

# DEVELOPMENT & OWNERSHIP OF INTELLECTUAL PROPERTY

**Purpose:** The purpose of this policy is to comply with the requirements of Public Law 96-517 as amended, "The Patent and Trademark Amendments of 1980".

**Policy:** Weber State University Charter Academy will use the following Weber State University policies dealing with intellectual properties, copyright, patents, computer use:

PPM 4-35 Intellectual Property ([http://www.weber.edu/ppm/Policies/4-35\\_IntellectualProperty.html](http://www.weber.edu/ppm/Policies/4-35_IntellectualProperty.html))

## I. PURPOSE

To articulate rules regarding intellectual property.

WSU supports academic freedom principles including the right to freely publish scholarly works and research results that are not subject to confidentiality obligations. WSU is entrusted with the responsibility of administering its own intellectual property in the best interests of the public.

## II. REFERENCES

- Public Law 96-517, as amended, "The Patent and Trademark Amendments of 1980"
- [WSU Policy 5-13](#)
- [WSU Policy 5-41](#)

## III. DEFINITIONS

**Copyrightable Material.** The term "material" refers to all copyrightable works, including but not limited to, writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, and software, and various combinations thereof.

**Copyright Owner.** The term "owner" refers to the party who owns or controls the bundle of rights to copyrightable material and who has the right to sell, assign, distribute, license, or otherwise control the uses of such material.

**Publication.** Publication occurs when by consent of the copyright owner the original or tangible copies of a work are sold, leased, loaned, given away, or otherwise made available to the general public.

**Sale.** Sale occurs when copyrightable materials are made available for consideration.

## IV. POLICY

- A. Creative works, such as discoveries, writings, instructional material, art works, know-how and inventions frequently result from WSU employee involvement in teaching, research and service activities. Creative works generally have certain intellectual property rights associated with their creation and existence.

- B. Sponsored projects with products and/or creative work resulting from the project work, are subject to all University Policies stated in WSU Policy 5-13 and 5-41.

PPM 10-2 Acceptable Use Policy for Computing and Network Resources

([http://www.weber.edu/ppm/Policies/10-2\\_AcceptableUse.html](http://www.weber.edu/ppm/Policies/10-2_AcceptableUse.html))

5-41 – Copyright Policy: Ownership

## POLICY

### I. PURPOSE AND SCOPE

#### A. Purpose

The purpose of the university's copyright policy is to outline the respective rights which members of the faculty, staff, and student body have in intellectual materials created while employed by or attending the university.

#### B. Nature of Rights Protected by Copyright

Copyright is a form of protection given by law to authors of intellectual works. Only authors or those to whom authors have assigned their rights may claim copyright. The owner of a copyright retains and controls a bundle of rights, including but not limited to the following: to print and reprint copies of the work; to sell or distribute copies of the work; to transform or revise the work; and to perform or display the work to the public.

#### C. Scope of Works Protected by Copyright

1. Literary works;
2. Musical works including accompanying words;
3. Dramatic works including accompanying music;
4. Pantomimes and choreographic works;
5. Pictorial, graphic, and sculptural works;
6. Motion pictures and audiovisual works;
7. Sound recordings; and
8. Computer programs and documentation.

The requirement the law places on the copyrightability of any of the above works is that the work must be in a form that can be perceived directly or by means of a machine or other device. Both published and unpublished works are under statutory protection.

#### D. Limitations on Copyright Coverage

Copyright protection is not extended to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of how it is described, explained, illustrated or embodied.

#### E. Copyright Ownership

The university encourages the preparation and publication of copyrightable works that result from teaching, research, scholarly and artistic endeavors by members of the faculty, staff and student

body by upholding ownership rights of authors in their writings and scholarship that result from usual teaching, research or artistic activities. Normally, the copyright of these works is held by the author.

However, because of advancing technology, new forms of educational materials are being developed which require a substantially greater level of direct support from the university than does the writing of a "traditional" textbook and the like. The extraordinary use or purchase of equipment and production facilities, computers, and the expertise of a variety of individuals with special training may be required to augment the talents of an author. When the investment of time and money by the author and the university differs substantially from that involved in the creation of customary educational material, as defined by departmental norms, such material shall be designated as university-sponsored and the university may claim copyright.

## II. DEFINITIONS

For purposes of this policy, the following definitions will apply:

- A. Copyrightable Material. The term "material" refers to all copyrightable works, including but not limited to, writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, and software, and various combinations thereof.
- B. Copyright Owner. The term "owner" refers to the party who owns or controls the bundle of rights to copyrightable material and who has the right to sell, assign, distribute, license, or otherwise control the uses of such material.
- C. Publication. Publication occurs when by consent of the copyright owner the original or tangible copies of a work are sold, leased, loaned, given away, or otherwise made available to the general public.
- D. Sale. Sale occurs when copyrightable materials are made available for consideration.

## III. OWNERSHIP

### A. Individual Authors

The university does not claim copyright on material resulting from customary teaching, research, scholarly and artistic activities such as scholarly articles, research bulletins, monographs, paintings, musical and dramatic compositions, sculptures, architectural designs, books, textbooks, submissions to scientific and technical journals, reference works and the like, and the preparation and taping of lectures or other instructional units. Exceptions to this are defined in Section B below.

### B. University Sponsor

- 1. The university may claim copyright under the following circumstances:
  - a. there is substantial support provided by any university department or unit established to furnish such support or assistance beyond the author's regular salary (including stipends, fellowships, grants), customary use of secretarial assistance, and the use of libraries, laboratories, studios, computers, or equipment; and
  - b. the university claims copyright as a condition of providing the support.

Such works shall be regarded as university-sponsored works for hire. Such works

shall be the property of the university and, at the university's option, shall be copyrighted in the name of the university, except for material produced or developed under grants from agencies of the federal government or other private sources (see Section C, following).

2. The university reserves the right to claim copyright in university-sponsored works subject to the procedures described in this paragraph. Decisions to claim copyright in the university's name will be made by the provost or his or her designee, following consultation and/or negotiation with the author(s), within sixty (60) days from receipt of written notice from the author(s) to the provost's office that he or she is creating a work which may be subject to this Section B.2. If, following consultation and/or negotiation with the author(s), the provost or his or her designee fails to assert a copyright claim in writing within the sixty day review period, the copyright will be released to the author(s). However, the university reserves the right to claim copyright in any work in which there is a substantial change in university support until the requisite notice of the change has been given to the provost's office and a new sixty day review period has run. Thus, any work in which the nature, scope or level of university support increases substantially during the course of the project must be renegotiated.
3. A substantial contribution, further is one which is significant in the context of the situation and the practices of particular disciplines, colleges and departments or other units of the university.
4. In all cases of substantial university support, an appropriate agreement shall be entered into by the university and the individual author(s). Questions whether particular copyrightable materials are considered university-sponsored should be addressed to the provost in consultation with appropriate departments or units.
5. Copyrightable material produced as the primary purpose of employment is considered a work-for-hire. In cases where the university hires work, a written work-for-hire agreement shall be prepared outlining the respective rights of the parties to the copyrightable material.
6. For example, when the university, or one of its colleges, schools, departments, or units has assigned a member of the faculty, staff or student body to develop copyrightable material during time that is being compensated for by funds administered by the university, the university shall own the rights unless an agreement in writing to the contrary has been reached between the author and the university.

#### C. External Sponsor

Copyrightable material produced under grants from the federal or state government, or a private agency, shall be subject to conditions of the contract or grant with respect to ownership, distribution and use, and other residual rights.

If the funding agency does not claim copyright, such right shall vest in the university and Section B shall apply. If the funding agency desires to claim copyright, the university shall make reasonable efforts to negotiate sharing of royalty rights for the author and/or the university.

### IV. REVENUE SHARING

#### A. Individual Authors

Authors of intellectual works described in III. A. above, own the copyrights in their works, and are free to publish them, register the copyright, and receive any resulting revenue from their sale.

B. University Sponsor

1. When the university, at its option, obtains a copyright for materials resulting from an effort regarded as university-sponsored, the author(s) may be allowed to share in any royalties which accrue from the sale or lease of such material provided an appropriate agreement is entered into. The agreement shall take into account the effort and contribution of the author(s) as well as the development costs to the university when setting the royalty rates and return of investment.
2. When an author(s) makes a gift of a personal work to the university, a written agreement accepting the contribution must be executed. The agreement shall take into account whether the author(s) shall share in any royalties resulting from the sale or lease of the contributed work. All such agreements shall be approved by the development office in consultation with the copyright coordinator.
3. When the university obtains a copyright and assumes the obligation of publishing and marketing a work, an agreement that sets forth a schedule for sharing royalty income between the university unit responsible for the production and the author(s), and summarizes commitments and/or promises made by either of the parties to the other shall be executed. Although each production effort will receive separate consideration depending on the respective contribution of the author(s) and the university, a general schedule for sharing income is as follows:
  - a. Eighty percent of gross proceeds of any sale will be allocated to the University unit(s) incurring the direct cost of publishing and marketing the work. Twenty percent of gross proceeds will be distributed to the individual author(s) who may or may not elect to disclaim all or part of their individual share for the benefit of their home department or unit.
  - b. When the costs of publishing and marketing are recouped from the 80 percent share of proceeds, the balance of proceeds will be distributed so that the author(s) will receive 30 percent of the gross proceeds, and the balance will be divided equally between a university copyright development fund and the university unit responsible for commercializing the copyrighted work. The author(s) may or may not elect to disclaim all or part of their individual share as described in (a) above.
4. When the university does not act directly as the publisher of copyrighted materials, but merely contracts with a commercial publisher for that function on a royalty basis:
  - a. The author(s) generally will be allocated 80 percent of the royalty income paid by the publisher to the university, and the university copyright development fund will receive the balance.
  - b. The 80 percent allocation described in (a) above will be subject to modifications made by agreement between the university and the author(s). For example, the author(s) may agree that all or a part of their personal allocations be deposited in a department development account established to nurture and support further research and development of copyrightable materials or any other use.
  - c. The 80 percent allocation may be subject also to modification so that the university may recoup administrative and developmental costs beyond the ordinary.

C. External Sponsor

In cases of external funding, where the university and the funding agency have negotiated a reasonable sharing of any income resulting from the commercialization of sponsored

copyrighted materials, the author may appropriately share in any income. The nature and extent of author participation in royalty income shall be subject to sponsor and university agreement.

#### V. USE OF UNIVERSITY-SPONSORED MATERIAL

The university will consult or provide a reasonable opportunity for the author's consultation with respect to use made of a copyrighted work within the university or before any license for its use outside of the university is granted. When unresolved matters on use occur, the matter shall be referred to the provost for resolution or referral for binding arbitration.

#### VI. REVISION OF MATERIALS

University-sponsored materials shall not be altered or revised without providing the author(s) a reasonable opportunity to assume the responsibility for the revision. If the author(s) decline(s) the opportunity to revise such material, the assignment of responsibility for the revision will be made by the provost in consultation with the appropriate department.

#### VII. WITHDRAWAL OF MATERIALS

University-sponsored materials shall be withdrawn from use when such use is deemed obsolete or inappropriate by the author(s) or the appropriate department.

#### VIII. RELEASE

The university may elect to release to the author(s) the right to any work copyrighted in the name of the university.

#### IX. LIABILITY

An author of a work produced as a result of a special assignment or commission, or with substantial university or outside support, must warrant that the material does not infringe on any existing copyright or other legal rights; that work not identified as quotations or properly cited is the expression or creation of the author; that necessary permission for quotation and the like has been obtained; and that the work contains no libelous material nor material that invades the privacy of others.

#### X. PROCEDURES

- A. The responsibility for coordinating matters involving copyright, including the making of contracts and the waiving or assigning of rights, is assigned to the university copyright coordinator in consultation with interested individuals and departments/units.
- B. The responsibility for the commercial marketing of most university-owned copyrighted materials, e.g., printed and media materials is assigned to an appropriate administrative office in cooperation with the copyright coordinator. The responsibility for maintaining appropriate fiscal records is assigned to the copyright coordinator.
- C. The copyright coordinator shall be responsible for ensuring the agreements required in III.B. are accomplished.
- D. Sample contracts are available through the office of the copyright coordinator and the office of legal counsel.

- E. All university-owned copyrights shall be protected by notice of copyright in the name, "Weber State University," and may be registered as such.

## 5-42 – Copyright Policy: Copying of Copyrighted Works

### I. PURPOSE

To declare the university's policy regarding compliance with Copyright Revision Act of 1976.

### II. REFERENCES

Policy and Procedures No. 5-41, Copyright Policy: Ownership

### III. DEFINITIONS

Terms used in this Policy and Procedures have the same meaning as in Title 17, United States Code (see 17 U.S.C., Section 101), including:

A. Audiovisual works are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

B. Broadcast programs are television programs transmitted by television stations for reception by the general public without charge.

C. Copies are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "copies" includes the material object, other than a phonorecord, in which the work is first fixed.

D. Copyright owner, with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

E. Fair use is a reasonable noninfringing use, including reproduction, of copyrighted material for such purposes as criticism, comment, news reporting, teaching, scholarship or research, as determined from consideration of all relevant circumstances, including (1) the purpose or character of the use, e.g., for commercial purposes or 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.

F. Literary works are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, discs, or cards, in which they are embodied.

G. Phonorecords are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed.

H. Publication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purpose of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

I. School days are school session days, not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions.

J. University, unless the context otherwise requires, includes the institution and its officers and employees acting in the scope of their office or employment.

K. Work means a work of authorship that is capable of copyright protection, including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, motion picture, audiovisual, and sound recording works.

#### IV. POLICY

##### A. Notices and Warnings

1. A "Display Warning of Copyright" conforming to requirements specified by the Register of Copyrights shall be displayed prominently, in such a manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of each place on the university campus at which orders are accepted for the making of copies or phonorecords of copyrighted materials.

2. An "Order Warning of Copyrights" conforming to requirements specified by the Register of Copyrights shall be included on printed forms used by library patrons for ordering copies or phonorecords of copyrighted materials.

3. All unsupervised reproducing equipment located on university premises shall display a notice that the making of a copy of copyrighted materials may be subject to the copyright law. The notice is to be displayed prominently so that it is readily apparent to a person making a copy.

##### B. Copying for Personal Use

The making of a single reproduction or phonorecording of copyrighted matter, including works contained in the collections of the university libraries or archives or obtained by interlibrary loan, is permitted if:

1. the university reasonably believes that the reproduction is made without any purpose of direct or indirect commercial advantage;
2. the copy or phonorecord will become the property of the user;
3. the university has no notice that the copy or phonorecord will be used for any purpose other than private study, scholarship, or research; and
4. such reproduction or phonorecording, and intended use to be made of it, constitute fair use. Copyrighted material to be reproduced under this paragraph shall be deemed reasonable as to amount and substantiality if it does not exceed the following guidelines:

- (a) a chapter from a book; or
- (b) an article from a periodical or newspaper; or
- (c) a short story, short essay or short poem, whether or not from a collective work; or
- (d) a chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

##### C. Copying for Classroom Use

The reproduction or phonorecording of copyrighted works for classroom or teaching laboratory purposes, such as criticism, comment, teaching, scholarship, or research, is permitted, if all of the following minimum fair use standards for permissible copying are observed:

1. Multiple copies prepared for class distribution do not exceed one copy per student in the particular course.
2. The copying meets the tests of brevity described in the following guidelines:
  - (a) With respect to poetry, "brevity" is deemed to mean a complete poem if less than 250 words and if printed on not more than two pages or, if from a longer poem, an



excerpt of not more than 250 words.

(b) With respect to prose, "brevity" is deemed to mean either a complete article, story or essay of less than 2,500 words, or an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words. These limits are not violated by the completion of an unfinished line of a poem or of an unfinished prose paragraph.

(c) With respect to illustrations, "brevity" is deemed to mean one chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

(d) With respect to "special" works (i.e., certain works that combine language with illustrations, sometimes intended for children, and that fall short of 2,500 words in their entirety), "brevity" is deemed to mean an excerpt comprising not more than 10% of the words found in the text itself.

3. The copying meets the tests of spontaneity as described in the following guidelines:

(a) The copying is at the instance and inspiration of the individual who orders or makes the reproductions or phonorecords to be prepared and distributed.

(b) 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 from the owner of the copyright.

4. The copying meets the cumulative effect tests described in the following guidelines:

(a) The copied material will be used in only one course offered in the college in which the instructor making the copies holds an academic appointment.

(b) Not more than one short poem, article, story, essay or two excerpts may be copied from works by the same author, nor more than three from the same collective work or periodical volume, during the same quarter or semester.

(c) Not more than nine instances of such multiple copying shall be made for any one course during the same quarter or semester.

(d) The limitations stated in (b) and (c) do not apply to current news periodicals and newspapers and current news sections of other periodicals.

#### D. Copying of Music

Music may be reproduced by copy or phonorecord for educational use if the following minimum fair use guidelines are satisfied:

1. Emergency copying is permitted to replace purchased copies which are not available for an imminent performance, provided that purchased replacement copies shall be substituted in due course at the earliest reasonable opportunity.

2. For academic purposes other than performance:

(a) Single or multiple copies of excerpts of works may be made provided that the excerpts do not comprise a part of the whole which would constitute a performable unit, such as a selection, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per student.

(b) A single copy of an entire performable unit (section, movement, aria, etc.) that is (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of scholarly research or in preparation to teach a class.

3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exists.

4. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by the university or an individual teacher for the purpose of constructing aural exercises or examinations if the copy is to be retained by the university or individual teachers. (The foregoing pertains only to the copyright of the

music itself and not to any copyright which may exist in the sound recording.)

E. Off-air Recording

1. Off-air recording of any television broadcast (except pay television) is permitted provided that:

- (a) the recorded program is retained by the department or the faculty member,
- (b) the recorded program is retained no more than forty-five (45) calendar days after the date of recording, and
- (c) upon conclusion of the retention period, all off-air recorded programs are erased or destroyed.

2. Off-air recording of television programs may be made by individual instructors at the university provided that:

- (a) the recorded program is recorded no more than one time by individual instructors;
- (b) the recorded program is used once in the course of relevant teaching activities and is repeated once only when instructional reinforcement is necessary within ten school days of the taping;
- (c) recorded programs are shown in classrooms and similar places devoted to instruction within a single building, cluster or campus, or in the homes of students receiving formalized home instruction;
- (d) recorded programs are used only during the first ten school days of the forty-five day retention period.

F. Computer Programs (Software)

1. The making of an exact copy or adaptation of a software package by a university department or unit which owns the copy is permitted provided that:

- (a) the new copy or adaptation is made as an essential step or in the utilization of the software in conjunction with the machine, or
- (b) a new copy or adaptation is made for archival purposes (not for use on any other machine) and will be destroyed when the original software is no longer in use.

G. Copying by University Libraries

1. General reserve desks may circulate single reproduction copies of library-owned copyrighted materials, provided that in the preparation of such circulating copies, library personnel do not exceed the standards for permissible copying set forth in section C, above.

2. With respect to interlibrary loans, university libraries as borrowing libraries shall keep and retain records of filled loan requests for three full years following the end of the calendar year in which the requests were made in order to insure that during said period of three years:

- (a) The library did not request and receive more than five articles per year from any copyrighted periodical title published within the five years immediately prior to the date of a request; and
- (b) the library did not request and receive more than five copies per year of or from any given copyrighted work, including a collection of copyrighted works, during the entire period such material was protected by copyright.

3. University libraries as lending libraries may make isolated and unrelated reproductions of a single copy of the same copyrighted materials on separate occasions as long as the libraries and their personnel are not aware of and have no reason to believe they are engaging in related or concerted reproduction of multiple copies.

4. University libraries shall refuse:

- (a) to fill an interlibrary loan request where prior contractual obligations prohibit copying of such copyrighted material;
- (b) to honor a request from a borrowing library which has not verified on its order form that the request conforms to the copyright law and guidelines.

5. For the purpose of preserving and maintaining library collections, university libraries are permitted to make:

(a) facsimile reproductions of unpublished works that are currently in the library-owned collection for purposes of preservation, security, or deposit in another library; and

(b) a copy of a published copyrighted work to replace a work that is damaged, deteriorating, lost or stolen, if:

(1) the library determines, after a reasonable effort, that an unused replacement cannot be obtained at a fair price, and

(2) the copy includes a notice of copyright.

#### H. Prohibitions

In addition to compliance with applicable limitations on uses of copyrighted materials as provided herein, faculty and staff are expected to refrain from any of the following actions which are specifically prohibited by law:

##### 1. Books and periodicals

Unless authorized in writing by the owner of the copyright to any book or periodical:

(a) Copying may not be used to create, or to replace or substitute for, anthologies, compilations or collections of copyrighted works. Replacement or substitution may occur whether copies of various works or excerpts there from are accumulated or are reproduced and used separately.

(b) There shall be no copying of or from copyrighted works intended to be "consumable" in the course of study or of teaching, such as workbooks, exercises, standardized tests, test booklets and answer sheets, and like consumable material.

(c) Copying may not:

(1) be used as a substitute for the purchase of books, publishers' reprints or periodicals;

(2) be directed by higher authority;

(3) be repeated with respect to the same item by the same teacher in successive quarters or semesters.

(d) No charge may be made to a student for a single copy of copyrighted materials beyond the actual cost of reproduction.

##### 2. Educational uses of music

Unless authorized in writing by the owner of the copyright to any music:

(a) Copying may not be used to create, or replace or substitute for, anthologies, compilations or collective works.

(b) There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching, such as workbooks, exercises, standardized tests and answer sheets, and like material.

(c) Copying may not be used for the purpose of performance, except as permitted for emergency copying under Section D 1.

(d) Copying may not be used as a substitute for the purchase of music, except as permitted under Sections D 1 and D 2, above.

(e) Copying is not permitted without inclusion of the copyright notice which appears on the printed copy of the music.

##### 3. Off-air recording

Unless authorized in writing by the owner of the copyright in any television program:

(a) Television programs may not be regularly recorded in anticipation of instructor requests by any media services unit of the university.

##### 4. Computer Programs (Software)

Unless authorized in writing by the owner of the copyright in any computer program:

(a) Copying computer programs may not be used as a substitute for purchase.

I. Exclusive Rights

1. University faculty and staff members are expected to recognize and observe the exclusive rights of copyright owners.
2. This policy statement shall be construed liberally to carry out the dual purposes for which specific limitations upon these exclusive rights were written into the law:
  - (a) to promote and facilitate educational uses of copyrighted materials, and
  - (b) to reduce incidence of copyright infringements.
3. Under federal law (17 U.S. C., Section 106), the owner of copyright has the exclusive rights to do and to authorize any of the following:
  - (a) to reproduce the copyrighted work in copies or phonorecords;
  - (b) to prepare derivative works based upon the copyrighted work;
  - (c) 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;
  - (d) 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 perform or display the copyrighted work publicly.

V. PROCEDURES

A. Posting Notices and Warnings

Responsibility for assuring that required notices and warnings are properly posted or affixed under Section IV A rests with the appropriate vice presidents.

B. Enforcement of Minimum Compliance Standards

1. Development of operating practices to assure compliance with minimum standards for copying rests with line management personnel, under the direction of the appropriate vice presidents, in consultation with the most directly affected group(s), (e.g., faculty, personnel officers, staff).
2. Operating practices for complying with legal requirements relating to performances of copyrighted musical, literary, and dramatic works shall be initiated by the relevant university operating units under the direction of the appropriate vice president.
3. Payment of royalties for copying or performance of copyrighted works, where required in the course of university business, shall be charged to an approved departmental account.
4. Violators of this policy will be subject to disciplinary sanctions as described in appropriate sections of the PPM.
5. Questions as to the interpretation of the Policy and Procedure, or as to other aspects of copyright law, should be addressed to the copyright coordinator or university counsel.

5-43 – Performance or Display of Copyrighted Works

I. PURPOSE

To declare the university's policy regarding compliance with provisions of the Copyright Revision Act of 1976 concerning performance or display of copyrighted works.

## II. REFERENCE

- [PPM 5-41](#), Copyright Policy: Ownership
- [PPM 5-42](#), Copyright Policy: Copying of Copyrighted Works

## III. DEFINITIONS

A. Audiovisual works are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

B. Broadcast is an electronic transmission, in any medium, for reception by the general public with or without charge.

C. Classroom means a place devoted to instruction, including a regular classroom, teaching laboratory, studio, workshop, gymnasium, training field, library, stage of an auditorium, or an auditorium itself when actually used for systematic instructional activities.

D. Display means to show a copy of a work, in whole or in part, either directly or by means of film, slide, television image, or any other mechanical or electronic device or process, and, in the case of a motion picture or other audiovisual work, includes the showing of individual images nonsequentially.

E. Dramatic rights, frequently called "grand rights," is a term referring to the rights of a copyright owner whose work is considered dramatic in nature, under which the owner has the exclusive right to perform, display, or present such copyrighted work publicly. Examples of dramatic works that are subject to dramatic rights include but are not limited to, plays, ballets, operas, operettas, oratorios, pantomime, revues, musical comedies, sketches, and dramatic scripts designed for radio and television broadcast.

F. Ephemeral recording means a copy or phonorecord of a work made for the purpose of later transmission by a broadcasting organization legally entitled, either by license from the copyright owner or pursuant to statutory exemption, to transmit the work.

G. Exempt performance or display means a performance, presentation, or display for which permission from and/or payment to the copyright owner are not required.

H. Face-to-face teaching activities are defined as instructional performances and displays that are not transmitted by electronic means from other locations. This term does not require that the teacher and student be able to see each other, although it does require their simultaneous presence in the same general place. It excludes broadcasting from a remote location into a classroom, whether by radio or television on open or closed circuit.

I. Full-Time Equivalent Enrollment (FTE) shall mean the sum of all full-time undergraduate and graduate students and the full-time equivalent of all part-time students calculated pursuant to the methods set forth and reported by the university to the Higher Education General Information Survey (HEGIS).

J. Lawfully made copy means a copy obtained pursuant to permission from the copyright owner or a valid provision in a lease agreement, purchase contract, or other agreement.

K. Motion pictures are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

L. Nonexempt performance or display means a performance, presentation, or display that is subject to licensing and payment or royalties, and for which permission from the copyright owner or duly authorized agent is required.

M. Notice of objection is a written notice signed by the copyright owner or an authorized agent, for the purpose of preventing a noncommercial performance of a nondramatic literary or

musical work. To be legally effective, the notice must be served on the person responsible for the planned performance at least 7 days prior to the performance, and must state the reasons for the objection.

N. Perform means to recite, render, play, dance, or act a work, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

O. Public performance or display means:

1. To perform or display a work at a place open to the public or at any place where a substantial number of persons outside of the normal circle of family and its social acquaintances is gathered; or
2. to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) above or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

P. Seating capacity means:

1. The total number of seats permanently affixed in the facility where a performance occurs, plus any temporary seats added for a particular performance; or
2. the total number of seats made available for a particular performance if the seating capacity of the facility has been altered to accommodate the performance, e.g., certain seats "roped off."
3. The total number of persons attending a particular performance if the site does not have formal seating, e.g. ballroom or outdoors.

Q. Transmission program means a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

R. Transmit means to communicate a performance or display by any device or process whereby images or sounds are received beyond the place from which they are sent.

S. University Premises means the buildings and grounds of the university campus, or of any other facilities leased, engaged, or controlled by the university, or of any organization (including any fraternity, sorority, social club, or similar organization affiliated with the university) located off-campus but functioning under the university's auspices primarily for the benefit of the university's students. University "premises" shall also mean the facilities used to accommodate performances of music by persons and groups of persons organized or operating under the authority of the university, where the performance is offered or sponsored by a governmental agency or nonprofit organization.

#### IV. POLICY

##### A. Exempt Performance or Display of Copyrighted Works

###### 1. Classroom Instruction

The exempt performance or display of copyrighted work is authorized on university premises if the performance or display is:

- (a) in the course of face-to-face teaching activities;
- (b) in a classroom; and
- (c) in the case of a motion picture or other audiovisual work, is presented by means of a lawfully made copy.

This exemption does not permit the unauthorized reproduction of copies or phonorecords for purposes of classroom performances or displays in violation of the university's copyright policy, [PPM 5-42](#).

###### 2. Instructional Broadcasts

- (a) The exempt reading or presentation of a nondramatic literary or musical work, or

the exempt display of a work by or in the course of an instructional broadcast transmission is permitted if the performance or display is:

- (1) a regular part of systematic instruction;
- (2) directly related and of material assistance to the teaching content of the transmission; and
- (3) is made primarily for reception in classrooms.

The reading of a nondramatic literary work under this exemption does not extend to acting it out in dramatic form without permission from the copyright owner. See paragraph (c).

(b) In connection with a transmission authorized under paragraph (a) above, the cognizant operation unit of the university may make not more than 30 copies of phonorecords and may use such ephemeral recordings for transmitting purposes for not more than seven years after the initial transmission if:

- (1) no further copies or phonorecords are reproduced from the authorized 30 copies originally made; and
- (2) only one copy or phonorecord is preserved, exclusively for university archival purposes, and the rest are destroyed after the expiration of the seven year period.

(c) The performance of a dramatic musical work, such as opera or musical comedy, or of a dramatic work, motion picture, or other audiovisual work, by or in the course of a transmission is permitted only if permission from the copyright owner or duly authorized agent is obtained.

(d) The performance of a nondramatic literary work is permitted by or in the course of a transmission specifically designed for, and directed to, blind and other sight or hearing impaired persons if:

- (1) the broadcast is made without any purpose of direct or indirect commercial advantage; and
- (2) the broadcast is made through the facilities of a noncommercial educational broadcast station, or a cable transmitting system.

(e) In connection with the transmission of a performance under paragraph (d) above, the cognizant operating unit of the university may make 10 copies of the transmission if:

- (1) copies are retained and used solely by the university's operating unit (or by a nonprofit organization that is legally entitled to transmit such programs to the blind and deaf);
- (2) the copies will be used solely for the same kind of transmission or for university archival purposes; and
- (3) no charge is made for the use of the transmission or copies.

### 3. Public Performance

The exempt public performance of a nondramatic literary or musical work (except in a broadcast transmission to the public) is permitted if:

- (a) The performance is provided without any direct or indirect admission charge, and no compensation is paid to any of its performers, promoters, or organizers, or
- (b) all net proceeds derived through any direct or indirect admission charge are used exclusively for education, religious, or charitable purposes; and
- (c) the copyright owner has not served a "notice of objection" concerning the performance at least 7 days in advance.

## B. Nonexempt Public Performances of Copyrighted Dramatic and Nondramatic Literary and Musical Works

### 1. Licensing Requirement

All public performances (other than exempt performances) which are presented on university premises or are sponsored by the university or any of its operating units or

affiliated organizations are required to be licensed by the copyright owner or an authorized agent who holds the right to grant such license.

(a) University departments or operating units that either regularly or occasionally use copyrighted dramatic literary or musical works for nonexempt purposes must obtain individual permission from and are responsible for making payment to the copyright owner or authorized agent prior to presenting such dramatic literary or musical works to the public.

(b) The public broadcasting of nondramatic musical works and graphic works by noncommercial educational broadcast stations is authorized only to the extent such broadcasts are covered by license agreements with the copyright owners, including such agreements entered into by the Public Broadcasting Service (PBS) and National Public Radio (NPR) with BMI, SESAC, ASCAP, and Harry Fox.

## 2. University-wide License Agreements

With respect to public performances of nondramatic musical works on university premises, the university has entered into general licensing agreements with BMI, ASCAP, and SESAC. Under the terms of these agreements the university may permit the public nondramatic renditions of separate musical compositions in the repertory of each licensing society in live or recorded performances at concerts and dances, parties at fraternities, sororities, or social clubs, during athletic events, in university cafeterias and eating places, and elsewhere on university premises.

## 3. Limitations in University-wide License Coverage

(a) The right to perform (live or recorded) nondramatic musical compositions is not assignable or transferable and is limited to the university's premises.

(b) The university's license agreements do not cover:

(1) Broadcasting, telecasting or transmission by wire or otherwise of renditions of musical compositions to persons outside of the university's premises.

(2) Performances by means of cable TV, cable radio, closed circuit radio or television stations, and jukeboxes.

(3) Performances of dramatic musical works, whether in the entirety or in part (one or more compositions), and whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action, or visual representation.

(4) Concert versions of dramatic musical works.

## C. Payment of Fees

1. Fees required to be paid under the terms of license agreements shall be administered as follows:

(a) The university's general license fee, based on full-time equivalent student enrollment (FTE), is the responsibility of the Central Administration and will be paid out of a special budgeted account.

## D. Copyright Coordinator

1. The Copyright Coordinator will assist university officers and directors of relevant operating units in complying with copyright laws and policies, and in fulfilling contractual requirements of applicable licensing agreements.

(a) The Coordinator will administer a special budgeted account for the purpose of paying the general license fees for general use of music.

(b) The Coordinator is responsible for establishing in cooperation with concerned operating units, a consolidated file of available concert programs and other lists of musical works performed at concerts and musical attractions under university auspices.

## E. Reporting of Performances

Under the terms of the university's general license agreements, reports are to be submitted by relevant operating units as follows:



Programs or other lists of musical works which are prepared for distribution to an audience, or for the use or information of the operating unit must be forwarded to the Copyright Coordinator when available.

#### F. Prohibitions

In addition to compliance with applicable limitations on performances or displays of copyrighted materials as provided herein, faculty and staff are expected to refrain from any of the following actions which are specifically prohibited by law:

Film or other audiovisual works. Unless the owner of the copyright or authorized agent of the copyright owner transfers the rights in a particular film or audiovisual work to the university, or to the individual faculty member or support staff employee, films rented, leased or purchased for classroom showing may not be:

- (a) transmitted by television or other devices or processes;
- (b) copied, recast, transformed, or adapted, in whole or in part, for any purpose;
- (c) shown to an audience who has paid for admission; or
- (d) permitted to be used by any other institution or individual.

#### V. PROCEDURES

##### A. Payment of Fees and Reporting

Responsibility for assuring required payment of general license fees, and for filing of required reports of musical programs, rests with Copyright Coordinator.

##### B. Enforcement of Contractual Obligations

Development of operating practices to assure meeting contractual obligations rests with line management personnel, under the direction of the appropriate vice presidents.

##### C. Exceptions

Exceptions to the guidelines contained in this policy must be approved by the responsible vice-president with the concurrence of university course

Student Code ([http://www.weber.edu/ppm/Policies/6-22\\_StudentCode.html](http://www.weber.edu/ppm/Policies/6-22_StudentCode.html))

Section C(16)(h) and D(2)(g)

C. As members of the Weber State University community, students shall avoid conduct which violates the provisions of paragraph IV.B. above. Examples of such prohibited conduct include but are not limited to the following:

- 16. Theft or other abuse of computer facilities and resources, including but not limited to:
  - h. Use of computing facilities and resources in violation of copyright laws.

D. In addition to the foregoing, as members of the Weber State University academic community, students shall:

- 2. Maintain academic ethics and honesty. To this end, the following activities are specifically prohibited:
  - g. Infringing on the copyright law of the United States which prohibits the making of reproductions of copyrighted material except under certain specified conditions.