

TRINITY INTERNATIONAL UNIVERSITY

TIU POLICY: Copyright Policy
TIU POLICY #: P-402
STATUS: Approved, November 2009
Updated, July 2015

I. PURPOSE:

To specify policy for Trinity International University (University) so that all faculty, staff, and students carry out their scholarly work consistent with applicable copyright laws. Before copying or using copyrighted materials, each member of the University is expected to review and follow the requirements included in this policy and in the “TIU Copyright Handbook” which can be found on my.tiu.edu.

II. SCOPE:

This policy applies to all faculty, staff, and students of the University.

III. POLICY:

A. Introduction

Compliance with the terms of this policy is a condition of employment for University faculty and staff, and of enrollment for University students. This policy is subject to any applicable laws and regulations or to specific provisions in grants or contracts that govern rights in copyrighted works created in connection with sponsored research.

The specific guidance provided in this policy includes:

1. Basic statement of copyright policy;
2. Copyright clearance;
3. Guidance for using materials for academic purposes with and without permission pursuant to the fair use doctrine, other statutes, case law and regulatory law; and
4. Defenses to infringement claims.

B. Appropriate Use of Copyrighted Works

As an institution devoted to the creation, discovery and dissemination of knowledge, the University supports the responsible, good faith exercise of full fair use rights, as codified in federal law at 17 U.S.C. § 107, by faculty, librarians, staff and students in teaching, research, and service activities. Except as allowed by law (See TIU Copyright Handbook for details), it is a violation of this policy and law for University faculty, staff, or students to reproduce,

distribute, display publicly, perform, digitally transmit (in the case of sound recordings), or prepare derivative works based upon a copyrighted work without permission of the copyright owner.

C. Fair Use

1. Permissible Use

Under United States Copyright law, the "fair use doctrine" allows certain specified uses of a copyrighted work without requiring prior permission of the copyright holder under certain situations. The University supports "the responsible, good faith exercise of full fair use rights, as codified in 17 U.S.C. § 107, by faculty, librarians, and staff in furtherance of their teaching, research and service activities."

2. Elements of Fair Use; Good Faith Consideration Required

University faculty or staff who propose to make fair use of a copyrighted work must consider in advance the applicability of four statutory factors to be weighed in making a fair use analysis. These factors are:

- a. The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes;
- b. The nature of the copyrighted work;
- c. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- d. The effect of the use upon the potential market for or value of the copyrighted work.

3. Procedure for Making Fair Use Determinations

The University Leadership Team shall issue and as necessary revise guidelines to assist University faculty, staff, and students in making fair use evaluations (see TIU Copyright Handbook). Faculty, staff, or students who require assistance with fair use questions are encouraged to consult the TIU Copyright Handbook.

D. Copyright Clearance

Each member of the University community is expected to be responsible to clear copyright, that is, to make a determination of lawfulness before using materials authored by others. The unlawful use of materials authored by others is considered an illegitimate exercising of the exclusive rights of copyright holders. The following exclusive rights vest solely in authors of copyrighted works:

- Copying;
- Distribution;
- Publishing;
- Preparing derivatives or revisions of;
- Performing; or
- Displaying works in public.

Before copying or otherwise using materials authored by others, each individual responsible for the use of materials must make (and be prepared to support) a determination if the materials are subject to a valid copyright (“copyrighted materials”). If so, the contemplated use must be:

1. Permitted by license; or
2. Lawful under the fair use doctrine or other law.

The user must obtain permission from the copyright owner if the contemplated use is neither fair use nor otherwise lawful.

Any member of the University community using copyrighted materials or works must affirm in writing that the use conforms to this policy. When permission from a copyright owner is obtained, a copy of the permission agreement should be retained. If a member of the University community makes a good faith written determination that a use is lawful under this policy and the guidelines, the University will support that determination.

E. Proper Use of Copyrighted Works

Members of the University community should use copyrighted works according to the guidelines below:

1. Copyright Notices

Members of the University community should use proper notices when their original works may be published. Publication on the internet can constitute publication.

2. Proper Form of Copyright Notice

An effective copyright should provide:

- a. The author’s name(s);
- b. The year(s) in which the work was created and most recently published; and
- c. The word “copyright” or its abbreviation, or the symbol ©.

3. Notice Not Required

In the United States and in the many countries that are signatories to copyright agreements to which the United States has also acceded by treaty, no copyright notice is required for works created under the Copyright Acts of 1976 and thereafter, or created on or after the date of January 1, 1978. A notice may, however, assist in proving entitlement to damages in litigation and may also protect a work from being re-published on the Internet by citizens of non-treaty member jurisdictions.

F. Policy Violations

Infringing uses of copyrighted works and other violations of this policy, the law, or the guidelines are grounds for disciplinary action by the University. In general, students, faculty, and staff will be disciplined if their conduct constitutes a willful violation of the law, this policy, or the guidelines. In addition, the University reserves all rights to refer unlawful activity to

appropriate federal, state, or local legal authorities. Members of the University community who willfully violate this policy and the policies incorporated herein do so at their own risk, assume all liability, and must indemnify the University for loss or damage resulting from their unlawful action.

In a civil suit, an infringer may be liable for a copyright owner's actual damages plus any profits made from the infringement. Alternatively, the copyright owner may avoid proving actual damage by electing a statutory damage recovery of up to \$30,000 or, where the court determines that the infringement occurred willfully, up to \$150,000. The actual amount will be based upon what the court in its discretion considers just. (17 U.S.C. 504)

Violation of copyright law is also considered a federal crime when done willfully with an intent to profit. Criminal penalties include up to ten years imprisonment depending on the nature of the violation. (No Electronic Theft Act, 18 U.S.C. 2319)

As stated in the University's Acceptable Use Policy for University Technology and Telecommunications Systems, no one may transfer copyrighted material using the University network without written permission. Only the author(s) or individuals that they specifically authorize may transfer copyrighted material from other media to University computing systems. Material in this category includes not only human readable documents, but also software and data files used with software designed to play musical, video, or multimedia productions. In particular, providing access to copyrighted MP3 files from media is prohibited.

G. Handling of Claims

1. Defense

The responsibility to monitor copyright compliance rests with the copyright holder. If a copyright holder believes that you have infringed copyright, that person or his/her lawyer will most likely send you a "cease and desist" letter. If you receive such a letter but do not wish to comply because you believe your use is justified under the law, please notify one of the people listed in section A of the TIU Copyright Handbook. In some cases, it will be important for the University to secure legal advice.

If an employee is accused of copyright infringement in a civil action, the University will, to the extent appropriate under applicable law, assist in their defense when, in the University's determination, the employee made a reasonable, good faith effort to comply with this policy and the guidelines. Otherwise, employees are personally responsible for defense of civil, criminal, or other legal actions alleging unlawful acts. Allegations or investigations of copyright infringement or other intellectual property claims relating to students' activities will be handled pursuant to the discretion of the University.

2. DMCA Procedures

All members of the University community are expected to comply with the Digital Millennium Copyright Act (the "DMCA"). The University's formal DMCA policy is incorporated herein by reference: <http://www.tiu.edu/tiu/copyright/>. The University has designated an agent for receiving notices of claims of copyright infringement pursuant to the DMCA. Among other provisions, the law imposes procedures on the University's response to subpoenas for information about student, faculty, and staff use of electronic

materials and forbids unlawful “file sharing” generally, and specifically programs or devices that avoid, bypass, remove, deactivate, or impair a technological measure (such as copy protection), without the authority of the copyright owner.