

Marshall University Information Technology Council

Procedure IT-1

MARSHALL UNIVERSITY COMPREHENSIVE COPYRIGHT PROCEDURE

General information:

1.1 Scope: This Procedure applies to all Marshall University faculty, staff, and students as designated and defined throughout the Procedure and includes all Marshall University campuses. If a work is created as part of an online course or multimedia project, it falls under the aegis of the Marshall University Board of Governors Policy MUBOG IT-5 E-Courses.

1.2 Statutory References:

1.3 Passage Date: 11/24/03

1.4 Effective Date: Revised October 2003 by the Copyright Committee

1.5 Background: The Comprehensive Copyright Procedure of Marshall University seeks to:

1.5.1 Provide guidance to faculty, staff, and students of Marshall University and its campuses, concerning the proper use of copyrighted material under the federal Copyright Act;

1.5.2 Ensure that any copyrighted material in which Marshall University has an equity interest is utilized in a manner consistent with the public interest;

1.5.3 Balance fairly and reasonably the rights of authors, composers, sponsors, and Marshall University;

1.5.4 Protect and promote the traditional academic freedom of Marshall University's faculty, staff and students in matters of publication.

1.6 Definitions:

1.6.1 **Author** – as used in this Procedure, a person who creates copyrighted material in any form.

1.6.2 **Copyright** – the exclusive right to reproduce, distribute to the public (by sale, rental, or other method), perform, publicly display, revise, or prepare a derivative work from a product for artistic or intellectual effort, or to authorize another to perform any of these actions; also, the procedure by which one legally secures this right. Copyright exists from the time of creation and the length of time of protection depends on the nature of the work and when it was copyrighted. Certain actions can assist in enforcing protection of the rights of the copyrighted work. Such actions include:

- Placing an adequate copyright notice on the work, and
- Registration of the copyright with the U.S. Copyright Office

1.6.3 Copyright Notice– an appropriate copyright notice includes the word “Copyright” or the symbol©, along with the year of creation and the name of the copyright owner. For copyright works owned by the University under this procedure, an appropriate copyright notice example is: © 2003 Marshall University

1.6.4 Copyright License– written permission for use of copyrighted material, usually limited to a particular period of time and a specified type of use.

1.6.5 Copyrighted Material – anything that may be copyrighted under U. S. copyright law, including (but not necessarily limited to) written works; lectures and other works prepared for oral delivery; musical and dramatic works; motion pictures, internet web pages, telecourses, photographs, drawings, and other pictorial representations; sound recordings; computer programs, instructions, and other software. Copyright protection does not extend to ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries, even if presented in a copyrighted form.

1.6.6 Fair Use – a use of copyrighted material, for purposes of criticism, comment, news reporting, teaching, scholarship, or research that is not an infringement of copyrights. Demonstration of such a purpose is not, by itself, sufficient to sustain a claim that the use is “fair.” The following factors help determine “Fair Use”:

- The use of a less-than-substantial portion of the original work.
- The use of the materials must be restricted to students in the class
- The use of the materials must be of a short duration.
- The use of the material may not have an adverse effect upon the potential market for or value of the copyrighted work.
- (See Appendix A for additional information on “Fair Use”)

1.6.7 Infringement – exercise by another of any of the exclusive rights of a copyright owner except as explicitly authorized by law or the copyright owner or as encompassed by the concept of “fair use”. Federal law provides both civil and criminal penalties for infringement of copyright

1.6.8 Marshall University Resources – Marshall University-controlled funds, staff, equipment, and facilities including those of technical production units such as academic computing, photographic services, recording services and radio and television services.

1.6.9 Marshall University Employee – any person hired as a temporary, probationary or regular employee by Marshall University or the Marshall University Research Corporation, either full or part time. In addition, a student is a Marshall University Employee for purposes of this Copyright Procedure if the student receives support in the

form of wages, salaries, tuition waivers, stipend or grant from funds administered by Marshall University.

- 1.6.10 **Public Domain** – outside copyright protection; a work is said to be “in the public domain” if it is available for use by anyone at any time without explicit authorization (e.g., government publications). (Note: Works posted on the Internet enjoy copyright protection and are not necessarily in the public domain. Unless the author of a work clearly relinquishes copyright protection, a user must seek the author’s permission before copying, distributing or publishing.)
- 1.6.11 **Publication** – the public distribution of copies of a work (including the original) by sale or other transfer of ownership or by rental, lease, or lending; although public performance or display of a work does not itself constitute publication, the offer to distribute copies to a group of people for purposes of further distribution, public performance, or public display does constitute publication.
- 1.6.12 **Royalty** – a payment made to an author or the owner of a copyright, usually based on numbers of copies sold, in return for the right to distribute a work.
- 1.6.13 **Significant Use** – the use of Marshall University resources not ordinarily used by, and/or available to all members of the faculty, staff or students.
- 1.6.14 **Work for Hire** – a work prepared by an employee within the scope of his or her employment; or, a specially ordered or commissioned work that is expressly agreed by the parties concerned to be a work for hire.

Procedure

2.1 Use of Copyrighted Works:

It is the procedure of Marshall University to follow the United States Copyright Law of 1976, as amended, (Title 17, United States code, hereinafter, the “Copyright Act”) and the Digital Millennium Copyright Act of 1998. Accordingly, all faculty, staff and students of Marshall University should follow these Procedure guidelines:

- 2.1.1 Only copyrighted materials are subject to the restrictions in this Procedure Statement. Uncopyrighted materials may be copied freely and without restriction. Because a copyright notice is not required for copyright protection of works published on or after March 1, 1989, most works (except those authored by the United States Government) should be presumed to be copyright protected, unless further information from the copyright holder or express notice reveals that the copyright holder intends the work to be in the public domain. Works published prior to March 1, 1989, generally require a copyright notice to be protected.
- 2.1.2 Copyrighted software may be copied without the copyright owner’s permission only in accordance with the Copyright Act. Section 117 of the Act permits making an archival back-up copy. Most software, however, is licensed to the user and the terms of the license

agreement may give the user permission to make copies of the software in excess of the archival copy permitted by the Copyright Act. Each software license agreement is unique. As a result, the user's rights to copy licensed software beyond that permitted under the Copyright Act may only be determined by reading the user's license agreement. Any copying or reproduction of copyrighted software on System or component institution computing equipment must be in accordance with the Copyright Act and the pertinent software license agreement. Faculty, staff and students may not use unauthorized copies of software on Marshall University owned computers or networks or computers housed in Marshall University facilities.

2.1.3 Copyrighted materials may be copied or otherwise used without the copyright owner's permission, within reasonable bounds and for educational purposes only, where such copying constitutes "fair use" under the Copyright Act and/or complies with The Technology, Education, and Copyright Harmonization Act (TEACH Act) provisions for use of digital works in an online or distance learning environment. See the definitions section of this Procedure for an outline of "fair use" and also Appendices A-D for helpful guidelines.

2.1.4 In order to copy or otherwise use materials, including software, where (a) the materials are copyrighted, (b) use exceeds what is permitted by license, and (c) the four factor fair use test (see definitions) indicates that the use is likely not fair; permission should be obtained from the copyright owner.

2.1.5 All Marshall University academic units and administrative offices are responsible for posting notices reflecting this Procedure at all computer and photocopying stations which may be used for reproducing copyrighted materials, e.g., departmental copy rooms and libraries, and at or near all computer stations. The suggested form is given in Appendix B.

2.2 Ownership, Use, and Sale of Copyrighted Materials Produced at Marshall University.

2.2.1 Copyrighted Material Developed by Marshall University faculty, staff and students.

2.2.1.1 The ownership of copyrighted material authored by Marshall University faculty and staff is determined according to the following provisions:

- a. If the copyrighted material is prepared pursuant to a contractual or partnership arrangement between Marshall University and a third party (e.g., a Federal agency, a publisher or another university), ownership is governed by the provisions of that arrangement.
- b. If the copyrighted material is prepared within the scope of normal employment duties or as a result of a special project funded by Marshall University, the copyrighted material is a work for hire and shall be the property of Marshall University.
- c. The faculty or staff member is the author and owner of the rights to a work created outside the scope, time, and place of employment and on his or her own initiative. In the case of copyrighted works created using generally available University resources, including journal articles, books, musical compositions and arrangements, papers, lecture notes, teaching aids and recordings of lectures, concerts and recitals, the University

transfers any copyright ownership it may have to the creator(s) in exchange for an irrevocable, royalty-free, on-exclusive, right to use such works, except as may be provided elsewhere in this Procedure. (Reference to the Copyright Procedure Guidelines is intended to assist a creator's use of the transferred copyright ownership without violating the irrevocable, royalty-free, on-exclusive rights granted the University under this Procedure.)

2.2.1.2 Unless otherwise stated in this Procedure, in cases where the provisions of this Procedure state that the University transfers copyright ownership to the creator(s), it is the intention that such ownership will be transferred to the creator(s) by operation of this Procedure without further action by the University. In cases where the University retains copyright ownership under this Procedure, it may transfer such ownership to the work's creator(s) by written agreement signed by the Executive Director of the Marshall University Research Corporation and approved by the Vice President for Research.

2.2.1.3 This Procedure does not preclude Marshall University's assignment of complete or partial ownership rights in copyrighted material to the employee-author (i.e., the granting of a copyright transfer or license), if both parties feel such action is to their benefit. In doubtful cases, the question whether a particular copyrighted material was prepared within the scope of normal employment duties shall be referred to the Executive Director of the Marshall University Research Corporation for a decision.

2.2.1.4 Copyrighted material produced by students shall be governed by the following provisions:

a. Copyrighted material, generated by research which is performed, in whole or in part, by the student with financial support in the form of wages, salaries, stipend, tuition waiver, or grant from funds administered by Marshall University, is the property of the University unless it is determined otherwise in the terms of the support agreement.

b. Ownership of copyrighted material generated by research, which is performed, in whole or in part, utilizing equipment or facilities provided to Marshall University under conditions that impose copyright restriction shall be determined in accordance with such restrictions.

c. Ownership of copyrighted material not within the provision of a and b in this Procedure shall be the property of the author. However, the student must, as a condition of a degree award, grant royalty-free permission to Marshall University to reproduce and publicly distribute copies of the theses or dissertations.

2.2.1.5 Copyrighted material not subject to either 1 or 2, above, shall be the property of the author(s). This Procedure does not preclude an author's assignment of all or partial ownership rights in copyrighted material to Marshall University, if both parties feel such action is to their benefit.

2.2.1.6 The decision whether or not a copyright in a work authored by a Marshall University faculty, staff or student ought to be registered at (or before) the time of publication rests with the owner as defined by the provisions stated above.

2.2.2 Use and Sale of Copyrighted Material

2.2.2.1 Developers should consult MUBOG IT-5 E-courses Policy and MUBOG GA-4 Intellectual Property Policy when appropriate.

2.2.2.2 When copyrighted material authored by Marshall University faculty, staff or students is copyrighted in the name of Marshall University:

a. Marshall University shall provide for the display of appropriate credits and may consider the comments of the participating faculty, staff or students regarding subsequent presentation, distribution, revision and updating of the copyrighted material

b. Marshall University shall have the sole right to determine the manner in which such copyrighted material is distributed outside Marshall University, if at all, and the charges (if any) to be imposed for its sale, rental or other use.

c. Marshall University may allow the participating faculty, staff or students to share in any royalties that accrue from the distribution of the copyrighted material outside Marshall University. Arrangements for sharing of royalties shall be subject to the following conditions:

- An agreement covering the division of royalties and other aspects of the project should be executed between the author(s) and Marshall University before the project is begun, if possible (see Appendix C for suggested checklist to consider). However, failure to establish such an agreement in advance shall not preclude its establishment later, if both parties feel such action is to their benefit.
- The first \$10,000 of royalties received by the University will be distributed to the participating employees. Depending on its assessment of relevant considerations, such as the source of funds used for development of the copyrighted material and the purpose of its distribution outside Marshall University, Marshall University may require recovery of its full costs incurred for the project before any employee may receive a share of the royalties beyond the first \$10,000. It may also require that a portion of the income be allocated to a departmental account or general account for support of future projects. (The share of royalties to be paid to a participating employee(s) beyond the first \$10,000 shall be established through negotiations conducted by the Marshall University General Counsel or her/his designee.)

2.2.2.3. Marshall University faculty, staff or students who, in accordance with the provisions of this Procedure, own copyrighted material developed through the significant use of Marshall University's resources shall not sell or otherwise arrange to distribute such materials for their personal profit, whether separately or as elements of larger works, unless a written agreement between the author(s) and Marshall University is established to provide for the reimbursement of all costs (or an appropriate portion, depending upon the circumstances) incurred by Marshall University for development of the copyrighted material.

2.2.2.4 To encourage the establishment of such an agreement before production of such copyrighted material is begun; the provisions of this Procedure shall be brought to the attention of all Marshall University faculty, staff or students who request a significant use of Marshall University resources for projects involving copyrighted materials. Failure to establish an agreement in advance shall not preclude its later establishment if circumstances warrant.

2.2.2.5 No form of Marshall University's name or other licensed trademark may be used in connection with publication, production, or distribution of material copyrighted by a Marshall University employee or other person except as may be approved in advance in accordance with Marshall University Procedure.

2.2.3 Compliance with TEACH Act Provisions for use of copyrighted works in digital formats transmitted within a digital medium such as WebCT course or distance learning classroom format:

2.2.3.1 The material must be provided at the direction of or under the supervision of an instructor and must be an integral part of the course curriculum (i.e., not merely entertainment or unrelated background material).

2.2.3.2 The amount of material provided must be comparable to that typically displayed in a live classroom session. For certain works, the display of the entire work could be consistent with displays typically made in a live classroom setting (e.g., short poems or essays, or photographic images). Distribution of entire textbooks, course-packs or supplemental readings would not be authorized under the TEACH Act.

2.2.3.3 Faculty must provide notice to students that materials distributed in the course may be subject to copyright protection.

2.2.4 TEACH Act Technological Requirements

2.2.4.1 Technological measures must be employed so that:

- a. To the extent technologically feasible, the transmission of material is limited to students currently enrolled in the course through password-restricted access or other similar measures.
- b. The material is available to students for a limited duration no longer than the "class session" i.e., the period during which a student is logged on to the server. Students may not be permitted to retain a permanent copy of the material or to further disseminate it. The legislative history identifies certain streaming technologies and digital rights management systems as examples of technological measures that would satisfy this requirement.

2.2.4.2 Institutional Requirements:

- a. Universities must institute policies regarding copyright;

b. Universities must provide information to faculty, staff, and students that accurately describes and promotes compliance with copyright law. Information about copyright is provided through workshops and our IT Copyright webpage.

2.2.4.3 Exclusions

- a. The TEACH Act excludes the use of works specifically created for use as distance learning products;
- b. The TEACH Act excludes the use of works that you know or have reason to believe are pirated i.e. not lawfully made. This could include many copyright-protected films and much music downloaded from the Internet;
- c. The TEACH Act excludes the conversion of print or other analog versions of works into digital formats unless:
 - no digital version of the work is available;
 - or the digital version employs technological protection measures that prevent its use;
 - And then, conversion is only permitted with respect to the portion of the work authorized to be performed or displayed under the TEACH Act's size restrictions.

2.2.4.4 Conclusion:

- a. Under the TEACH Act you may now, under certain limited conditions(described above), use short works or portions of larger works in distributed learning situations without first obtaining the permission of the copyright holder.
- b. If you cannot operate within these constraints, you may still be able to provide electronic access to copyrighted materials under the long-standing principle of "fair use." The TEACH Act explicitly provides:" Nothing in this act is intended to limit or otherwise to alter the scope of the fair use doctrine." The provision of downloadable course materials and supplementary reading materials will continue to be subject to the fair use doctrine exclusively.

Appendix A

“Fair Use” Guidelines

NOTE: These are guidelines only and do not necessarily apply to all situations. Specific Fair Use questions should be directed to the University’s Office of General Counsel in order to avoid personal or institutional liability for a Copyright violation. These Guidelines are based on US law and may not be applicable to the laws of other countries.

I. General Guidelines for use of copyrighted materials in instructional materials

- A. The development of instructional materials for a course typically involves the inclusion of materials generated by someone other than the author or designer of the course. Nearly always these materials are owned by their creator or people or organizations to which this ownership has been assigned. The owners of these materials are protected by U.S. Copyright law and, with a few exceptions, have exclusive rights in determining how they may be used.
- B. A general principle of copyright law is that a copyright is implicit. That is, the owner or assignee still owns the copyright to a work even if that copyright is not formally registered. Therefore, unless a creator or owner of a work has negated his or her copyright, any and all works must be assumed to be subject to copyright protection.
- C. A copyrighted work may only be used in instructional materials if that use does not violate the owner’s copyrights. There are three ways to accomplish this:

II. Obtain permission

By far the most direct way to use copyrighted works as part of course materials is to request permission of the copyright owner. Doing this in writing and obtaining the permission in writing, provides the clearance to use the work within course materials. In requesting permission to use copyrighted materials make sure your request includes the following:

- A. What material will be used? Be explicit in identifying the material, or portions thereof, that you are requesting permission to use.
- B. How the material will be used? Will the material be available on the web, CD or distributed by some other medium? Will it be excerpted or used intact? Answers to these questions should be explained in your request.
- C. How long will you use the material? Your request should include the period of time that you intend to use the material. If you intend to use the work for some undetermined period of time, ask the copyright owner for perpetual authority to include it in your course material. Keep in mind that the owner may place a time limit on his or her grant of authority to use the material.

- D. Who will have access to the material? If the requested work will be available on an unsecured website, you must indicate that in your request. On the other hand, if the materials will be on a website that is restricted to students registered in your class you should indicate so. Having restricted access to the works may make copyright owners more amenable to granting your request to use those materials.

III. Obtain a license for the work's use

In some circumstances you maybe able to obtain a license to use the works in your course materials. Such licenses may be available from publishers and other suppliers. For example, artwork, photographs and clip art are often available from suppliers and licensed for use by purchaser of that license. Often such licenses permit unlimited use of the works by licensee. (A word of caution: You must read and fully understand the terms and conditions of a license agreement before using works licensed under that agreement). The license may or may not grant you the authority to use the works the way that you intend.

IV. Fair Use

An exception to the exclusive rights of a copyright owner is known as "Fair Use". Under the "Fair Use" provisions of the Copyright Act, a copyrighted work may be used for instructional purposes, without obtaining permission or license from the owner, under certain specific conditions.

- A. A less-than-substantial portion of the original work. In order to use work by others as part of course materials, the material to be used cannot be a substantial portion of the original work. The definition of what constitutes a substantial portion of a work can vary, but a widely recognized "rule of thumb" is 10% of the original work. That is, if the material to be used in course materials is less than 10% of the original work, the use of this material may be considered "Fair Use". It should be noted that what constitutes the whole of an original work may not always be obvious. For example, a 15-page chapter from a 200-page book might be useable as a fair use. However, if that 15-page chapter was from a book of readings, that chapter might be independently copyright protected. In that case, the 15-page excerpt, even though it is only a portion of a larger book, might represent the entirety of a copyright protected work. Its use, then, could not be considered an educational fair use.
- B. The use of the materials must be restricted to students in the class. Only students registered for the class may have access to the materials. In a classroom situation, this means that the display and use of these materials must be restricted to students in the class. It may not be more widely disseminated. In an on-line class scenario, the material must only be available to students who are officially registered for the specific class. The online delivery system for the presentation of the course materials must be able to restrict access to these materials to registered students. The use of copyright protected materials on a generally accessible website would not meet these criteria for fair use. Even restricting access to these materials to on-campus users would not meet this criterion.

- C. The use of the materials must be of a short duration. To be used as an educational fair use, copyright protected materials may only be used as part of the overall course materials for a short period of time. Like the substantiality condition above, what constitutes a short duration is subject to interpretation. A widely accepted “rule-of-thumb” is two years. That is, works owned by others may not be used in course materials for more than two years without obtaining explicit permission or a license to do so.
- D. The use of the material may not have an adverse effect upon the potential market for or value of the copyrighted work. The inclusion of a copyrighted work in the instructional materials for a course may not negatively affect the value or potential value of the work to the copyright owner and still be considered an educational fair use. The use of a copyrighted work under conditions where its value might be adversely affected should not be considered fair use and would require explicit permission or license.
- E. “Fair Use” is a viable means of legally using copyrighted works in instructional materials. However, the “Fair Use” of such materials is only possible under very restrictive conditions and these conditions are subject to some interpretation. When at all possible, the instructor, instructional designer or creator of a University course should obtain explicit permission or license to use the copyrighted works of others in their course materials.

V. Guidelines for Specific Instructional Areas

A. Guidelines for Creating Course packs

1. Limit course pack materials to:
 - a. Single chapters
 - b. Single articles from a journal issue
 - c. Several charts, graphs or illustrations
 - d. Other similarly small parts of a work.
2. Include:
 - a. Any copyright notice on the original
 - b. Appropriate citations and attributions to the source.
 - c. Obtain permission for materials that will be used repeatedly by the same instructor for the same class.
 - d. Use for only registered students in specified classes.
 - e. Written permission must be obtained from publisher(s) and royalties paid BEFORE course packs are sold.

- A. Guidelines for Displaying and Performing Others' Works in Distance Learning
1. Incorporate performances of others' works
 - a. Sparingly
 - b. Only, if a faculty member or the institution possesses a legal copy of the work.
 2. Include
 - a. Any copyright notice on the original
 - b. Appropriate citations and attributions to the source
 - c. The notice contained in Section I.
 3. Limit access to students enrolled in the class and administrative staff as needed. Terminate access at the end of the class term.
 4. Obtain permission for materials that will be used repeatedly by the same instructor for the same class.
- B. Guidelines for Digitizing and Using Images for Educational Purposes
1. Is the image you wish to digitize readily available online or for sale or licensed?
 - a. If YES: Point to, purchase or license the image. Do not digitize it unless you are in the process of negotiating a license. If you have a contract pending, digitize and use the image in accordance with these guidelines until the license is finalized and you have received the licensed digital -image.
 - b. If NO: Digitize and use the image in accordance with the following limitations:
 - i. Limit access to all images except "thumbnails" to students enrolled in the class and administrative staff as needed. Terminate access at the end of the class term.
 - ii. Faculty members also may use images at peer conferences.
 - iii. Students may download, transmit and print out images for personal study and for use in the preparation of academic course assignments and other requirements for degrees, may publicly display images in works prepared for course assignments and may keep works containing images in their portfolios.
 - iv. Periodically review digital availability. If a previously unavailable image becomes available online or for sale or license at a fair price, point to or acquire it.
- C. Guidelines for Digitizing and Using Others' Works in Multimedia Materials for Educational Purposes. Please keep in mind that the rights described here are rights to create unique works, but not to make multiple copies and give them out (distribute them).
1. Students, faculty and staff may incorporate others' work into a multimedia work display and perform a multimedia work in connection with or creation of the following:
 - a. Class assignments
 - b. Curriculum materials
 - c. Remote instruction
 - d. Examinations
 - e. Student portfolios
 - f. Professional symposia.
 2. Be conservative. Use only small amounts of others' works.

3. Don't make any unnecessary copies of the multimedia work.

D. Guidelines for the Use of Music

1. Limit copying as follows:
 - a. Sheet music, entire works: only for performances and only in emergencies (needs to be defined and clear)
 - b. Sheet music, performable units (movements, sections, arias, etc.) only if out of print
 - c. Student performances: record only for teacher or institutional evaluation or student's portfolio
 - d. Sound recordings: one copy for classroom or reserve room use
2. Include:
 - a. Any copyright notice on the original
 - b. Appropriate citations and attributions to the source.
3. Replace copies with purchased originals if available.

E. Guidelines for Making Reserve Copies

1. Limit reserve copies to
 - a. Single chapters
 - b. Single articles from a journal issue
 - c. Several charts, graphs, illustrations
 - d. Other similarly small parts of a work.

F. Guidelines for Digitizing and Using Others' Works in Electronic Reserves

1. Limit reserve materials to
 - a. Single articles or chapters; limited number of charts, graphs or illustrations; or other small parts of a work
 - b. A small part of the materials required for the course
 - c. Copies of materials that a faculty member or the library already possesses legally (i.e., by purchase, license, fair use, interlibrary loan, etc.)
2. Include
 - a. Any copyright notice on the original
 - b. Appropriate citations and attributions to the source
 - c. The notice provided under Section I.
3. Limit access to students enrolled in the class and administrative staff as needed. Terminate access at the end of the class term.
4. Obtain permission, where necessary, for materials that will be used repeatedly by the same instructor for the same class.

G. Guidelines for Marshall University Libraries.

In order to ensure that Marshall University libraries enjoy the protections of the Copyright Act, Marshall University libraries shall meet latest Copyright Act criteria for libraries.

1. Marshall University libraries will not reproduce or distribute copyrighted material for the purpose of direct or indirect commercial advantage.
2. Marshall University libraries will ensure that its libraries and archives are

- a. Open to the public, or
- b. Available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized area.

H. Marshall University will include the following notice of copyright with every distribution or reproduction of copyrighted materials:

Notice

Warning Concerning Copyright Restrictions

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified by law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for or later uses, a photocopy or reproduction for purposes in excess of "Fair Use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

- I. Copies for Marshall University Library Use.
 - 1. Marshall University libraries may copy unpublished works of any sort, including photographs, motion pictures and sound recordings, solely for the purpose of preservation and security or for deposit for research use in another library or archive that makes its collection open or available. Such copies may only be in facsimile form. The copies may not be digitized for storage in a computer database.
 - 2. Marshall University libraries may also copy in facsimile form any sort of out-of-print published work in order to replace a damaged, lost, deteriorating or stolen copy if the library has reasonably, but unsuccessfully, attempted to replace the work at a fair price from the "the trade," including reprint houses and out-of-print sources.
- J. Photocopying by Marshall University Library Patrons. All Marshall University libraries shall post the notice contained in Appendix B in the copying machine area of the library.

Appendix B

Posting Notice for Reproduction Equipment

Copying, displaying and distributing copyrighted works may infringe the owner's copyright.

The Marshall University "Copyright Procedure" can help you determine whether your use of a copyrighted work is fair use or requires permission. Any use of computer or duplicating facilities by students, faculty or staff for infringing use of copyrighted works is subject to appropriate disciplinary action as well as those civil remedies and criminal penalties provided by federal law.

Appendix C

Suggested Checklist for Development/Distribution of Copyrightable Material

When materials are being produced that contain copyrighted works, proper credit or attribution should be provided somewhere within the work. The following Suggested Checklist should be considered before a project is begun. Only appropriate items need to be addressed for a given project.

I. GENERAL

- A. PROJECTSUPERVISOR/COORDINATOR--Give name, departmental (or other) affiliation, mailing address if not a University employee, and phone number.
- B. REASON (S) FORPRODUCTION--Explain why material has been/should be developed; describe how it has been/will be used on campus, elsewhere within the University, and/or outside it; if material relates directly to a University course, give department, course title, and number. Specify whether or not development of material constitutes a University assignment for the individual(s) in charge.
- C. SCHEDULE—Give beginning and ending dates for production of material (projected or actual, depending on status of project); give dates for first use of material within the University and for first use outside.
- D. CREATIVECONTRIBUTORS--List all persons who have contributed/will contribute creatively to production (e.g., by providing ideas, written material, graphics); give names and departmental affiliation for University staff, and specifically identify any who have left the University since working on this project; for non-University staff, give mailing addresses and phone numbers. Describe the nature of the contribution made by each.
- E. IDENTIFIABLEPARTICIPANTS--List all persons who are/will be shown and/or heard when material is presented, if material is audiovisual; for each, give the same type of information as requested above for creative contributors. (If some people fall into both categories, merely list names and describe the nature of participation by each here.)
- F. RELEASES OFRIGHTS--List all persons involved in the project who have already given written permission for University use and/or external distribution of this material embodying their ideas, appearance, and/or voices. Attach all such permissions already obtained.

II. DESCRIPTION OFMATERIAL

- A. PROGRAM/SERIES/PROJECTTITLE
- B. FORM/MEDIUM—Identify all physical forms/media in which material is/will be physically fixed, such as videotape, sound recordings, film strip/slides, workbook, diskettes, CD ROMs.
- C. UNITS/MODULES/PROGRAMS—Give title of each unit, if the end product is a series, and the average approximate length (time required for presentation) per unit.
- D. SUBJECT/CONTENT—Give brief outline or summary of conceptual content of material.

- E. INTENDEDUSE--Specify how material is intended to be used, including nature of intended audience, type of program within which material will be used, objectives its use is intended to accomplish, and other relevant details.
- F. USEFULLIFE--Explain how long material is expected to remain accurate, up to date, and useful; specify any factors that would affect the material's useful life

III. RECOMMENDATIONSFOR DISTRIBUTION

- A. PURPOSE—Explain why external distribution would be beneficial to the University's interests and how the interests of prospective users would be served. If external distribution is not recommended at this time, say so and ignore the remainder of this section.
- B. METHOD--Indicate whether material should be made available outside the University on the basis of sale, rental, license, and/or cost-free loan; explain reasons for recommendation.
- C. ANTICIPATEDUSERS--Identify anticipated users of this material by category (e.g., colleges/universities; secondary schools; elementary schools; practicing professionals in specific fields; particular types of industry; governmental agencies; research scientists) and indicate which would be the source of greatest demand and why.
- D. GEOGRAPHICALSCOPE--If there is any reason to think geographical factors would be relevant, indicate where (e.g., Marshall only, U.S., Europe, and South America) the material would or should be distributed primarily and why.
- E. CONTROLS/LIMITATIONS--Explain(1) any prior approvals that should be obtained before material is released to any particular category of user or for any particular type of use and (2) any restrictions on the manner of use that should be imposed on all categories of users.
- F. RESPONSIBLEUNIT--Indicate what unit of the University or other agency should/will be responsible for logistic and administrative details of distribution (e.g., responding to inquiries, packing, and shipping, billing for and collecting payments). For software, indicate whether the unit will be providing any direct technical support of users.

IV. FINANCIALCONSIDERATIONS

- A. REQUIREDRESOURCES--List below, under the appropriate headings, the resources anticipated as necessary (or actually used) to carry out the project. For each, identify the source (academic department, technical production facility, commercial firm), give the estimated or actual monetary value, and the basis (such as hours times salary or standard rates) upon which the value is calculated.
- B. Faculty/staff
- C. Facilities
- D. Supplies/materials
- E. Equipment
- F. Other

- V. UNIVERSITY SHAREOF EXPENSE--Give estimated (or actual) total cost of developing material and itemize the University's share by account names and numbers.

- A. RELEASETIME--Identify any University faculty or staff who were/will be given release time from their usual duties in order to work on this project; for each, indicate the amount of release time involved.
 - B. DISTRIBUTIONCOSTS--Provide estimates, on a per-unit basis, of costs involved in distributing material outside the University (e.g., for duplication, postage, handling, insurance, and other relevant factors). If different costs are involved in different types of distribution (sale, rental, licensing, loan), distinguish among them clearly.
 - C. RATES--Indicate recommended rates to be charged for material; explain basis for recommendation.
 - D. SPECIALPROVISIONS--State what (if any) special rate provisions should be made (such as discounts) and why.
 - E. EXPENSE/INCOME--Give estimated amounts of annual expense and income resulting from external distribution of material; include explanatory detail not previously provided as may be necessary.
 - F. DISTRIBUTION OFINCOME--Identify departmental accounts by title and number, individuals by name; specify percentages or other basis for distribution of income accruing from distribution of material, and explain why the basis indicated is considered appropriate.
- VI. COPYRIGHTPROCEDURES - State whether or not it is intended that this material be copyrighted. If so, identify who will hold the copyright. Also specify whether or not a notice of copyright has already been incorporated into any portion of the material already completed. Identify any material incorporated into the current production that was previously copyrighted in the name of Marshall University.
- VII. CONTRACT TERMS - Provide any specific recommendations you may wish to make (in addition to points already covered) as to terms, such as sublicensing rights or right to make derivative works.
- VIII. CERTIFICATION /APPROVALS
- A. The author and/or project supervisor/coordinator, must certify that all material incorporated into the project will be original except for material covered by written permission(s) furnished by the copyright owner(s) concerned and that nonmaterial copyrighted by persons other than Marshall University will be used without obtaining such permission and all such permissions will be kept in the project file.
 - B. All appropriate Deans, Chairs and/or Directors need to approve any internal funding rates and or matters.
 - C. The Marshall University Research Corporation needs to approve projects involving any external funding.

Appendix D

The Technology, Education and Copyright Harmonization (TEACH) Act

Introduction: The New Legislation

On November 2nd, 2002, the "Technology, Education and Copyright Harmonization Act" (the TEACH Act), part of the larger Justice Reauthorization legislation (H.R. 2215), was signed into law by President Bush. Long anticipated by educators and librarians, TEACH redefines the terms and conditions on which accredited, nonprofit educational institutions throughout the U.S. may use copyright protected materials in distance education-including on websites and by other digital means--without permission from the copyright owner and without payment of royalties.

The new law offers many improvements over the previous version of Section 110(2), but in order to enjoy its advantages, colleges, universities, and other qualified educational institutions will need to meet the law's rigorous requirements. Educators will not be able to comply by either accidental circumstances or well-meaning intention. Instead, the law calls on each educational institution to undertake numerous procedures and involve the active participation of many individuals.

TEACH Act Compliance Check-list

Adapted from the Copyright Crash Course:

<http://www.utsystem.edu/ogc/intellectualproperty/teachact.htm>

1. Eligibility

Are you an accredited nonprofit educational institution or governmental body?

- YES, proceed
- No, stop and go to Appendix A, *Fair Use Guidelines* and/or seek permissions and/or licensing

Do you have an institutional policy (s) or procedure (s) that addresses the use of copyrighted materials and promotes compliance with US Copyright law?

- YES, proceed
- No, develop one

Do you provide educational resources to your campus that accurately describe copyright rights and responsibilities?

- YES, proceed
- No, create resources

2. Eligible Works: Types and Amounts

Generally:

Is the work a digital educational work, i.e., a work produced or marketed primarily for performance/display as a part of mediated instructional activities transmitted via digital networks?

- ✓ No, proceed
- ✓ Yes, go to Appendix A, *Fair Use Guidelines* and/or seek permissions and/or licensing

Is the work lawfully made and acquired?

- ✓ Yes, proceed
- ✓ No, Stop
- ✓ Don't know – would a reasonable evaluation indicate the origin of the work to be questionable? If so, stop.

Is the work an integral part of the class session; part of the systematic mediated instructional activities; and directly related and of material assistance to the teaching content?

- ✓ Yes, proceed
- ✓ No, reevaluate use of the work or go to Appendix A, *Fair Use Guidelines* and/or seek permissions and/or licensing

Specifically:

Amounts allowed

Non dramatic literary works =All

Non dramatic musical works =All

Any other works:

Performances = Reasonable portions in an amount comparable to that performed in live classroom

Displays = Amount comparable to that performed in live classroom

- ✓ Yes, proceed
- ✓ No, stop and go to Appendix A, *Fair Use Guidelines* and/or seek permissions and/or licensing

3. Authentication

Is transmission of the work limited, as technically feasible, to students enrolled in the course?

- ✓ Yes, proceed
- ✓ No, stop and go to Appendix A, *Fair Use Guidelines* and/or seek permissions and/or licensing

4. Downstream Controls

Have you implemented reasonable measures to prevent retention of the works for longer than the class session and have you implemented reasonable measures to prevent unauthorized further dissemination in accessible form by the recipients?

- ✓ Yes, proceed
- ✓ No, stop and go to Appendix A, *Fair Use Guidelines* and/or seek permissions and/or licensing

5. Conversion: Analog to Digital

Is there a digital version of the work available at the institution? And is the digital version technologically protected to prevent TEACH uses?

- ✓ Yes, Conversion of analog to digital permitted
- ✓ No, Conversion of analog to digital not permitted

6. Notice to Students

Is there a notice accompanying the work notifying students that the work may be protected by copyright?

- ✓ Yes, proceed
- ✓ No, add one.