

**COPYRIGHT  
INTELLECTUAL PROPERTY  
POLICIES**



## **COPYRIGHT AND INTELLECTUAL PROPERTY POLICIES**

The unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject students and individuals to civil and criminal liabilities. Almost all of the music, movies, television shows, software, games and images found on the Internet are protected by federal copyright law. The owner of the copyright in these works has the right to control their distribution, modification, reproduction, public display and public performance. It is therefore generally illegal to use file sharing networks to download and share copyrighted works without the copyright owner's permission unless "fair use" or another exemption under copyright law applies.

Fair use under the federal Copyright Act allows the use without permission of copyrighted material for the purpose of criticism, comment, news reporting or teaching under certain limited circumstances. There is no blanket exception from liability for students or employees of educational university, however, and whether the use of copyrighted material without permission falls within "fair use" or one of the other exceptions in the Act depends on a very detailed, case-by-case analysis of various factors. Students should be aware that sharing music, videos, software and other copyrighted materials is very likely not to be considered a "fair use" and therefore may be a violation of the law.

A violation of the university's policy for use of its information technology system can result in termination of network access for the student and/or other disciplinary action including removal of the student from the university. Moreover, there are severe civil and criminal penalties for copyright infringement under federal law. A copyright owner is entitled to recover actual damages and profits resulting from an infringement, but also may recover statutory damages ranging from \$750 to \$30,000 per work for a non-willful infringement and up to \$150,000 for a willful infringement, even if there is no proof of actual damages, in addition to court costs and reasonable attorneys' fees. The government also can file criminal charges that can result in fines and imprisonment.

EDMC's policies in regard to copyright infringement via the Internet prohibit the illegal downloading or unauthorized distribution of copyrighted materials using the university's information technology system. EDMC's policies prohibit use of the EDMC computer network to engage in illegal copying or distribution of copyrighted works such as by unauthorized peer-to-peer file sharing (i.e., the sharing of copyrighted works, typically in digital or electronic files) without permission.

## **Policy on Intellectual Property**

### **Introduction**

As a creative community of teachers, artists and scholars, Western State University (the “university”) is committed to encouraging the creation of new works, new ideas, and new forms of creative and scholarly expression. This Policy on Intellectual Property is provided to protect the interests of those who create as well as the interests of the university itself, which supports this creative and scholarly work.

### **I. Purpose and Scope**

This document expresses the University’s policy regarding ownership and usage rights with respect to Intellectual Property (as hereinafter defined). It covers all those who are a part of the university – faculty, staff, students, visiting artists, visiting scholars, or other participants enrolled, employed or affiliated with the University, and this Policy governs in all circumstances, unless the University has modified it through a written agreement connected to a sponsored or commissioned work or as part of work under a grant or contract. Should there be any conflict between the provisions of this Policy and the terms of a separate written agreement between the University and any party, the terms of that separate written agreement will govern. This Policy is not intended to limit “fair use” as defined by U.S. laws.

### **II. Terminology**

The following terms are used throughout the Policy and are defined in Appendix A attached hereto:

- A. *Copyright*
- B. *Commissioned Work*
- C. *Independent Academic Effort or Creative Activity*
- D. *University Employee*
- E. *Intellectual Property*
- F. *Patent*
- G. *Sponsored Work*
- H. *Student*
- I. *Substantial University Resources*
- J. *Trademark and Service Mark*
- K. *Work*
- L. *Work Made for Hire*

### **III. The Rights of the Creator of Intellectual Property**

- A. *Faculty, Staff and Student Works*

#### **1. General Rule.**

Subject to the exceptions noted in this Policy, as a general rule, the University does not claim ownership of Intellectual Property developed through Independent Academic Effort or Creative Activity and that is intended to disseminate the results of academic research and scholarship, and/or to exhibit forms of artistic expression on the part of faculty, staff, and Students.

## 2. Exceptions to the General Rule.

Exceptions to the general rule set forth in III.A.1 above include Intellectual Property developed by faculty, staff, Students and University Employees under any of the following circumstances:

- (a) The Intellectual Property is developed as a Sponsored Work.
- (b) The Intellectual Property is developed as a Commissioned Work.
- (c) The Intellectual Property is developed using Substantial University Resources.
- (d) The Intellectual Property is developed by the creator within the scope of his or her employment with the University and constitutes a Work Made for Hire.
- (e) The Intellectual Property is developed by a creator who is assigned, directed or funded by the University to create the Intellectual Property.
- (f) The Intellectual Property is developed under a grant, program or agreement which provides the University with ownership rights, in whole or in part, to the Intellectual Property.

Under the circumstances described in Section III.A.2(a) through (f) above, the Intellectual Property shall be owned by the University (or by the University and any other party as specified in any written grant, program or agreement).

The creator of any Intellectual Property that is or might be owned by the University under this Policy is required to make reasonable prompt written disclosure of the Work to an officer designated by the University's President, and to execute any document deemed necessary by the University to perfect legal rights in the University and enable the University to file applications for registration when desired.

## 3. Ownership Rights in Specific Types of Works.

For purposes of clarification and without limiting the general rule and exceptions set forth in Sections III.A.1 and 2 above, ownership rights in the following types of Works are allocated as set forth below:

- (a) Curricular materials including course outlines, curricula, lesson plans, course handouts, PowerPoint and other presentation materials (in all forms and media), course content and syllabi are deemed to be Works Made for Hire and therefore all Intellectual Property associated therewith is owned by the University. Likewise, student rosters, attendance forms, interim grade reports, and assessments of student projects, including all Intellectual Property associated therewith, belong solely to the University.
- (b) Unless developed under the circumstances set forth in Section III.A.2 (a) through (f), or a written agreement provides otherwise, scholarly articles and papers written for publication in journals, presentations and scholarly papers prepared for seminars and conferences, and personal lecture or teaching notes are typically not considered to be owned by the University as Works Made for Hire or otherwise.

(c) If any Intellectual Property to be owned by the University under Section III.A.2 (a) through (f) above is developed jointly with a non-University party, the parties respective ownership and usage rights in the resulting Intellectual Property shall be set forth in a written agreement.

(d) Where Intellectual Property is to be developed using Substantial University Resources, authorized representatives of the University will develop a written agreement with the user of those resources, which must be executed by the parties prior to use of the resources, to identify the nature and terms of the use, including possible reimbursements or other systems of compensation back to the University.

(e) Unless a Work is developed under the circumstances set forth in Section III.A.2 (a) through (f), or a written agreement provides otherwise, all Intellectual Property created by faculty during sabbatical are owned by the faculty.

(f) Unless the Work is developed under the circumstances set forth in Section III.A.2 (a) through (f), or a written agreement provides otherwise, Intellectual Property created by a Student working on his or her own, or developed in the context of a course, is owned by the Student and the University will not use the Student's Work without the Student's permission to do so.

(g) Students working on a project governed by an existing written agreement to which the University is a party are bound by all terms of that agreement.

(h) Students hired to carry out specific tasks that contribute to Intellectual Property of the University retain no rights of ownership in whole or in part to that Intellectual Property or to the Student's contribution to that work.

(i) Students who wish to work collaboratively with University Employees on projects which involve the creation of Works and Intellectual Property are required to sign and deliver an acceptable written agreement to the University outlining their rights before commencing work on such projects. Either party has the right to initiate such agreement.

(j) The rights of the University to a perpetual, worldwide license (exclusive or non-exclusive, as the University deems necessary), to use and reproduce copyrighted materials for educational, research, and promotional purposes must be included in any agreement with a non- University sponsor.

#### *B. Independent Contractor Works.*

As a general rule, the University will own Intellectual Property created by an independent contractor if a written agreement signed by the parties so provides, or the University has specially ordered or commissioned the work and such work is designated as a Work Made for Hire in a signed written agreement between the parties. If the University does not own the Intellectual Property created by an independent contractor, it shall have a right or license to use any Work produced by the independent contractor in the course of performance of the contract, in accordance with the parties' agreement.

#### **IV. University's Usage Rights**

To the extent that faculty, staff or University Employees retain ownership of Work and Intellectual Property according to this Policy, the University shall have a permanent, non-exclusive, worldwide, royalty free right and license to make educational use of such Work and Intellectual Property, including the right to use, reproduce, distribute, display, perform and modify (i.e. create derivative works) such Work and Intellectual Property in all forms and media now known or hereafter existing in connection with its curriculum, courses of instruction and educational programs, and any related accreditation or promotion of the University. Where practicable, the University will use best efforts to cite the creator of the Work if the University exercises such usage rights.

#### **V. University's Marks**

Intellectual Property comprised of or associated with the University's Trademarks and Service Marks, including but not limited to its name, logos, slogans, insignia, and other symbols of identity (collectively the "Marks") belongs exclusively to the University and/or its affiliates. This Policy is designed to protect the reputation of the University and its affiliates, and to prevent the illegal or unapproved use of the University's Marks.

No University Mark may be used without the prior, written authorization of the appropriate authorities of the University. However, faculty, staff, and Students may identify their status or professional affiliation with the University as appropriate, but any use of the University's Marks in this regard must avoid any confusing, misleading or false impression of affiliation with, or sponsorship or endorsement by, the University. No products or services may be marked, offered, sold, promoted or distributed with or under the University's Marks without the University's prior written permission and compliance with the licensing policies of the University. All requests for use of University Marks must be submitted in writing to an officer designated by the President. The designated University officer retains information concerning what marks, names, logos, symbols, insignias, and related words, phrases, and images currently comprise the University's Marks.

#### **VI. Substantial Use of University Resources**

Although "Substantial University Resources" is defined (see Appendix A), it is acknowledged that such resources and their use may change over time, with changes in technology, physical infrastructure of the University, modes of employment, etc. Therefore, this Policy allows the Academic Policy Advisory Committee to review the definition of "substantial use" from time to time and implement any changes or clarification to the definitions which the University deems necessary in order to establish an appropriate standard.

#### **VII. Review Scheme**

Questions concerning this Intellectual Property Policy should be addressed to the Dean of Academic Affairs.

### **VIII. Reservation of Rights**

The University reserves the right at any time in its sole discretion to modify and/or make changes to the Policy as advisable or appropriate. The University agrees, however, that it will endeavor to notify the entire University community through both print and electronic means of its intention to make modifications and/or changes to the Policy at least 30 working days prior to their enactment.

### **IX. Effective Date**

This Policy supersedes any preexisting Intellectual Property policy of the University and will remain in effect until modified or revoked by the University. This Policy will be binding on all parties who create Intellectual Property after the effective date, and this Policy and other agreements that represent modifications to this Policy shall remain binding on such creators even after their relationship with the University changes or terminates.

### **X. Governing Law**

This Policy shall be governed by and interpreted under applicable federal laws pertaining to intellectual property and the laws of the State without regard to choice of law provisions.

## APPENDIX A TO POLICY ON INTELLECTUAL PROPERTY

### **Definitions of Terms Used in Policy**

#### *A. Copyright*

Copyright is the intangible property right granted for a limited period of time by federal statute (Title 17 of the U.S. Code) for an original work of authorship fixed in any tangible form of expression. Copyright provides the owner with five exclusive rights, including the exclusive right to reproduce the work, to prepare derivative works based on the work, to distribute copies of the work to the public by sale or other transfer of ownership (or by rental, lease, license or lending), to display the work publicly and to perform the work publicly (if relevant).

#### *B. Commissioned Work*

A Commissioned Work is defined as a Work (as defined in paragraph K of this Appendix) that is produced or created pursuant to a written agreement with the University and for University purposes by (a) individuals not under the employ of the University or (b) University Employees (as defined in paragraph D of this Appendix) acting outside the scope of their regular University employment, as determined by their existing University employment arrangement or contract.

#### *C. Independent Academic Effort or Creative Activity*

Independent Academic Effort or Creative Activity is defined as the inquiry, investigation, research, or creative activity that is carried out by faculty, staff and Students of the University working on their own, that advances knowledge or the development of the arts, sciences, humanities, or technology where the specific direction, methodology, and content of the pursuit is determined by the faculty, staff member(s), or Student(s) without the direct assignment, supervision, or involvement of the University.

#### *D. University Employee*

An University Employee is a full-time or part-time faculty member, visiting faculty, adjunct faculty, artist, scholar, or fellow (as defined in the Faculty Handbook), or a full-time or part-time staff member (as defined in the Staff Handbook), or Student, who is employed by the University or who is working under an University contract, either expressed or implied.

#### *E. Intellectual Property*

Means: (i) trademarks, service marks, brand names, trade dress, assumed names, trade names, slogans, URLs, domain names, logos and other indications of source, sponsorship or affiliation, together with all associated goodwill (whether the foregoing are registered, unregistered or the subject of a pending application for registration); (ii) inventions, developments, improvements, discoveries, know how, concepts and ideas, whether patentable or not, in any jurisdiction; (iii) patents, patent applications and patent disclosures; (iv) trade secrets and proprietary or confidential information; (v) writings and other works of authorship, whether subject to copyright



protection or not, in any jurisdiction, including but not limited to literary works (such as books, scholarly articles, journal articles and other articles, theses, research, course syllabi, curricula, exams, instructional and evaluation materials for classes, courses, labs or seminars, study guides, student rosters and attendance forms, grade reports, assessment of student work and projects, course or program proposals, software, data and databases, lecture and presentation materials); musical works (including any accompanying words); dramatic works (including any accompanying music); pantomimes and choreographic works; pictorial, graphic, and sculpture works (including graphic designs; illustrations, photographs, paintings, sculptures and other works of art); motion pictures and other audiovisual works (including films, audio and video recordings and multimedia projects); sound recordings; architectural works; and compilations; and (vi) copyrights, copyright registrations and applications for registration of copyrights in any jurisdiction.

#### *F. Patent*

A United States patent is a grant which gives the owner of the patent the right to exclude all others from making, using, or selling the claimed invention in the United States for a set period of time. Similar rights are granted in other countries, but the discussion of Patents in this Policy will focus specifically on United States patent rights.

#### *G. Sponsored Work*

Sponsored Work is a Work (as defined in paragraph K of this Appendix) that is produced or created under an agreement between the University and a sponsor which provides the University with ownership and/or usage rights to the Work and Intellectual Property produced under the agreement. Sponsored works do not include works created through independent academic effort or creative activity, even when based on the findings of the sponsored project, so long as an agreement does not state otherwise.

#### *H. Student*

A Student is a regularly registered, full- or part-time, undergraduate or graduate at the University, including students attending the University as “special status students”: e.g., as participants in Professional Institute for Educators (PIE), Continuing Education (CE), the Pre-College or Saturday programs, or in exchange programs or through special grants or fellowships.

#### *I. Substantial University Resources*

Any substantial use of University equipment, facilities, time, personnel, or funds, and use of University resources that are not “commonly provided”, is considered a use of “Substantial University Resources.” This use does not include resources commonly provided to University faculty and staff, such as offices, library facilities, basic artistic facilities, and everyday telephone, computer, and computer network support. However, substantial time spent in the use of these latter resources may constitute the use of “Substantial University Resources.” Resources not considered “commonly provided” include specially procured equipment or space, additional staffing or personnel, utilization beyond normal work hours of University personnel, and monetary expenditures that require a budget. Faculty may use the basic artistic facilities unless use infringes on student use of those facilities for coursework.

#### *J. Trademark and Service Mark*

A trademark or service mark is any word, phrase, name, symbol, logo, slogan, device, or any combination thereof that is used in trade to identify and distinguish one party's goods or services from those of others.

#### *K. Work*

The term "Work" as used in this Policy shall be defined to include all of the items identified in Sections (i), (ii), (iv) and (v) of the definition of Intellectual Property in paragraph E of this Appendix A.

#### *L. Work Made for Hire*

A "Work Made for Hire" is defined as a Work (as defined in paragraph K of this Appendix A) prepared by an employee within the scope of his or her employment.

Consistent with the Copyright Act of 1976, as amended, a Work Made for Hire under this Policy also includes 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.

Examples of works made for hire include software programs created within the scope of an employee's duties by a staff programmer, a newspaper article written by a staff journalist for the newspaper that employs him/her, and a musical arrangement or ditty written for a music company by a salaried arranger on its staff.