

WIDENER UNIVERSITY INTELLECTUAL PROPERTY POLICY

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PART I: INTRODUCTION

I. Purpose

- a. The creation of this document is intended to create an intellectual environment where creative endeavors and innovations can be encouraged, supported, and rewarded.

PART II: COPYRIGHT POLICY: WORKS CREATED BY WIDENER FACULTY, STUDENTS, AND STAFF

I. General Principles of Copyright Law

a. **What does Copyright protect?**

- i. Copyright protects original works of authorship fixed in a tangible medium of expression. Copyrightable works include the following categories: (1) literary works, which can include computer programs; (2) musical compositions including any accompanying words; (3) dramatic works; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works, which can include photographs, charts, and technical drawings; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works.

b. **What are the rights of a copyright owner?**

- i. A copyright owner has the right to do and to authorize others to do the following: (1) reproduce the work; (2) prepare derivative works based upon the work; (3) distribute the work to the public; (4) publicly perform the work; (5) publicly display the work; and (6) publicly perform sound recordings by means of a digital audio transmission.

c. **When does copyright protection begin?**

- i. Copyright is secured automatically when a work is created, and a work is created when it is fixed in a tangible medium of expression. No publication or registration or other action in the Copyright Office is required to secure protection.

d. **How long does copyright last?**

a. **Works created after January 1, 1978**

- i. The term of copyright is the life of the author plus seventy years.

- ii. Copyright for works made for hire is 95 years from the date the work is first published or 120 years from the date of creation, whichever period first expires.
 - b. **Works created before January 1, 1978 but not published or registered with the Copyright Office**
 - i. The same rules apply as for works created after January 1, 1978 (see above), but if those duration rules would have put a work in public domain before December 31, 2002, the work was nevertheless protected until that date. In addition, if a work was published on or before December 31, 2002, it is now protected until December 31, 2047.
 - c. **Works Originally Created and Published with Notice or Registered with the Copyright Office before January 1, 1978**
 - i. These works can potentially be protected for up to 95 years from the date copyright was originally secured (which under the older 1909 Copyright Act was either by publication with notice or by registering a work with the Copyright Office). However, works published before 1923 are now in the public domain.
 - d. For more details about copyright duration, you can read this brochure produced by the U.S. Copyright Office:
<http://www.copyright.gov/circs/circ15a.pdf>
 - e. **Where can I get more information?**
 - i. You can start with Circular 1 (“Copyright Basics”) available from the U.S. Copyright Office website (<http://www.copyright.gov/>).

II. **General Rule for Works Produced by Faculty and Students**

- a. In accord with longstanding academic tradition, Widener University does not claim ownership to pedagogical, scholarly, or artistic works produced by faculty or students, regardless of their form of expression. Such works include those of students created in the course of their education, such as dissertations, papers, and articles. The University claims no ownership of popular fiction, novels, popular or scholarly works of non-fiction, textbooks, poems, musical compositions, unpatentable software, or other works of artistic imagination. The only exceptions to this general policy are specifically set forth in Part III of this policy.
 - i. **University Waiver of Rights under Work for Hire Doctrine:**
 - 1. The University waives any rights to claim authorship under the work for hire doctrine to any of the pedagogical, scholarly, or

artistic works by faculty or students referred to immediately above. In the event a court would find that the University was the owner of one of these works under the work for hire doctrine, the University agrees to transfer all rights to the faculty or student author.

ii. Use of University Resources:

1. A work shall not be treated as a work for hire and owned by the University merely because it was created with the use of University resources, facilities, or materials that are traditionally and commonly made available to faculty members. Likewise, a work will not be considered a work for hire and owned by the University merely because the professor received a research or Provost grant that the professor relied upon in preparing the work. The following examples help illustrate this principle:
 - a. A law professor writes a book using his University office, computer, libraries, and secretarial and administrative assistance. The professor also received a summer research grant to help support his research. The professor is the copyright owner of the book.
 - b. A chemistry professor uses her University lab to conduct experiments. The professor uses the results from these experiments to write an article for a science journal. The professor received a Provost grant to help support her research. The professor is the copyright owner of the article.
 - c. A professor in the Communications Department uses University equipment to make a film. The professor is the copyright owner of the film.
 - d. A professor in the Art Department uses Department materials to create a painting. The professor is the copyright owner of the painting.
 - e. A professor prepares extensive lecture notes and slides for her class. The professor is the copyright owner of the lectures notes and slides and may continue to freely use the notes and slides if the professor moves to another institution.

iii. Recorded lectures including lectures recorded for online courses:

1. The copyright to a recording of a professor's lecture including lectures recorded for online courses is owned by the professor. This recognizes that the core creative input in a recorded lecture comes from the professor who prepares the notes and slides for the lecture and delivers the lecture. The University may only use these recorded lectures with the professor's permission.

iv. When a professor moves to a new institution:

1. If a professor moves to another institution, he or she may not use recorded lectures prepared at Widener for a course taught at the new institution, including an online course, except with the written permission of Widener University. The professor may, however, record entirely new lectures for a course or online course taught at the new institution.

v. Student research work for Faculty Members:

1. Any work produced by a student who has been hired by a faculty member to be a research assistant is presumed to be a work for hire and any rights in the work will belong to the faculty member.

III. **Exceptions to the General Rule for Works Produced by Faculty and Students**

a. Institutional Works:

- i. The University shall retain ownership of works created as institutional works. Institutional works are works that are created at the direction of the University for a specific University purpose. The following examples help illustrate this principle:
 1. A law professor is asked to write a brochure for a new law school institute. The copyright to the work is owned by the University.
 2. An English professor is asked to write a description of her Department for the Department's webpage. The copyright to the description is owned by the University.
 3. A professor is asked to write a Self-Study for the School of Arts and Sciences. The copyright to the Self-Study is owned by the University.

ii. Scholarly, Pedagogical, and Artistic Works:

1. Scholarly, pedagogical, and artistic works are not institutional works and instead are covered under Section II above.

b. Negotiated Agreements:

- i. Parties are free to override the general rules articulated in Part II by entering into a written agreement that provides for ownership of a work

(including joint ownership) and any revenue sharing between the parties if a work is commercially exploited.

ii. **Works Created with Substantial University Funding:**

1. If the University decides to provide substantial funding for the creation of a work and expects to have full or partial ownership of the copyright in the work, the University should negotiate with the creator in advance of the work's creation. Whatever ownership arrangement is reached by the parties should be memorialized in a written agreement signed by both parties. Research grants and Provost grants shall not be considered "substantial funding" and this section shall not apply to works supported by such grants. Those works are instead governed by Section II above. The following example illustrates this principle:

a. The University gives a communications professor \$50,000 to produce a film. Under the general rule stated in Section II, the copyright in the film will belong to the professor. If the University would like to have some ownership rights in the film, it should negotiate the allocation of rights with the professor in advance of the film's creation and the parties' agreement should be memorialized in a contract. In the absence of a written agreement, the professor will own all the rights in the work.

iii. **Externally Funds Works:**

1. Contracts and grants frequently contain complex provisions relating to copyright, rights in data, royalties, publication, and various categories of material including proprietary data, computer software, licenses, etc. Questions regarding the specific terms and conditions of individual contracts and grants, or regarding rules, regulations and statutes applicable to the various government agencies, should be directed to the University Standing Committee on Intellectual Property.

IV. **General Rule for University Staff**

a. The ownership of works prepared by University staff will be governed by the Copyright Act's work for hire provisions, unless the University and a staff member agree otherwise. As a general rule, the University will own the copyright to a work if it is "prepared by an employee within the scope of his or her employment." The following examples illustrate this principle.

- i. An employee in the University public relations department writes an article for the Widener magazine. Since the article falls within the scope of the employee's employment, the University owns the copyright to the work.
 - ii. An employee in the University public relations department writes a novel in his spare time. Since writing a novel is not within the employee's scope of employment, the employee and not the University owns the copyright to the novel.
 - iii. An employee in the financial aid department writes a brochure explaining the University's financial aid program. Since writing the brochure is within the scope of the employee's employment, the University owns the copyright to the brochure.
 - iv. An employee in the financial aid office writes a scholarly article about financial aid in higher education. Since writing the article is not within the scope of the employee's ordinary employment responsibilities, the employee and not the University owns the copyright in the work.
- b. The Copyright Act's definition of a work for hire is found in Section 101 of the Act. The text of the definition is reproduced in Appendix A.

V. **General Rule for Works Prepared by Non-Employees for the University**

- a. Under the Copyright Act, works of non-employees such as consultants, independent contractors, etc. generally are owned by the creator and not the University, unless there is a written agreement to the contrary. As it is Widener's policy that the University shall retain ownership of such works, Widener will generally require a written agreement from non-employees that ownership of such works will be assigned to the University. Examples of such works include reports by consultants and subcontractors, architectural or engineering drawings, illustrations or designs, and artistic works.

PART III: USE OF OTHER PEOPLE'S COPYRIGHTED WORKS BY WIDENER FACULTY, STAFF, AND STUDENTS

I. **General Rule Regarding Use of Other People's Copyrighted Works**

- a. Copyright owners generally have the right to control the reproduction of their works, the making of derivative works based on their works, the public distribution of their works, and the public display and performance of their

works. If you are going to be using another's copyrighted materials in any of these ways, you should determine whether your use is permitted under an exception in the Copyright Act. If it is not, you may need to obtain permission to use the work.

II. Statutory Exceptions for the Use of Copyrighted Materials for Educational or Scholarly Uses

- i. The Copyright Act has specific statutory exceptions for certain uses by educators, educational institutions, and libraries.
 1. **Face-to-face teaching activities:** Section 110(1) has rules regarding the display and performance of works in the course of face-to-face teaching activities. The section is reproduced in Appendix B.
 2. **Online classes:** Section 110(2) (the TEACH Act) has rules for the use of copyrighted material in distance learning. The section is reproduced in Appendix B.
 3. **Library uses:** Section 108 has special rules regarding uses by libraries and archives. The section is reproduced in Appendix C.

- ii. **Fair Use Exemption:** The Copyright Act also has a more general but not well-defined fair use exception which allows for certain uses of a work without permission.
 1. Section 107: This section specifically mentions "teaching (including multiple copies for classroom use), scholarship, or research" as possible fair uses, but potential users must still consider the four factors mentioned in the statute: (1) the purpose and character of the use, including whether such use is of a commercial or is for non-profit 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. Section 107 is reproduced in Appendix D.
 - a. **General Guidance for thinking about fair use:** If the use you're making of a work harms a market that should appropriately belong to the copyright owner, then you should probably be getting permission to do it. For example, copying chapters out of workbook that is

designed to be sold to students is not likely to be a fair use. This harms the very market for which the book is intended, and you are taking valuable portions of the work. By contrast, copying a newspaper article that you saw before class and is relevant to your course's subject matter is very likely to be a fair use. It does not substantially harm the market for the newspaper and you are only taking a single article out of single day's newspaper that has many articles.

III. **Guidance on the Use of Copyrighted Works by Faculty and Teaching Assistants**

- a. The Association of Research Libraries (www.arl.org) has prepared a brochure on copyright use policies for educators in higher education: "Know Your Copy Rights: Using Works in Your Teaching – What You Can Do (Tips for faculty & teaching assistants in higher education)." The brochure is available at: <http://www.knowyourcopyrights.org/resourcesfac/kycrbrochure.shtml>
Look for the link to download a "Complete brochure -- black-and-white edition."
- i. Faculty and teaching assistants are encouraged to consult this brochure for guidelines on the use of copyrighted works. Faculty with more precise questions should consult the University Standing Committee on Intellectual Property Policy.

APPENDIX A

COPYRIGHT ACT SECTION OF OWNERSHIP (SECTION 201)

§ 201 . Ownership of copyright¹

(a) INITIAL OWNERSHIP. — Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work.

(b) WORKS MADE FOR HIRE. — In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

(c) CONTRIBUTIONS TO COLLECTIVE WORKS. — Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

COPYRIGHT ACT DEFINITION OF WORK FOR HIRE (SECTION 101)

A “work made for hire” is—

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwards, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

APPENDIX B

COPYRIGHT EXCEPTIONS FOR FACE-TO-FACE TEACHING ACTIVITIES AND ONLINE CLASSES (SECTION 110(1) and (2))

Notwithstanding the provisions of [section 106](#), the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if—

(A) the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission;

(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to—

(i) students officially enrolled in the course for which the transmission is made; or

(ii) officers or employees of governmental bodies as a part of their official duties or employment; and

(D) the transmitting body or institution—

(i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of

the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and

(ii) in the case of digital transmissions—

(I) applies technological measures that reasonably prevent—

(aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and

(bb) unauthorized further dissemination of the work in accessible form by such recipients to others; and

(II) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination;

APPENDIX C

COPYRIGHT ACT RULES FOR REPRODUCTIONS BY LIBRARIES AND ARCHIVES (SECTION 108)

§ 108 . Limitations on exclusive rights: Reproduction by libraries and archives⁴¹

(a) Except as otherwise provided in this title and notwithstanding the provisions of [section 106](#), it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if—

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.

(b) The rights of reproduction and distribution under this section apply to three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if—

(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

(2) any such copy or phonorecord that is 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 or archives.

(c) The right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if—

(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

(d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(f) Nothing in this section—

(1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: *Provided*, That such equipment displays a notice that the making of a copy may be subject to the copyright law;

(2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by [section 107](#);

(3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or

(4) in any way affects the right of fair use as provided by [section 107](#), or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—

(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, 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 the individual members of a group; or

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): *Provided*, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

(h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, 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 such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

(2) No reproduction, distribution, display, or performance is authorized under this subsection if—

(A) the work is subject to normal commercial exploitation;

(B) a copy or phonorecord of the work can be obtained at a reasonable price; or

(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

(3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.

(i) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b), (c), and (h), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

APPENDIX D

COPYRIGHT SECTION ON FAIR USE (SECTION 107)

§ 107 . Limitations on exclusive rights: Fair use⁴⁰

Notwithstanding the provisions of [sections 106](#) and [106A](#), the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the 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.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.