



Title: Copyright Infringement and Intellectual Property
Policy Number: E0917
Responsible Office: Curriculum Education Services and Information Technology Services (ITS)
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TITLE OF THE POLICY

Copyright Infringement and Intellectual Property

PURPOSE OF THE POLICY

This policy states Wake Technical Community College's position on copyright infringement, illegal file sharing, and intellectual property. The college adheres to the Higher Education Opportunity Act of 2008 regarding the copying or distribution of copyrighted materials.

APPLICABILITY

This policy applies to all faculty, staff, and students.

POLICY STATEMENT

Wake Technical Community College requires its faculty, staff, and students to comply with the United States Copyright Act (Title 17 of the United States Code) (the "Copyright Act"). Faculty, students, and staff may download, possess, and store only lawfully-acquired, copyrighted materials; and may use, adapt, and distribute those materials only in ways consistent with the Copyright Act, associated case law, the Fair Use principle, and the intellectual property rights of others. The unauthorized use (downloading, possessing, storing, copying, adapting, sharing, or distribution) of copyrighted materials is a violation of federal law and Wake Technical Community College policy and is strictly prohibited.

DEFINITIONS

Word/Term	Definition
Copyright Infringement	The copying, sharing, or distribution of copyrighted works (including but not limited to music, videos, and digitally-formatted textbooks) without permission; may be referred to as "pirating," or in the electronic context of peer-to-peer networks, "illegal file sharing."
Intellectual Property	Intellectual and creative works (inventions, artwork, designs, images, literary works, etc.) that qualify for protection under U.S. law.
Penalties	Punishment imposed on students, faculty, or staff for violating all or portions of a policy.

PROCEDURES

A. Copyrights and Infringement

Copyright infringement of any kind is not permitted at Wake Technical Community College and may result in criminal and civil penalties. Any sharing of copyrighted material without proper licensing or permission from the owner/author/manufacture is prohibited by law and is not condoned by the college.

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1. Rights of Copyright Owners

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under Section 106 of the Copyright Act. These rights include the right to reproduce or distribute a copyrighted work.

2. File Sharing

In the file-sharing context, downloading or uploading all or substantial parts of a copyrighted work without the permission of the copyright holder constitutes infringement.

- a. **Students** who infringe on a copyright are subject to disciplinary action up to and including expulsion from their program of study or from the college.
- b. **Employees** who infringe on a copyright are subject to disciplinary action up to and including termination of employment at the college.

NOTE: Copyright infringement may also result in **criminal penalties**, including imprisonment for up to five years for a first offense and fines of up to \$250,000 per offense.

B. Intellectual Property

Certain intellectual and creative works qualify for protection under U.S. law. The Copyright Act defines federal copyright protection, details original works of authorship protected, and outlines the process for protecting such works. Title 35 of the United States Code defines patent protection, details inventions and discoveries protected, establishes conditions for patentability, and spells out the process for the granting of patents.

1. Independent Works

Works in which the college has no intellectual property rights include those covered by copyright or patent protection produced by a college employee outside the course or scope of his/her employment, or by any person (including college employees and students) without college support. An independent work is characterized by, for example, the applicability of the following:

- The work is the result of individual initiative. It is not the product of a specific contract or assignment made as a result of employment with the college.
- The work is not a product of the employee's job duties.
- The work is produced by an employee outside his/her work schedule.
- The work is produced by an employee or by any person (including students at the college) without funds, resources, or facilities owned or controlled by the college.

2. College-Supported Works

College-supported works are works covered by copyright or patent protection produced by a college employee in the course or scope of his/her employment, or by any person (including college employees and students) with college support. A college-supported work is characterized by one or more of the following:

- The work is the product of a specific contract or assignment made as a result of employment with the college.

- The work is a product of the employee's job duties.
- The work is produced by an employee during his/her work schedule.
- The work is produced by an employee or by any person (including students at the college) with funds, resources, or facilities owned or controlled by the college. College funds include but are not limited to release time, grant funds, salary supplements, leave with pay, and other material or financial assistance.

3. Fair Use

[Title 17, Chapter 1, Section 107](#) (Fair Use) of the United States Code classifies certain uses of materials copyrighted by others as non-infringing. It states:

a. 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

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

The fact that a work is unpublished will not per se preclude a finding of fair use, if that finding is made on consideration of all factors listed above.

Any employee or student wishing to use copyrighted materials under conditions not permitted by the Fair Use statute must obtain permission from the author or owner prior to using such material. If an employee intends to use copyrighted materials for college-related activities, he or she must file all correspondence and documentation of permission with his/her dean or unit manager. The documentation will consist of no less than the letter requesting approval for use, the letter of response from the author or owner, and the article or materials to be used.

4. Intellectual Property Rights

a. Ownership Rights

- i. **Independent Works:** The creator of an independent work qualifying for copyright or patent protection owns all intellectual property rights to that work. This includes the right to voluntarily transfer intellectual property ownership, in whole or in part, through a formal written agreement signed by the creator of the independent work.
- ii. **College-Supported Works:** Unless otherwise provided for in a written agreement, the college owns all intellectual property rights to a work produced with college support and qualifying for copyright or patent protection. These rights include the right to voluntarily transfer intellectual property ownership, in whole or in part, through a formal written agreement approved by the Board of Trustees and signed by its chair.

b. Distribution of Revenues and Other Benefits

- i. **Independent Works:** The creator of an independent work qualifying for copyright or patent protection controls any revenues or other benefits generated by that work.
- ii. **College-Supported Works:** Unless otherwise provided for in a written agreement, the college controls any revenues or other benefits generated by college-supported works qualifying for copyright or patent protection.

c. Written Agreement

Notwithstanding the college's ownership rights in a college-supported work, the college president, normally with the approval of the employee's supervising administrators and the dean or manager of the employee's division, may enter into a written agreement with an employee for an equitable arrangement for joint ownership, sharing of royalties, or reimbursement to the college for its costs and support. In all such cases, the agreement will provide that the college will have a perpetual license to use the work without compensation to the employee for such use.

The college recognizes that the research and development of an idea frequently requires the expenditure of time and money as well as the use of lab space, equipment, or other campus facilities. In order to assist worthy projects, Wake Technical Community College may enter into a written agreement with a college employee or student whose research or other work has demonstrable merit. Assistance may include financial support for the purchase of supplies, payment of patent fees, and other costs deemed necessary to the successful development of the individual's idea, concept, design, or invention. In all such cases, the agreement will provide for the college a basis of ownership or an agreement to reimburse the college for its costs and support as agreed upon by the employee or student and the college Board of Trustees. In no circumstances, however, shall the college agreement deprive, diminish, or abrogate the rights of the college as specified in Section 4.a. above.

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d. Grant-Supported Works

Notwithstanding the provisions of this policy, in the case of a work created under a grant accepted by the college, the ownership provisions of the grant prevail.

e. Consulting

Subject to college policy and prior approval, employees may consult for outside organizations. Any consulting agreement should include a statement that the employee has obligations to the college as described in this Copyright Infringement and Intellectual Property Policy, and this policy should be attached to the consulting agreement. In the event of conflict between the consultant's obligations under this Copyright Infringement and Intellectual Property Policy and the consultant's obligations to the organization for which he/she consults, the obligations under this Copyright Infringement and Intellectual Property Policy take precedence.

RELATED POLICIES, PROCEDURES, REFERENCES, FORMS, AND TERMS

Type	Name	Location
Reference	U.S. Copyright Office	https://www.copyright.gov
Reference	Amended Title 17 U.S. Code: Copyright Law	https://www.copyright.gov/title17/
Reference	U.S. Copyright Office Fair Use Index	https://www.copyright.gov/fair-use/
Reference	Title 35 U.S. Code: Patents	http://uscode.house.gov/browse/prelim@title35&edition=prelim
Reference	Higher Education Act of 2008	https://ed.gov/policy/highered/leg/hea08/index.html

CONTACT INFORMATION

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Policy Clarification (Intellectual Property)	Curriculum Education Services Vice President	919-866-5674	sldietrich@waketech.edu

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