



UNION
UNIVERSITY

FACULTY HANDBOOK

2020–2021



Copyright and Intellectual Property Policies

Purpose

Issues of copyright compliance potentially impact the work of all faculty, students, and staff at Union University (the “University”). Similarly, intellectual property issues relating to the ownership and use of patentable ideas and inventions and copyrighted works may arise when faculty and students, while engaging in research and scholarly activities, develop new ideas and creative works. In the contemporary academic environment, questions regarding intellectual property rights may impact one’s work from three perspectives: as a user of copyrighted material, as a creator of new intellectual property, or as a manager of legal compliance. For this reason, the institution establishes the following copyright and intellectual property policies. These go beyond the mere recitation of applicable statutory language or referencing specific guidelines (i.e. fair use). These policies address the legal use of others’ works, the ownership of our own intellectual property, and management of institutional liability.

Policy Statement

It is the policy of the University to comply with all laws governing and protecting the intellectual property rights of individuals and entities, including, but not limited to, those rights associated with copyrights, patents, trademarks, service marks and trade secrets. The University strictly adheres to, and expects faculty, students and staff members to comply with, all laws regulating the use, distribution and reproduction of copyrighted works. The University seeks to maximize the educational benefits of using copyrighted materials in the classroom and in other educational settings through the use of the face-to-face teaching exemption, the Digital Millennium Copyright Act, the TEACH Act exemption, Open Access distribution models, and permissible copying under the fair use doctrine, while strictly adhering to copyright laws. Additionally, it is the policy of the University to encourage faculty and students to perform research and other academic or scholarly pursuits leading to the creation of copyrighted works, patentable inventions, and other valuable creative works.

Application of Policies

The Copyright Policy applies to all University students, faculty, staff, employees and any other person using the University’s library, website, computers or any computer network or system paid for or maintained by the University. The Intellectual Property Policy shall apply to all faculty, staff (including student employees), students, and to non-employees (including visiting professors, affiliate and adjunct faculty, etc.) who participate in research projects at Union University.

Definition of Terms

Author: The person or persons who are responsible for the creation or development of a copyrighted work. Such persons may include faculty members, graduate students, undergraduate students, University employees, or any other person involved in and responsible for the creation of a copyrighted work.

Copyrighted Work: An original work of authorship that has been fixed in any tangible medium of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device that is not in the public domain. Works of authorship include the following categories: (1) literary works; (2) musical works; (3) dramatic works; (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.

Creative Works: For purposes of this policy, creative works means copyrighted works, inventions, procedures, formulas, scholarly works and materials, artistic works, biological materials or academic works.

Creator: Any author, inventor or developer of intellectual property.

Extraordinary Resources: Resources allocated to faculty members and/or students that exceed (qualitatively and quantitatively) the resources routinely available through budgeted sources. For example, the utilization of University facilities, equipment, personnel (including graduate students) or other resources beyond that which is normally provided to carry out one’s assigned duties is a use of extraordinary resources.

Financial Benefit: Income potential, revenues, and royalties that might be generated by and accrue to the University, a member of the faculty, and/or a student due to a creative work.

Employee Initiated Work: Creative works developed by faculty members while fulfilling their contractual responsibilities or developed by students through their own initiative to satisfy the requirements of a course or project. Examples of such works include, but are not limited to: scholarly publications, books, plays, poems, musical compositions, works of art, textbooks, anthologies, online scholarly professional or educational materials in any format, manuscripts, biological material, web pages, and computer software. Such creative works may be developed through the use of ordinary resources or extraordinary resources.

University Initiated Work: Creative works developed by the University through the use of faculty, staff, administration, or student expertise, time and energy to produce creative works. Such creative works may be developed through the use of ordinary resources or extraordinary resources.

Gross Income: Gross income is defined as income, proceeds or dividends received by the University from the sale, lease, licensing or other use of a creative work and/or its associated intellectual property rights.

Intellectual Property: A category of intangible rights protecting commercially valuable products of the human intellect, in a concrete or abstract form, such as copyrightable works, protectable trademarks, patentable inventions, or trade secrets.

Invention: The conception and reduction to practice of a useful, novel and non-obvious product or process, or improvement thereon, for which a patent may be obtained. As used herein, the phrase “product or process” includes, but is not limited to, the following: biological material, composition of matter, technological development, article of manufacture, model, design, or new use of application.

Inventor: The person or persons responsible for the conception of an idea leading to an invention.

Net Income: The gross income received by the University with respect to a creative work minus the costs and expenses incurred by the University to obtain a patent, register a copyright, register trademarks, protect trade secrets, effect commercialization of a product (i.e., packaging, marketing, printing, shipping, warehousing),

defend intellectual property rights associated with the creative work, and maintain and administer the creative work.

Open Access: Open access is defined as the dissemination of scientific and scholarly research literature online, free of charge, and free of unnecessary licensing restrictions.

Open Access Journal: Journals that give open access to all or a sizable part of their articles.

Ordinary Resources: Funds, time, facilities, equipment and other resources derived from the general resources of the University that are available to faculty, staff and students in the normal course of business as part of a department’s budget or through application for internal grants. Examples of ordinary resources include, but are not limited to, the following: normal use of assigned office space, office equipment, laboratory equipment, library resources or administrative staff.

Outside Sponsor: Any agent, representative of a corporation, corporation, business entity, foundation, donor, or investor that desires or claims a partnership with faculty members or students in their capacity as employees or students of the University to engage in the enterprise of developing a creative work by providing financial support for such creative work.

Public Domain: Works that are available for unrestricted copying by the general public without permission. Material in the “public domain” includes works whose copyrights have expired; works that were created too early to have copyright protection (i.e., prior to 1923); works by the federal government; and works donated to the public by authors or artists.

Copyright Policy:

Legal Use of Others’ Copyrighted Works

It is the policy of the University to strictly adhere to the laws regulating the use, distribution and reproduction of copyrighted works and to avoid exceeding the bounds of permissible copying under the fair use doctrine, while maximizing the educational benefits of using copyrighted materials in the classroom and in other educational settings. The moment a work is written, recorded or fixed in a tangible medium; it becomes protected by copyright law. As a general rule, copyrighted works may not be used, distributed or reproduced without permission from the copyright owner. However, under certain circumstances, the fair use doctrine or a teaching exemption may apply, which will allow

students, faculty and/or staff members to use the copyrighted work, or a portion of the copyrighted work, for educational purposes without obtaining permission from the copyright owner. The United States Copyright Law of 1976, as amended (the "Copyright Act") is codified in Title 17 of the United States Code Annotated. Union University expects all faculty members, staff members and students to comply with this policy, with state and federal laws regulating the use of copyrighted works, and with the terms of applicable contracts and license agreements when using, distributing and/or reproducing copyrighted materials.

I. The Reproduction of Copyrighted Materials.

The copyright owner's written permission must be obtained prior to reproducing any copyrighted work unless the reproduction constitutes a "fair use" under the Copyright Act. This policy applies only to materials that are Copyrighted Works as defined herein. Materials in the public domain may be reproduced freely and without restriction. However, if it is unclear whether materials are part of the public domain, Union University employees must verify public domain status before assuming materials are part of the public domain.

II. The Fair Use Doctrine

In the academic setting, most questions of copyright from the user's standpoint involve application of the fair use doctrine. Fair use is a statutory exception that allows the limited use of copyrighted work for certain specified purposes, including education, scholarship, research, and private study. This doctrine should not be construed as an absolute exception to the rules governing use of copyrighted works. Not all educational use is fair use. When questions arise with regard to fair use, there are a number of established guidelines for determining the appropriate course of action. There are four main factors evaluated by courts in determining whether the use made of a work is a "fair use." Although there is no simple test to establish whether a use is "fair," the following four factors should be examined in light of the particular facts of each case to determine whether a specific use is "fair" or not:

The Four-Factor Test

The four main factors used by judges evaluating whether a use is a "fair use" include, without limitation:

1. *The Purpose and Character of Your Use*

The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes is the first consideration. Non-profit, educational uses are favored over commercial uses. Transformative works are favored over reproductions. That is to say, a work is "transformative" when it is transformed into something new or is used for something other than that for which it was originally created.

2. *The Nature of the Copyrighted Work*

The nature of the copyrighted work refers to the characteristics, qualities, and attributes of the work. Because the dissemination of facts or information benefits the public, you have more leeway to copy from factual works such as biographies than you do from fictional works such as plays or novels. For example, a work of nonfiction is favored over fiction or more creative works; textbooks are favored over motion pictures or software programs. Consumable works, like workbooks, are not favorable to fair use. An unfavorable use does not automatically mean the work cannot be used. This is only one factor that is weighted on the negative side. The other three factors must be considered as well.

In addition, you will have a stronger case of fair use if the material copied is from a published work than an unpublished work. The scope of fair use is narrower for unpublished works because an author has the right to control the first public appearance of his expression.

3. *The Amount and Substantiality of the Portion Taken*

The amount and substantiality of the portion used in relation to the copyrighted work as a whole. This incorporates both the quantity and the quality of material being duplicated. The less you take, the more likely that your copying will be excused as a fair use. However, even if you take a small portion of a work, your copying will not be a fair use if the

portion taken is the “heart” of the work. In other words, you are more likely to run into problems if you take the most memorable aspect of a work. For example, it would probably not be a fair use to copy the opening guitar riff and the words “I can’t get no satisfaction” from the song, “Satisfaction.”

Exact measures, word counts and percentages do not exist in the fair use law. Quantity is evaluated relative to the length of the entire original work and the amount needed to serve the objective. It is also viewed in light of the “nature” of the work. For instance, whole articles and entire pictures are not favorable to fair use. On the other hand, small portions may not be favorable if it is “the heart of the work”, for example the most creative clip from a motion picture. Also, each item in an “anthology” is subject individually to fair use scrutiny.

4. The Effect of the Use upon the Potential Market for or Value of Copyrighted Work

The effect of the use upon the potential market for or value of the copyrighted work, whether your use deprives the copy-right owner of income or undermines a new or potential market for the copyrighted work, is considered by some courts to be the most important factor. Reproduction in order to avoid purchasing the work is not fair use. Significant adverse market effect is unfavorable to fair use.

As we indicated previously, depriving a copyright owner of income is very likely to trigger a lawsuit. This is true even if you are not competing directly with the original work.

Unfortunately, this examination does not always give clear guidance and is open to interpretation. Fair use should be a “last resort rather than a first defense.” Other criteria to consider are creative commons, classroom use, and works that are in the public domain. If you have any questions regarding the fair use doctrine or whether a specific use constitutes fair use under the doctrine, contact the Director for Library Services.

II. The Face-to-Face Teaching Exemption

In addition to the doctrine of fair use, there is a specific face-to-face teaching exemption within copyright law. It allows for

legally reproduced work (e. g. articles, small portions of books, short video clips, etc.) to be used in a classroom setting or similar place devoted to instruction in the course of face-to-face teaching activities of a non-profit educational institution. The exemption applies only when such use involves no direct or indirect admission charge, is part of regular instructional activities, and is directly related to the teaching content. The full text of the face-to-face teaching exemption is found 17 U. S. C. § 110. In the event that an instructor is unsure about a use, the Director for Library Services should be contacted.

III. Digital Millennium Copyright Act of 1998

The Digital Millennium Copyright Act (DMCA) is a United States copyright law that implements two 1996 treaties of the World Intellectual Property Organization (WIPO). It criminalizes production and dissemination of technology, devices, or services intended to circumvent measures (commonly known as digital rights management or DRM) that control access to copyrighted works. It also criminalizes the act of circumventing an access control, whether or not there is actual infringement of copyright itself. In addition, the DMCA heightens the penalties for copyright infringement on the Internet. Passed on October 12, 1998 by a unanimous vote in the United States Senate and signed into law by President Bill Clinton on October 28, 1998, the DMCA amended Title 17 of the United States Code to extend the reach of copyright, while limiting the liability of the providers of online services for copyright infringement by their users.

One significant emphasis of the DMCA is prohibition of circumvention of copyrighted protection mechanisms, except in a few restricted situations. The DMCA also limits the liability of Internet Service Providers (ISPs), provided they meet a variety of guidelines, including the timely removal of material reported by copyright holders as violating their copyrights and designating an agent for receiving such complaints. Since Union University serves as a kind of Internet Service Provider (to its students, faculty and staff), it must meet the provisions of the DMCA. The Associate Vice President of Information Technology is Union’s Designated Agent “to receive notifications of claimed infringement.”

IV. The TEACH Act

The Technology, Education and Copyright Harmonization (TEACH) Act was enacted in November of 2002 to amend the Copyright Act to provide an exemption for the use of copyrighted works in distance education and face-to-face teaching which has an online, web-enhanced, transmitted or broadcast component to it. The TEACH Act was enacted in response to the adoption of the Digital Millennium Copyright Act, which placed new restrictions on the copying of digital media without including any provision for fair use in the digital realm. Because of the negative effect of this law on the classroom, particularly with regard to distance education which does not qualify for the face-to-face teaching exemption, Congress adopted the TEACH Act. It exempts from liability the transmission, including over a digital network, of a performance or display of a copyrighted work by an accredited, non-profit, educational institution to students officially enrolled in a course at the institution. The TEACH Act provisions were incorporated into 17 U. S. C. §110. It should be noted, however, that the TEACH Act exemption is not unlimited and is tightly regulated in the law. The TEACH Act provides an exemption for the performance of a non-dramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if:

1. the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of an accredited nonprofit educational institution;
2. the performance or display is directly related and of material assistance to the teaching content of the transmission;
3. the transmission is made solely for, and to the extent technologically feasible, the reception of such transmission is limited to students officially enrolled in the course for which the transmission is made;
4. the transmitting institution (i) adopts and implements policies regarding copyright, (ii) provides informational materials to

students, faculty and relevant staff members, and (iii) provides notice to students that materials used in connection with the course may be subject to copyright protection; and

5. in the case of digital transmissions, the transmitting institution must apply technical measures that reasonably prevent recipients from retaining works beyond the class session and further distributing them; and the institution must not interfere with technological measures used by copyright owners to prevent such retention and unauthorized further dissemination.

The TEACH Act places considerable responsibilities on educational institutions that choose to take advantage of the exemption it offers. When possible, faculty members and instructors are encouraged to use copyrighted materials in a manner that falls within the scope of the fair use doctrine or the face-to-face teaching exemption. However, the University recognizes that this is not always possible when using copyrighted works in connection with on-line courses or distance education. When an instructor wishes to use a copyrighted work in a manner that does not fall within the fair use doctrine or the face-to-face teaching exemption, but does fall within the exemption created under the TEACH Act, the instructor should notify the Director for Library Services and work with Director for Library Services to ensure that all statutory requirements for the exemption are satisfied, including the implementation of statutorily required technical measures and compliance with student notice provisions.

V. Obtaining Permission

For the use of copyrighted works that goes beyond the scope of the fair use doctrine, the face-to-face teaching exemption, and the TEACH Act exemption, permission from the copyright owner must be obtained. There are numerous agencies that coordinate the granting of permission to use copyrighted works. Two services commonly used by educators are the Copyright Clearing House for print copies and the American Society of Composers, Authors, and Publishers (ASCAP) for musical performance; however, these companies may not represent the copyright owner at issue.

The primary source for obtaining permission is the Copyright Clearance Center (CCC) (<http://www.copyright.com/>). According to their website, the Copyright Clearance Center is a “global rights broker for the world’s most sought after print and online content, from books, journals and newspapers to blogs and images.” You may also consider contacting the U.S. Copyright Office (<http://www.copyright.gov/>) for permission assistance.

VI. Licensing Agreements

Historically, in the print environment, certain rights to lend, copy, or perform a copyrighted work were granted to the owner of a book, journal, or score. In the digital realm, licensing agreements have become the key to access rights. As the various departments of the University have become more dependent upon the licensing of data and software, the management of access rights has become an important administrative task. Therefore, the University requires Union University employees to negotiate license agreements with appropriate care, maintain files of all licenses, and establish processes that will ensure compliance.

Signing a restrictive publication agreement can limit the ability of employees to archive and distribute their work. Union faculty and authors may want to include an addendum to publication agreements to protect their rights. One example of an addendum is provided by SPARC (Scholarly Publishing and Academic Resources Coalition) and is available online at:

http://www.arl.org/sparc/bm~doc/Access-Reuse_Addendum.pdf. For further information regarding the use, reproduction and distribution or display of copyrighted material in an educational setting, contact the Director for Library Services.

Intellectual Property Policy

I. Ownership of Our Own Intellectual Property

In the course of pursuing its stated institutional mission the University may provide support for the creation of imaginative and authentic intellectual property. When it does so, it shall assert ownership of and all applicable intellectual property rights to such works in accordance with applicable law.

II. Intellectual Property Created by Faculty Members, Students and University Employees

Faculty members and students are encouraged to perform research and other academic or scholarly pursuits leading to the creation of patentable, copyrightable, and other valuable creative works, including but not limited to, inventions; computer programs; scientific, industrial, or business processes or methods; books; art work; musical compositions; films; musical or stage productions or recordings; literary collections; manuscripts and other creative works that have artistic, educational, and/or economic value. Such efforts generally benefit both the University and the individual performing such work.

When a University employee (faculty, staff or student worker) creates such a copyrightable, patentable, or other valuable creative work either as part of his or her job duties or using extraordinary University resources, he or she must immediately notify the Provost and Vice President for Academic Affairs, dean and department chair of the existence and nature of such creative work. If a faculty member, University employee or student is approached by an outside sponsor who desires to enter into an agreement or partnership with such faculty member, employee or student to engage in the enterprise of developing a creative work by providing financial support for such creative work, the faculty member, employee or student will apprise the Provost and Vice President for Academic Affairs of such a desire or interest on the part of an outside sponsor and the University seek guidance from counsel to protect the interests of faculty members, University employees, students and the University.

A. Ownership of Intellectual Property Rights

1. Employee Initiated Works. Unless a faculty member or University employee is derelict in performing his or her assigned duties with the University and assuming ordinary (as opposed to extraordinary) use of University resources, the faculty member or University employee has the right to patent, copyright, publish, or otherwise establish ownership of any such

creative work that such person creates by means of his or her expertise or labor. When a faculty member or student employee creates such a patentable, copyrightable, or other valuable creative work, he or she shall have all of the exclusive rights to own, market, publish, use, and economically exploit such valuable creative work.

When a faculty member or University employee creates a patentable, copyrighted, or other valuable creative work using extraordinary resources of the University, then the financial benefits of such work shall be shared between the University and creator(s) in accordance with Revenue Sharing Formula set forth in Section III., below. Unless otherwise agreed upon in writing, the University shall be the owner of the work created with extraordinary resources and any resulting patent or copyright thereon. However, the faculty member or University employee creator and the University may agree in writing to a shared ownership.

The University shall have no ownership rights in employee-initiated works except as specified above and set forth in the Taxonomy of Creative Works herein. Any use of the University name in a work (other than to identify the creator as a faculty member or student) must be approved by the Provost and Vice President for Academic Affairs.

2. University Initiated or Commissioned Works. If a faculty member or University employee is hired by the University (a) to create a patentable, copyrightable, or other valuable creative work or (b) to perform a specific task which directly leads to the creation of a patentable, copyrightable, or other valuable creative work, and provided the faculty member or University employee has expressly agreed in writing signed by the faculty member or University employee relinquishing his or her ownership rights to the creative work, then the University shall be the exclusive owner of such creative work and any resulting patent or copyright thereon. However, the faculty member or University employee

and the University may agree in writing to a shared ownership.

The financial benefits of University initiated or commissioned works that are created with the use of ordinary resources shall be shared between the University and the faculty, employee or student creator(s) in accordance with Revenue Sharing Formula set forth in Section III below. The financial benefits of University initiated or commissioned works that are created with the use of extraordinary resources shall be sole property of the University unless otherwise agreed upon by the parties in writing.

3. Works Sponsored by a Third Party. Any creative works created by a faculty member or University employee pursuant to an agreement with or under the sponsorship of an outside sponsor or governmental grant shall be subject to the copyright, patent, and exploitation terms and conditions of such grant, contract, or agreement and the ownership of any such creative works generated there from shall be determined in accordance with the provisions of such grant or contract. Any use of the University name in such a work (other than to identify the creator as a faculty member, student, or employee of the University) must be approved by the Provost and Vice President for Academic Affairs.
4. Student Works. The University will ordinarily waive its rights to intellectual property created by students where the use of University facilities, equipment or other resources has been properly authorized, except when: (a) faculty or staff involvement is substantial; (b) the work is part of a larger University work or specifically commissioned by the University; (c) the use of facilities, equipment, or other resources is substantially in excess of the norm, for educational purposes; or (4) the intellectual property resulted from the student's employment with the University. Any use of the University name in a work (other than to identify the creator as a student and/or graduate of the University) must be approved by the Provost and Vice President for

Academic Affairs.

NOTE: All University employees are encouraged to take appropriate steps to protect their personal, private intellectual property. General information about securing copyright, patents, or trademarks is available from

the Director for Library Services. Specific questions relating to the implementation of these policies should be directed to the Provost and Vice President for Academic Affairs.

B. Taxonomy of Creative Works

Unless otherwise negotiated, the party identified in the Control of Creative Work column shall have ownership of the creative work and the party listed in the Financial Benefits column shall be entitled to all financial benefits arising from or generated by the work. Where financial benefits are identified as “shared,” income generated from the creative work shall be distributed in accordance with the Revenue Sharing Formula set forth in Section III, below.

TYPE OF CREATIVE WORK	INITIATED BY	RESOURCE ALLOCATION	CONTROL OF CREATIVE WORK (i.e., Ownership)	FINANCIAL BENEFITS
Employee Initiated Creative Work	Employee	Ordinary	Employee	Employee
	Employee	Extraordinary	University	Shared
	Employee & Student	Ordinary	Employee & Student	Employee & Student
	Employee & Student	Extraordinary	University	Shared
University Initiated Creative Work	University	Ordinary	University	Shared*
	University	Extraordinary	University	University*

*unless another agreement is negotiated between all parties involved.

III.Division of Income Derived from Intellectual Property Rights

Gross income derived from the sale, lease, licensing or use of any inventions, creative works, copyrights, patents or any other intellectual property owned by the University shall first be used to reimburse the University for any costs and expenses incurred by the University (i) to obtain a patent, register a copyright or trademark or otherwise protect and legally establish ownership in the intellectual property; (ii) in connection with the

publication, marketing, distribution, production or commercialization of the creative work; and/or (iii) for any legal expenses related to the creative work. Any remaining revenue shall be deemed the net income generated by the creative work.

Revenue Sharing Formula

After University expenses have been reimbursed, the net income will be disbursed as follows:

1. Fifty Percent (50%) to the creators. Where more than one creator exists, the disbursement will be apportioned on a case by case basis. Faculty will faithfully and accurately record/document the contributions of all contributors both in substance and time. Student disbursements will be paid against tuition first. After the student's tuition and fees have been addressed any residual will be paid to the student for administering the project. The faculty member will receive an additional five percent (5%) of the 50% of the income/revenue/royalty and/or commission that remains after the University has been reimbursed for expenses. Expenses do not include salary or monies that come from materials budgeted for the department and respective college.
2. Twenty percent (20%) to the creator(s)' college(s) or school(s) to be used in the creator(s)' respective department(s) or program(s).
3. Fifteen percent (15%) to Union University Research Fund administered by the Assistant Provost for Accreditation and Research within the Office of the Provost and Vice President for Academic Affairs.
4. Fifteen percent (15%) to the University's general operating fund.

Management of Institutional Liability

The establishment of the foregoing policies is only the beginning point of the University's effort to effectively manage its liability in the areas of copyright and intellectual property. It is important that all administrators, faculty, and staff bring their respective areas of work into compliance. Toward this end, the pertinent portions of these policies are published in faculty, staff, and student handbooks. In addition, the Director for Library Services has been designated as the point of contact for information regarding compliance issues. The Director for Library Services maintains copies of all pertinent documents and is available for consultation.