

# **INTELLECTUAL PROPERTY POLICY**

*For the University of Maryland, Baltimore County*

## **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 shall be effective as of July 1, 2002 (“Effective Date”). It shall 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 shall remain subject to the University System of Maryland Policy on Patents effective May 31, 1990 or the University System of Maryland 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.

- A. Personnel.** All University employees, full-time and part-time, including Student Employees acting within their Scope of Employment; non-employee consultants; visiting faculty and visiting employees; 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., from Sponsored Research Agreements [as defined below], 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, 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 contain a provision governing rights to intellectual property created under the agreement.
- F. Students.** Persons enrolled in the 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. University.** University shall mean the University of Maryland, Baltimore County, a constituent institution of the University System of Maryland, except as otherwise stated.

#### **IV. GENERAL PROVISIONS**

- A. Purpose.** The purpose of this policy is to set forth the terms, conditions, and procedures whereby University Personnel and Students establish and maintain their interests in intellectual property created by or used at the 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. In addition, a reference to this policy shall be made in the Student and Personnel handbooks and in academic catalogues, e.g., graduate and undergraduate, or their equivalent. Said reference shall be in enough detail to enable Students and Personnel to easily obtain the full text of this policy.
- 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, the University is not bound to honor those 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, which is 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.
- 3) **Internal Research Funding.** The University's internal research funding, unless subject to another provision in this section, shall not be considered funding under a Sponsored Research Agreement.

**G. Implementation Authority.** The Chancellor shall have the ultimate authority and responsibility for implementation and coordination of this policy and the other institutional policies for the University System of Maryland. The University's president shall have the authority and responsibility to implement and coordinate this policy within the University. Subject to the other provisions of this policy and applicable law, the University 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 in which the 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 institution'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, including traditional scholarly works such as textbooks, journal articles, and monographs, and other literary or artistic works,

regardless of the form in which such works exist (e.g., tangible or electronic), with the following exceptions:

- 1) **Scope of Employment.** The University owns all rights in copyright for works produced by non-faculty Personnel within the Scope of Employment.
- 2) **Sponsored Research Agreements.** The University owns all rights in copyright for works, which are expected deliverables, 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 computer software and programs is addressed in Section VII.

#### **B. Right of Use.**

- 1) **University rights.** Except for commercially available works and works created by Students as part of their academic coursework, the University shall have the right to use and reproduce for its internal research and educational purposes scholarly and original works, whether owned by the University or Personnel, for which it has provided resources.
- 2) **Additional rights.** If the University wishes to secure additional rights in a copyrighted work, it shall so specify in writing at the time it 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 II-3.10.
- 3) **Use of Copyrighted Materials.** All Personnel and Students are responsible for complying with University guidelines on the fair use of copyrighted material and for complying with the requirements of copyright law, including obtaining required permissions to use copyrighted material (See Appendix A).

#### **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.** Except as may be set forth in an agreement between the University and the creators, 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 has developed guidelines for the use of copyrighted materials and guidelines that address library and educational fair use as well as fair use exceptions for research and scholarly work (See Appendix A).

#### **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 other than library 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 shall 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.** Unless an invention is subject to another provision under this Section, VI.A, the University will not assert its right of ownership for inventions made solely by Students as part of their academic coursework.

## **B. Responsibilities of Personnel and Students**

- 1) **Disclosure.** Personnel and Students shall disclose inventions which are subject to University ownership to the University's Office of Technology Development in a timely manner, fully, and in writing. When uncertain about the University's rights, Personnel and Students shall disclose.
- 2) **External Collaborations.** In accord with 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 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.** Except as may be set forth in an agreement between the University and the creators, 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) **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 other than library 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.** Unless computer programs and software are subject to another provision under this section, the University will not assert its right of ownership for computer programs and software created solely by Students as part of their academic coursework.

## **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 University's Office of Technology Development 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 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.** Except as may be set forth in an agreement between the University and the creators, 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

Section V, *Copyrights*, shall apply to any materials that may be considered technology-mediated instructional materials.

## 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.** A trademark, service mark or trade dress is owned by the University 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 independently 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 University President or his designee shall approve registration of trademarks or service marks, at the state or federal level.

**E. Research Data and Results.** The University shall own all research data and results generated by Personnel within their Scope of Employment, including, without limitation, notes, laboratory notebooks and other documentation of research results and data. Faculty shall have a non-exclusive royalty-free right to publish and use for research or educational purposes such research data and results.

## **X. INTERINSTITUTIONAL AGREEMENTS**

For the purposes of this Section, University shall mean any one of the following: a constituent institution of the University System of Maryland, the University of Maryland Biotechnology Institute, the University of Maryland Center for Environmental Science, or the University System of Maryland Office.

**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 Universities and when a Student or Student Employee is earning a degree in one University but doing research or creative work in another.

- 1) **Ownership.** When more than one University can claim ownership to intellectual property under this policy, they own it jointly.
- 2) **Management Agreements.** Universities that are or may become joint owners of intellectual property shall enter into agreements stating which University will be responsible for management of the intellectual property. Universities are encouraged to negotiate standard agreements whenever possible.
  - 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 each University's share of Net Revenue, Project Specific Costs, and General Costs shall be distributed.

- b) **Student Requirements.** With regard to Students and Student Employees, agreements shall specify whether the degree-granting University or the supporting University will be responsible for managing intellectual property they create when that property is subject to University ownership.
- 3) **Responsibilities of Managing University.** The University managing intellectual property under an agreement shall promptly inform the other University or Universities 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 University decides not to proceed, the other owning University or Universities shall have the right to assume responsibility as the managing University.
- 4) **Distribution of Revenue.** The managing University 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 Universities are unable to reach agreement or differ in their interpretation of an agreement. The Chancellor's decision shall be final and binding on all parties.

**B. Joint Creators.** This section applies when Personnel or Students from two or more Universities collaborate.

- 1) **Early Notification.** As soon as collaborators from different Universities 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 Universities that an agreement is needed.
- 2) **Agreements Govern.** In these instances, signed agreements between Universities shall determine ownership of intellectual property, responsibility for managing it, and distribution of expenses and Revenue resulting from its development. Universities 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 Universities are unable to reach agreement or differ in their interpretation of the agreement. The Chancellor's decision shall be final and binding on all parties.

## **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 creators Revenue it receives from copyrights of their work 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. However, the University may elect, by written agreement or University policy, to pay up to fifty percent of net Revenue to such non-faculty Personnel.
- 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 accord with Section XI.G.

2) **Deductions from Revenue.** The University shall make the following deductions from Revenue before distributing Net Revenue (Section XI.A.3).

- a) **Creators' Share.** First, ten percent of Revenue shall be distributed among the creators of the work 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. 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 will deduct 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.** The remaining portion of the Revenue received from a work 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 work. After reimbursement of the University's expenses, Revenue may be used to reimburse costs incurred by 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 specific costs have been paid in full, any remaining Revenue shall go to the creators until the threshold dollar amount has been paid as specified above in Section XI.A.2.a.

3) **Distribution of Net Revenue.** 'Net Revenue' is the Revenue remaining after deductions under Section XI.A.2.

- a) **Creators' Share.** The University shall distribute among the creators fifty percent (50%) of the Net Revenue it receives from their creative work unless applicable laws, regulations, provisions of grants or contracts, or signed agreements with creators provide otherwise.
  - b) **University's Share.** The University shall receive 50% of the Net Revenue. Net Revenue received on account of copyrighted work shall be dedicated to research, scholarship, creative work, and related academic activities. The University's share shall be distributed as follows:
    - i) **Department's Allocation.** 85% of the University's share shall be distributed to the creator's department or analogous unit until the portion allocated to the creator's department or analogous unit totals a maximum of \$100,000 in any fiscal year; thereafter, 15% of the University's share shall be distributed to the creator's department or analogous unit.
    - ii) **Remaining University Share.** The remaining portion of the University's share shall be devoted to research as directed by the University President or his designee.
  - c) **Department's Allocation.** The Department's Allocation shall be that amount allocated to the creator's department or analogous unit as set forth above. The department or analogous unit shall allocate its Department Allocation as follows:
    - i) **Creator's Research Funds.** 50% of the Department's Allocation shall be allocated to the creator as unrestricted research funds for use in University research until the portion allocated to the creator totals a maximum of \$50,000 in any fiscal year; thereafter, 20% of the Department's Allocation shall be allocated to the creator as unrestricted research funds for use in University research.
    - ii) **Remaining Department Share.** The remaining portion of the Department's Allocation, the Department's Share, shall be devoted to research, scholarship, creative work, and related academic activities at the discretion of the Department Chair or equivalent.
  - 4) **Timely Distribution.** The University shall distribute accrued Revenue due creators under this policy at least annually. Distribution will be made along with a statement of related income and expenses.
- B. Patents and Computer Programs and Software.** The University shall share with inventors or creators Revenue 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 of Revenue shall be distributed among the inventors or creators 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 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 portion 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' or Inventors' Share.** Fourth, after project specific costs have been paid in full, any remaining Revenue shall go to the inventors until the threshold dollar amount has been paid as specified above in Section XI.B.2.a.
- 3) **Distribution of Net Revenue.** 'Net Revenue' is the Revenue remaining after deductions under Section XI.B.2.
  - a) **Inventors' or Creators' Share.** The University shall distribute among the inventors or creators fifty percent (50%) of the Net Revenue it receives from their inventions 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 receive 50% of the Net Revenue. Net Revenue received on account of an invention or creative work shall be dedicated to research and to the promotion of patenting and patents. The University's share shall be distributed as follows:
    - i) **Department's Allocation.** 85% of the University's share shall be distributed to the inventor's or creator's department or analogous unit until the portion allocated to the inventor's or creator's department or analogous unit totals a maximum of \$100,000 in any fiscal year; thereafter, 15% of the University's share shall be distributed to the inventor's or creator's department or analogous unit.
    - ii) **Remaining University Share.** The remaining portion of the University's share shall be devoted to research as directed by the President or his designee.
  - c) **Department's Allocation.** The Department's Allocation shall be that amount allocated to the inventor's or creator's department or analogous unit as set forth above. The department or analogous unit shall allocate its Department Allocation as follows:
    - i) **Inventors' or Creators' Research Funds.** 50% of the Department's Allocation shall be allocated to the inventors or creators as unrestricted research funds for use in University research until the portion allocated to the inventors or creators totals a maximum of \$50,000 in any fiscal year; thereafter, 20% of the Department's Allocation shall be allocated to the inventor as unrestricted research funds for use in University research.
    - ii) **Remaining Department Share.** The remaining portion of the Department's Allocation, the Department's Share, shall be devoted to research, scholarship, creative work, and related academic activities at the discretion of the Department Chair or equivalent.
  - 4) **Timely Distribution.** The University shall distribute Revenue due inventors under this policy at least annually. Distribution will be made along with a statement of related income and expenses.
- C. 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.

**D. 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.

**E. Joint Appointment.** In situations covered by section IX, the University's share of Net Revenue shall be divided equally among the Universities or as otherwise provided by written agreement.

**F. 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 IX.B.2.

**G. 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, and 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.** This policy was adapted from the University System of Maryland Policy Framework approved by the Board of Regents on February 8, 2002 and includes all of the procedures and policies required therein. Any revisions to this policy shall not go into effect until approved by the Chancellor in writing.
- B. Point of Contact.** The Director of the Office of Technology Development shall be the University's contact person for intellectual property issues.
- C. Authority to Subcontract.** The University may enter into contracts with third parties in connection with the development, administration, and protection of its intellectual property.
- D. 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, Presidents 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. All decisions on such cases shall be reported to the Intellectual Property Committee, which will take them into account in its annual review of this policy.
  - 2) **Policy Waivers.** Only the Chancellor may waive any provision of this policy. All decisions concerning waiver shall be reported to the Intellectual Property Committee and to the Board of Regents.
  - 3) **Recourse.**
    - a) **Disputes.** In the event of a dispute regarding the interpretation of this policy, the matter may be taken to the University's Research Council for resolution. In such cases, a written request shall be sent to the Research Council Chairperson describing the dispute. Should the Research Council Chairperson decide to hear the dispute, which shall be at his or her discretion, the person or persons seeking a resolution shall make an oral presentation of the dispute to the Research Council. The Research Council will make a decision regarding the dispute and will report that decision to the University President. The Research Council's decision shall be binding unless overturned on appeal. Appeals of the Research Council's decision may be made to the University President or his/her designee.
    - b) **Annual Review.** On an annual basis, the Research Council may review this Policy and make recommendations for modifications. Any such

recommendations shall be forwarded to the University's President and must be approved by the Chancellor in writing before any modifications shall go into effect.

**E. University System of Maryland Intellectual Property Committee.**

- 1) **Membership.** At the call of the Chancellor, the President shall nominate representatives from the University. The Chancellor will assure that faculty members constitute a significant proportion of the membership and that representatives of technology transfer offices shall routinely meet with the Committee. Members shall serve a three-year term. No voting member may serve more than two consecutive terms. The Vice Chancellor for Academic Affairs shall chair the Committee, without a vote.
- 2) **Responsibilities.** The Committee shall advise the Chancellor on intellectual property matters. It shall convene at least once each academic year to review this policy and may recommend revisions to the policy. The Committee shall also meet at the call of the Chair. The President or the Chancellor may refer to the Committee for its recommendations to the Chancellor matters relating to this policy, including relevant matters not addressed by the policy, and suggestions for revisions. The Chancellor may ask the Committee for advice on the resolution of disputes over intellectual property.
- 3) **Creator's Right to Participate.** Whenever the Committee considers this policy's application in order to advise the Chancellor about a specific work, Personnel or Students who created the work or their representative may make a written presentation and an oral presentation to the Committee.

**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.

## ***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.

**Faculty** – Those persons appointed to a faculty position in the University as set forth in the Board of Regents Policy II 1.00.

**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.

**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.

**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

**Software** – Programs, routines, and symbolic languages that control the functioning of the hardware and direct its operation.

**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.

## APPENDIX A

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

### PART I:

## University Guidelines for the Use of Copyrighted Materials

### PURPOSE

To provide Personnel and Students of the University with guidelines concerning permitted and prohibited reproduction of copyrighted materials for use in research, instruction, or publications.

In general, the 1976 Copyright Act provides that under most circumstances copyrighted materials cannot be reproduced in whole or in part without the consent of the person who owns the copyright. A copyrighted item identifies the person who owns the copyright with a legend such as "Copyright 2000 University of Maryland, Baltimore County". The 1976 Copyright Act permits "fair use," i.e., limited reproduction of copyrighted material without the permission of the author of the material, provided that in the reproduction (1) the original authorship of the copyrighted material is recognized and (2) the fact that the material is copyrighted is noted.

Any Personnel or Students who reproduce copyrighted material while preparing a document, which they will own under University policies, is responsible for determining whether the reproduction is a permitted "fair use." The University cannot provide legal advice to Personnel or Students to assist in making such determinations. The Office of Attorney General need not, but may, provide legal counsel to defend Personnel in actions for breach of copyright laws.

The President or a senior administrator designated by the President is responsible for determining whether a use of copyrighted material is a "fair use" if the material will be used in a document owned by the University under University policies. The President or his designee may make such discretionary decisions, seeking the advice of University legal counsel if necessary.

The University need not assume responsibility for the legal defense of any Personnel who exceeds the Guidelines unless he/she did so in the course of preparing a copyrightable item owned by the University and with the prior concurrence, in writing, of the President or his designee.

### DEFINITION OF COPYRIGHT

A copyright is the legally protected right of an author of a work to prevent others from copying the work. Copyrightable "works" include literary and instructional materials, audiovisual materials, photographs, computer software, and sound recordings. Personnel and Students should understand that Web pages and other materials, which may be found on the Internet, are considered copyrightable "works".

## **"FAIR USE"**

The 1976 Copyright Act, Section 107, provides that the "fair use" of a copyrighted work, including such use by reproduction in copies or phonorecords 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 "FAIR USE" GUIDELINES**

The Guidelines are specific guidelines for classroom use copying in not-for-profit educational institutions such as the University with respect to books and periodicals. The Guidelines were incorporated in the House Committee Report on Section 107 of the 1976 Copyright Act. The Guidelines state the minimum and not the maximum standards of educational "fair use." There may be instances in which copying which does not fall within the Guidelines may be permitted under the criteria of "fair use." The House Committee has stated that the guidelines are not intended to limit the types of copying permitted under the standards of "fair use" to those expressly mentioned. **Conversely, the Guidelines may describe copying which is not allowed by the 1976 Copyright Act.** Ultimately, federal courts interpreting the 1976 Copyright Act will determine what uses constitute "fair use."

The Guidelines are reprinted as Attachment 1 to this policy.

## **COMMENTS CONCERNING THE "FAIR USE" GUIDELINES**

Faculty and staff members may wish to use the Guidelines in Attachment 1 in cases where it is their personal responsibility to make decisions concerning "fair use." However, the University does not represent or guarantee that all copying permitted by the Guidelines is permitted by the 1976 Copyright Act. Faculty may wish to consult their own attorney.

The following points should be considered by faculty and staff members utilizing the Guidelines.

1. Certain journals and periodicals, although copyrighted, permit multiple copying for educational use. If so, a notice will appear at the page where the copyright is printed. If you do not see a printed notice, do not assume that you have permission to reproduce from the journal or periodical.

2. Neither a "not-for-profit" nor an "educational" exemption from the 1976 Copyright Act exists. However, the nonprofit or educational character of a use should be considered along with other factors in deciding whether the "fair use" doctrine is applicable.
3. Libraries may supply requested single copies of out-of-print works and, regardless of whether they are out-of-print, single copies of journal articles or contributions, or contributions to collective works or small parts of other works.
4. The notice of copyright required by Section II.C. of the "fair use" Guidelines should specify when and by whom the original work was copyrighted.
5. In the Guidelines, the section entitled "Prose" within the definition for "Brevity" refers to literary medium other than poetry. Such mediums include, among other things, articles from professional or scholarly journals and books
6. Duplication of hand-outs long in advance of their distribution to students would most likely violate the "Spontaneity" requirement of the Guidelines.
7. Multiple copying and systematic reproduction of copies require the prior permission of the copyright owner. Section III.C.c. of the Guidelines prohibits the same teacher's repetitive use of copies from one term to another. That is not spontaneous use.

## **HOW TO OBTAIN PERMISSION**

When a proposed use of photocopied material requires Personnel or Students to request permission, communication of complete and accurate information to the copyright owner will facilitate the request. The request should be sent, together with a self-addressed envelope, to the "permissions department" of the publisher in question or to the author if no publisher is involved. As this process can take time, faculty or staff members should allow sufficient lead-time. If the publisher assesses a fee for permission, the fee may be passed on to students who receive copies of the photocopied materials. A sample letter to a copyright owner is Attachment 2. If time is short, oral permission should be obtained and documented through a subsequent exchange of letters.

## **"FAIR USE" CERTIFICATION FORM**

It is recommended that Personnel and Students requesting University copy centers to reproduce multiple copies of copyrighted works complete a "Fair Use" Certification Form at the time copying services are requested and maintain it in their files along with the work copied for their own protection. A sample form is Attachment 3. Personnel and Students may wish to use a different form recommended by their attorneys.

NOTE: These guidelines are based on federal law, the Copyright Revision Act of 1976 ("1976 Copyright Act"), and related guidelines ("Guidelines") endorsed by the House of Representatives.

ATTACHMENT 1 TO APPENDIX A – Part I

**"FAIR USE" GUIDELINES**

*(from House Judiciary Committee Report No. 94-1476)*

**NOTE: THE FOLLOWING GUIDELINES ARE NOT LAW AND MAY NOT BE RELIED UPON EXCLUSIVELY TO DETERMINE WHETHER OR NOT A WORK MAY BE COPIED.**

**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 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 student 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. the copying meets the cumulative effect test as defined below; and
- C. each copy includes a notice of copyright.

Definitions:

**“Brevity”:**

1. Poetry: (a) a complete poem if less than 250 words and if printed on not more than two pages, or (b) from a longer poem, and excerpt of not more than 250 words.

2. 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 percent of the work, whichever is less, but in any event a minimum of 500 words.

(Each of the numerical limits stated in "1" and "2" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)

3. Illustration: one chart, graph, diagram, drawing cartoon, or picture per book or per periodical issue.
4. "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 "2" 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 percent of the words found in the text thereof, may be reproduced.

**“Spontaneity”:**

1. The copying is at the instance and inspiration of the individual teacher; and
2. 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”:**

1. The copying of the material is for only one course in the school in which the copies are made.
2. Not more than one 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.
3. There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in "2" and "3" 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 are 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.
- D. No charge shall be made to the student beyond the actual cost of photocopying.

ATTACHMENT 2 TO APPENDIX A – Part I

**[Sample University Letter to  
Request Permission to Copy and Use a Work]**

Material Permissions Department  
XYZ Book Company  
100 Main Street  
New York, New York 12345

Dear Sir/Madam:

I would like permission to copy the following for use in my class next semester:

**Title:** Life Cycle of the Frog, 3rd Ed.  
**Copyright:** XYZ Book Co., 1958, 1971, 1980.  
**Author:** John Doe

**Material to be duplicated:** Chapter 3 (photocopy enclosed)  
**Number of copies:** 75

**Distribution:** The material will be distributed to students in my class, and they will pay only the cost of photocopying.

**Type of reprint:** Photocopy

**Use:** The chapter will be used as supplementary teaching materials.

I have enclosed a self-addressed envelope for your convenience in replying to this request.

Sincerely,

(Name)

ATTACHMENT 3 TO APPENDIX A – Part I

**[University "Fair Use" Certification Form]**

**TO:** THE FILE  
**FROM:** (Name of Faculty or Staff Member)  
**SUBJECT:** Request for Reproduction of \_\_\_\_\_

CHECK ONE:

I certify that I have obtained the copyright owner's permission to reproduce the above listed work.

OR

I certify that I have read the University's guidelines on reproduction of copyrighted material and Sections 106, 107 and 501(a) of the Copyright Act of 1976 (See below), have considered the factors contained therein, and believe that my requested reproduction of the above listed work is a "fair use" under Section 107.

Sincerely,

(Name)

Attachment – Sections 106, 107, and 501(a) of the Copyright Act

**SECTIONS 106, 107 AND 501(a) OF THE COPYRIGHT ACT**  
(Excerpts from Title 17 United States Code)

**SECTION 106. EXCLUSIVE RIGHTS IN COPYRIGHTED WORKS**

Subject to sections 107 through 121, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

**SECTION 107. LIMITATIONS ON EXCLUSIVE RIGHTS: "FAIR USE"**

Notwithstanding the provisions of section 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

**SECTION 501(a). INFRINGEMENT OF COPYRIGHT**

- (a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 121 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a). As used in this subsection, the term "anyone" includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

## **APPENDIX A**

### **PART II:**

# **University Library Policy on Copyright Restrictions for Electronic Reserves**

[Approved by Library Policy Committee January 7, 1997]

## **ELECTRONIC RESERVES**

After a careful evaluation of the copyright laws and the responsibility of the library in adhering to these regulations, we will be using the following guidelines to process photocopies of copyrighted material to be placed on electronic Reserve at the library. The copyright law makes various provisions to meet the legitimate needs of educators. These fair use provisions are based upon brevity (not photocopying works in their entirety), spontaneity (allowing teachers to take new directions in the course work by making use of recently published material), and immediacy (being able to make use of these materials in a timely fashion.)

Personal photocopies placed on Reserve must also follow the above guidelines. It is the owner's responsibility to make sure that personal copies are lawfully made.

### **A. One-time Reserves:**

We are allowed to copy and place on reserve one article, one or two chapters of a book, or a complete poem without difficulty. Requests for placing items on reserve, however, should meet the following guidelines.

- 1 The amount of material should be reasonable in relation to the total amount of material assigned for one term of a course taking into account the nature of the course, its subject matter, and level, (See 17 U.S.C. §107 (1) and (3)).
2. The material should contain a notice of copyright, (See 17 U.S.C. §401).
3. The effect of photocopying the material should not be detrimental to the market for the work, (See 17 U.S.C §107(4)). (In general, the library should own at least one copy of the work.)

From: ALA Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve Use, March 1982.

Copies following the above guidelines may be placed on reserve for one semester or session only without obtaining permission from the copyright holder.

**B. Repeat Reserves:**

If the same material is needed on Reserve for subsequent semesters, advance permission from the copyright holder is required as the conditions of spontaneity and immediacy are no longer in effect.

The library will request and pay for permissions within reason.

NO material will be placed on reserve for a second time for the same course and instructor without proof of copyright permission or proof that a good faith effort was made to obtain it.

It is recommended that professors allow adequate time for the library to obtain permissions when planning their course work. If copyright permission cannot be obtained through the Copyright Clearance Center, it may take up to three months to obtain permissions.

All material on Electronic Reserve that falls under copyright restrictions must have a notice of copyright, a full citation, and the professor's name on the front page.

In addition, in order to comply with fair use guidelines being developed for this specific medium, the following steps will be taken:

1. Access to full-text reserves on the World Wide Web will be password protected. Library staff will provide the professor with a password for each course for which there is copyrighted material online. The professor is responsible for telling students the appropriate password and informing them of the importance of the copyright protection.
2. Students will be able to read the full-text material on the screen or print it to an attached printer. For the present, there will not be an option to "Save to Disk". Fair Use Guidelines are still in draft form and so it is not yet clear whether allowing the option of "Save to Disk" would be considered by some in the legal community as unfair dissemination of the material.
3. Material on the WWW in Electronic Reserves can be found through Course Name and Number and Professor Name only. There will be no indexing on authors or titles available.
4. Faculty produced material, such as lecture notes or exams, etc. or materials no longer protected by copyright law can also be placed as full-text on the WWW at the request of the professor. We will require permission from the professor in the form of an e-mail message or marking the appropriate section on the Reserve Request Form. This material will also be accessed through Course Name and Number and Professor Name, but will not require a password.