

# COPYRIGHT POLICY

## CORNISH COLLEGE OF THE ARTS

Developed, Updated & Approved by

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## **Introduction**

Cornish College of the Arts, an educational institution offering baccalaureate studies in performing and visual arts, recognizes that faculty and staff, as creators and users of intellectual property, act as positive role models for our students when using copyrighted work in teaching and creative practice. Observing copyright law demonstrates respect for intellectual property rights in relation to one's own work and the work of others. While recognizing that copyright compliance is required by law, the College also acknowledges the need to find a balance between the rights of copyright owners and the legal exceptions to copyright afforded by law.

## **Policy Purpose**

This document describes Cornish policies and associated administrative procedures for copyrightable materials and other intellectual property. Its objectives are:  
To codify the College's commitment to comply with United States copyright law while recognizing the privileges and responsibilities related to Fair Use and other copyright exceptions for educational purposes.

To fulfill requirements that arise when applying the TEACH Act to digital content in an online learning environment; 1) The educational institution must "institute policies regarding copyright," 2) The institution must "provide informational materials" regarding copyright.

To fulfill requirements from the The Higher Education Opportunity Act (HEOA) of 2008 to have a copyright policy in place and inform the Cornish community about copyright law.

To enable the College to foster the free and creative expression and exchange of ideas and comment.

To preserve College practices and privileges with respect to the publication of scholarly works.

To establish principles and procedures for sharing income derived from copyrightable material produced at the College.

To protect the College's assets and imprimatur.

## **Policy Statement**

Cornish College of the Arts affirms and promotes the observance of U.S. copyright laws as outlined in the Copyright Act, Title 17 of the U.S. Code.

It is the policy of Cornish College of the Arts that all rights in copyright shall remain with the creator unless the work is a work-for-hire, is supported by a direct allocation of funds through the College for the pursuit of a specific project, is commissioned by the College, makes significant use of College resources or personnel, is otherwise subject to contractual obligations, or was produced by a student as part of their studies and that student did not opt-out of Cornish's right-to-use student work policy.

All students, faculty, and staff are responsible for complying with copyright law; including obtaining required permission from the copyright holder for the legal use of copyrighted materials when necessary, obtaining public performance rights, small rights, grand rights, and public display rights when necessary, and paying appropriate royalties or licensing fees for usage rights when necessary.

Cornish College supports educational exceptions to the use of copyrighted works by the Cornish community as provided for under U.S. Copyright Law, particularly:

- Fair Use guidelines: section 107, Limitations on Exclusive Rights, Fair Use.
- Educational exceptions to copyright for "face-to-face teaching: section 110 (1) Limitations on exclusive rights: Exemption of certain performances and displays.
- Use of digital copies in course management systems as outlined in the TEACH Act: section 110 (2) Limitations on exclusive rights: Exemption of certain performances and displays, and in 112 (f) Limitations on exclusive rights: Ephemeral recordings.
- Use of works in the Public Domain: outlined in sections 301-305 Duration of Copyright.

All members of the College community are expected to learn about how copyright law affects the way we work, teach, learn and create at Cornish College of the Arts, and to comply with copyright law.

### **Policy Scope**

This policy addresses the *use* of copyrighted intellectual property in accordance with United States copyright law.

Further policies regarding the *ownership* of intellectual property, as related to Cornish College of the Arts, are documented in College handbooks for students, faculty, and staff.

For more detailed information on the use of copyrighted digital files on the Cornish College Network and College computers, and restrictions applying to peer-to-peer file sharing, see the *Cornish College of the Arts, Information Technology Policy*.

For more detailed information about the posting of copyrighted materials on the College's social media networks, see the *Cornish College of the Arts Marketing and Communications Policy*.

### **Definitions**

#### **Copyright**

The ownership and control of the intellectual property in original works of authorship which are subject to copyright law.

#### **Copyrightable Works**

Under the federal copyright law, copyright subsists in "original works of authorship" which have been fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. These works include:

- o Literary works such as books, journal articles, poems, manuals, memoranda, tests, computer programs, instructional material, databases, bibliographies;
- o Musical works including any accompanying words;
- o Dramatic works, including any accompanying music;
- o Pantomimes and choreographic works (if fixed, as in notation or videotape);
- o Pictorial, graphic and sculptural works, including photographs, diagrams, sketches and integrated circuit masks;
- o Motion pictures and other audiovisual works such as video recordings;
- o Sound recordings.

### **Copyrightable Student Work**

Students who create copyrightable work(s) with the use of Cornish resources and in furtherance of class or course projects while enrolled at Cornish grant to Cornish a royalty-free, non-exclusive, worldwide, transferrable and perpetual license to use the work(s) (whether in its entirety or portions thereof), together with photographs and/or videos of students, for the promotion and/or to advancement of the interests of Cornish, including, but not limited to, the right to reproduce, display and distribute copies of the work(s), photographs and/or videos, and to prepare derivative works.

### **Scope of Copyright Protection**

Copyright protection does not extend to any idea, process, concept, discovery or the like, but only to the work in which it may be embodied, illustrated, or explained. For example, a written description of a manufacturing process is copyrightable, but the copyright only prevents unauthorized copying of the description; the process described could be freely copied unless it enjoys some other protection, such as patent.

Subject to various exceptions and limitations provided for in the copyright law, the copyright owner has the exclusive right to reproduce the work, prepare derivative works, distribute copies by sale or otherwise, and display or perform the work publicly. Ownership of copyright is distinct from the ownership of any material object in which the work may be embodied. For example, if one purchases a videotape, one does not necessarily obtain the right to make a public showing for profit.

The term of copyright in works created on or after January 1, 1978, is the life of the author plus seventy years. Copyright in works-for-hire is for ninety-five years from the date of first publication or one hundred twenty years from creation, whichever period first expires.

### **Works for Hire**

"Work for hire" is a legal term defined in the Copyright Act as "a work prepared by an employee within the scope of his or her employment." This definition includes works prepared by employees in satisfaction of sponsored agreements between the College and outside agencies. Certain commissioned works also are works for hire if the parties so agree in writing.

The employer (i.e., the College) by law is the "author", and hence the owner, of works for hire for copyright purposes. Works for hire subject to his principle include works that are developed, in whole or in part, by College employees. For example, significant use of staff or student employee programmers or College film production personnel will typically result in College ownership of the copyright in the resulting work. Where a work is jointly developed by College faculty or staff or student employees and a non-College third

party, the copyright in the resulting work typically will be jointly owned by the College and the third party. In such instances, both the College and the other party would have nonexclusive rights to exploit the work, subject to the duty to account to each other. Whether the College claims ownership of a work will be determined in accordance with the provisions of this policy, and not solely based upon whether the work constitutes a work-for-hire under the copyright law. For example, copyright in pedagogical, scholarly, or artistic works to which the College disclaims ownership under this policy shall be held by the creators regardless of whether the work constitutes a work-for-hire under copyright law. College ownership in a work-for-hire may be relinquished only by an official of the College authorized to do so by the Board of Trustees.

### **Books, Articles and Similar Works, Including Unpatentable Software**

In accord with academic tradition, except to the extent set forth in this policy, Cornish does not claim ownership to pedagogical, scholarly, or artistic works, regardless of their form of expression. Such works include those of students created in the course of their education, such as exhibitions, recordings, papers, etc. The College claims no ownership of popular nonfiction, novels, textbooks, poems, musical compositions, unpatentable software, or other works of artistic imagination which are not institutional works and did not make significant use of College resources or the services of College non-faculty employees working within the scope of their employment.

### **Institutional Works**

The College shall retain ownership of works created as institutional works. Institutional works include works that are supported by a specific allocation of College funds or that are created at the direction of the College for a specific College purpose. Institutional works also include works whose authorship cannot be attributed to one or a discrete number of authors but rather result from simultaneous or sequential contributions over time by multiple faculty and students. For example, software tools developed and improved over time by multiple faculty and students where authorship is not appropriately attributed to a single or defined group of authors would constitute an institutional work. The mere fact that multiple individuals have contributed to the creation of a work shall not cause the work to constitute an institutional work.

### **Works of Non-Employees**

Under the Copyright Act, works of non-employees such as consultants, independent contractors, etc. generally are owned by the creator and not by the College, unless there is a written agreement to the contrary. As it is Cornish's policy that the College shall retain ownership of such works, Cornish will generally require a written agreement from non-employees that ownership of such works will be assigned to the College.

Examples of works which the College may retain non-employees to prepare are:

- Reports by consultants or subcontractors
- Computer software
- Architectural or engineering drawings
- Illustrations or designs
- Artistic works

### **Videotaping and Related Classroom Technology**

Courses taught and courseware developed for teaching at Cornish belong to Cornish. Any courses which are videotaped or recorded using any other media are Cornish property, and may not be further distributed without permission from the cognizant academic department Chair. Blanket permission is provided for evanescent video or

other copies for the use of students, or for other College purposes. For more information see the *Cornish College of the Arts Information Technology Policy*.

#### **Contractual Obligations of the College**

This Copyright Policy shall not be interpreted to limit the College's ability to meet its obligations for deliverables under any contract, grant, or other arrangement with third parties, including sponsored research agreements, license agreements and the like. Copyrightable works that are subject to sponsored research agreements or other contractual obligations of the College shall be owned by the College, so that the College may satisfy its contractual obligations.

#### **Use of College Resources**

Cornish College resources are to be used solely for College purposes and not for personal gain or personal commercial advantage, nor for any other non-College purposes. Therefore, if the creator of a copyrightable work makes significant use of the services of College non-faculty employees or College resources to create the work, they shall disclose the work and assign title to the College. Examples of non-significant use include ordinary use of desktop computers, College libraries, and limited administrative resources.

#### **Posting of Copyrighted Materials on Social Media**

It is important that all members of the Cornish community are informed about the law regarding the posting of copyrighted material on College social media sites, and the implications thereof. For more information, see the *Cornish College of the Arts Marketing and Communications Policy*.

#### **Student Digital Millennium Copyright Act (DMCA) Notifications**

The Higher Education Opportunity Act (HEOA) requires higher education institutions, including Cornish, to inform students annually about copyright infringement and Digital Millennium Copyright Act

(DMCA) notice risks. Please see the current year's *Student Handbook* for more information. See the *Cornish College of the Arts Information Technology Policy* for information about combating on-campus network copyright abuse, alternatives to illegal downloading, etc.

#### **Self-Study Materials on Copyright**

The College is committed to maintaining self-study materials for members of the campus community to learn about copyright law compliance and the privileges and responsibilities that go along with Fair Use and other educational exceptions to copyright.

In order to help members of the Cornish community understand and comply with copyright laws, the Cornish Library has developed the *Copyright Resource Guide* at <http://libguides.cornish.edu/copyright>, located on the library web site. Faculty, students and staff can learn about copyright, how to obtain permissions, how to apply Fair Use, and other educational exceptions to copyright.

## **Copyright Law**

The Copyright Act of 1976 grants a number of exclusive rights to copyright holders, including:

- Reproduction rights
- Distribution rights
- Right to create derivative works
- Public performance rights
- Public display rights

It is illegal to exercise any of these exclusive rights held by copyright owners without first obtaining permission. However, some limitations to these rights have been established in Sections 107 through 122 of The Copyright Act of 1976, including educational exceptions. See the Policy Statement section above.

## **Violation of Copyright Policy**

Non-compliance with U.S. Copyright Law may lead to legal action on the part of the copyright holder.

Non-compliance with Cornish College Copyright Policy falls within the areas of student conduct and employee conduct.

Cornish students are subject to the Student Code of Conduct, in the current Student Handbook, which addresses violation of College policies.

Cornish faculty and staff are subject to the current Employee Handbook which addresses violation of College policies.

## **Related Cornish Policies**

- Cornish Student Handbook
- Cornish Employee Handbook
- Cornish College of the Arts Information Technology Policy
- Cornish College of the Arts Marketing and Communications Policy