

## **Marietta College Policy for Copyrights**

### **Introduction**

As an academic community of scholars, Marietta College encourages the free exchange of ideas, the publication of scholarly works, the pursuit of basic scientific research, and the creation and production of visual and performing arts. The College seeks to create an environment that promotes the freedom of inquiry and the freedom of access to information fundamental to both teaching and scholarship. Incumbent upon such a community of scholars is an understanding of the nature of intellectual property and of the rights and responsibilities that pertain to each member of this community.

Of the four types of intellectual property - copyrights, patents, trademarks, and trade secrets - this policy addresses the issue of copyrights only. Copyright pervades the everyday lives of members of the Marietta College community: from a student searching the World Wide Web, a faculty member sharing copyrighted works in a traditional face-to-face classroom setting, to an administrator writing a report. All of these activities require an awareness and understanding of copyright law by every College community member. Marietta College seeks to comply with both the letter and spirit of the U. S. Copyright Act of 1976 and subsequent additions and amendments to copyright law. This copyright policy, therefore, applies to all members of the Marietta College community - students, faculty, administrators, and staff. Marietta College maintains a copyright Web site [<http://www.marietta.edu/~copy/>](http://www.marietta.edu/~copy/) that provides guidelines and interpretations of copyright law for the College community to consult in answering questions about the use of copyrighted materials.

Any College community member who willfully disregards copyright law accepts all responsibility and assumes all liability for their actions.

### **Overview of Copyright**

The protection of copyright law extends to “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” (17 U.S.C. § 102 (2000)) To secure copyright protection a work must be both original and fixed in a tangible medium, which may range from paper to digital materials on the Internet.

Copyrightable works include, but are not limited to, the following categories:

- (1) Literary works (e.g., books, journal articles, poems, manuals, computer programs, web pages, software, programmed instructional materials, and databases).

- (2) Musical works, including any accompanying words (e.g., songs, operas, and musical plays).
- (3) Dramatic works, including any accompanying music (e.g., plays).
- (4) Pantomimes and choreographic works (if fixed in notation or videotape).
- (5) Pictorial, graphic, and sculptural works (e.g., paintings, prints, drawings, graphic designs, and photographs).
- (6) Motion pictures and other audiovisual works (e.g., film, television, radio, videos, and DVDs).
- (7) Sound recordings (e.g., phonorecords, disk, tapes, cassettes and CDs).
- (8) Architectural works.

Not all materials are covered by copyright. For example, copyright does not protect works for which copyright has expired, works in the public domain, and publications of the United States government written by federal employees as part of their duties. Current works in the public domain usually include a statement indicating that they have been placed in the public domain. Also “any idea, procedure, process, system, method of operation, concept, principle or discovery” is not necessarily eligible for copyright protection even though the work of original authorship in which it is expressed may be copyrighted. (17 U.S.C. § 102 (2000))

### **Rights of Copyright Owners**

The copyright clause in the U. S. Constitution (Article 1 § 8) seeks to promote advancements in science and useful arts by granting authors exclusive rights to their works. To temper the rights of authors with the need of the general population to access and use new works, the clause also provides that the exclusive rights be restricted to limited time periods.

The current copyright law grants to the owner of copyright the following set of exclusive rights:

- To reproduce the copyrighted work.
- To distribute copies of the copyrighted work publicly by sale, rental or lending.
- To make derivative or adaptive works based upon the copyrighted work.
- To perform the copyrighted work in public (if literary, musical, dramatic, or choreographic work, pantomime, motion picture or audiovisual work).
- To display the copyrighted work in public (if literary, musical, dramatic, or choreographic work, pantomime, motion picture or audiovisual work).
- To perform the copyrighted work in public “by means of a digital audio transmission.”

(17 U.S.C. § 106 (2000))

The copyright owner may retain all of these rights or may transfer or assign all or selected rights to another party. If two or more authors produce a work in which their contributions are “merged into

inseparable or interdependent parts” of a single work, each author holds an undivided share in the exclusive rights. (17 U.S.C. § 101 (2000)) The authors must have intended to create a single work and each author must have contributed copyrightable expression to hold joint ownership of copyright.

After establishing the exclusive rights assigned to copyright owners, copyright law also sets forth exceptions to the rights, granting the general population means to use copyrighted works without seeking permission of the copyright owner. These exceptions, however, are specific and establish conditions that must be met in total for use of a copyrighted work not to be considered an infringement of copyright law. Fair use is one of the most widely known limitations of the exclusive rights of copyright owners. If the proposed use of a copyrighted work is not covered by one of the limitations of the copyright act, the user must seek the permission of the copyright owner.

The Marietta College copyright Web site <<http://www.marietta.edu/~copy/>> describes the guidelines and interpretations of the limitations on exclusive rights to use in dealing with copyright issues.

### **Copyright Notice and Registration**

The author of an original work is vested with the exclusive rights of copyright protection as soon as the work is fixed in a tangible form. An author is no longer required to affix the word “Copyright” or the symbol © with the year and copyright owner’s name on a work, or register with the U. S. Copyright Office to secure copyright protection. A user must be aware that a published work without copyright designation or an unpublished work may be protected by copyright law.

Copyright owners are advised to register a new work with the Library of Congress, Copyright Office, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000 or <<http://www.loc.gov/copyright/>>. Registration provides certain legal benefits if the copyright owner is involved in future litigation regarding the work.

### **Duration of Copyright**

Works created after January 1, 1978, are protected for the life of the author plus seventy years (or, for works of corporate authorship, ninety-five years from publication or one hundred twenty years from creation, whichever is first). Works whose copyright has expired enter the public domain.

### **Use of Copyrighted Materials**

The reproduction of copyrighted materials for use in a course or as part of scholarly research must either have written permission for use or fall within the accepted guidelines of Fair Use. For information

on determining what constitutes Fair Use, consult the Marietta College copyright Web site

<<http://www.marietta.edu/~copy/>>.

### **Rights and Responsibilities of Members of the Marietta College Community**

Marietta College affirms the right of an author who is a member of the College community to retain any copyrights accruing to the author consistent with this policy. It shall be the responsibility of the owner of a copyright to take steps to protect such rights. In cases of joint ownership, the joint owners shall cooperate in good faith to determine what steps, if any, shall be taken to protect copyrights associated with the joint work.

A faculty or staff author of a traditional scholarly work or a work not commissioned by the College will retain the exclusive copyright in that work, unless extraordinary College resources are used in the creation of the work. Traditional scholarly works generally include, without limitation, books, articles, lecture notes and computer or web-based course modules created to supplement conventional classroom teaching. Commissioned works are works that are funded by or created at the direction of the College under a written agreement between a faculty or staff member and the College. Where extraordinary College resources are used in the creation of traditional scholarly works or non-commissioned works, the copyright for such works will belong to the College, unless the faculty or staff author and the College agree otherwise in writing.

Commissioned works are works produced by a faculty or staff member for the College under a written agreement. Compensation, ownership, royalties, and licensing shall be determined by the terms of the written agreement.

Support for creative work refers to the non-reimbursed use of College facilities, equipment, space, or personnel beyond the normal use for the education and instruction of students. The use of facilities and equipment meeting the following criteria shall not be considered in determining whether extraordinary support has been given: (1) commonly available to all faculty and professional staff within a department or on campus-at-large; and (2) for educational use or primarily instructional in nature. Building and/or renovation of space and/or purchase of equipment funded by outside sources, such as a grant, and secured by a faculty member for creative work shall not be considered in the determination of extraordinary support. Any questions about the determination of extraordinary levels of support shall be directed to the Copyright Committee.

Students shall own the copyright to the copyrightable works they create, even if assistance is given by a faculty or staff member, except (i) copyright to traditional works authored by a faculty member with the assistance of a student shall be owned by the faculty member or the College as set forth above; (ii) works created by a student under a grant, contract or other arrangement between the College

and a third party shall be owned as set forth above; and (iii) works created by a student in the course and scope of employment at the College shall be considered works made for hire.

### **Works for Hire**

The general rule of copyright protection is granted to the person who creates the work and places it in a fixed form. Copyright law provides for an exception to this rule under the “works made for hire” doctrine which considers the employer as the copyright holder. Works in this category are “(1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.” (17 U.S.C. § 101 (2000))

Marietta College interprets the work for hire doctrine to exclude scholarly works and instructional materials created by faculty and staff unless the College explicitly requests specific scholarly work or instructional materials to be produced and the parties have agreed to a special contractual agreement. Works produced by a faculty member during a sabbatical leave shall be considered part of normal scholarly activity. Works created by faculty in performing administrative duties, such as, but not limited to, committee minutes, reports, and curriculum studies, shall be the property of the College.

### **Distance Learning**

For the purposes of this policy, distance learning materials are courses and supporting materials delivered to distance learning students entirely via a form of communication technology, including, but not limited to Internet, World Wide Web, and/or satellite broadcasts. For a course to be considered a distance learning course, more than fifty percent (50%) of the instruction must be delivered in a setting in which the learners are separated from the instructor in time and/or space. Computer or web-based course modules or other learning devices created to supplement conventional classroom teaching are not considered distance learning materials. Any copyrights for distance education materials created upon a faculty or staff member’s own initiative and without the extraordinary use of College resources shall belong to the faculty or staff member. Generally, any copyrights for distance education materials commissioned by the College or created with the extraordinary use of College resources shall belong to the College, although the College, in its sole discretion, may choose to transfer or share such rights.

Distance education materials commissioned by the College or to be created with the extraordinary use of College resources should not be created unless there is a written agreement in place between the faculty or staff member and an authorized College representative. Such agreements shall outline the

rights and expectations of the parties and will ordinarily grant the faculty or staff member who created distance education materials the right of first refusal to teach the course when offered. In addition, the faculty or staff member shall be granted a non-transferable, royalty-free license by the College to use the work for his or her own educational and research purposes at the College.

A faculty or staff member employed by the College or a person under a special contract with the College to teach a specific class via distance education may use portions of copyrighted works as long as they adhere to guidelines established herein. Copies of copyrighted works must be lawfully made and acquired to be eligible for use in a distance education setting. The instructor must make a reasonable attempt to limit access to the materials to students who are enrolled in the class and must inform students that some of the works may be protected by copyright. Access to the materials on the network is limited to the duration of the semester during which the class is offered via a password or a similar security measure. Consult the College copyright Web site <<http://www.marietta.edu/~copy/>> for the detailed guidelines to be followed when using copyrighted materials in distance education classes.

The faculty or staff member who created the materials will have the right to teach the course for which the materials were developed for as long as she or he desires. If the faculty or staff member who created the materials declines to teach the course, the College has the right to allow another instructor to use the materials to offer the course. This right would expire three years from the last time the faculty member who created the materials taught the course. If the faculty member should leave the employ of the College, the faculty member has the right to use any materials created at Marietta College. The College would also retain the rights as described above, for the time period of three years after the last time the course was taught. This time period can be extended by agreement of the parties.

### **Copyright Committee**

The Copyright Committee shall be responsible for administrative matters relating to copyrights and for interpretation of copyright law. The Committee shall consist of the Vice President for Administration and Finance, at least four faculty members appointed by Faculty Council in two-year rotation, and two administrators appointed by the President. Appointed members shall serve two-year terms. For the first year, two faculty members and one administrator will be appointed for one-year terms and two faculty members and one administrator for two-year terms. The Committee shall elect its own chair. Members having business pending before the Committee shall not participate in the deliberation on the matter. One faculty alternate and one administrative alternate shall be appointed for a one-year term. Alternates are immediately eligible for appointment to the Copyright Committee following their one-year term as an alternate. Quorum, voting requirements, and other procedural matters shall follow College

policy regarding committees. Meetings may be called by the chair or at the request of two members of the Committee.

The Committee shall have the following responsibilities:

- To serve as a resource for the College community regarding copyright issues.
- To consider all questions and matters regarding this Policy and its administration, and to make recommendations to the President thereon.
- To examine the merits of each notice to it regarding copyrights.
- To take such action as may come before it regarding copyrights.
- To respond with written communication to an author regarding a copyright issue within thirty (30) days.
- To amend this Policy as necessary to reflect any legislative changes to the applicable laws and/or recent court decisions that affect the interpretation of the applicable laws.
- To make recommendations to the President regarding the registration of copyrights.
- To consider and make recommendations to the President of the College regarding special contractual agreements or licenses concerning copyrights.
- To oversee the collection and distribution of income derived from royalties or licenses from copyrights to the College.
- To consult with legal counsel when issues cannot be resolved through negotiation.
- To appoint a Webmaster to maintain and update the Web site created to provide guidelines and interpretation of copyright law for the use of the College community.

### **Distribution of Income**

The following provisions apply only to copyrights in which both the College and a faculty member, staff member, and/or student holds rights (“Joint Copyrights”) and there is no written agreement that provides otherwise.

The College shall establish an account for each joint copyright item for which it anticipates receiving income. All expenses and income relating to that item shall be recorded therein. Income to each account shall be distributed as follows in the order shown. Initial distribution will cover College expenses allocable to preparing and prosecuting the copyright registration of the item covered by the account. No income will be distributed until all expenses are first paid. Expenses do not include College salaries or other overhead associated with the administration of this policy. Any expenses of the College arising subsequent to the preparation and prosecution of a copyright registration, including, but not

limited to, marketing and licensing of an item, or enforcement of the rights in and to the item, shall be charged to the account and paid before any further income is distributed.

After expenses are paid, any remaining balance shall be distributed as follows: 50% to the creator(s) and 50% to the College, unless other percentages were agreed upon in a special contractual agreement. In the event the College receives equity in an enterprise as a result of a transfer of rights under a copyright, the amount, if any, to share with the creator(s) shall be the same percentages (50/50) as noted immediately above, unless other percentages were agreed upon in a special contractual agreement. Distributions of net income shall be on an annual basis on or about the date established by the Committee.

### **Conflict Resolution**

Conflicts arising under this policy, including whether something is subject to copyright protections; whether an act or omission to act is a violation of the Policy section herein; questions about “the determination of extraordinary levels of support”; and any question arising out of the interpretation or the wording or meaning of this document shall be resolved by the Copyright Committee. This is not a legal process nor shall any legal professionals be introduced into the process.

Any member of the College community, as defined above, shall notify, in writing, the Copyright Committee of a potential or actual conflict. Upon written notice of an alleged conflict, the Committee shall notify all members of the College community who are involved in the conflict. The parties shall be given an opportunity to present their respective cases orally before a quorum of the Committee. The parties, if they choose, may submit supporting written arguments to the Committee.

The Committee, after a hearing, shall render a decision, in writing, resolving the conflict. The decision shall be served upon the parties by personal delivery or campus mail.

If any party to the conflict or controversy disagrees with the decision of the Copyright Committee, the party may file a written appeal of the decision to the Provost within fourteen (14) calendar days of the receipt of the decision. A copy of the Copyright Committee’s written decision and any written arguments that the allegedly aggrieved party wishes to make should accompany the appeal. All other parties to the original controversy shall have ten (10) calendar days from the filing of the appeal to file any written responsive arguments.

Based upon the written decision of the Copyright Committee and the written arguments, the Provost shall determine the merits, if any, of the appeal and render a written decision on the appeal. There will be no oral hearing. A copy of the Provost’s decision shall be delivered to the parties as outlined above.

Within fourteen (14) calendar days from the service of the Provost’s decision, any party may appeal, in writing, the decision to the President of the College. The appeal should include the decision of



the Copyright Committee, the decision of the Provost, and the arguments the allegedly aggrieved party wishes to make. All other parties shall have ten (10) calendar days from the filing of the appeal to respond in writing.

Based upon all filings, the President shall render a decision, which will be final. No oral hearing shall take place before the President.

If any party wishes to pursue further legal redress from the President's decision, the matter shall be referred to binding arbitration. Each party will select an arbitrator and those two arbitrators will select a third. The three arbitrators shall decide the case under procedures that the arbitrators establish.

The decision of the arbitrators shall be final and binding upon all parties. The cost of arbitration will be assigned to a party or parties by the arbitration panel based upon the merits of the case being arbitrated.