creators of the trademark, service mark or trade dress, as specified in Section XI.B.
 - b) **Independently created trademark, service mark, or trade dress.** Except as provided herein or unless subject to prior written agreement between the creators and the University, the University will not share the Revenue from commercialization of a trademark, service mark, or trade dress with the individuals who created the trademark, service mark, or trade dress.
- 2) **University Ownership.** Revenue received from commercialization of a trademark, service mark, or trade dress licensed independently and not directly related to another form of intellectual property license shall not be shared and shall belong to the University.

F. Joint Appointment. In situations covered by section X., the University's share of net revenue shall be divided equally among the Universities or as otherwise provided by written agreement.

G. Joint Creators. If joint creators are from different Universities, the University's share of net Revenue shall be divided equally unless determined by signed agreements as provided in Section X .B.2.

H. Equity.

- 1) Issuance of Shares. Equity may be issued separately to the University and the inventors or creators.
- 2) Distribution of Shares. Equity in a commercial venture received as consideration for intellectual property rights shall be shared equally between the University and the creators, unless a different distribution is negotiated in an agreement signed by the University and the creators of the relevant intellectual property.
- 3) Timely Distribution. When the University receives all shares directly, as soon as practicable after the University receives equity, and subject to the creators receiving any conflict of interest exemptions that must be granted and complying with any conditions for those exemptions, the University shall transfer equity shares to the creators. The University and creators shall have independence in their exercise of equity holder privileges within the constraints of law, policy, specific exemption under Maryland law from the State Ethics Law, and contractual agreements.
- 4) Unqualified Persons. Personnel or Students not qualified to hold the equity under applicable law shall designate a qualified person to receive the equity. If no designee is named within thirty days of a written request by the University to do so, the right to a share of the equity shall be forfeited to the University.

XII. ADMINISTRATION

A. Implementation.

- 1) Background. This policy was adapted from the University System of Maryland Policy on Intellectual Property (BOR IV-3-20) and approved by the Towson University Senate April 1, 2002. The Provost and Vice President for Learning approved the policy on April 11, 2002.
- 2) Point of Contact. Towson University's initial point of contact for intellectual property issues will be:
Associate General Counsel
Rm. 204 Administration Building
Towson University
Towson, MD 21252
Ph: 410-704-6062
- 3) Implementation Procedure. University policy and implementation procedures will be publicized during briefing sessions for each College Council and additional institutes and centers on the campus. Additional promotion and informational articles will be published in campus, faculty and student newsletters. Departmental briefings and open discussion sessions will be made available to all academic departments, library and media resource staff, student support services. To reach the student population,

information about the University policy will be incorporated in student orientation packets, student catalogs and provided for incorporation in the 'Using Information Effectively' course series and other appropriate portions of the curriculum.

- 4) USM Approval. The President will provide the Chancellor with a copy of the University's policy for approval prior to initial adoption as well as prior to any subsequent revision. (Until such time as the Chancellor provides written approval of the initial University document, this USM document shall apply to the University. Subsequent revisions shall not go into effect until approved by the Chancellor in writing.)
- 5) Documentation of Procedure. The President will provide the Chancellor with a copy of the University's implementation procedures for the record.

B. Authority to Subcontract. The University may enter into contracts with third parties in connection with the development, administration, and protection of its intellectual property.

C. Special Cases.

- 1) Issues not addressed. The Board of Regents recognizes that special cases will arise that are not specifically covered by this policy. In such cases, the President may make a decision on how to proceed and report that decision to the Chancellor. Alternatively, the President may submit such cases to the Chancellor or designee for resolution.
- 2) Policy waivers. Only the Chancellor may waive any provision of the USM Policy or of any University's approved policy on intellectual property.

XIII. REPORTING

The President shall report annually to the Chancellor and the Board of Regents on intellectual property activity at the University. The report, in a format to be determined by the Chancellor, shall include data for the preceding year on disclosures, patent applications, patent awards, licenses, and start-up companies, distinguishing when appropriate between Maryland-based companies and those outside of the State. The report shall also include data on revenue and expenditures associated with the University's technology transfer function.

Approved by the President, 4/11/02

Approved by the Office of the Chancellor, USM, July 8, 2002

APPENDIX A (This section is provided for information only. It is not part of the policy.)

Towson University
Guidelines for Use of Materials Protected by Copyright

I. General Copyright Information

Copyright grants originators property rights in their creative work as a means of promoting and advancing knowledge. The copyright owner has the exclusive right to reproduce, create derivative works based on, display, perform, and distribute the copyrighted work. The original copyright owner(s) may transfer all or part of his/her/ their rights (e.g., grant permission to use the work, or part of it, in a certain way). The transfer or license must be in writing, and the copyright owner must receive something in return

A. What works are copyrightable?

To be copyrightable, a work must be original (i.e., a product of the originator's own creative labor), have some degree of creativity (the Great American Novel vs. the white pages in the telephone book), and be fixed in a tangible medium of expression from which it can be perceived, reproduced or otherwise communicated directly or with the aid of a machine or device. Electronic files, digital images, and e-mail stored on floppy disk, CD-ROM, hard drive, web servers and stored in cache are copyrightable works. Literary works; musical works (and lyrics); dramatic works (and accompanying music); pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and audiovisual works, sound recordings and architectural works are all examples of copyrightable works. Titles, names, short phrases and slogans are not copyrightable. Facts and ideas are not copyrightable, only expression. There can be layers of copyright in a work: an art history textbook is copyrightable, as is a single photograph in that book, and the painting or sculpture photographed.

A compilation or collective work (like an anthology, record album, or data base) can warrant a copyright separate from the copyright in each individual part of it because of the creativity involved in collecting, arranging, and perhaps editing individual works. Also, a collection of underlying facts, which aren't individually eligible for copyright protection, can be protected because of the creativity involved in the manner in which the facts are arranged and presented.

B. Infringement

Infringement occurs when someone distributes, sells, or uses a work in any way inconsistent with the owner's property rights. The owner can sue the infringer for damages (the actual harm incurred or, in some cases, a statutory minimum) or sue to enjoin the illicit use. Copyright infringement is also a federal crime punishable by fines and/or jail sentence if infringement is willful and for (a) financial gain/commercial advantage, or (b) retail value of infringing items over \$1,000. Financial gain includes

receipt, or expectation of receipt, of anything of value, including receipt of other copyrighted works.

II. Copyright Checklist

A. Is the material you want to use copyrightable? Is it protected by copyright?

If the answer is no, you can use the work without permission.

Absence of a copyright notice does not mean the work is not copyrighted. Copyright protection for works of American origin created after December 31, 1977, is for the life of the (last surviving) author plus 70 years. Anonymous and pseudonymous American works created after December 31, 1977, and works made for hire, are protected for 95 years from the year of first publication or 120 years from the year of creation, whichever expires first. All protection runs to the end of the calendar year. Once copyright protection has expired, the work is in the public domain, and can be used without permission.

As a rule of thumb, material which was entirely created (including footnotes, annotations, translations, etc.) and published before January 1, 1923, or which was created by the U.S. federal government, is in the public domain and can be used without permission. You should assume everything else, whether published or not, is protected. For a more exact answer as to whether a work is protected, you will need to know the answers to factual questions such as when the work was created; whether it has been published, and if so, when, and with or without copyright notice; whether the work was a work for hire; whether the author is still alive or when he/she died; if published, in what country the work was first published; whether copyright has been renewed; and whether the author was domiciled in the US or a national or domiciliary of a treaty nation.

B. Does the proposed use of a work protected by copyright fall within any statutory limitations on the copyright owner's rights?

If the answer is yes, you can use the work without permission. Some of the most pertinent limitations are described briefly below.

- 1. Face to face teaching exemption.** Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution is allowed in a classroom or similar place devoted to instruction. However, the exemption does not apply to a motion picture or other audiovisual work if the performance or display of individual images is given by means of a copy that was not lawfully made and if the person responsible for the performance knew or had reason to know it was not lawfully made.
- 2. Library use.** These provisions apply to Libraries and their employees acting within the scope of their employment. All such permitted reproductions or distributions must be made without any purpose of direct or indirect commercial advantage, and the

reproduction or distribution of the work must include any copyright notice that appears on the Copy being reproduced, or (if there is no such notice) must include a legend stating that the work may be protected by copyright.

For purposes of this subsection, a “Library” is a library or archive which is open to the public or available not only to researchers affiliated with the library or archives or the institution of which it is a part, but also to other persons doing research in a specialized field. For purposes of this subsection, a “Copy” is a copy or phonorecord.

- a) **Unpublished works.** A Library can reproduce and distribute up to three Copies of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another Library if (i) the work being reproduced is currently in the collections of the Library and (ii) any Copy reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the Library.
- b) **Published works.** A Library can reproduce and distribute up to three Copies of a published work duplicated solely for the purpose of replacing a Copy that is damaged, deteriorating, lost or stolen, or if the existing format in which the work is stored has become obsolete, if (i) the Library has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price and (ii) any such Copy reproduced in a digital format is not made available to the public in that format outside the premises of the Library. A format is considered obsolete if the machine or device necessary to perceive the work in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.
- c) **User requests.** These exemptions do not apply to musical works; to pictorial or graphic works except those published as illustrations, diagrams or similar adjuncts to other works; to sculptural works; or to a motion picture or other audiovisual work other than an audiovisual work dealing with news.
 - 1) A Library may make and distribute a copy, made from the collection of the Library where the user makes the request or from that of another Library, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a Copy of a small part of any other copyrighted work, if (i) the Copy becomes that property of the user, (ii) the Library has had no notice that the Copy would be used for any purpose other than private study, scholarship or research, and (iii) the Library displays prominently where orders are accepted, and includes on its order form, a warning of copyright in the form attached.
 - 2) A Library may make and distribute a copy of an entire work, or a substantial portion of it, made from the collection of the Library where the user makes the request or from that of another Library, if in addition to the above requirements, the Library has first determined, on the basis of a reasonable investigation, that a Copy cannot be obtained at a fair price.

Only isolated and unrelated reproduction and distribution of a single Copy of the same material on separate occasions is permitted by this exemption. Reproduction and distribution is not permitted if the Library or its employee (i) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple Copies of the same materials, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by individual members of a group; or (ii) engages in the systematic reproduction or distribution of single or multiple Copies of work which cannot be obtained at a fair price. However, Libraries may participate in interlibrary arrangements as long as neither the purpose nor effect is that the Library receiving such Copies for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

- 3) A Library can make an off-the-air videotape recording of network newscasts for limited distribution (only by lending, and only a limited number of copies and excerpts) to scholars and researchers for use in research purposes. This exemption does not apply to documentary, magazine-format or other public affairs broadcasts.

- d) **Last twenty years of copyright protection.** During the last 20 years of any copyright term of a published work, a library, archives, or nonprofit educational institution may reproduce, distribute, display or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if it has first determined, on the basis of a reasonable investigation, that (i) the work is not subject to normal commercial exploitation; (ii) a copy or phonorecord of the work cannot be obtained at a reasonable price, and (iii) the copyright owner or its agent has not provided notice (pursuant to regulations) that either of the conditions above applies. This exemption does not apply to subsequent uses by users other than the library, archives, or educational institution.
 - e) **Unsupervised copying equipment.** Unsupervised copying equipment in the library must display a notice that making a copy is subject to copyright law. (The attached notice can be used.)
 - f) **A nonprofit library can lend a computer program for nonprofit purposes,** if the packaging for each copy of a computer program, which is lent, includes a warning of copyright (see attached notice).
3. **Lending computer programs.** The University can transfer possession of a lawfully made copy of a computer program to another nonprofit educational institution or to faculty, staff, or students unless (a) the computer program is embodied in a machine or product which cannot be copied during the ordinary operations or use of the machine or product or (b) the computer program is embodied in or used in

conjunction with a limited purpose computer that is designed for playing video games and may be designed for other uses.

- 4. Nonprofit performance.** The University can perform a nondramatic literary or musical work (not transmitted to the public) without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers. This exemption applies (a) if there is no direct or indirect admission charge for the performance; or (b) if the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, and if the copyright owner has not served written notice of objection to the performance. Any such notice must state the reasons for the objection, must be signed by the copyright owner or the owner's duly authorized agent and served on the person responsible for the performance at least seven days before the date of the performance, and must comply, in form, content, and manner of service, with copyright regulations.
- 5. Computer uses.** The owner of a computer program may (a) make or authorize the making of another copy or adaptation of the program, as long as the new copy or adaptation is created as an essential step only in conjunction with a machine (i.e., installing a program on hard drive from disk); and (b) make a copy of it for archival purposes, as long as all archival copies are destroyed if the owner no longer has rightful possession of the program.

C. Does the proposed use of a work protected by copyright fall within the guidelines for classroom copying, the guidelines for educational uses of music, or the guidelines for educational multimedia (all attached)? If the answer is yes, you can use the work without permission.

D. Is the proposed use of a work protected by copyright a "fair use" even though it does not fall within the guidelines? If the answer is yes, you can use the work without permission. You should contact the University's Counsel's office for advice.

Fair use is a defense to claim of infringement. Fair use, like beauty, is in the eye of the beholder, and is rarely clear-cut one way or the other. Three fair use cases have made it to the Supreme Court: all three were overturned at each level of review, two by split decision at the Supreme Court. Whether use is fair depends on an analysis of four factors (though other factors can be considered as well):

- 1. The purpose and character of use (commercial or non-commercial).** This analysis favors such uses as criticism, comment, news reporting, teaching, scholarship or research. Use of a copyrighted work in a derivative work is viewed more favorably than mere copying. This factor focuses on public benefit vs. private commercial gain.

2. **The nature of the copyrighted work.** Creative works are given more protection than factual works, and unpublished works are given more protection than works that have been published.
 3. **The portion of the original work that was taken or copied.** This factor considered both the quantity and the relative importance of the part used.
 4. **The economic impact of the use on copyright holder of the original work.** This is the most important factor (the tiebreaker). It considers not just the proposed use, but also the impact on the copyright holder if everyone did the same thing. It also considers whether the proposed use serves the same or a different function or niche than the original work.
- E. Do you have documented permission for the use from the copyright holder?** If the answer is yes, you can use the work in accordance with the scope of the permission granted.

For memos or documents written by a Towson University employee for internal distribution, or exams or syllabi written by a professor for class, permission to copy (for the purpose) is implied. For other works, the author initially has all copyrights in his/her/their work, but publishing agreements typically contain provisions assigning those rights to the publisher.

The Guidelines established here are consistent with 1976 Copyright Act, Title 17, U.S. Code, and subsequent provisions and guidelines for the educational use of copyrighted materials as published by the Library of Congress, U. S. Copyright Office, 101 Independence Avenue S.E. Washington D.C. 20559-6000

September 2001

AGREEMENT ON GUIDELINES FOR CLASSROOM COPYING IN
NOT-FOR-PROFIT EDUCATIONAL INSTITUTION

WITH RESPECT TO BOOKS AND PERIODICALS

The purpose of the following guideline is to state the minimum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

GUIDELINES

I. *Single Copying for Teachers*

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A. A chapter from a book;
- B. An article from a periodical or newspaper;
- C. A short story, short essay or short poem, whether or not from a collective work;
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper;

II. *Multiple Copies for Classroom Use*

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; *provided that*:

- A. The copying meets the tests of brevity and spontaneity as defined below; and,
- B. Meets the cumulative effect test as defined below; and,
- C. Each copy includes a notice of copyright

Definitions

Brevity

- (i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two page or, (b) from a longer poem, an excerpt of not more than 250 words.
- (ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in “i” and “ii” above may be expanded to permit the completion of an unfinished line of poem or of an unfinished prose paragraph.]

- (iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- (iv) “Special” works: Certain works in poetry, prose or in “poetic prose” which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph “ii” above notwithstanding such “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in text thereof, may be reproduced.

Spontaneity

- (i) The copying is at the instance and inspiration of the individual teacher, and
- (ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

- (i) The copying of the material is for only one course in the school in which the copies are made.
- (ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- (iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in “ii” and “iii” above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. *Prohibitions as to I and II above*

Notwithstanding any of the above, the following shall be prohibited:

- (A) Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.
- (B) There shall be no copying of or from works intended to be “consumable” in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.
- (C) Copying shall not:
 - (a) substitute for the purchase of books, publishers’ reprints or periodicals;
 - (b) be directed by higher authority;
 - (c) be repeated with respect to the same item by the same teacher from term to term.

Appendix

GUIDELINES FOR EDUCATIONAL USES OF MUSIC

April 30, 1976

[Preamble is the same as *Agreement on Guidelines*, above]

A. Permissible uses

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance, provided purchased replacement copies shall be substituted in due course.

2. (a) For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performance unit such as a section, movement or aria, but in no case more than 10 percent of the whole work. The number of copies shall not exceed one copy per pupil.

(b) For academic purposes other than performance, a single copy of an entire performance unit (section, movement, aria, etc.) that is, (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a large work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.

3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added or none exist.

4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations or collective works.

2. Copying of or from works intended to be “consumable” in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
3. Copying for the purpose of performance, except as in A(1) above.
4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.

FAIR USE GUIDELINES FOR EDUCATIONAL MULTIMEDIA¹

TABLE OF CONTENTS

1. Introduction
2. Preparation of Educational Multimedia Projects Under These Guidelines
3. Permitted Educational Uses for Multimedia Projects Under These Guidelines
4. Limitations
5. Examples of When Permission is Required
6. Important Reminders

1. INTRODUCTION

1.1 Preamble

Fair use is a legal principle that provides certain the limitations on the exclusive rights² of copyright holders. The purpose of these guidelines is to provide guidance on the application of fair use principles by educators, scholars and students who develop multimedia projects using portions of copyrighted works under fair use rather than by seeking authorization for non-commercial educational uses. These guidelines apply only to fair use in the context of copyright and to no other rights.

There is no simple test to determine what is fair use. Section 107 of the Copyright Act³ sets forth the four fair use factors which should be considered in each instance, based on particular facts of a given case, to determine whether a use is a "fair use": (1) the purpose and character of use, including whether such use is of a commercial nature or is for nonprofit educational purposes, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (4) the effect of the use upon the potential market for or value of the copyrighted work.

While only the courts can authoritatively determine whether a particular use is fair use, these guidelines represent the endorsers' consensus of conditions under which fair use should generally apply and examples of when permission is required. Uses that exceed these guidelines may nor may not be fair use. The endorsers also agree that the more one exceeds these guidelines, the greater the risk that fair use does not apply.

The limitations and conditions set forth in these guidelines do not apply to works in the public domain -- such as U.S. Government works or works on which copyright has

¹ These Guidelines shall not be read to supersede other preexisting education fair use guidelines that deal with the Copyright Act of 1976.

² See Section 106 of the Copyright Act.

³ The Copyright Act of 1976, as amended, is codified at 17 U.S.C. §101 *et seq.*

expired for which there are no copyright restrictions -- or to works for which the individual or institution has obtained permission for the particular use. Also, license agreements may govern the uses of some works and users should refer to the applicable license terms for guidance.

The participants who developed these guidelines met for an extended period of time and the result represents their collective understanding in this complex area. Because digital technology is in a dynamic phase, there may come a time when it is necessary to review the guidelines. Nothing in these guidelines shall be construed to apply to the fair use privilege in any context outside of educational and scholarly uses of educational multimedia projects. These guidelines do not cover non-educational or commercial digitization or use at any time, even by non-profit educational institutions. These guidelines are not intended to cover fair use of copyrighted works in other educational contexts such as digital images or archives, distance education, or electronic reserves, which may be addressed in other fair use guidelines.⁴

This Preamble is an integral part of these guidelines and should be included whenever the guidelines are reprinted or adopted by organizations and educational institutions. Users are encouraged to reproduce and distribute these guidelines freely without permission; no copyright protection of these guidelines is claimed by any person or entity.

1.2 Background

These guidelines clarify the application of fair use of copyrighted works as teaching methods are adapted to new learning environments. Educators have traditionally brought copyrighted books, videos, slides, sound recordings and other media into the classroom, along with accompanying projection and playback equipment. Multimedia creators integrated these individual instructional resources with their own original works in a meaningful way, providing compact educational tools that allow great flexibility in teaching and learning. Material is stored so that it may be retrieved in a nonlinear fashion, depending on the needs or interests of learners. Educators can use multimedia projects to respond spontaneously to students' questions by referring quickly to relevant portions. In addition, students can use multimedia projects to pursue independent study according to their needs or at a pace appropriate to their capabilities. Educators and students want guidance about the application of fair use principles when creating their own multimedia projects to meet specific instructional objectives.

1.3 Applicability of These Guidelines (Certain basic terms are identified in bold and defined in this section.)

These guidelines apply to the use, without permission, of portions of lawfully acquired copyrighted works in educational multimedia projects which are created by educators or students as part of a systematic learning activity by nonprofit educational institutions.

⁴ In general, multimedia projects are stand-alone, interactive programs incorporating both original and preexisting copyrighted works in various media formats, while visual image archives are databases of individual visual images from which images intended for educational uses may be selected for display.

Educational multimedia projects created under these guidelines incorporate students' or educators' original material, such as course notes or commentary, together with various copyrighted media formats including but not limited to, motion media, music, text material, graphics, illustrations, photographs and digital software which are combined into an integrated presentation. **Educational institutions** are defined as nonprofit organizations whose primary focus is supporting research and instructional activities of educators and students for noncommercial purposes.

For the purposes of the guidelines, **educators** include faculty, teachers, instructors, and others who engage in scholarly, research and instructional activities for educational institutions. The copyrighted works used under these guidelines are **lawfully acquired** if obtained by the institution or individual through lawful means such as purchase, gift or license agreement but not pirated copies. Educational multimedia projects which incorporate portions of copyrighted works under these guidelines may be used only for **educational purposes** in systematic learning activities including use in connection with non-commercial curriculum-based learning and teaching activities by educators to students enrolled in courses at nonprofit educational institutions or otherwise permitted under Section 3. While these guidelines refer to the creation and use of educational multimedia projects, readers are advised that in some instances other fair use guidelines such as those for off-air taping may be relevant.

2. PREPARATION OF EDUCATIONAL MULTIMEDIA PROJECTS USING PORTIONS OF COPYRIGHTED WORKS

These uses are subject to the Portion Limitations listed in Section 4. They should include proper attribution and citation as defined in Sections 6.2.

2.1 By students:

Students may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a specific course.

2.2 By Educators for Curriculum-Based Instruction:

Educators may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia programs for their own teaching tools in support of curriculum-based instructional activities at educational institutions.

3. PERMITTED USES OF EDUCATIONAL MULTIMEDIA PROGRAMS CREATED UNDER THESE GUIDELINES

Uses of educational multimedia projects created under these guidelines are subject to the Time, Portion, Copying and Distribution Limitations listed in Section 4.

3.1 Student Use:

Students may perform and display their own educational multimedia projects created under Section 2 of these guidelines for educational uses in the course for which they were created and may use them in their own portfolios as examples of their academic work for later personal uses such as job and graduate school interviews

3.2 Educator Use for Curriculum-Based Instruction:

Educators may perform and display their own educational multimedia projects created under Section 2 for curriculum-based instruction to students in the following situations:

3.2.1 for face-to-face instruction,

3.2.2 assigned to students for directed self-study,

3.2.3 for remote instruction to students enrolled in curriculum-based courses and located at remote sites, provided over the educational institution's secure electronic network in real-time, or for after class review or directed self-study, provided there are technological limitations on access to the network and educational multimedia project (such as a password or PIN) and provided further that the technology prevents the making of copies of copyrighted material.

If the educational institution's network or technology used to access the educational multimedia project created under Section 2 of these guidelines cannot prevent duplication of copyrighted material, students or educators may use the multimedia educational projects over an otherwise secure network for a period of only 15 days after its initial real-time remote use in the course of instruction or 15 days after its assignment for directed self-study. After that period, one of the two use copies of the educational multimedia project may be placed on reserve in a learning resource center, library or similar facility for on-site use by students enrolled in the course. Students shall be advised that they are not permitted to make their own copies of the multimedia project.

3.3 Educator Use for Peer Conferences:

Educators may perform or display their own multimedia projects created under Section 2 of these guidelines in presentations to their peers, for example, at workshops and conferences.

3.4 Educator Use for Professional Portfolio

Educators may retain educational multimedia projects created under Section 2 of these guidelines in their personal portfolios for later personal uses such as tenure review or job interviews.

4. LIMITATIONS -- TIME, PORTION, COPYING AND DISTRIBUTION

The preparation of educational multimedia projects incorporating copyrighted works under Section 2, and the use of such projects under Section 3, are subject to the limitations noted below.

4.1 Time Limitations

Educators may use their educational multimedia projects created for educational purposes under Section 2 of these guidelines for teaching courses, for a period of up to two years after the first instructional use with a class. Use beyond that time period, even for educational purposes, requires permission for each copyrighted portion incorporated in the production. Students may use their educational multimedia projects as noted in Section 3.1.

4.2 Portion Limitations

Portion limitations mean the amount of a copyrighted work that can reasonably be used in educational multimedia projects under these guidelines regardless of the original medium from which the copyrighted works are taken. **In the aggregate** means the total amount of copyrighted material from a single copyrighted work that is permitted to be used in an educational multimedia project without permission under these guidelines. These limitations apply cumulatively to each educator's or student's multimedia project(s) for the same academic semester, cycle or term. All students should be instructed about the reasons for copyright protection and the need to follow these guidelines. It is understood, however, that students in kindergarten through grade six may not be able to adhere rigidly to the portion limitations in this section in their independent development of educational multimedia projects. In any event, each such project retained under Sections 3.1 and 4.3 should comply with the portion limitations in this section.

4.2.1 Motion Media

Up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced or otherwise incorporated as part of a multimedia project created under Section 2 of these guidelines.

4.2.2 Text Material

Up to 10% or 1000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated as part of a multimedia project created under Section 2 of these guidelines. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology may be used. For poems of greater length, 250

words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used.

4.2.3 Music, Lyrics, and Music Video

Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or audio or audiovisual works, may be reproduced or otherwise incorporated as a part of a multimedia project created under Section 2. Any alterations to a musical work shall not change the basic melody or the fundamental character of the work.

4.2.4 Illustrations and Photographs

The reproduction or incorporation of photographs and illustrations is more difficult to define with regard to fair use because fair use usually precludes the use of an entire work. Under these guidelines a photograph or illustration may be used in its entirety but no more than 5 images by an artist or photographer may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2.

4.2.5 Numerical Data Sets

Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or otherwise incorporated as part of a educational multimedia project created under Section 2 of these guidelines. A field entry is defined as a specific item of information, such as a name or Social Security number, in a record of a database file. A cell entry is defined as the intersection where a row and a column meet on a spreadsheet.

4.3 Copying and Distribution Limitations

Only a limited number of copies, including the original, may be made of an educator's educational multimedia project. For all of the uses permitted by Section 3, there may be no more than two use copies only one of which may be placed on reserve as described in Section 3.2.3. An additional copy may be made for preservation purposes but may only be used or copied to replace a use copy that has been lost, stolen, or damaged. In the case of a jointly created educational multimedia project, each principal creator may retain one copy but only for the purposes described in Sections 3.3 and 3.4 for educators and Section 3.1 for students.

5. EXAMPLES OF WHEN PERMISSION IS REQUIRED

5.1 Using Multimedia Projects for Non-Educational or Commercial Purposes

Educators and students must seek individual permissions (licenses) before using copyrighted works in educational multimedia projects for commercial reproduction and distribution.

5.2 Duplication of Multimedia Projects Beyond Limitations Listed in These Guidelines

Even for educational uses, educators and students must seek individual permissions for all copyrighted works incorporated in their personally created educational multimedia projects before replicating or distributing beyond the limitations listed in Section 4.3.

5.3 Distribution of Multimedia Projects Beyond Limitations Listed in These Guidelines

Educators and students may not use their personally created educational multimedia projects over electronic networks, except for uses as described in Section 3.2.3, without obtaining permissions for all copyrighted works incorporated in the program.

6. IMPORTANT REMINDERS

6.1 Caution in Downloading Material from the Internet

Educators and students are advised to exercise caution in using digital material downloaded from the Internet in producing their own educational multimedia projects, because there is a mix of works protected by copyright and works in the public domain on the network. Access to works on the Internet does not automatically mean that these can be reproduced and reused without permission or royalty payment and, furthermore, some copyrighted works may have been posted to the Internet without authorization of the copyright holder.

6.2 Attribution and Acknowledgement

Educators and students are reminded to credit the sources and display the copyright notice and copyright ownership information if this is shown in the original source, for all works incorporated as part of the educational multimedia projects prepared by educators and students, including those prepared under fair use. Crediting the source must adequately identify the source of the work, giving a full bibliographic description where available (including author, title, publisher, and place and date of publication). The copyright ownership information includes the copyright notice (©, year of first publication and name of the copyright holder).

The credit and copyright notice information may be combined and shown in a separate section of the educational multimedia project (e.g. credit section) except for images incorporated into the project for the uses described in Section 3.2.3. In such cases, the copyright notice and the name of the creator of the image must be incorporated into the image when, and to the extent, such information is reasonably available; credit and copyright notice information is considered "incorporated" if it is attached to the image file and appears on the screen when the image is viewed. In those cases when displaying source credits and copyright ownership information on the screen with the image would be mutually exclusive with an instructional objective (e.g. during examinations in which the source credits and/or copyright information would be relevant to the examination questions), those images may be displayed without such information being simultaneously displayed on the screen. In such cases, this information should be linked to the image in a manner compatible with such instructional objectives.

6.3 Notice of Use Restrictions

Educators and students are advised that they must include on the opening screen of their multimedia project and any accompanying print material a notice that certain materials are included under the fair use exemption of the U.S. Copyright Law and have been prepared according to the educational multimedia fair use guidelines and are restricted from further use.

6.4 Future Uses Beyond Fair Use

Educators and students are advised to note that if there is a possibility that their own educational multimedia project incorporating copyrighted works under fair use could later result in broader dissemination, whether or not as commercial product, it is strongly recommended that they take steps to obtain permissions during the development process for all copyrighted portions rather than waiting until after completion of the project.

6.5 Integrity of Copyrighted Works: Alterations

Educators and students may make alterations in the portions of the copyrighted works they incorporate as part of an educational multimedia project only if the alterations support specific instructional objectives. Educators and students are advised to note that alterations have been made.

6.6 Reproduction or Decompilation of Copyrighted Computer Programs

Educators and students should be aware that reproduction or decompilation of copyrighted computer programs and portions thereof, for example the transfer of underlying code or control mechanisms, even for educational uses, are outside the scope of these guidelines.

6.7 Licenses and Contracts

Educators and students should determine whether specific copyrighted works, or other data or information are subject to a license or contract. Fair use and these guidelines shall not preempt or supersede licenses and contractual obligations.

Glossary (This section is provided for information only. It is not part of the policy.)

Commercial venture - a start-up company, limited partnership, joint venture or any other entity that has obtained an option or a license to university technology.

Confidential Disclosure Agreement - An agreement or section of an agreement that prevents parties to the agreement from releasing knowledge or information without the other's permission.

Copyright - The intangible property right granted by statute for an original work fixed in a tangible means of expression. A copyright provides the owner with the following exclusive rights over a work: to reproduce, to prepare derivative works, to distribute, to perform publicly, and to display publicly. Copyright comes into existence immediately at the time the work is fixed in a tangible means of expression.

Creative works - "Original works of authorship" that are fixed in a tangible form of expression that may be protected by copyright. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device. Copyrightable works 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.

Creator - Refers to an individual or group of individuals who make, conceive, reduce to practice, or otherwise make a substantive intellectual contribution to the creation of intellectual property. "Creator" follows the definition of "inventor" used in U.S. patent law and the definition of "author" used in the U.S. Copyright Act.

Disclose - Formally record the essence of a potentially patentable concept, the circumstances in which it was conceived, the persons participating in the invention, and the steps taken to reduce it to practice, if applicable, in accord with the requirements of U.S. patent law for establishing precedence

Equity or equity shares - Shares of common or preferred stock, warrants, options, convertible instruments, units of a limited partnership, or any other instruments conveying ownership interest in a commercial venture, or options or rights to purchase an ownership interest.

First sale - The principle that gives the purchaser of a copyrighted work the right, among other things, to lend it to others.

Intellectual property - The intangible value developed by human creativity that is protected by the legal mechanisms of patents, trademarks, copyrights, service marks, trade secrets, mask works, and plant variety protection certificates. Rights derived from legislation include ownership and disposition, including commercialization. Intellectual property encompasses inventions, discoveries, know-how, show-how, processes, unique materials, copyrightable works, original data and other creative or artistic works that have value. It also includes the physical embodiments of intellectual effort such as models, machines, devices, designs,

apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, other compositions or matter, plants, and records of research.

Invention - Any discovery which is or may be patentable or which may be commercially licensable.

License - A contract in which an intellectual property owner grants permission to exercise one or more of the rights that an owner holds.

Mask work - A series of related images representing a predetermined, three-dimensional pattern of metallic, insulating, or semiconducting layers of a semiconductor chip product.

Material Transfer Agreement - A contract covering transfer of physical possession and use of tangible research property into or out of the university.

Media Technology – a vehicle for conveying information in auditory or visual format, that is capable of being perceived, manipulated or used by others. In this context, the combined message and vehicle requires a technology component for development, delivery or use by the recipient.

Patent (U.S. only) - The intangible property right to exclude others from making, using, offering for sale, or selling the invention in the United States or importing the invention into the United States. In order to obtain patent protection, an invention must be useful, novel and unobvious.

Plant variety protection certificate - Registration under the Plant Variety Act of 1970 that protects sexually propagated cultivars that are distinctive, uniform and true-breeding.

Royalty - Payment made to an owner of intellectual property for the privilege of practicing a right held by the owner of the intellectual property under applicable law

Tangible research property - Includes the physical embodiments of intellectual effort such as models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, other compositions of matter, plants, and records of research. Tangible research property is distinct from intangible properties such as patents, trademarks, copyrights, service marks, trade secrets, mask works, and plant variety protection certificates. Individual items of tangible research property may be associated with one or more intangible properties.

Trade dress - Distinctive and unique packaging, color combinations, building designs, product styles, and overall presentations identifying the source, product, producer, or distributor of goods and services where the appearance distinguishes the product or business from other similar products or businesses but is not distinctive or specific enough to be considered a trademark.

Trademarks and service marks - Distinctive words or graphic symbols identifying the source, product, producer, or distributor of goods and services.