

IMMACULATA UNIVERSITY COPYRIGHT POLICY

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I. INTRODUCTION

The copyright policy of Immaculata University (hereinafter "IU") affirms its commitment to comply with United States law relating to copyright; to respect the property rights of authors and their assignees; to educate members of the campus community about copyright law; and to exercise vigorously the rights and responsibilities granted under this law.

The policy adheres to the long-standing academic tradition that creators of works own the copyrights in works resulting from their scholarly, pedagogical, and creative activities. This principle is the foundation of this policy on copyright. This principle also underlies the commitment of IU to fostering an environment of respect for and responsible use of the intellectual property of others. IU is committed to helping members of the community comply with copyright laws by providing resources to help individuals make informed, careful, and situation-sensitive decisions about the lawful and fair use of work created by others.

II. APPLICATION

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

It is the policy of IU that all Users must comply with U.S. Copyright Law. Copyrighted materials may be copied freely by the owner of the copyright on the materials. In addition, copyright holders such as scholarly publishers, may explicitly release their published materials from strict observance of copyright laws for stated classroom or research purposes.

III. COMPLIANCE WITH COPYRIGHT LAWS

IU expects Users to make a reasonable effort in good faith to comply with copyright laws in their use of copyrighted materials. IU encourages Users to take full advantage of the "fair use" exception to the exclusive rights of copyright owners. Before relying on the fair use exception, Users should educate themselves regarding the limits of fair use and should, in each instance, perform a careful, good faith fair use analysis based on the factors identified in Section 107 of the federal Copyright Act.

Faculty and staff are permitted to use and duplicate copyrighted materials of other parties for educational and classroom uses, provided such activities are within the fair use standard, 17 U. S. C. sect. 107. The fair use standard requires consideration and balancing by Users of the following factors to determine if duplication or use by a third party constitutes a fair use:

A. The Fair Use Factors

1. *The Purpose and Character of the Use, Including Whether the Use is of a Commercial Nature or is For Nonprofit Educational Purposes.*

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

2. *Nature of the Copyrighted Work.*

Is the work published or unpublished, fact or fiction? Published factual works, such as form books, dictionaries or other factual works, by their nature more readily support a finding of fair use than do unpublished works or non-factual, fictional, creative works.

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

If the portion of the work copied or used in relation to the entire work is quantitatively and qualitatively insignificant that supports a finding of fair use. No specific number of words or percentage copied of the work is set as being permissible. However, see the "safe harbor" guidelines discussed below. Copying of a minor portion of a work may be found to be other than a fair use if the portion constitutes the essence or critical part of the copied or used work.

4. *The effect of the use upon the potential market for or value of the copyrighted work.*

This factor is considered the most important element to be considered under the fair use analysis. Duplication or use of a copyrighted work that is not detrimental to and does not diminish the potential market for the work will support a finding of fair use.

B. Examples Of Acts That Do Not Constitute Fair Use:

- a. Duplication of materials for profit.
- b. Duplication of material from published textbooks.
- c. Duplication of unpublished materials.
- d. Duplication of computer software for multiple use.
- e. Duplication of the same materials for classroom use term after term.

IV. FILE SHARING AND PEER-TO-PEER SOFTWARE PROGRAMS

Current technology easily allows your personal computer to duplicate and distribute copyrighted video images, audio recordings and other digital materials. Unfortunately this makes it is easy for you to violate IU policy and US copyright law. For this reason you should know the use of popular and freely distributed file sharing programs such as KaZaA, Gnutella (Morpheus, LimeWire, Gnucleus, Bearshare), Aimster, iMesh, and many other programs to download copyrighted music and video material, in almost every case, places you in violation of IU policy and US law.

Most of these programs by default allow Internet users to copy files from your computer. Most programs don't alert you in advance or even ask your permission before turning your computer into an Internet file server. Some of these programs also install hidden components that allow file sharing to run in the background on your computer. As a result, whenever your computer is turned on, the file sharing application is also enabled, even if you don't open the application or actively use the program. Such an application places you at a high risk of violating IU policy and copyright law by becoming an unlawful distributor of copyrighted material. For example, what you may believe to be a single one-time policy violation consisting of downloading a single track of music from a popular CD is actually an around-the-clock violation of IU policy and copyright law because anytime your computer is turned on it is publicly announcing to the Internet (perhaps unknowingly to you) that the single music track you previously downloaded is now available on your computer for distribution via the IU network. Because IU has a reliable and large capacity connection to the Internet and because these file sharing programs favor computers connected to fast reliable networks, thousands of other Internet users flock to your computer to download your file.

You should know that IU does not monitor computer use on the IU network to look for copyright violations; however, in the process of investigating network congestion or troubleshooting technical problems, they may become aware of policy violations. In such cases immediate action may be taken by IU, including disconnection of network access.

You should also be aware that law enforcement agencies, the Recording Industry Association of America (RIAA), and other copyright holders of digital media are actively monitoring the Internet for users who are actively distributing copyrighted material. The recording, film and software industries have recently become very aggressive in their active pursuit of copyright infringement. Millions of dollars have been spent to develop and maintain software which is able to search the Internet and identify unauthorized

distribution of their protected titles. This active monitoring is specifically designed to search for distribution of materials using the most commonly used software packages including KaZaA, Gnutella (Morpheus, LimeWire, Gnucleus, Bearshare), Aimster, iMesh, as well as many others.

V. SOFTWARE GENERALLY PROTECTED BY COPYRIGHT LAW

The vast majority of all computer software is protected by copyright law. The exceptions to this rule are so few Users should assume that all software on IU's computer system, on third party systems, or available through the Internet is protected by copyright, unless there is a clear indication to the contrary.

Simply stated, copyright laws allow a user of software to use the software, load it onto the hard drive of a computer, and retain the original disk as an archive copy. Users are not allowed to modify the software, make more copies of it, simultaneously use a single copy on both a home and a campus computer, or distribute the software through the Internet, unless the license agreement explicitly permits those activities.

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

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

VI. VIOLATION OF COPYRIGHT LAWS

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

The IU Acceptable Use Policy and the IU Copyright Policy state that the receipt of, possession of, or distribution of copyrighted material without the permission of the copyright holder is prohibited. You should also know that such acts are a violation of the laws of the United States (Title 17, U.S. Code). Violators of copyright law could be subject to felony charges in state or federal court, and may also be sued by the copyright holder in civil court. Such civil suits could subject the violator to liability for infringement with damages up to \$100,000 per work.

VII. DIGITAL MILLENNIUM COPYRIGHT ACT

The Digital Millennium Copyright Act (DMCA) was signed into law by President Clinton in October, 1998. One of the provisions of the legislation provides an opportunity for universities such as IU to shield themselves from liability for the actions of Users that infringe on the copyrights of others. Any use of the IU network, email system, or web sites to transfer copyrighted material including, but not limited to, software, text, images, audio and video is strictly prohibited. As indicated above, acts of piracy are violation of state and federal laws, and as such, may result in criminal charges. Suspected infringement of the DMCA should be reported to IU's DMCA Agent. Please see the IU DMCA policy at www.immaculata.edu/policies.

VIII. REPORTING A VIOLATION

Any issues or concerns related to the use of copyrights at IU should be directed to Dr. Thomas A Egan, Chief Information Officer of Immaculata University (tegan@immaculata.edu), 12 Villa Maria * 1145 King Road, Immaculata, PA 19345, at 610-647-4400 x3868.