

JACKSONVILLE STATE UNIVERSITY
Manual of Policies and Procedures

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SUBJECT: Intellectual Property and Fair Use Policy

APPROVED: William A. Meehan, President

PURPOSE

The purpose of this policy is to provide guidelines for the determination of the rights of Jacksonville State University and its faculty, administration, staff, and students (“University Member” or “Member of the University”) with regard to copyrights, patents and other intellectual property, and income of any nature derived therefrom, where work thereon was instituted after October 1, 1988.

POLICY

This policy covers all materials, inventions, ideas and work copyrighted, patented or registered by administrative officers and employees, faculty, staff, students, and third-party vendors and contractors of Jacksonville State University under the Copyright and Patent Laws of the United States, and/or other protective federal and state statutes or common law legal rights and interest, when the work product was developed during the period of time that the individual was employed by, a student of or fulfilling contractual or other applicable legal obligations to JSU. Also included under this policy are guidelines for fair use of copyrighted material.

Intellectual property as that term is used herein shall be broadly interpreted to include all products of human intelligence and creation recognized by law as being protectable as such, and shall include, but not necessarily be limited to, copyrightable works, patented inventions, designs, trademarks. Examples include

1. Books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi and survey instruments;
2. Lectures and unpublished lecture notes;
3. Digital, video and audio works;

4. Computer programs and documentation;
5. Processes, machines and articles of manufacture;
6. Designs, concepts, logos, trademarks, trade dress and the like;
7. Any concept, process or discovery leading to an invention;

Ownership of, rights in or equity in or use of intellectual property may be determined through:

1. Individual effort;
2. University assisted individual efforts (direct, by use of University property or facilities, or while engaged in work during normal duty hours);
3. Externally sponsored efforts;
4. University assigned efforts; and
5. Fair Use.

1. **Individual Efforts (An individual's efforts outside of and without support of the University):**

This policy recognizes that a Member of the University is entitled to ownership of or rights in intellectual property derived from individual creative works if no significant use of University property or facilities is involved or the University provides no support for the work.

2. **University Assisted Individual Efforts:**

Materials, designs, concepts, inventions, or works produced by employees of the University shall be subject to copyright, patent or registration by the employee and/or University as co-authors if the production cost is specifically shared by the employee and the University.

In cases where the University assistance is less than fifty percent of the costs of production, as determined by the University utilizing accepted accounting principles and procedures, the individual employee shall retain the copyright or patent and the University may share in the division of

royalty or other income up to the total reimbursement costs of University assistance. In cases in which the University assistance is fifty percent or greater, the University shall retain the copyright or patent and the division of royalty or other income shall be based on percentage of sponsorship. Routine use (defined as use that does not exceed that which would ordinarily occur in the normal discharge of the University Member's obligations to JSU) of the library, electronic resources, equipment, office space, facilities, supplies and personnel shall not, for the purpose of this policy, constitute University assistance.

3. Externally Sponsored Efforts:

Rights to materials and inventions subject to copyright, patent, registration rights or other legal protection as Intellectual Property developed as a result of work supported partially or fully by an outside agency through a contract or grant shall be determined in accordance with the terms of the contract or grant. In those cases where Intellectual Property rights are vested in the University or are shared by agreement between the sponsor and the University, the producer(s) (University Member(s) responsible for the work) may share in the income within the provisions of this policy.

4. University Assigned Efforts:

Materials, inventions or other works (Intellectual Property) produced by Members of the University subject to patent, copyright, registration or legal protection as such shall be exclusively owned by the University if the University assigned the employee to produce the specific materials, invention or works. Sharing of royalty or other income with the author or inventor may be authorized by the University President as an incentive to encourage further development of copyrightable, patentable work or Intellectual Property. A faculty member's general obligation to produce scholarly and creative works and/or the receipt of professional development leave, unless there is specific

agreement to the contrary, does not constitute University assigned efforts as defined in this policy.

The following chart should assist in understanding the policy above. In the event of a conflict between the following and the language of the policy, written language governs.

| → ↓ | Individual Efforts-No University Support | Individual Efforts-University Assisted | Externally Sponsored Efforts | University Assigned |
|------------------------|--|--|--|--|
| FACULTY | Producing individual owns rights. | University contributes less than 50% of costs, producing individual owns subject to recoupment of costs from royalties. Where University contributes 50% or more of costs, the University owns the IP and royalties are divided pro rata based upon percentage of sponsorship. | Determined in accordance with terms of the applicable contract or grant. | Conclusively presumed owned by the University. The President, on recommendation of the appropriate Vice-President may execute a royalty sharing agreement to be negotiated. Royalty sharing may be used as an incentive to encourage further development of a product or work. |
| ADMINISTRATORS & STAFF | Producing individual owns rights. | University contributes less than 50% of costs, producing individual owns subject to recoupment of costs from royalties. Where University contributes 50% or more of costs, the University owns the IP and royalties are divided pro rata based upon percentage of sponsorship. | Determined in accordance with terms of the applicable contract or grant. | Conclusively presumed owned by the University. The President, on recommendation of the appropriate Vice-President may execute a royalty sharing agreement to be negotiated. Royalty sharing may be used as an incentive to encourage further development of a product or work. |
| STUDENTS | Producing individual owns rights. | University contributes less than 50% of costs, producing individual owns subject to recoupment of costs from royalties. Where | Determined in accordance with terms of the applicable contract or grant. | Conclusively presumed owned by the University. The President, on recommendation of the appropriate Vice-President may execute a royalty sharing agreement |

| | | | | |
|------------------------|---|--|--|---|
| | | University contributes 50% or more of costs, the University owns the IP and royalties are divided pro rata based upon percentage of sponsorship. | | to be negotiated. Royalty sharing may be used as an incentive to encourage further development of a product or work |
| EXTERNAL THIRD PARTIES | Intellectual property produced under contract or agreement with parties to produce or assist in its development or production shall be presumed to be the exclusive property of the University subject only to the terms of any contract to the contrary. | | | |

5. Fair Use:

Within the provisions of and compliance with the “Technology, Education, and Copyright Harmonization” (TEACH) Act of 2002, the Copyright and Fair Use Policy of Jacksonville State University provides an accurate guideline for teachers and faculty members concerning the rules regarding the use of copyrighted works in non-profit educational organizations. This federal legislation redefined the privileges of educators to use digital media in their lectures and presentations. Although there are many complex revisions to the copyright law as it applies to educational use, this guide provides methods of implementation for every department of the university.

It is necessary for educators at the University to recognize that many of the resources used to teach students are protected by copyright laws, as virtually any “work of original authorship” is, and in which the author(s) and/or publishers have property rights and economic interests. While the copyright owner has the right of duplication and privilege of public display, teachers frequently unknowingly violate these policies when they distribute certain paper handouts in class or upload clips of video and music to a website thinking that academic use and fair use are synonymous, which they are not.

The first step in copyright awareness begins with the policy of fair use, a complex

issue even for those who work with it frequently, because many nuances make every copyright law and application relative to a given situation subjective to individual interpretations. The basis foundation of copyright law is that the right to copy, distribute, perform, or display any creative work belongs solely with the owner, who may not necessarily be the author; however, fair use makes it possible for teachers to utilize these copyrighted materials without violating the owner's rights under a set of general guidelines, which form the basis for the application of the University's "fair use" policy. These guidelines are as follows:

- Fair Use Guidelines -

Factor #1

Purpose and Character

The purpose and character of use can be divided into separate categories based upon institutional and use considerations.

Favor Fair Use – Non-profit; educational personnel.

Support Fair Use – News reporting; parody; criticism; commentary.

Against Fair Use – Commercial usage.

The first category lists uses that weigh in favor of Fair Use while the last, commercial usage, defines what clearly may require permission from the owner if permission has not been specifically or generally granted. For example, non-profit use within the auspices of education makes a very good case *in favor* of Fair Use. If an instructor engages in a project that is non-profit and also involves criticisms of the copyrighted work, the case for Fair Use is strengthened, as qualities from the second category enhance teachers' rights as users. Even if the user plans to profit from a copyrighted work, qualities from the second category might keep the user inside the scope of Fair Use.

These categories are mere indicators of what can be considered legal privileges

of Fair Use because owners and users have always had a difficult time deciding on the proper system of balance. If there is any doubt regarding the legality of one's actions, it is always a good idea to seek permission from the copyright owner. Consulting the University's legal counsel is also recommended.

Factor #2

Nature of Work

The type of work one uses can also determine how Fair Use rules are applied.

Favor Fair Use – facts; published works.

Against Fair Use – unique expressions; unpublished works.

Collections of pure facts and published works tend to side with Fair Use, while dealing with works that are either the result of unique thought or remain unpublished are more risky. Unpublished works are more protected because they remain out of the public domain; however, teachers are allowed to use collections of published facts fairly safely because government copyright policies encourage the dissemination of facts to the public.

Factor #3

Quantity

The fair amount used of a copyrighted work is just as subjective as the previous two factors. According to the "Classroom Guidelines" portion of the amendment to the U.S. Copyright Act, teachers should refrain from copying more than 1000 words of any given document. Another dynamic aside from the quantity taken is the value of the portion in relation to the whole work. Is the copied portion considered the "heart" of the material? If so, the copying privileges become more limited.

Factor #4

Market Effect

The last factor in the test addresses the effects of the use on the market value of the work. Essentially, the evaluation is made through comparing the widespread use of the action and how it affects the success of the work as published material. In court cases, judges tend to analyze the first three factors before letting this fourth factor become relevant. If the first three factors indicate the use is likely fair, the judge will not allow the fourth factor to supersede those three. Situations in which the original work goes out of print are more likely to give a teacher the right of Fair Use than where a work is currently in the marketplace, for sale and from which the copyright owner could be expected to derive income or value.

6. Course Packs:

Below are basic suggestions for including copyrighted materials in student course packs.

-Books- limit excerpts to single chapters

-Journals- limit to single articles

-Charts/Graphs- depending on the size of the excerpt, limit to several at a time

** As always include any copyright notices on the works themselves, and be sure to appropriately cite the sources.

7. Images:

TEACHERS: Teachers should determine if the image being digitized (or converted into a computer-read format) is available online or for sale at a reasonable price.

YES- if the copyrighted image is available, teachers should seek to negotiate a contract for the image before using it.

NO - if the copyrighted image is NOT available, the digitized pictures should be smaller thumbnail images, and student access to these images should be restricted after the end of the term.

STUDENT USE - According to Fair Use, students are able to use the downloaded images for personal use and in preparation for academic work.

8. Multimedia Works:

According to the guidelines from the Conference on Fair Use (CONFU), students and faculty members may incorporate other copyrighted works into audio/visual presentations under certain restrictions. Fair Use allows the presenter to utilize the copyrighted work in the presentation and perform or display this work as long as it is being given in an academic setting. However, the multimedia presentation containing the copyrighted work may NOT be distributed or copied without appropriate permission.

9. Music-

The Music Library Association has established several rules for handling musical works in the classroom. The proper and improper uses are listed below.

Permissible Uses

1. An emergency copy may be made for an imminent performance, given that the replacement copies shall be ordered in due time.
2. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, but in no case more than

10 percent of the whole work. The number of copies shall not exceed one copy per pupil.

3. Printed copies that 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 if 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 that may exist in the sound recording.)

Prohibitions

1. Copying to create, 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 #1 under "Permissible Uses."

4. Copying for the purpose of substituting for the purchase of music, except as in #1 and #2 under "Permissible Uses."

5. Copying without inclusion of the copyright notice, which appears on the printed copy. *From The Music Library Association* (<http://www.musiclibraryassoc.org>)

10. Reserve Copies

In compliance with the Fair Use Guidelines for Electronic Reserve Systems, instructors should always list the appropriate citations and notices when placing an item on reserve. Reserve materials should be limited to single articles or chapters and, in general, small portions of entire works. Also, instructors should only make copies of materials that are already owned legally by either the library

or the instructor. There should be limited access to the reserves given only to students enrolled in the class during that academic period. Materials will be removed from reserve at the end of the semester. Instructors should seek permission from the copyright owner for repeated use of the same copyrighted reserve material.

11. Distance Education:

The issues of copyright protection within Distance Education focus primarily on the duplication and distribution of works. While Section 110 of the federal copyright law allows educational performances of copyrighted works, there is a legal gap between what can be displayed in the classroom and how these materials can be transmitted.

The law (17 U.S.C. §110) treats materials utilized in classroom instruction (§110(1)) and that used in providing distance education (online instruction)(§110(2)) differently. The following chart may help understand the distinctions.

| SECTIONS OF COPYRIGHT LAW, U.S. CODE 17 | | |
|--|--|---|
| | Face-to-Face Instruction: 17 U.S.C. §110 (1) | Course Transmission (Distance Education: 17 U.S.C. §110 (2) |
| Eligibility | Nonprofit, Educational | Accredited, Nonprofit, Educational, Governmental |
| Activity | Face-to-face teaching | Digital transmission controlled by, or under the actual supervision of the instructor; |
| Works Covered | All works | Nondramatic literary & musical works and limited portions of other works; display of all works |
| Limitations | Lawfully obtained copy; purpose is instructional not entertainment | Lawfully obtained copy; available to students no longer than class session; made by or under supervision of the instructor; display of work in an amount comparable to typical classroom setting. |
| Where | Classroom or similar place devoted to instruction | An integral part of a transmitted class session; part of systematic mediated instructional activity; directly related to the teaching content |
| Who | Students and teachers | Students and teachers |

Guidelines for digitally transmitting copyrighted material in a distance education setting are as follows:

-*Licenses*- With any copyrighted work that may be transmitted, checking the license is necessary to view any restrictions or privileges that are applicable.

-*Quantity*- The keys to any ambiguity in Fair Use are *small parts* and *limited access*. Copyrighted works transmitted over a network should be used sparingly if there is not a license agreement established. The safest copyrighted materials to be used are those that have been purchased, licensed, or loaned to a teacher, library or institution.

Limited Use for Media Materials

1. Motion media. 10% or 3 minutes
Text. 10% or 1,000 words
2. Music, Lyrics, and Music Video. 10% BUT no more than 30 seconds from an individual work.
3. Illustrations and Photographs. Hard, because fair use usually precludes the use of an entire work. May use in one educational multimedia work: no more than 5 images by a single artist or photographer; no more than 10% or 15 images from a published collective work.
4. Numerical data sets. 10% or 2,500 fields or cell entries from a copyrighted database or data table.

-*Citation*- When transmitting copyrighted material, it is necessary to cite the correct sources on the material itself. Failure to cite the material puts the

instructor out of the reach of Fair Use.

-Transmission- The transmission of copyrighted material should be done over a secure network with limited access to the data. Academic classroom settings or other places designated for instruction are the only eligible sites that can legally receive such data.

-Permission-

- a. Permission to utilize a copyrighted work should be established when an instructor intends to distribute material from the course that contains copyrighted material.
- b. Access becomes unrestricted: An institution intends to offer a course that contains the performance of copyrighted works to non-employees.
- c. 15-day limit: An institution wishes to retain the recorded or copied class session that contains the performance of a copyrighted work for more than the 15 day limit. After the 15 days, a copy may be put on reserve in the library for on-site use only

RESPONSIBILITY

The Provost and Vice President for Academic Affairs is responsible for this policy.

EVALUATION

This policy will be reviewed biennially.