



MARYLAND INSTITUTE  
COLLEGE OF ART

## **Intellectual Property Policy**

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## Introduction

This Intellectual Property Policy (“Policy”) sets forth MICA’s policies concerning ownership and use of intellectual property created by MICA’s faculty members, students, staff and guests, as well as compliance with intellectual property laws, including uses of copyright protected resources and materials. The Policy refers to supplementary texts and materials, including guidelines, tutorials and FAQs, that are provided to assist the MICA community in implementing the Policy.

The Policy maintains MICA’s tradition of according ownership of intellectual property rights in works of authorship and inventions to their creators except where substantial MICA resources are used or the intellectual property is created pursuant to a project funded by MICA’s sponsors. In such instances, the allocation of intellectual property rights and beneficial interests is consistent with MICA’s past practices, and recognizes the investments of MICA’s sponsors in support MICA’s programs.

Copyrights receive the most attention in this Policy, because copyright is the form of intellectual property protection that generally applies to works of authorship, including works of visual art, audiovisual works, and computer programs.

From moveable type and the printing press (impetus for the first copyright laws) to photography, broadcast media, reprography and new digital technologies, copyright law has evolved to recognize the opportunities and infringement risks posed by new technologies. Changes in copyright laws in response to digital technologies and the Internet, especially the Digital Millennium Copyright Act and Sonny Bono Term Extension Act, have inspired a robust public debate about the effect of copyright laws on arts and culture. MICA recognizes the importance of this debate, while appreciating the vital importance of copyright to its Faculty and Students, who are both copyright users and copyright owners.

This Policy encourages the MICA community to understand the copyright laws that apply to their work, and to participate in the public debate around copyright laws in the digital era. MICA’s Policy requires Faculty, Students and Staff to comply with copyright laws and to respect the copyrights of others.

This Policy is comprised of two parts. Part I generally sets forth MICA’s Intellectual Property policies and defines the obligations and rights of MICA’s faculty, students and staff involved in the creation or use of Intellectual Property in connection with academic and scholarly pursuits, as well as creative endeavors undertaken as a student, faculty or staff member of MICA.

Part II sets forth guidelines for implementing the Policy, providing MICA’s faculty, students, staff, and guests with context and guidance in applying the Policy. The Policy refers to various “Appendices,” which provide additional information and materials supporting this Policy.

## **Intellectual Property Policies**

### **1. Definitions of Capitalized Terms used in this Policy –**

**1.1 Collaborative Works** – Works created collaboratively by a group of Creators.

**1.2 Community Arts Program** – MICA Programs in which Students assist or lead art workshops as a community building activity with children, youth, and adults in off-campus community settings.

**1.3 Copyrights** – Exclusive rights in works of authorship under the United States Copyright Act and the copyright laws of other countries, including rights of reproduction, distribution, public performance, public display, the right to prepare derivative works, and the right to authorize others to use any and all such rights.

**1.4 Creator** – A person who creates or participates with others in creating a Work, Intellectual Property, or both.

**1.5 Disclosure Form** – A form prescribed by the Provost for use by Creators of Works or Intellectual Property owned in whole or in part by MICA under this Policy. A “Disclosure Form” may specify a description of the nature, purpose, operation and technical specifications of the Intellectual Property or Works at issue, any publication or submission for publication, sale or offer of sale of the Intellectual Property or Works at issue, any public use of the Intellectual Property or Works at issue, or any other information deemed important by the prospective Creators or Creators or the Provost in evaluating the disclosed Intellectual Property or Works.

**1.6 Domain** – The MICA domain [www.mica.edu](http://www.mica.edu) and all associated MICA web pages, including, without limitation, all content, materials, information, policies, modifications, updates, enhancements, revisions, new features, and new web properties of such pages, along with all site services provided through such web pages any other websites under MICA’s ownership or control.

**1.7 Effective Date** – The date, January 29, 2010 after which this Policy will be effective. This Policy will apply to all Intellectual Property and Works created or disclosed to MICA by Personnel, Students and Outside Participants after the Effective Date, as well as all uses of Intellectual Property or Works after the Effective Date. Use of Intellectual Property and Works by Personnel, Students and Outside Participants occurring prior to the Effective Date will remain subject to the terms of the Faculty Handbook, *Revised August 2007*.

**1.8 Electronic Reserve** – Technology Resources permitting password protected access to digital copies of educational materials whether through the Decker Library, Media Resources Center (MRC) or a course management system such as BlackBoard®.



**1.9 Eligible Faculty** - Defined in Section 6.

**1.10 Eligible Intellectual Property** - Defined in Section 6.

**1.11 Faculty** –All faculty members and instructors employed by MICA, including full-time faculty, pro-rata faculty, and part-time faculty, whether in a degree granting program, non-degree granting or non-credit program, but not including Outside Participants.

**1.12 Faculty Usage Rights** – The non-exclusive, perpetual, and royalty-free rights of a Faculty member, arising where the Faculty member would not otherwise have the rights, to reproduce his or her Works, or Student Works that were created in or for that Faculty member’s class, and to distribute and display such reproductions for the following purposes: (i) non-commercial, educational purposes; and (ii) as to Works created in whole or part by the Faculty member, in the Faculty member’s portfolio. In exercising the Faculty Usage Rights, whenever practicable the Faculty member will identify the owner of the Work (if known) and provide appropriate attribution to all other Creators who participated in creating the Work. Faculty Usage Rights may be waived by written agreement in connection with commissioned Works or Sponsored Programs.

**1.13 Intellectual Property** – Property rights resulting from certain intellectual efforts and eligible for legal protection under various United States federal and state intellectual property laws or the intellectual property laws of other countries, including without limitation rights associated with works of authorship under Copyright laws, Patent laws, and Trademark laws and all other intellectual and industrial property rights of every kind and nature and however designated, whether arising by operation of law, agreement, or otherwise, and all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including all rights in any of the foregoing). With regard to Patents, Intellectual Property includes potentially patentable inventions regardless of whether such inventions have been reduced to practice or not.

**1.14 MICA** – The Maryland Institute College of Art including its undergraduate college, graduate schools, the Division of Continuing Studies, research centers and all credit and non-credit programs, wherever located.

**1.15 MICA Copyrights** – Copyrights, whether registered or unregistered, owned in whole or in part by MICA, including Copyrights in Works owned or controlled by MICA, such as MICA’s print publications and Website.

**1.16 MICA Information** – Any information or data not personally owned by Personnel or Students and residing on the Hardware Resources.

**1.17 MICA Patents** – Patent rights, including issued Patents and Patent applications, in inventions owned or licensed in whole or in part by MICA.

**1.18 MICA Trademarks** – Trademarks, whether registered or unregistered, owned by MICA, including, without limitation, MARYLAND INSTITUTE COLLEGE OF ART; MICA; the stylized M|I|C/A logo; and any and all other MICA logos and textual marks used as Trademarks by MICA.

**1.19 MICA Usage Rights** – The non-exclusive, perpetual and royalty-free rights of MICA, arising where MICA would not otherwise have the rights, to reproduce Works created by Faculty and Students within their Scope of Employment, as part of an academic class, or in connection with a MICA Program, and to distribute and display such reproductions for non-commercial educational and scholarly purposes, exhibition, accreditation, development, alumni relations, promotion and recruitment of Students and Faculty, for inclusion in MICA archives and permanent collections, and as examples of Student and Faculty Works.

**1.20 MICA Programs** - All programs funded in whole or in part by MICA or MICA’s sponsors, including, without limitation, exhibitions, workshops, residencies, sponsors, lectures, Sponsored Programs, and Community Arts Programs.

**1.21 MICA Works** – Works owned by MICA.

**1.22 Moral Rights** – Rights accorded to authors and artists to control the attribution of their Works, and to prevent the mutilation or destruction of their Works under the federal Visual Artists Rights Act (“VARA”) provisions of the United States Copyright Act (17 U.S.C. 106A), state “moral rights” laws such as art preservation and “droit de suite” (resale rights) laws, and similar moral rights laws of other countries.

**1.23 Net Revenue** – Defined in Section 6.2.

**1.24 Provost** – Means MICA’s Provost and its designees.

**1.25 Outside Participants** – Visiting artists, fellows, and faculty from other institutions invited to provide lectures, workshops or participate in other MICA Programs; participants in MICA’s Community Art Programs, and the other third party participants in MICA’s Programs.

**1.26 Participation Agreement** – Defined in Section 5.4.1.

**1.27 Patent** – Exclusive right to manufacture, sell and use an invention, granted by the United States or other national governments to the inventor(s) for a limited period of time.

**1.28 Personnel** – MICA’s Faculty and Staff.

**1.29 Revenue** – Monies or other consideration received from a third party in exchange for Intellectual Property rights, but not including grants or other funding provided in support of Sponsored Programs, design or research activities.

**1.30 Scope of Employment** – The range of activities, tasks and duties performed or expected to be performed by Personnel while employed by MICA, including but not limited to a Faculty Member’s classroom and studio teaching, research, scholarly writing and administrative responsibilities activities within Faculty and Staff job descriptions; and usual and customary duties associated with Faculty and Staff positions.

**1.31 Sponsored Programs** – MICA Programs whereby Works are created for third parties in whole or in part by Students, Faculty, or both, including research projects of the Office of Research and any other MICA Programs subject to the terms of design development agreements, Participation Agreements, sponsored research agreements or other agreements (including grants) that contain provisions governing rights to Intellectual Property produced in connection with the sponsored activity.

**1.32 Staff** – All full-time and part-time staff employed by MICA including administrators and Students employed by MICA, but not including Faculty or Outside Participants.

**1.33 Students** – All full and part-time students actively enrolled at MICA, including, but not limited to, undergraduate students, post-baccalaureate students, graduate students, non-degree students, non-credit students and continuing studies students.

**1.34 Student Usage Rights** – The non-exclusive, perpetual, and royalty-free rights of a Student, arising where the Student would not otherwise have the rights, to reproduce Works created in whole or part by the Student for an academic class or in connection with a MICA Program, and to distribute and display his or her Works for the following purposes: (i) non-commercial, educational purposes; and (ii) in the Student’s portfolio. In exercising the Student Usage Rights, whenever practicable the Student will identify the owner of the Work (if known) and provide appropriate attribution to all other Creators who participated in creating the Work. Student Usage Rights may be waived by written agreement in connection with commissioned Works or Sponsored Programs.

**1.35 Substantial MICA Resources** – Any or all of the following: (i) services provided by MICA Personnel and Students outside of their usual and customary instructional, support, or administrative activities; (ii) use of specialized equipment, facilities and space (including but not limited to digital laser cutters, 3-D printers, computer labs, animation facilities, video and film editing facilities, studios, dark rooms, digital and traditional printing facilities); (iii) use of raw materials or processing materials provided by MICA; (iv) extra staffing for access to facilities; and (v) use of funding provided or obtained for a project by MICA. For the avoidance of doubt, “Substantial MICA Resources” does not include use of an ordinary office computer, local telephone calls, routine use of office printer paper, usual and ordinary administrative assistance from the Faculty member’s department, department-provided

art supplies for studio demonstrations, or ordinary use of library and media resources and other usual and ordinary use of MICA facilities.

**1.36 Technology Resources** – The following goods and services owned or licensed by MICA and made available to Users by MICA: (i) technology services, including the technical expertise of the staff of the Office of Technology Services, Internet connectivity, access to the MICA computer network and email servers, and services provided through the Domain (Defined in Section, 1.6); (ii) technology hardware, including computer work stations, printers, servers, routers, connecting cables, and audio/video gear, regardless of whether such resources are located in a computer lab, server room, microcomputing site, the Decker Libraries, MRC, Personnel desks, or are personally assigned to Personnel or Students; and (iii) computer software stored on or accessible through any of the Technology Resources.

**1.37 Trademarks** – A name, symbol, slogan, design or other device (each, a “mark”) used to indicate the source or origin of goods or services provided under the mark, whether the source is specifically identified or not. Technically, “trademark” means a mark used on goods or packaging for goods, and “service mark” means a mark used to advertise services. This Policy uses the term “Trademark” to refer to both trademarks and service marks.

**1.38 User** – Defined in Section 11.

**1.39 Works** – All tangible expressions or embodiments of works of authorship, artwork, designs, inventions, and other work products that may incorporate intangible property rights potentially protectable under one or more Intellectual Property laws. “Works” include, but are not limited to, textual works, 2-dimensional works of visual art, sculptural works, illustrations, graphic designs, product designs, interior designs, architectural works, motion pictures, photographs, audio-visual and interactive works, computer programs, choreography, musical compositions, and sound recordings.

**2. Administration of this Policy** – The Provost or its designee administers this Policy. This Policy may be amended from time to time by the Board of Trustees, or their designee; any such amendments shall be effective when first noticed in any of the Faculty Handbook, Staff Handbook or Student Rights and Responsibilities policies, in print or online.

**2.1 Intellectual Property Committee** – The Committee advises the Provost or its designee on matters related to the Intellectual Property Policies. The committee consists of five faculty members (with at least one from the graduate faculty), the Dean of Undergraduate Programs and Faculty, the Dean of Academic Services, the Directors of Decker Library and the Media Resources Collection, the Vice President of Technology Systems and Services, the Vice President of Student Affairs, and the Vice Provost for Research. The Provost and Vice President of Academic Affairs shall serve as a non-voting member and chair. Faculty representatives on the committee are appointed by the Personnel Committee and serve staggered two-year terms in order to maintain continuity.

In making its appointments of faculty to this committee, the Personnel Committee shall ensure that there is broad representation from the College's educational programs. In deliberating and making recommendations, the Committee may seek the counsel of the faculty, students, staff and from time to time, individuals outside the College. Towards this end, the Committee reserves the right to invite other non-members to attend specific committee meetings.

**2.2 Disputes Regarding the Policy** – Upon written request of any person subject to this Policy describing a dispute, the Provost or designee will direct the IP Committee to hear the dispute. All parties to the dispute will have an opportunity to make oral or written presentations regarding the dispute to the IP Committee. The Provost will notify the parties of IP Committee's determination. Within sixty (60) days of the Committee's adverse determination, appeals of the decision may be submitted to the President of MICA, whose decision will be final.

### **3. Office of Research**

MICA empowers its Students to think entrepreneurially and apply the problem solving, collaboration, creative and intellectual skills developed in their class work to the production of original works of art, design and scholarship.

The Office of Research and its research centers support MICA's goal of providing experiences that engage Faculty and Students in powerful roles that affect and shape our culture, by obtaining opportunities for Faculty and Students to participate in collaborative research and design projects with non-profit and for-profit organizations, and with other academic institutions. Faculty and Students are involved in real world research projects that highlight the role of the artist and designer in the twenty-first century.

The Office of Research will develop and expand MICA Programs that produce valuable Intellectual Property, either as a direct result or as a byproduct of Sponsored Programs or research initiatives. This Policy acknowledges the important role of Intellectual Property in the advancement of the objectives of the Office of Research and sets forth a framework for the thoughtful evaluation of Intellectual Property developed at MICA, whether pursuant to a Sponsored Programs, or otherwise through the use of Substantial MICA Resources.

**3.1 Office of Research** – MICA's Office of Research and its research centers develop strategic research collaborations and initiatives, identifying opportunities for MICA's Faculty and Student artists and designers to participate in such research collaborations and initiatives. MICA has long engaged Students in research and hands-on learning, often in collaboration with scientists and practitioners outside the arts. These research efforts were initially focused on providing professional development opportunities for Students, but in recent years other institutions have actively sought out MICA artists and designers as valuable participants in their own design and research efforts. The Office of Research was established to help MICA

formalize and enhance collaborative partnerships with other research organizations and to develop new relationships with academic institutions, as well as nonprofit and for profit organizations in the private sector. The Office of Research will consult with the Provost, to assist in determining the value of securing legal protection for MICA's Intellectual Property developed in connection with research initiatives and Sponsored Programs, and to explore opportunities for commercialization of such Intellectual Property rights.

#### **4. Copyright Compliance Policy**

**4.1 Compliance with Copyright Law** – MICA expects that all Students, Faculty, and Staff comply with all applicable Copyright laws. Copyright law provides that an unauthorized use of one or more of a Copyright owner's exclusive rights (reproduction, distribution, public performance, public display, or preparation of a derivative work based on a Work) is copyright infringement, unless the use is a fair use.

**4.1.1 Secure Rights and Permissions** – Whenever Copyright protected Works are used by Students, Faculty or Staff, and fair use does not clearly apply, MICA requires that the permission of the Copyright owner be obtained. Guidance for identifying rights, determining the applicability of fair use, researching the identity of Copyright owners and securing permissions is provided in the Intellectual Property Guidelines in Section 10 of this Policy ("IP Guidelines").

**4.1.2 Works Not Subject to Copyright Protection** – Certain Works are not Copyright protected, such as Works for which the term of Copyright has expired, Works that are prepared by employees of the federal government within the scope of their employment, and Works comprised solely of subject matter that is not Copyrightable (e.g., utilitarian objects, ideas, facts, procedures, processes, systems, methods of operation, concepts, principles, or discoveries). Additionally, some Copyright protected Works have been dedicated to the public domain (subject to user compliance with certain conditions) by their authors or Copyright owners through the use of open source licenses such as GNU general public licenses or Creative Commons agreements that permit authors and users to share Works under easy-to-use rights systems.

In general, Works that are not Copyright protected may be copied, adapted, and used freely, without permission. However, some Works that are not Copyright protected may be subject to other Intellectual Property rights or may incorporate other Works that remain Copyright protected. For example, a 1950's era television program's Copyright may have entered the public domain (for failure to renew copyright) but the program title may still be protected by Trademark law, and the music in its soundtrack or the short story from which the television program's screenplay was adapted, may remain Copyright protected. Conclusions about a Work's public domain status may be relied upon only after a thorough review of the Work and all of its elements.

**4.1.3 Prohibition of Illegal File-sharing and Piracy** – MICA prohibits use of Technology Resources for illegal downloading, distributing, transmitting, or sharing of Copyright protected Works, or for making Copyright protected Works available for illegal downloading, distributing, transmitting, or sharing.

**4.1.4 Personal Responsibility** – Personnel and Students are responsible for compliance with Copyright laws when using Copyright protected materials. MICA is not required to defend or assist in the legal defense of Personnel or Students who have not obtained permissions from the Copyright owner for the use of Copyright protected Works, where such permissions are required.

**4.2 Compliance with License Agreements** – Many copyright protected resources are provided by MICA to Faculty, Students and Personnel under the terms of license agreements, including computer operating systems such as Apple Leopard and Microsoft Vista, digital photography and video editing programs such as Photoshop and Final Cut Pro, InDesign, Creative Suite, and access to image databases such as the Corbis Image Library and ARTstor. License agreements may come with boxed software products, appear in a click-through box during a registration or download procedure, or reside in terms of use agreements on websites. Such license agreements may limit installation of software to a single desktop or laptop computer. Reproduction rights in images obtained from licensed databases may be limited in various ways, e.g., to educational and scholarly purposes. Students, Faculty and Staff are expected to abide by the terms of all applicable license agreements.

**4.3 Fair Use under Copyright Law** – Fair use is the Copyright law doctrine that permits certain unauthorized uses of a Copyright protected work that would otherwise violate one or more of the exclusive right(s) of the Copyright owner. Under current U.S. Copyright law, fair use is determined by application of the so-called “Four-Factors” test that sets out four non-exclusive factors, and a non-exhaustive illustrative list of uses that *may* constitute a fair use, depending on all of the facts and circumstances of each case. Fair Use Guidelines, describing the four factors in detail with examples of Works found by courts to be fair or unfair uses is provided in Section 10 of the IP Guidelines.

**4.4 Educational Fair Use** – The U.S. Copyright Act provides specific fair use exemptions for students and educators in nonprofit educational institutions. Sections 110(1) and 110(2) of the Copyright Act specifically permit certain displays, performances, and transmissions of Copyright protected Works in studio and classroom teaching. Fair Use may be applicable to other uses of Copyright protected Works, beyond the specific exemptions in Section 110, under the Four Factors test, see Section 4.4.4. The following Sections, 4.4.1 - 4.4.3, discuss the Section 110 exemptions:

**4.4.1 Performance and Display of Works in Studio and Classroom** – Students and Faculty may display or perform certain Works (see criteria

below) in studios and classroom as a part of their courses at MICA. Section 110(1) of the Copyright Act exempts from infringement performances of poetry, plays or other dramatic Works, music, video and motion pictures and displays of photography and other Works of art in classrooms and studios during teaching activities, so long as the copy of the Work displayed or performed was lawfully obtained.

#### **4.4.2 Performance and Display of Works Via Technology**

**Resources** – Students and Faculty may display, perform, and transmit certain Copyright protected Works (see criteria below) via the Technology Resources in connection with an academic or studio course. Section 110(2) of the Copyright Act (Sometimes referred to as the TEACH Act) exempts from infringement certain performances, displays, and transmissions of Works via digital course management systems and other secure electronic storage systems by Faculty and Students.

**4.4.3 Criteria for Section 110 Exemptions** – Almost any type of Copyright protected Work typically used during teaching activities may be displayed or performed in studio and classroom teaching, or transmitted via Technology Resources, so long as all of the following criteria are met:

- Works are displayed, performed, or transmitted by, or at the request of a Faculty member in connection with teaching a specific academic or studio course;
- Works are directly relevant to the curriculum and materially assist in the teaching of the course;
- Access to Works is limited to Students currently enrolled in the course for which the material is intended;
- Works are accessible without fee;
- Copies of Works displayed, performed, or transmitted were lawfully obtained;
- Amount of Work displayed, performed, or transmitted equates to amounts typically used in teaching;
- Works bear a Copyright notice;
- Works are not re-used in the same course the following year without securing permission from their Copyright owners through the Copyright Clearance Center, [www.copyright.com](http://www.copyright.com), or the MICA Bookstore;
- Display, perform or transmit only a limited portions (e.g., one page, illustration, chart, or table) of Works expressly prepared for educational programs, including, from an academic or studio course textbook or work book;
- Larger portions (such as reading assignments) of Works expressly prepared for educational programs, including, e.g., academic or studio textbooks, work books, academic course packs (bundled photocopies of various materials for a particular course for sale to Students), instructional



videos and sound recordings, and distance learning materials may not be displayed or transmitted via the Technology Resources without permission of the Copyright owner. Arrangements to secure permissions to display or perform such Works must be obtained through the Copyright Clearance Center at [www.copyright.com](http://www.copyright.com) or through the MICA Bookstore.

A list of additional resources and tools for understanding Section 110, Copyright, and fair use may be found in Section 10.3.6 of the IP Guidelines.

**4.4.4 Fair Use May Permit Broader Use of Works** – Even if the exemption provided in Section 110(2) of the Copyright Act does not specifically apply to the performance, display or transmission of certain Works, Students and Faculty may nevertheless be able to use Copyright protected Works if the usage is a fair use under the Four Factor test (see IP Guidelines), including uses such as:

- Dramatizing musical Works in the studio or classroom;
- Displaying a PDF of recently published art history article on the course’s password-protected website as a unplanned class assignment;
- Linking to or embedding Copyright protected audio and video files in digital course management systems for class assignments; and
- Repeated display, performance, and/or transmission of orphan works. “Orphan works” are Copyright protected Works whose author or Copyright owner cannot identified or located for permission despite a diligent search.

Examples of uses of Copyright protected works determined to be fair or not fair uses found may be found in Sections 10.3.1-10.3.5 of the IP Guidelines. A list of additional resources and tools for understanding Copyright and fair use may be found in Section 10.3.6 of the IP Guidelines.

**4.5 Reproduction of Works in Photocopies** – Copyright law provides a limited exemption from infringement arising from reproduction of protected Works in photocopies for private study, scholarship, and research.

**4.5.1 Photocopies Furnished by Library Personnel** – Congress created an express exemption from Copyright infringement in Section 108 of the Copyright Act, for nonprofit libraries and archives. Under Section 108, MICA library staff may, upon request, furnish a single copy of a portion of a Work per person, as long as the copy is made for the person’s personal study, scholarship, or research, and the photocopy includes the Work’s notice of copyright, or if the Work does not bear a notice, a legend similar to “Notice: This material may be protected by Copyright Law (Title 17 U.S.C.)”. The library may furnish a single copy of an entire work to a person if a new or used copy of the Work is not available at a fair price and the above-mentioned requirements are met. The Section 108 exemption does not extend to copies of musical, pictorial, graphic, audiovisual Works, except that pictorial or graphic works published as illustrations, diagrams, or similar are allowed as audiovisual Works dealing with the news. A person may not request a copy as part of

a related or concerted reproduction or distribution of multiple copies. MICA library will refuse to furnish copies if a concerted effort by one or a group of people is suspected. However, if a person exceeds this permitted use, Copyright law limits the liability of library Personnel for such infringement if the library employee reasonably believed that the use of the Work was a fair use. MICA provides self-service photocopier stations in the Library and other campus locations and expects that use of self-service photocopiers will not exceed the Section 108 exemption unless fair use clearly applies. The Section 108 exemption is conditioned upon prominent display of the following notice adjacent to photocopier and/or service desk location:

***NOTICE***

***WARNING CONCERNING COPYRIGHT LAW***

**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 in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified 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. MICA strictly forbids any copying or distribution of copyright protected materials for transmission to others. Unauthorized electronic transmission of copyright protected material may make a user liable for copyright infringement.**

**4.5.2 Digital Copies of Works** – Section 108 was amended in 1998 to permit a library to create digital copies of Copyright protected Works in two limited circumstances. First, a library may make up to three copies of a Copyright protected Work for preservation or archival purposes if damaged, deteriorating, lost or stolen, or the existing Work format is obsolete, if after a reasonable effort the library determines that an unused replacement cannot be obtained at a fair price and the library password protects, streams or otherwise limits the transmission of digital copies of the Work outside of the library. Second, a library may reproduce, distribute, display, or perform “published” Works in digital copies during their last 20 years of Copyright protection for purposes of preservation, scholarship or research, if after a reasonable effort the library determines that the Work is not currently in commercial exploitation; is not available for a reasonable price; and the Copyright owner has not notified the Copyright Office that the Work is subject to normal commercial exploitation or can be obtained at a reasonable price. “Published” means that copies of the Work have been offered or distributed to the public by sale or other transfer of ownership, or by rental, lease, or lending. “Not currently in commercial exploitation” means out-of-print Works. In both cases, digital copies should bear the Work’s copyright notice or legend that the Work is Copyright protected, as described in Section 4.5.1, above.



**4.5.3 Fair Use and Copying by Faculty and Students** – The Section 108 exemptions are limited to photocopies furnished by library Personnel to library users. Faculty, Students, and Staff may rely on an application of the fair use doctrine in making photocopies of Works for educational and scholarly purposes. Prior to passage of the current U.S. Copyright Act, a group of publishers, authors, teachers and education associations convened to devise guidelines for the application of fair use to photocopying by Faculty in nonprofit educational institutions for teacher preparation, research, and classroom instruction. *The Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions* (“Classroom Photocopying Guidelines”) resulted. Section 4.6 sets out the criteria required to comply with the Classroom Photocopying Guidelines.

**4.6 Classroom Photocopying Guidelines** – The Classroom Photocopying Guidelines are a set of best practices that Faculty may follow in making photocopies of books and periodicals for educational and scholarly purposes. Although the Classroom Photocopying Guidelines are reported in the legislative history of the Copyright Act (H.R. Rep. No. 94-1476 at 68-80), they are not law and cannot be relied upon in every situation to determine whether or not a Copyright protected Work may legally be photocopied. Electronic copies, for example, are not addressed in the Classroom Photocopying Guidelines. Nevertheless, when clearly applicable, the Classroom Photocopying Guidelines are widely accepted, providing a fair use “safe harbor” from Copyright infringement. Students, Faculty and Personnel should also consider whether photocopies or electronic copies of a Work that do not appear to fit in the Classroom Photocopying Guidelines safe harbor may nevertheless qualify as fair use. See the IP Guidelines explaining fair use and providing examples in Section 10 of this Policy. The Classroom Photocopying Guidelines apply specifically to two types of uses of Copyright protected materials: (i) Faculty preparation and scholarly research, see Section 4.6.1; and (ii) distribution of copies to Students in classroom and studios, see Section 4.6.2.

**4.6.1 For Faculty Preparation and Scholarly Research** – A single copy of a Copyright protected Work may be made of any of the following types of Works by or at the request of Faculty members for use in scholarly research, classroom teaching, or preparation to teach a class: (i) one chapter of a book; (ii) one article from a periodical or newspaper; (iii) one short story, short essay, or short poem whether or not from a collective work; or (iv) one chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

**4.6.2 For Distribution of Copies To Students** – Multiple copies (one copy per student enrolled in a course) of Copyright protected Works may be made for distribution to Students in classrooms and studios, so long as: photocopying copying meets the “Brevity,” “Spontaneity,” and “Cumulative Effect” tests, defined below. Also, each photocopy must include a Copyright notice for the original work. If the original work bears no Copyright notice, a legend to that effect should be included.

**4.6.2.1 Brevity** – means that a Faculty member may use: (i) a complete poem if less than 250 words and printed on no more than two typed pages, or a 250 word excerpt of a longer poem; (ii) a complete article, story, or essay of fewer than 2,500 words, or an excerpt from a longer Work of no more than 1000

words or ten percent of the Work whichever is less, but in any event a minimum of 500 words is permitted; (iii) one illustration, chart, graph, diagram, drawing cartoon, or reproduction per book or per periodical issue; and (iv) less than 2,500 words in an entire Work combining text and illustrations or no more than two pages (or no more than ten percent of the words in the Work) from such Works. These numerical limits may be expanded to permit completion of an unfinished line of a poem or of an unfinished prose paragraph;

**4.6.2.2 Spontaneity** – means that (i) copying is made at the instance and inspiration of the individual Faculty member (not at the direction of a department chair or an administrator); and (ii) the inspiration and need to use the Copyright protected Work occur so close in time that it would be unreasonable to expect a timely reply to a request for permission to use the Work.

**4.6.2.3 Cumulative Effect** – means that (i) the particular copy of the Copyright protected Work will be used in connection with one course; (ii) no more than one poem, article, story, essay, or two excerpts of a Work may be copied from the same author, nor more than three from the same collective work (other than current news periodicals) or periodical volume during one class term; and (iii) there will be no more than nine instances of such multiple copying for one course during a single class term.

**4.7 Photocopying Subscription Periodicals** – The Classroom Photocopying Guidelines are not intended and do not apply to photocopying of periodicals for distribution to Faculty in lieu of obtaining additional subscriptions of such periodicals.

**4.8 Use of Works with Digital Rights Management** – The Digital Millennium Copyright Act (“DMCA”) amended the Copyright Act in 1998 and, among other things, criminalizes circumvention of access controls known as “digital rights management” or “DRM” whether or not Copyright infringement occurs. Because Copyright infringement is not required to find a violation, fair use is inapplicable as a defense to the anti-circumvention provision. Consequently, every three years, the Registrar of Copyrights issues exemptions of certain classes of Works so users can make noninfringing uses of such Works without violating the DMCA anti-circumvention provision. For example, the current exemption permits circumvention of DRM on audiovisual Works in MICA’s collection used to create compilations of audiovisual Works for use by Faculty and Students in media/film studies classes.

## **5. Development and Ownership of Intellectual Property Rights –**

### **5.1 Intellectual Property Owned by Individuals –**

**5.1.1 Faculty Works** – Each Faculty member owns the Intellectual Property in the Works the Faculty member individually creates in pursuit of the Faculty member’s academic, scholarly and artistic activities within his or her Scope of

Employment and without use of Substantial MICA Resources, subject to MICA Usage Rights, and Sections 5.1.4, 5.3, and 5.4.

**5.1.2 Student Works** – Each Student owns the Intellectual Property in the Works a Student individually creates in his or her pursuit of academic, scholarly and artistic activities at MICA, subject to Faculty Usage Rights, MICA Usage Rights, and Sections 5.1.4, 5.3, and 5.4.

**5.1.3 Outside Participant Works** – Each Outside Participant owns the Intellectual Property in the Works that the Outside Participant individually produces during a workshop, demonstration, or other MICA Program, subject, with Outside Participant’s approval, to Student Usage Rights, Faculty Usage Rights, MICA Usage Rights, and Sections 5.1.4, 5.3, and 5.4.

**5.1.4 Collaborative Works** – Collaborative Works will be owned by the group of Creators having created such Collaborative Works, on a pro-rata ownership basis (subject to Section 5.2), subject to Student Usage Rights, Faculty Usage Rights, MICA Usage Rights, and Sections 5.3, and 5.4.

**5.2 Modification of Ownership** – Creators at MICA may modify the ownership allocation of Intellectual Property set forth in 5.1.4 as between each other, in a written agreement signed by all of the Creators of a Collaborative Work; MICA’s ownership and other rights may only be modified by written agreement executed by the Provost.

### **5.3 Intellectual Property Owned by MICA –**

**5.3.1 Staff Works** – MICA owns the Intellectual Property in all Works created by Staff within their Scope of Employment and this is called Work for Hire.

**5.3.2 Administrative Works by Faculty** – MICA owns all administrative Works (and accompanying Intellectual Property) created by Faculty within their Scope of Employment, that are created or developed for administrative purposes, including, but not limited to, grade evaluations, correspondence, materials prepared for Student and Staff records, departmental documentation and other administrative materials. MICA does not own a Faculty member's syllabi, lesson plans or Works created for studio and classroom teaching purposes.

**5.3.3 Works Commissioned by MICA** – Unless otherwise provided in a written agreement approved by the Provost, MICA owns the Intellectual Property rights in the Works MICA commissions, whether inside or outside the Scope of Employment of any Faculty or Staff member.

### **5.3.4 Works Created Using Substantial MICA Resources –**

(i) **The Provost may require the use** of written agreements in connection with projects that use Substantial MICA Resources. MICA will own the

Works and Intellectual Property rights in Works created by Creators that use Substantial MICA Resources, subject to Student Usage Rights and Faculty Usage Rights and any applicable written agreements.

(ii) All MICA Personnel that desire to use Substantial MICA Resources will obtain the consent of the Provost prior to commencing the project. Faculty members responsible for supervising such projects will submit a written description of the project to the Provost, identifying: (i) the Personnel who would participate in the project; (ii) any and all artistic, scholarly, research or educational goals of the project; (iv) a description of the resources to be provided by MICA and (v) a description of the proposed Works that will result from the project. The Provost will review the project and determine whether the project uses Substantial MICA Resources.

(iii) If the Provost determines that the project uses Substantial MICA Resources, the ownership of the resulting Works and Intellectual Property will be allocated as described in Section 5.3.4, unless the Provost, after evaluating the project, elects not to assert an ownership interest on behalf of MICA, as provided in Section 7.1.3, in which case, ownership in the Works and Intellectual Property will be determined by the Provost.

(iv) Whether a use of MICA facilities, Students, or Personnel constitutes a use of Substantial MICA Resources will be determined by the Provost. Faculty or Personnel may obtain a determination, at any time before or during the creation of a Work, of whether a Work constitutes a use of Substantial MICA Resources, by submitting a written request to the Provost, whose decision shall be final.

**5.3.5 Duty to Assign Inventions and Works** – Any Personnel creating inventions or Works that incorporate MICA Intellectual Property agrees to execute any documents deemed necessary by MICA to protect MICA’s interest in such invention or Works, including without limitation any assignment or Intellectual Property application, and grants MICA a limited power of attorney in the event MICA is unable to contact such Personnel to secure a signature deemed necessary by MICA to protect MICA’s rights in such invention or Works.

## **5.4 Ownership of Intellectual Property in Works from Sponsored Programs –**

### **5.4.1 Sponsored Programs –**

(i) MICA requires the use of written agreements in Sponsored Programs. These agreements between MICA and Sponsored Program sponsors typically create obligations with respect to ownership and use of Intellectual Property created in connection with the Sponsored Program, and may also provide specific obligations for the reporting of inventions, technical data, and copyrightable Works. Unless otherwise provided in the applicable Participation Agreement, such rights will be subject to Student Usage Rights, Faculty Usage Rights and MICA Usage Rights.

(ii) All Faculty, Students and third parties creating Intellectual Property or Works in Sponsored Programs will be required to execute “Participation Agreements” that set forth the obligations of the participants concerning ownership of Intellectual Property rights in Works created pursuant to such programs, as well as other applicable requirements for participation in the program. The terms of the Participation Agreements supersede any conflicting terms in this Policy with respect to Intellectual Property and Works created in connection with the Sponsored Program.

(iii) Personnel responsible for supervising such projects will submit a written description of the project to the Provost. The submission will identify: (i) the sponsor and the sponsor’s relationship to MICA; (ii) the Creators to be involved in the project; (iii) any and all artistic, scholarly, research or educational goals of the project; (iv) a description of the resources to be provided by MICA; and (v) a description of any Works to be developed.

(iv) The Provost will determine the terms and conditions of the agreements that will be required for the Sponsored Program, provide the responsible Personnel with form agreements, and assist in the negotiation process with any sponsors and other Outside Participants.

#### **5.4.2 Works Created in Community Arts Programs –**

(i) MICA requires the use of Participation Agreements with community groups and individuals participating in Community Arts Programs. Outside Participants in Community Arts Programs will own the Intellectual Property in Works they independently create. Some Works created in Community Arts Programs will be Collaborative Works such as murals. Outside Participants will own Intellectual Property in Collaborative Works created in such Community Arts Programs as provided in Section 5.1.4. All such rights shall be subject, with the Outside Participant’s approval, to Student Usage Rights, Faculty Usage Rights, MICA’s Usage Rights, and subject to Sections 5.2 and 5.4.1.

(ii) Personnel responsible for supervising such projects shall submit a written description of the project to the Provost. The submission will identify: (i) the Outside Participants (both the community group and individuals, as applicable) to be involved in the project; (ii) the relationship between MICA and the proposed Outside Participants; (iii) the Students who plan to be involved in the project; (iv) any and all artistic, scholarly, research or educational goals for the project; (v) the resources to be provided by MICA; and (vi) a description of the Works that would be produced in the project.

(iii) The Provost will provide the responsible Faculty and Staff member(s) with appropriate agreements and assist in the negotiation process with the Outside Participants.

**5.4.3 Works Created in Programs Funded by Grants** – Intellectual Property in any Works created in connection with a Sponsored Program that is funded in whole or in part by grants received from a governmental agency, nonprofit organization, private foundation, or other grantor or donor (other than grants to individual artists) will be owned by MICA to the fullest extent possible under applicable laws and regulations, subject to the terms and conditions required by the grant. MICA ownership of such Works will be subject to Student Usage Rights and Faculty Usage Rights, unless the applicable Participation Agreement otherwise provides.

**6. Intellectual Property Revenue Sharing** – MICA will share Revenue it receives from Intellectual Property created using Substantial MICA Resources (“Eligible Intellectual Property”) with the Faculty member(s) that created the Eligible Intellectual Property (“Eligible Faculty”) subject to the terms of this section and to Revenue allocation provisions of any written agreement(s) related to the Eligible Intellectual Property approved by MICA pursuant to this Policy. MICA may, on a case-by-case basis, treat other Personnel on the same basis as Eligible Faculty for purposes of this Section 6.

**6.1 Deductions from Revenue** – MICA will make the following deductions from Revenue received in connection with the sale or licensing of Eligible Intellectual Property before distributing Net Revenue pursuant to Section 6.2.

**6.1.1 Overhead Costs** – First, MICA will deduct a percentage of Revenue to cover the general overhead costs of developing, obtaining, managing, and defending its Intellectual Property portfolio. The percentage of Overhead Costs shall be determined by the Provost.

**6.1.2 Project Costs** – Second, Revenue will be applied to reimburse any specific, incremental expenses incurred by MICA for securing Patent, Copyright or other Intellectual Property protection relevant to the Eligible Intellectual Property, and all transaction costs, including outside consultants, attorneys fees, and other costs incurred in connection with securing any license or other business opportunity related to the Eligible Intellectual Property.

**6.2 Distribution of Net Revenue** – “Net Revenue” means the Revenue remaining after deductions to Revenue are made pursuant to Section 6.1.

**6.2.1 Eligible Faculty’s Share** – MICA will distribute pro rata among Eligible Faculty members a percentage of the Net Revenue it receives from the Eligible Intellectual Property, unless applicable laws, regulations, provisions of grants, or the terms of the applicable Participation Agreements provide otherwise.

**6.2.2 MICA’s Share** – MICA will retain a percentage of the Net Revenue, to be distributed as follows:



(i) **Department's Allocation** – a percentage of MICA's Share will be distributed to the Eligible Faculty member's department or analogous unit to be used for research, scholarship, development of creative Works, and related academic activities at the discretion of the Eligible Faculty member's respective department chair or equivalent.

(ii) **Office of Research** – a percentage of MICA's Share will be distributed to the Office of Research to support its work in developing sponsored research programs, and opportunities to license MICA's Projects developed in connection with Sponsored Research Programs.

(iii) **Remaining MICA Share** – The remaining portion of MICA's share will be retained by MICA, to be allocated within MICA as determined by the Provost.

**6.3 Timely Distribution** – MICA will distribute accrued revenue due Eligible Faculty members under this policy at least annually. Distribution will be made along with a statement of related income and expenses.

**6.4 Trademark Revenue** – Revenue received in connection with a MICA Trademark created using Substantial MICA Resources will not be shared with the Eligible Faculty.

## **7. Assessment and Management of Intellectual Property** –

### **7.1 Management of MICA Intellectual Property and Works** –

**7.1.1 Disclosure to MICA** – Personnel that anticipate creating (or that realize they have created) inventions or Works owned in whole or in part by MICA under this Policy or Intellectual Property subject to this Policy will timely submit a Disclosure Form to the Provost, identifying all such inventions and Works and associated Intellectual Property. This will aid the Provost in determining which, if any, steps will be taken to protect MICA's ownership. If Personnel are unsure about MICA's rights in Works, the disclosure should be made and the Provost will determine ownership rights under this Policy.

**7.1.2 Evaluation by MICA** – The Provost will, in its sole discretion, in a reasonably prompt manner, make a determination whether and how to seek legal clearance and protection of the Intellectual Property, Works or inventions disclosed to it, the scope of such protection, whether and how to pursue commercialization of the Intellectual Property or Works or inventions, and any licensing of MICA's rights to the Creators of the Intellectual Property, Works or inventions. Specifically, the Provost will review copyrightable Works, including software, disclosed to it pursuant to this Policy, and determine whether registration, notices, or other actions should be taken to protect such Intellectual Property. With respect to patentable inventions or other Intellectual Property, the Provost will review invention disclosures and consult with the Creator(s)

and others associated with the Intellectual Property and inventions in order to investigate the patentability and licensing potential of the disclosed inventions or the Intellectual Property. The Provost will determine whether any Patent application(s) should be filed by MICA. Nothing in this Policy will be construed to require MICA to register any Trademarks or Copyrights or to apply for any Patents, whether MICA is entitled to do so or not.

**7.1.3 Election Not to Assert Ownership Interest** – If the Provost elects not to assert MICA’s interest in the disclosed Intellectual Property, the Provost will notify the person(s) making the disclosure of MICA’s decision not to assert ownership rights within a period of 90 days from the date of disclosure, and MICA’s ownership interest in the Intellectual Property will revert to the Creator(s), except where prohibited by law or agreement with a third party and except for those rights retained under Section 7.1.7. The Creator(s) thereafter may seek Patent or other Intellectual Property protection as owner and MICA will have no further rights with respect to the released Intellectual Property, except for (i) the Section 7.1.7 retained rights, and (ii) the Provost may, in its sole discretion, elect to impose certain limitations or obligations.

**7.1.4 Transfer of Ownership Interest** – MICA may, at any time after having asserted an ownership interest in Intellectual Property, elect to transfer all or part of MICA’s interest in such Intellectual Property to the Intellectual Property’s Creator(s) except for (i) the Section 7.1.7 retained rights, and (ii) the Provost may, in its sole discretion, elect to impose certain limitations or obligations.

**7.1.5 Responsibilities of Intellectual Property Owners** – For Works in which MICA is an owner of the Intellectual Property, all Creators will, upon MICA’s request and at MICA’s expense, assist the Provost in obtaining, perfecting, and maintaining Intellectual Property protection (e.g., copyright registrations, patents), including executing such documents and instruments as may be required by the Provost. Creators will also grant MICA a limited power of attorney in the event MICA is unable to get in touch with a Creator to secure a signature deemed necessary for the documents in the preceding sentence.

**7.1.6 Use of Others’ Copyright Protected Materials** – All Creators of Works comprised in part of MICA Intellectual Property will make a written disclosure to the Provost detailing any and all uses of third party Intellectual Property incorporated into such Works. Such disclosure will include (i) the basis for any fair use (see the Four-Factor Test set forth in Section 10.2) relied upon by the Creators in using such third party Intellectual Property; (ii) steps taken to comply with all applicable Intellectual Property, Moral Rights and rights of publicity and privacy laws; (iii) steps taken to obtain required permissions; and (iv) all license agreements governing use of any third party rights.

**7.1.7 Rights Retained in MICA Intellectual Property** – If MICA elects not to assert its ownership in disclosed Intellectual Property, or elects to transfer all or part of MICA’s interest in MICA Intellectual Property to the Creator of such

Intellectual Property, MICA shall, absent specific language in a written agreement between the Creator and the Provost recognizing and modifying these retained rights, retain the following rights: (i) the right to recover all expenses incurred by MICA in the development, protection and exploitation of such Intellectual Property, with such reimbursements to be made from the initial consideration realized from the use of such Intellectual Property rights prior to any other cost deductions; and (ii) a non-exclusive license for MICA, and any of its Faculty and Students, to use the non-elected or transferred Intellectual Property for academic purposes, and for any Sponsored Programs.

**7.2 Written Agreements Must be Executed by Authorized Persons** – Personnel and Students will not sign agreements including, without limitation, any license, materials transfer, or confidential disclosure agreements, or take any action with respect to MICA’s rights in Intellectual Property or Works covered by this Policy unless authorized to do so by the Provost. MICA will not be bound by any unauthorized actions of Personnel or Students and will not be bound by any unauthorized agreements resulting from such actions.

## **8. Protection and Use of MICA Intellectual Property**

**8.1 MICA Copyrights** – MICA protects its Copyrights through the following policies, which govern the registration, use and licensing of MICA Copyrights. For more information about Copyright Law, refer to tutorial materials on Copyright Law and Fair Use attached and the FAQ’s on Copyright Law and Fair Use attached.

**8.1.1 Identification of MICA Copyrights** – Because copyrightable Works are protected under Copyright law upon fixation in a tangible medium of expression, the MICA community routinely creates numerous Copyright protected Works. Registration of Copyrights with the United States Copyright Office offers tangible benefits for the Copyright owner, and is a simple and relatively inexpensive endeavor. However, because the volume of potentially registrable Works created at MICA is large and in many cases involves ephemeral works such as event flyers or notices, MICA may determine that federal registration is not warranted in many cases. MICA Works that will be published, performed or displayed for longer periods of time or that may for other reasons be deemed of significant value to MICA, if susceptible of Copyright protection, should be federally registered. The Provost administers the registration, licensing and use of MICA Copyrights.

**8.1.2 Evaluation of MICA Copyrights** – MICA Personnel must contact the Provost before publishing (offering copies of the Work to the public) copyrightable MICA Works. The Provost will evaluate the Work as provided in Section 7.1 and determine whether: (i) legal clearance is necessary prior to publication, (ii) MICA’s best interests are served by seeking Copyright registration, (iii) any restrictions apply to publication of the Work, and (iv) whether written agreements are required. MICA Personnel should make special note and inform the Provost of MICA Works susceptible

of Copyright protection that could be valuable to MICA through licensing or otherwise. Examples include motion pictures, audiovisual works, interactive works, print publications, prints, computer software and music.

**8.1.3 Use of MICA Copyrights by Personnel and Students** – If the Provost approves the use of a MICA Copyright, Personnel and Students may use the MICA Copyrights for their intended purpose or as directed by the Provost.

**8.1.4 Other Licensing of MICA Copyrights** – MICA Copyrights shall only be used by third parties in accordance with a written license agreement issued by the Provost. Requests for license or usage rights must be made in writing to the Provost and will be reviewed in accordance with Section 7.2.

**8.1.5 Copyright Notice** – Whenever practicable, Works which contain MICA Copyrights should bear a Copyright Notice, as follows:

**Copyright © [Year] Maryland Institute College of Art**

**8.2 MICA Trademarks** – MICA protects its Trademarks through the following policies, which govern the registration, use and licensing of MICA Trademarks. For more information about Trademark Law, refer to the tutorial materials on Trademark Law, attached.

**8.2.1 Clearance, Registration and Use of MICA Trademarks** – Registration and uses of MICA Trademarks are administered by the President or its designees. Before adopting a new Trademark for use in connection with any of MICA's goods or services, or expanding the use of an existing MICA Trademark for use in connection with new goods or services, approval must be obtained from the Provost. If the Provost approves the new MICA Trademark, or expanded usage, it will determine whether any the following actions are required: (i) securing an availability search and legal review, (ii) determining whether any Copyrights in a design Trademark must be acquired, (iii) determining whether an application to federally register the Trademark should be filed, and (iv) filing Trademark applications if appropriate.

**8.2.2 Trademark Licensing** – MICA Trademarks may not be used in connection with goods, services or in advertising by Personnel, Students, or third parties without written authorization from the Provost. All requests require a written proposal or request that includes: (i) description of the proposed use; (ii) drawings or prototypes showing how MICA Trademarks will be applied to goods and used in advertising; and (iii) a description of where the goods or services will be offered or advertised. If the Provost approves a requested use, a written license agreement between MICA and the MICA Trademark user will be provided by the Provost, and usage may not commence until the license agreement is executed by MICA and the licensee.

**8.2.3 Trademark Use Guidelines and Restrictions** – Uses of MICA Trademarks by Personnel, Students or third parties may not state or imply that MICA

endorses, sponsors, or has an affiliation with any particular goods, services, people, organizations, or events without the prior written approval of the Provost. In the event a proposed use is approved by the Provost, such proposed use will be subject to the terms set forth in a written license between the user and MICA.

**8.2.4 Nominative Fair Use of MICA Trademarks** – Some uses of MICA Trademarks are considered “nominative fair use”, which do not require prior approval by MICA. Examples of nominative fair uses include a Student identifying him or herself in writing as a MICA student; a Faculty member identifying the actual relationship between the Faculty member and MICA; or a Student organization announcing an event to take place on or near MICA’s campus. Such uses must not give the appearance that MICA sponsors or is otherwise affiliated with the entity making use of the MICA Trademark where no such sponsorship or affiliation exists. For more information about fair use of Trademarks, refer to the tutorial materials on Trademark Law, attached.

**8.2.5 Use of Trademark Designations** – The Provost will consider the advisability of using Trademark designations such as <sup>TM</sup> and <sup>SM</sup> and may establish policies and guidelines with respect to such designations. The Provost may establish additional policies and guidelines for the use of MICA Trademarks, which may include using designations such as <sup>®</sup> in conjunction with Federally registered Trademarks.

**8.3 Inventions and Use of MICA Patents** – This Policy (including the specific policies stated under Sections 8.3 and 7.1) is intended to protect MICA’s Patent rights by governing the disclosure, protection, use and licensing of inventions owned by MICA under this Policy, and any resulting MICA Patents. The Provost may publish additional policies or guidelines relating to MICA Patents, such as those relating to record-keeping during the inventive process and restrictions on publication, or may develop policies or guidelines specific to a particular project, if the Provost deems such additional policies and guidelines necessary to protect MICA’s interest in potentially patentable inventions.

**8.3.1 Inventors** – Whenever Faculty members or Personnel conceive, develop or reduce to practice an invention in which MICA would have an ownership interest under this Policy, they must, upon creation, promptly and fully disclose such invention to the Provost through the submission of a Disclosure Form as provided in Section 7.1.1. MICA shall evaluate the patentability of such inventions as provided in Section 7.1.2. For more information about Patent Law, refer to the tutorial materials on Patent Law, attached.

**8.3.2 Patent License Request Required** – MICA Patents shall only be used in accordance with a written Patent license approved by the Provost. In the event a party wishes to license a MICA Patent, such party must make a detailed written request to the Provost. The Provost will review any Patent license request in accordance with Section 7.1.2.

**8.4 Protection of Software** – At various times, Faculty, Students or Outside Participants may develop computer software using Substantial MICA Resources, or as part of a Sponsored Program or Community Arts Program. Such computer software is subject to the same ownership and license requirements provided in this Policy as any other Works created using Substantial MICA Resources.

**9. Compliance with this Policy** – Each Student, Faculty member, and Staff member is individually responsible for reading, understanding, and complying with this Policy. Violations of this Policy may result in disciplinary actions as provided in MICA’s Technology Systems and Services policies, Student policies, Faculty Handbook, and Staff Handbook. In addition, a Student, Faculty member or Staff member could face personal legal liability for infringement of Copyright and other Intellectual Property laws.

## **II. Intellectual Property Guidelines**

The Guidelines set forth in this Part II, are provided to assist MICA Faculty, Personnel, Students and Staff in implementing MICA’s Intellectual Property Policy.

### **10. Fair Use of Copyright Protected Works –**

**10.1 Fair Use** – Fair use is the Copyright<sup>1</sup> doctrine that permits certain unauthorized uses of a Copyright protected Work that would otherwise violate one or more of the exclusive right(s) of the Copyright owner. The fair use doctrine (now codified in the United States Copyright Act, 17 U.S.C. §107) arose from a series of court decisions intended to inject breathing space into the Copyright law to accommodate various freedom of speech concerns.

Although the fair use doctrine is flexible, permitting courts to find fair uses in many different situations, it can be complex and difficult to apply. Unfortunately, there are very few reliable “rules of thumb” to guide artists in determining fair use. The Fair Use Guidelines set forth below are intended to assist MICA Personnel and Students making fair use determinations when using Copyright protected materials.

**10.2 The “Four-Factors” Test** – The United States Copyright Act sets out in Section 107 four non-exclusive factors, and a non-exhaustive illustrative list of uses that *may* constitute a fair use, depending on all of the facts and circumstances of each case. The list of potentially fair uses includes “criticism, comment, news reporting, teaching (including multiple copying for classroom use), scholarship, or research.” The Section 107 factors are individually considered and collectively weighed — no one factor is determinative in every case:



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<sup>1</sup> Fair Use may also found in certain uses of Trademarks, such as in the case involving the musical group Aqua’s song “Barbie Girl”, which parodies Mattel’s Barbie® doll and was found by a court to be a fair use of Mattel’s Trademark.

1. The *purpose and character of the use*, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The *nature of the Copyright protected work*;
3. The *amount and substantiality of the portion used* in relation to the Copyright protected work as a whole; and
4. The *effect of the use on the potential market* for or value of the Copyright protected work.

**10.2.1 Factor 1 - Purpose And Character of The Use** – The first factor examines the *purpose and character* of the proposed use of the original Work. While educational and nonprofit uses are generally favored over commercial uses, not all nonprofit and educational uses are fair use and not all commercial uses are unfair. Transformative uses of a Work, those which add new meaning to, repurpose, or alter the character of the original Work, are generally favored over a use that merely reproduces the original Work. A strongly transformative use may counterbalance commercial aspects of the use. The first factor is often seen as sliding scale from mere copying to substitute for or serve similar purposes as the original Work, to highly transformative uses that recontextualize the original Work in a creative or critical usage. Parodies are often found to be highly transformative because parody uses humor to comment upon and criticize the original Work. Satire, which comments upon and criticizes society, may be rated less fair under the first factor if the original Work is not the intended target of the satire’s message.

**10.2.2 Factor 2 - The Nature of the Copyright Protected Work** – Some Works are considered more susceptible of fair use than others, particularly informative or factual Works such as scientific or historical texts. Creative and expressive Works, including novels, artwork, films and musical compositions, are interpreted as being “closer to the core of copyright” and thus less susceptible of fair use. Unpublished Works and consumable Works such as standardized tests or workbooks are also less favored for fair use treatment.

**10.2.3 Factor 3 - The Amount and Substantiality Of the Portion Used** – The third factor requires a comparison of the *amount and substantiality* of the portion used in relation to the Copyright protected Work as a whole. Generally, the less of the original Work that is used, the more likely a fair use will be found. Conversely, the more of the original Work used, the less likely it will be considered fair use. There are no reliable “rules of thumb” (a certain number of words, seconds of music, or percentage of the original Work), that establish a fair use. In some cases, use of the entire Work might be a fair use; in others, use of 1% of the Work might be unfair. Moreover, the third factor is not just a quantitative test; it is also a qualitative test. One must analyze the copied portion as to its importance within the original Work. If material is deemed qualitatively to be the “heart of the work”, it is unlikely to fair well under the third factor, even if the portion used is very small.

**10.2.4 Factor 4 - The Effect of the Use on the Potential Market** – The fourth factor requires an examination of whether the use is likely to cause economic harm to the owner of the Copyright protected Work by displacing opportunities to sell the Work or license its use. The point is to balance the harm to the Copyright owner in permitting an unauthorized use with the harm to the public if expression is suppressed. Typically, the courts consider the actual or likely markets for the original Work. Even if the economic loss from a particular unauthorized use is insubstantial, the analysis examines whether harm would become substantial if the use became widespread.

**10.3 Examples of the Application of the Four-Factors Test** – The following summaries of Copyright cases are provided as examples of what courts find as fair use or not fair use.

**10.3.1 Fair Use Applied to Works of Fine Art** – Two separate court decisions involving artwork created by MICA alumnus Jeff Koons illustrate application of the Four-Factors test in asserting the Fair Use defense to copyright infringement claims; a defense that was unsuccessful in one case, but successful in the other.

(i) **Unsuccessful Fair Use Defense** – Jeff Koons created a wooden sculpture based on Art Rogers’ photograph “String of Puppies.” Koons found the photograph on a postcard in a gift shop, depicting a couple holding a litter of puppies spread across their laps. Rogers sued Koons for creating an unauthorized derivative Work based on the photograph. Koons claimed fair use as a social satire. The court disagreed based on its application of the Four-Factors test. The court held that the first factor did not support fair use. Koon’s change of form to sculpture, application of blue clown noses to the noses of the puppies, and placement of daisies in the hair of the couple did not add sufficient new material and meaning to the original Work to be transformative. While parodies target other Works with humorous criticism, satire is aimed at society and need not rely on another Work to make its point. The court also focused on the substantial profit Koons made from the sale of his series of sculptures based on the photograph, finding that the commercial success of his artwork together with its determination that the use was non-transformative weighed against fair use. The second factor also did not favor fair use, because the court found that the original Work, a published art photograph, was creative and imaginative – highly protected expression - despite being used as a commercially-produced postcard. Under the third factor, the court found that Koons’ used substantially all of the original expression, faithfully reproducing every detail of the original photograph in the sculptural Work. Under the fourth factor, Koon’s adaptation of the photograph without a license enabled Koons to profit from exploitation of the original Work without paying Rogers. Additionally, the court was concerned that photos of Koons’ Work could supplant the market for the original photograph. Koons, who characterized his Work as a “satire” that commented upon the materialism of modern society, was ordered to destroy all of the infringing sculptures worth \$369,000.

(ii) **Successful Fair Use Defense** – Several years later, Jeff Koons was sued by another photographer, Andrea Blanch, for Koons’ unauthorized use of her original photograph. Blanch’s original work which depicted a pair of lower legs and feet clad in



Gucci silk sandals, was originally commissioned as part of a fashion spread in Allure Magazine. Koons' collage, "Niagra", used a scan of the original photo, cropped to remove its original context of lower legs and sandaled feet propped up on a beverage tray in the cabin of a private jet. In applying the first factor, the court found that Koons' use was highly transformative, adding substantial new material and re-contextualizing the original Work, strongly leaning towards fair use. The collage added additional glamorous looking legs arranged to dangle in front of a landscape made from various pastries. Koons testified that it was important to his purpose of commenting upon the culture and attitudes cultivated by mass communications like glossy fashion magazines to use a fragment of an authentic photo from Allure Magazine. Under the second factor, the court found that the fact that the original photograph was a creative Work was of limited usefulness in determining fair use where the creative Work is being used for a transformative purpose. The third factor favored fair use, since Koons cropped out the background of the photo, removing the photographer's expressive elements of composition, lighting and depth of field, using only the fashionably attired feet and legs for his collage. Finally, for the fourth factor, the court noted that Blanch admitted that she had never exploited her Work for use in graphics or other visual art, and that Niagara had not affected the market for her Work, or decreased the value of the original photograph. The court concluded that Koons use of a portion of her photograph in Niagara had no deleterious effect on the potential market for or value of Blanch's photograph. Since the Four-Factors Test favored fair use, the case against Koons was dismissed.

**10.3.2 Fair Use of Images as Primary Source Material** -- The Bill Graham Archives ("Archives") sued Dorling Kindersley Publishing ("DK") for Copyright infringement of seven images of the Archives' concert posters, tickets and other memorabilia that appeared in DK's book documenting the 30-year history of the Grateful Dead, titled *Grateful Dead: The Illustrated Trip* ("*Illustrated Trip*"). DK had requested a license to use the images but license terms were never reached. DK went ahead with publication of the *Illustrated Trip* and the Archives sued DK for copyright infringement. DK defended on the basis that its use of the images is a fair use. The court applied the Four-Factor test. The court determined that the first factor weighed heavily in favor of DK because DK used the images for a transformatively different purpose— a visual timeline created from original source material from the history of the Grateful Dead and enhanced readers' understanding of the text in *Illustrated Trip*. The court gave the second factor limited weight because the Archive's images are both commercial and expressive Works used to promote concerts, and the second factor is less helpful to determine whether transformative uses of Works are fair or not fair. The court found that the third factor did not weigh against fair use because DK used thumbnail-sized copies of the images and minimized the expressive value of each image by combining it with a prominent timeline, textual descriptions, and other illustrations, so that each of the Archive images appeared in *Illustrated Trip* as part of a collage of text and illustrations. DK used only seven Archives images in a 480 page coffee table book, a qualitatively and quantitatively small use of the Archives images. The court found that the fourth factor did not weigh against fair use despite the Archives contention that DK's use could not be a fair use because it negatively impacts the market for licensing Archives images, citing DK's payment of fees for other images in *Illustrated Trip*. The court found that DK's use

of the Archives' images falls within a transformative market, not the Archives' established or likely market for its images, therefore the Archives could not suffer market harm for DK's use of its images. On balance, the court concluded that the Four-Factors weighed in favor of DK's use, and that DK's use of the Archives images in *Illustrated Trip* was fair use.

**10.3.3 Not a Fair Use of Unpublished Manuscript** – Harper & Row (Harper) sued The Nation Magazine for copyright infringement of former President Ford's unpublished memoirs, where The Nation obtained an unauthorized copy of the manuscript and scooped a Harper-licensed prepublication article in Time Magazine. Harper suffered monetary losses when Time canceled its article. The Nation claimed fair use. The U.S. Supreme Court held that The Nation's article was not a "fair use" under the Four-Factors test.

The Court held the first factor did not support fair use. The Nation's use was a news publication which might be protected despite being commercial if The Nation's purpose was only to report the news. However, the Court found that The Nation clearly intended to supplant the right of Harper and Time to first publish Ford's manuscript. The Court held that the second factor also leaned strongly away from fair use. Ford's manuscript was an unpublished historical narrative and autobiography. The Nation usurped Harper's and Time's right to control the timing and event of first publication. While there is often less protection of factual material under Copyright law, the Court held that The Nation's use extended beyond expression necessary to convey facts by using extensive verbatim excerpts of Ford's descriptions and expression. The Court held that the third factor similarly weighed heavily against fair use. Looking at the amount and substantiality of the portion used by The Nation, the Court recognized that quantitatively, The Nation used little of the entire manuscript. Qualitatively, however, the Court held that The Nation took "essentially the heart of the book" by publishing Ford's description of pardoning former President Nixon. Finally, identifying the fourth factor as undoubtedly the single most important element of fair use, the Court noted that seldom is seen such a clear cut example of market harm. Harper suffered monetary loss when Time canceled its article and refused to pay the serialization fee, and The Nation's verbatim publication of Ford's discussion of the Nixon pardon, damaged the market for the book.

**10.3.4 Not a Fair Use of Teaching Material in the Classroom** – Eloise Marcus, a public school teacher, sued Shirley Rowley, another public school teacher, for infringement of a cake decorating booklet that Marcus created for her adult education classes. Rowley incorporated 11 pages from Marcus' booklet into an instructional booklet Rowley prepared for teaching her food service career classes. Rowley claimed that her use of Marcus' booklet was fair use because the copied pages contained only unprotectable facts, recipes, and sets of instructions and created for an educational purpose. The court determined that Rowley's use was not fair use under the Four-Factors test.

The court determined that the first factor did not support fair use because Rowley's booklet was intended the same intrinsic purpose as Marcus' booklet. Both were created for classroom teaching, but Rowley added very little material to the original — strong indicia of no fair use. The court found the second factor to be neutral, neither for nor against fair use because Marcus' cake decorating booklet was mainly

informational but contained some creativity in her tips and cake decorating ideas. But Rowley’s substantial quantitative and qualitative copying weighed heavily against fair use under the third factor. Citing two earlier court decisions, the court recognized that wholesale copying of Copyright protected Works often precludes a finding of fair use. In one decision, multiple copies of an unauthorized arrangement of a protected hymn used by a school choir. In the other, several educational audiovisual Works were reproduced in their entireties in one video for classroom use. Neither case was found to be a fair use despite clearly educational purposes due to their respective wholesale copying. Similarly, the court determined that Rowley’s extensive verbatim copying, that despite being approximately 50% of Marcus’ booklet, the copied pages contained virtually all of the substance of her Work. Under the fourth factor, although there was no evidence of market harm, the court held that that an absence of measurable damages does not oblige a finding of fair use. Balancing the four factors, the court concluded that the Four-Factor Test weighed decisively in favor of a conclusion of no fair use.

The court compared its Four-Factor analysis with the Classroom Photocopying Guidelines (see Section 4.6 of the Policy) and concluded that Rowley’s use was not a fair use. The Classroom Photocopying Guidelines are a set of best practices that assist teachers in determining when classroom copies are a fair use. Copies which meet the Classroom Photocopying Guidelines criteria of brevity, spontaneity, and cumulative effect, and display a copyright notice are more likely to be found a fair use. The court noted that Rowley far exceeded brevity criteria when she copied 11 pages where brevity would permit only 2 pages from a “special work” that combines illustrations and text, like the Marcus booklet. Rowley used the copies for three consecutive years, exceeding spontaneity criteria of that requires the use to be at the “instance and inspiration of the individual teacher” and made “so close in time that it would be unreasonable to expect a timely reply to a request for permission.” Finally, Rowley did not display a Copyright notice or other credit for her copies of Marcus’ Work as required by the Classroom Photocopying Guidelines.

### **10.3.5 Not a Fair Use of Academic Material in Course Packs –**

Several major publishing houses sued Kinko's for Copyright infringement based on Kinko’s unauthorized use of excerpts from the publishers’ Copyright protected books in academic course curricula sold as “course packs” to students. Kinko's claimed its use of the excerpts were fair use.

The court found that Kinko’s use was not a fair use. The court held under the first factor that Kinko’s copying of educational materials for students leaned away from fair use. The court acknowledged that Kinko's course packs, in the hands of the students, was no doubt educational, but in the hands of Kinko's employees, the use was clearly commercial. Moreover, Kinko’s made no effort to expand upon, contextualize, or otherwise transform the material but merely repackaged and sold the excerpts as course packs. The court held that the second factor titled toward fair use since the nature of the original Works was more factual than fictional, but found that the third factor leaned strongly away from fair use based on Kinko’s qualitative and quantitative use of the publishers’ books. Qualitatively, court found that the portions Kinko’s copied were critical parts of the books— the portions assigned by instructors. Quantitatively, the court

noted that Kinko's copied as much as 14 to 110 pages from each book copied, usually an entire chapter of a book, far exceeding any standard for fair use. Fourth, the court held that the fourth factor weighed heavily against fair use. Kinko's sales of course packs to students negatively impacted the publishers' textbook sales and collections of permissions for authorized copies.

Finally, the court considered, as an additional factor, whether Kinko's copying exceeded the Classroom Photocopying Guidelines (see Section 4.6 of the Policy) criteria of brevity, spontaneity, and cumulative use. The court concluded that Kinko's course packs not only exceed all three criteria, but were in effect anthologies that, without the Copyright owners' permission, are excluded from fair use by the Classroom Photocopying Guidelines. The court granted the publishers statutory damages, injunctive relief, and attorneys' fees and costs.

**10.3.6 Copyright and Fair Use Tools** – Students, Faculty and Staff may find the following fair use resources helpful in learning more about Copyright and determining whether or not a use is a fair use:

- Search for Copyright records, read the Copyright Act and guides to Copyright law and registration, file Copyright applications online, <http://www.copyright.gov/>
- Interactive animated guide to understanding Copyright at the Library of Congress, <http://www.loc.gov/teachers/copyrightmystery/#/copyright/>
- Additional information and primary sources for fair use law, from the Stanford University Libraries, <http://fairuse.stanford.edu/index.html>
- More information about copyright and fair use in classroom teaching, from the Center For Social Media at the School of Communications at American University (AUSOC), [http://www.centerforsocialmedia.org/resources/fair\\_use\\_and\\_teaching/](http://www.centerforsocialmedia.org/resources/fair_use_and_teaching/)
- A flowchart to help identify materials that may be digitized for use in classroom and studio teaching and distance learning under Section 110 of the Copyright Act, <http://library.duke.edu/blogs/scholcomm/wp-content/uploads/2007/12/copyright-review-flow-chart-v3x.pdf>
- An interactive flowchart created by the Visual Resources Association to assist in the determination of the Intellectual Property status of images in classroom and studio teaching, and by libraries <http://www.vraweb.org/resources/ipr/dirc/index.html>
- A set of best practices for fair use of materials in documentary film from AUSOC, [www.centerforsocialmedia.org/resources/fair\\_use/](http://www.centerforsocialmedia.org/resources/fair_use/)

- A set of best practices for fair use of materials in online video from AUSOC, [http://www.centerforsocialmedia.org/resources/publications/fair\\_use\\_in\\_online\\_video/](http://www.centerforsocialmedia.org/resources/publications/fair_use_in_online_video/)
- A tool to help determine the public domain status of a Work, by Michael Brewer, American Library Association Office for Information Technology Policy Copyright Advisory Committee, <http://librarycopyright.net/digitalslider/>
- Tools to search for Works made available by their authors for use by others through a Creative Commons license and to make your Works available to others under a Creative Commons license, <http://creativecommons.org/>

**10.4 Documenting Fair Use** – If analysis of a proposed use of a Copyright protected Work according to the Four-Factor Test, set forth in Section 10.2 above, clearly indicates that it is a fair use of the Copyright protected material, the analysis should be documented in writing as a best practice for Creators, or as a required disclosure to the Provost for MICA Works. Such documentation will then be available if necessary later to explain the rationale used for determining fair use.

**10.5 Securing Rights and Permissions** – Allow Sufficient Time – Pre-existing materials adapted or otherwise incorporated in new Works should be identified and evaluated early for intellectual property clearance issues, and usage rights secured before investments are made in the new Works. It is far better (and much less expensive) to seek permissions and negotiate licenses in advance of the anticipated use, rather than be forced to respond to a cease and desist letter, or negotiate a license after an investment of time has been made.

**10.5.1 Identifying the Use** – The project and its purpose must be examined to determine what type of use is being made of the third party materials. For example, advertising is a commercial use and virtually all proprietary content must be licensed and typically will involve a fee. Use of images in documentary film that provides criticism and commentary on a topic of legitimate public interest may either be fair use (see Sections 10.2 and 10.3 above) or require permission (with or without a fee). Film distributors and television networks require “errors and omissions” or “media perils” insurance for the audiovisual Work the distributor network distributes or broadcasts films and other audio. The insurance company may require permissions or licenses rather than rely on a fair use analysis.

**10.5.2 Identifying Rights and Their Owners** – Materials may require permission to use multiple rights. To use the photograph of an identifiable person standing next to a sculptural Work in a print advertisement or on a website, one must first secure a license from the photograph’s copyright owner, usually the photographer, or the photographer’s stock photo house, agent or publisher. But a copyright license for the photograph alone may be insufficient. For example, to use the photograph of any identifiable person in advertising materials, one must secure both the photograph license

and a model release from the photograph's subject, or risk infringing that person's rights of privacy and publicity. Moreover, if the image includes a copyright protected sculptural Work, clearance from the artist or other owner of copyright in the sculptural Work must be obtained before commercial use of the photograph is made.

**10.5.3 Some types of materials have multiple owners.** To use music in an audiovisual Work, for example, a synchronization license must be obtained from the owner of the musical composition, licensing the right to synchronize the song with visual images; and a master use license must also be obtained from the owner of the sound recording to use the recording in the soundtrack for the audiovisual Work. These rights are often owned by different entities.

**10.5.4 Not all pre-existing materials must be cleared.** For example, public domain Works can be used without license. However, later adaptations of public domain Works (e.g., Disney's animated film adaptation of Victor Hugo's public domain literary Work "Hunchback of Notre Dame"), may be protected under a separate Copyright, covering the new material added to the public domain Work. Unauthorized use of the later-added material would infringe the Copyright in the adaptation, and must be cleared before use in a new Work, even though the underlying Work is in the public domain.

**10.5.5 Use of Licensed Materials** – If clipart, stock photography or similar third-party owned or controlled materials are used, the terms of the applicable license must be reviewed to determine whether the proposed use is permitted under the terms of the license. If not, the licensor should be contacted to secure a quote for the proposed use. Some archives make images and other materials available under the terms of a "Creative Commons" license. Creative Commons ([www.CreativeCommons.com](http://www.CreativeCommons.com)) is a nonprofit organization that serves as a clearinghouse for Copyright owners that wish to routinely permit licensed uses of the owner's Copyright protected Works. There are different categories of Creative Commons licenses, each allowing a different level of usage. Creative Commons licenses (or any other permissive licenses) may not provide all the rights required for a particular usage. Read every license agreement carefully and, if necessary, obtain legal counsel for assistance.

**10.5.6 Requesting Permission** – Once the use, rights required and owners of such rights are identified, contact the owners and request the rights. Here is a basic permission request:

**YOUR LETTERHEAD**

[DATE]

[AUTHOR OR COPYRIGHT OWNER OF WORK]

Re: Permission to use [TITLE OF PROTECTED WORK]

Dear [CONTACT NAME]:

[OPTIONAL: Thank you for speaking with me by telephone last [DATE], I am writing to confirm your] [OR: I am writing to request] permission to use the original work described below, in my work tentatively titled [TITLE] (the “New Work”).

I plan to [DESCRIBE YOUR PLANNED NEW WORK AND USE OF NEW WORK]. In consideration of your granting me these permissions, I will provide you with [DESCRIBE CONSIDERATION – ONE OR MORE COMPLIMENTARY COPIES, OPPORTUNITY TO INCLUDE ORIGINAL WORK IN NEW WORK, FEE, ACKNOWLEDGEMENT, OR ETC.].

I am requesting permission to use [DESCRIBE THE WORK, SELECTION TO BE USED, DATE, AND TITLE OF WORK] (“Original Work”) for [DESCRIBE USE TO BE MADE, NEW WORK, AND USES TO BE MADE OF NEW WORK], and other uses connected with the New Work, including but not limited to publicity, marketing, and other similar uses for the New Work. I ask that you grant nonexclusive world rights for the use of the Original Work [OPTIONAL: in connection with all editions or versions of the New Work and any sequels thereto, in all languages].

If you agree to grant the permissions requested in this letter, please sign where indicated below and return this letter to me. I enclose a copy of this letter for you to retain for your records. Please contact me if you have any questions or comments regarding this request.

Yours sincerely,

\_\_\_\_\_

Encl.

**Accepted And Agreed:**  
[COMPANY NAME]

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**11. MICA Technology Guidelines** – MICA has many Technology Resources available for use by its Personnel, Students, and in some cases Outside Participants or others. Anyone who is allowed to use the Technology Resources (collectively, “Users”) must do so in accordance with this Policy as well as the other MICA Terms of Use,



attached hereto in Appendix I, the MICA Website and Network Terms of Use Agreement, and attached as Appendix II, the MICA Privacy Policy, and any other MICA guidelines or policies relating to the protection and safeguarding of Technology Resources or confidential MICA Information (collectively, the “IT Policies”).

**11.1 Email Contact Information** – MICA requires that all Personnel and Students have an active MICA email address on file with MICA that is accurate and that is updated regularly by such Personnel or Student. Personnel and Students who prefer to use a non-MICA email system may do so by forwarding their MICA email account to their preferred email account. However, MICA will use the MICA email address for official MICA communications, and it is the responsibility of Personnel and Students, and not MICA, to ensure that the forwarding address on the MICA email server is accurate and up-to-date, and that forwarding is occurring properly.

**11.2 Ownership of the Technology Resources** – Technology Resources, including all text, logos or graphic images appearing therein, as well as all MICA Information, are protected by various Intellectual Property and other laws. Technology Resources are the property of MICA or MICA’s licensors, and all right, title and interest in and to the Technology Resources will remain with MICA or its licensors.

**11.3 Use of Technology Resources** – The Technology Resources include email services and may include instant message services, bulletin board services, chat areas, news groups, forums, communities, personal web pages, calendars, and/or other message or communication facilities designed to enable Users to communicate with the public at large, with MICA, or with other Users. Unless otherwise specifically agreed by MICA in writing, the Technology Resources are for Users’ personal and non-commercial use only, and Users will not:

- Post on or transmit to or through any of the Technology Resources any defamatory, libelous, obscene, bigoted, hateful, racially offensive, vulgar, harassing, inflammatory, pornographic, profane, threatening or unlawful content or any content that could constitute or encourage conduct that would be considered a criminal offense or give rise to civil liability, whether under statute, common law or equitable principles, or otherwise violate any law.
- Upload files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of another's computer.
- Advertise or offer to sell or buy any goods or services for any commercial purpose (excluding offers to buy or sell personal possessions or tutor services).
- Conduct or forward surveys, contests, pyramid schemes or chain letters.



- Download any file posted by another user of the Technology Resources or allow access to and downloading of files that the User knows, or reasonably should know, cannot be legally distributed in such manner.
- Falsify or delete any author attributions, Copyright notices or legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded, or that is provided with, or comprised of, Technology Resource materials.
- Violate any code of conduct or other guidelines which may be applicable to any particular Technology Resources services.
- Harvest or otherwise collect information about others, including e-mail addresses, without their prior express written consent.
- Post on or transmit to any service of the Technology Resources any content that discusses illegal activities with the intent to commit them.
- Use the Technology Resources in any manner which could damage, disable, overburden, or impair the Technology Resources or any part thereof or interfere with any other party's use and enjoyment of the Technology Resources.
- Obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Technology Resources.
- Violate any applicable laws or regulations, or violate this Policy or the Terms of Use.
- Access or attempt to access any other User's account, or misrepresent or attempt to misrepresent the User's identity while using the Technology Resources.
- Post on, transmit to or upload from any services comprising the Technology Resources any content that violates another party's privacy or infringes another party's Intellectual Property, including, but not limited to, such party's Copyrights, Trademarks, trade secrets or Patents. Examples of materials that may be covered by Copyright include software, graphics, text, photographs, sound, video and musical recordings.

**11.4 Use Monitoring** – MICA has no obligation to monitor use of the Technology Resources. MICA reserves the right to: (i) review and monitor any use of the Technology Resources, including without limitation a User's use of any user ID and/or password in accessing the Technology Resources and any information stored or sent using the Technology Resources (including emails), and to remove any such

information in MICA's sole discretion; (ii) utilize any technological methods, such as traffic shaping, content filtering or user tracking to identify or thwart activities deemed in MICA's sole discretion to be potentially illegal or to otherwise manage the Technology Resources or their usage; or (iii) save a copy of any information stored on or sent using the Technology Resources, even if the originator of such information deletes such information. MICA reserves the right to restrict or terminate a User's access to the Technology Resources, including, without limitation, a User's access to any or all of the services provided thereunder or a User's ability to use any Technology Resources user ID and/or password, at any time without notice if MICA believes that a user has violated the IT Policy. MICA reserves the right at all times to disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in MICA's sole discretion if MICA believes a User has violated any of the IT Policy or any other related MICA policies or guidelines.

**11.5 Care In Disclosing Personal Information** – Users should always use caution when giving out any personally identifying information in using any of the Technology Resources. MICA does not control or endorse the content, messages or information that may be accessed through the use of the Technology Resources, and MICA specifically disclaims any liability with regard to services accessed through the use of Technology Resources and any actions resulting from a user's use or participation in such services.

**11.6 Information Posted Publicly or Non-Confidential Information Sent To MICA** – MICA does not claim ownership of information provided to MICA (including feedback and suggestions) through the Technology Resources or posted, uploaded, input or submitted to the Website or through the Technology Resources (collectively "Submissions"). However, by posting, uploading, inputting, providing or submitting a Submission a User is granting MICA, its affiliated companies and sublicensees a non-exclusive, royalty-free, perpetual, irrevocable and fully assignable and sublicenseable license in and to such Submissions. MICA has the right to copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate and reformat a User's Submission, with or without attribution, and allow other Users to do so as well. Where feasible, MICA will generally strive to provide attribution in the event MICA uses Submissions.

**11.7 Backup of Information** – MICA backs up some of the information stored on or transmitted through the Technology Resources, and periodically deletes some of the information stored on Technology Resources. The schedule of such backup and deletion may vary among different Technology Resources, and may not adequately protect certain information that users place on such Technology Resources. As such, all Users that store any information on the Technology Resources are solely responsible for the backup and preservation of such information, and in no event will MICA be liable for the corruption or deletion of such data.



**11.8 Location of Technology Resources** – Unless otherwise specifically stated in written guidelines approved by the Provost, Technology Resources that have been assigned to a certain location within MICA’s facilities will not be moved from such location. Technology Resources that are located on carts or are otherwise intended to be moved may be moved upon being checked out from the MICA authority in charge of such Technology Resources; however, such Technology Resources will not leave the MICA facilities.

**11.9 Use of Technology Resources** – Technology Resources are provided by MICA for the use and enjoyment of all Users. Except for Technology Resources specifically assigned to a Faculty member, Student or MICA department, Technology Resources are not to be overused by any user such that other users are denied effective access to such Technology Resources. Certain Technology Resources may be subject to additional use guidelines specific to such Technology Resources, such as restricting use to those Faculty or Students within a specific MICA department; Users will abide by all additional use guidelines. Some of the Technology Resources such as Software, are owned by a third party vendor and licensed to MICA. Unless otherwise specifically authorized through the Office of Technology Systems and Services in writing, Users will not: (i) make any copies of the Technology Resources, even for backup purposes; (ii) move the Technology Resources to hardware other than the hardware on which the Technology Resources originally reside, even if the proposed new hardware is comprised of Technology Resources; (iii) make commercial use of the Technology Resources where such commercial use does not inure to MICA’s benefit and is not related to a Student’s studies or Faculty’s research; or (iv) introduce any Trojan horses, worms, spyware, viruses or other devices that disable, reduce the efficiency of, or disclose information modified using the Technology Resources. Users of the Technology Resources will be familiar with and will not violate any third party licenses applicable to such Technology Resources.

**11.10 Protection of MICA Information and Access To the Technology Services** – All Users have a duty to protect the MICA Information. In addition to following the policies herein regarding safeguarding user accounts and passwords, Users should: (i) log off from any computer when the User leaves that computer, even if the User only intends to be gone “for a few minutes”; (ii) when not in use, lock any storage media containing MICA Information in a secure location; (iii) destroy or permanently reformat any storage media that previously held MICA Information but will no longer be used for such purpose; (iv) not use email or other unsecured methods to send or receive confidential MICA Information; and (v) when disposing of Technology Resources no longer in use, destroy or permanently reformat any hard drive or other storage device contained therein.

**11.11 Representation** – By utilizing the Technology Resources or User warrants and represents that the User owns or otherwise controls all of the rights to the User’s Submission as described in this section including, without limitation, all the rights necessary for the user to provide, post, upload, input or submit the Submissions.

**11.12 Confidentiality of Account and Password** – Each User is responsible for choosing access passwords that are not “guessable” and for maintaining the confidentiality of the User’s account and password, if any, and for restricting access to the User’s computer. Each User accepts full responsibility and liability for all activities that occur under the User’s account or password. MICA reserves the right to refuse service, terminate accounts, or remove content in its sole discretion. For certain services, a User may be required to register; as part of the registration process, the User must select a user name. The information that the user supplies during any registration process must be accurate and complete and the User agrees to not (i) register under the name of another person; (ii) choose a user name that MICA deems offensive; or (iii) choose a user name for the purposes of deceiving or misleading MICA or other Users as to the User’s true identity. The User agrees to not impersonate any other person, including any Personnel, Student or other User.

**11.13 Notification of Unauthorized Use/Denying Access.** Each User will notify MICA immediately of any unauthorized use or threat of unauthorized use of the User’s account or the Technology Resources or of any other breach or potential breach of security known to the User with respect to the User’s account or the Technology Resources, including without limitation any loss or compromise of any password, and will cooperate with MICA in every reasonable way to help MICA prevent the further unauthorized use, threat of unauthorized use, disclosure or threat of disclosure regarding the Technology Resources, the User’s account and/or the User’s password. All Users agree that immediately upon termination of their right to use the Technology Resources, or upon any earlier demand by MICA at any time, such Users will cease all access and/or use of the Technology Resources.

## APPENDIX I

### MICA WEBSITE AND NETWORK TERMS OF USE

THIS DOCUMENT SETS FORTH THE TERMS OF USE FOR THE MARYLAND INSTITUTE COLLEGE OF ART (“MICA,” “WE,” “US,” OR “OUR”) WEBSITE, WWW.MICA.EDU (“WEBSITE”), AS MORE SPECIFICALLY DEFINED BELOW, AND THE INFORMATION, SERVICES AND/OR PRODUCTS THAT MAY BE MADE AVAILABLE TO YOU, THE USER (“YOU” OR “YOUR”) THROUGH THIS WEBSITE. PLEASE READ THE FOLLOWING TERMS OF USE (“TERMS”) CAREFULLY. BY USING THE WEBSITE, YOU INDICATE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THESE TERMS, INCLUDING THE BINDING ARBITRATION PROVISIONS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE THE WEBSITE IN ANY MANNER.

The “Website” encompasses this website and all associated MICA Web pages, including without limitation all content, materials, information, policies, modifications, updates, enhancements, revisions, new features, and new web properties of such pages, along with all site services provided through such Web pages.

#### **Modification of these Terms of Use**

MICA reserves the right to change these Terms at any time at its sole discretion and without notice to you. All changes to the Terms will be posted on the Website and are effective immediately. Consequently, MICA recommends that you visit and review these Terms frequently. Your continued use of the Website following any changes to the Terms will mean you accept those changes.

#### **Website Ownership**

The Website, including all text, logos or graphic images appearing therein, is protected by copyright, trademark, patent, trade secret, and other laws. The Website and all Website content is the property of MICA and/or third party licensors, and all right, title and interest in and to the Website shall remain with MICA and/or such third party licensors. Nothing in these Terms transfers any rights to you or any third party except as expressly set forth herein.

#### **Links to Third Party Websites**

The Website may contain links to other web sites (“Linked Websites”). The Linked Websites are not under the control of MICA and MICA is not responsible for the contents of any Linked Website, including without limitation any link contained in a Linked Website, or any changes or updates to a Linked Website. MICA is not responsible for webcasting or any other form of transmission received from any Linked Website. MICA is providing these links to you only as a convenience, and the inclusion of any link does



not imply any association with its operators. You enter any Linked Website at your own risk.

### **Website Use**

The Website may contain bulletin board services, chat areas, news groups, forums, communities, personal web pages, calendars, and/or other message or communication facilities designed to enable you to communicate with MICA, the public at large or with other users. You agree to use the Website only to post, send and receive messages and material that are proper and related to the particular Website forum, community, or other site service you are using. Unless otherwise specifically agreed by you and MICA in writing, the Website is for your personal and non-commercial use only, and you will not:

- Post on or transmit to the Website any defamatory, libelous, obscene, bigoted, hateful, racially offensive, vulgar, harassing, inflammatory, pornographic, profane, threatening or unlawful content or any content that could constitute or encourage conduct that would be considered a criminal offense or give rise to civil liability, whether under statute, common law or equitable principles, or otherwise violate any law.
- Upload files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of another's computer.
- Advertise or offer to sell or buy any goods or services for any business purpose (excluding offers to buy or sell personal possessions or tutor services).
- Conduct or forward surveys, contests, pyramid schemes or chain letters.
- Download any file posted by another user of the Website or allow access to and downloading of files that you know, or reasonably should know, cannot be legally distributed in such manner.
- Falsify or delete any author attributions, copyright notices or legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded, or that is provided with Website materials.
- Violate any code of conduct or other guidelines which may be applicable to any particular Website services.
- Harvest or otherwise collect information about others, including e-mail addresses, without their prior express written consent.
- Post on or transmit to the Website any content that discusses illegal activities with the intent to commit them.

- Use the Website in any manner which could damage, disable, overburden, or impair the Website or interfere with any other party's use and enjoyment of the Website.
- Obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Website.
- Violate any applicable laws or regulations, or violate these Terms of Use.
- Access or attempt to access any other user's account, or misrepresent or attempt to misrepresent your identity while using the Website.
- Post on, transmit to or upload from the Website any content that violates another party's privacy or infringes another party's intellectual property, including, but not limited to, such party's copyrights, trademarks, trade secrets or patents. Examples of materials that may be covered by copyright include software, graphics, text, photographs, sound, video and musical recordings.

### **Monitoring**

MICA has no obligation to monitor you or any other user's use of the Website, and currently does not perform such monitoring. MICA reserves the right to review and monitor your use of the Website, including without limitation your use of any user ID and/or password in accessing the Website and any materials posted to the Website, and to remove any materials in its sole discretion. MICA reserves the right to restrict or terminate your access to the Website, including, without limitation, your access to any or all of the services provided thereunder or your ability to use any Website user ID and/or password, at any time without notice if we believe you have violated these Terms of Use. MICA's goal is to encourage civil discourse on the Website.

### **Information Disclosure**

Disclosure Under Law. MICA reserves the right at all times to disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in MICA's sole discretion if we believe you have violated these Terms of Use.

Providing Correct Personal Information. In the course of using the Website, you may be required to enter certain information, including without limitation personal information ("Information"). You agree to provide MICA with correct Information, and to update such Information on the Website promptly as reasonably necessary and as required by the Website.

Caution When Providing Information. Always use caution when giving out any personally identifying information about yourself or your children in using any Website service. MICA does not control or endorse the content, messages or information found in



any Website forums, communities or other services and, therefore, MICA specifically disclaims any liability with regard to Website services and any actions resulting from your participation in such services. Managers and hosts are not authorized MICA spokespersons, and their views do not necessarily reflect those of MICA.

Posting Limitations. Materials uploaded to the Website may be subject to posted limitations on usage, reproduction and/or dissemination. You are responsible for adhering to such limitations if you download the materials.

### **Materials Provided to MICA or Posted at Any Website**

License in Posted Materials. MICA does not claim ownership of the materials you provide to MICA (including feedback and suggestions) or that you post, upload, input or submit to the Website or its associated services (collectively “Submissions”). However, by posting, uploading, inputting, providing or submitting your Submission you are granting MICA, its affiliated companies and sublicensees a non-exclusive, royalty-free, perpetual, irrevocable and fully assignable and sublicenseable license in and to such Submissions. We have the right to: copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate and reformat your Submission, with or without attribution, and allow other Website users to do so as well. Where feasible, we will generally strive to provide attribution in the event we use Submissions.

No Compensation. No compensation will be paid with respect to the use of your Submission, as provided herein. MICA is under no obligation to post or use any Submission you may provide and may remove any Submission at any time in MICA's sole discretion.

User Representation. By posting, uploading, inputting, providing or submitting your Submission you warrant and represent that you own or otherwise control all of the rights to your Submission as described in this section including, without limitation, all the rights necessary for you to provide, post, upload, input or submit the Submissions.

### **Representation and Warranty Disclaimer**

THE WEBSITE AND ALL INFORMATION AND MATERIALS ON THE WEBSITE, INCLUDING TEXT, IMAGES, GRAPHICS, AND LINKS, AND THE INFORMATION AND MATERIALS ON ANY WEBSITES, WHETHER AFFILIATED OR UNAFFILIATED WITH MICA, WHICH YOU MAY VISIT THROUGH THE WEBSITE, IS PROVIDED “AS IS” BY US AS A CONVENIENCE TO ALL USERS, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND TO YOU OR ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES (I) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (II) OF INFORMATIONAL CONTENT OR ACCURACY; (III) OF NON-INFRINGEMENT; (IV) OF QUIET ENJOYMENT; (V) OF TITLE; (VI) THAT THE WEBSITE WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION; (VII) THAT ANY DEFECTS OR ERRORS IN THE





WEBSITE WILL BE CORRECTED; OR (VIII) THAT THE WEBSITE IS COMPATIBLE WITH ANY PARTICULAR HARDWARE OR SOFTWARE PLATFORM. ANY USE OF THE WEBSITE AND ANY INFORMATION AND/OR MATERIALS PROVIDED ON OR THROUGH THE WEBSITE SHALL BE SOLELY AT YOUR OWN RISK. EFFORTS BY MICA TO MODIFY THE WEBSITE SHALL NOT BE DEEMED A WAIVER OF THESE LIMITATIONS. MICA AND ITS OFFICERS, DIRECTORS, AGENTS, STAFF, SUCCESSORS, ASSIGNS, AND STOCKHOLDERS (COLLECTIVELY, WITH MICA, THE “MICA ENTITIES”) SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER THESE TERMS, STATUTE, REGULATION, COMMON LAW PRECEDENT OR DOCTRINE, OR OTHERWISE, EVEN IF WE WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WERE NEGLIGENT. In jurisdictions that prohibit the exclusion or limitation of liability for consequential or incidental damages, MICA’s liability is limited to the greatest extent permitted by law.

### **Indemnification**

You shall indemnify, defend and hold the MICA Entities harmless from all claims, losses, liabilities, suits, damages, disputes or demands, including reasonable attorneys fees (collectively, “Claims”), arising from your use of the Website or from any violation of these Terms. In connection with any Claims that may give rise to your indemnification obligations as set forth above, the MICA Entities shall have the exclusive right, at its option, to defend, compromise and/or settle the suit, action or proceeding, and you shall be bound by the determination of any suit, action or proceeding so defended or any compromise or settlement so effected. The remedies provided in this Section are not exclusive of and do not limit any other remedies that may be available to the MICA Entities pursuant to this Section.

### **Your Account**

Confidentiality of Account and Password. You are responsible for maintaining the confidentiality of your account and password, if any, and for restricting access to your computer. You accept full responsibility and liability for all activities that occur under your account or password. MICA reserves the right to refuse service, terminate accounts, or remove content in its sole discretion. For certain services, you may be required to register; as part of the registration process, you must select a user name. The information that you supply during any registration process must be accurate and complete and you agree to not (1) register under the name of another person; (2) choose a user name that MICA deems offensive; or (3) choose a user name for the purposes of deceiving or misleading forums members and/or staff as to your true identity. You agree to not impersonate any other person, including any other MICA forum member, any MICA forum host or any MICA staff.



Notification of Unauthorized Use/Ceasing Access. You shall notify MICA immediately of any unauthorized use or threat of unauthorized use of your account or the Website or of any other breach or potential breach of security known to you with respect to your account or the Website, including without limitation any loss or compromise of any password, and will cooperate with MICA in every reasonable way to help MICA prevent the further unauthorized use, threat of unauthorized use, disclosure or threat of disclosure regarding the Website, your account and/or your password. You agree that immediately upon termination of your right to use the Website, or upon any earlier demand by MICA at any time, you will cease all access and/or use of the Website, and will not attempt to access and/or use the Website.

**Notice and Procedure for Making Claims of Copyright Infringement**

MICA will investigate notices of copyright infringement and take appropriate actions under the Digital Millennium Copyright Act (“DMCA”). Pursuant to the DMCA, written notification of claimed copyright infringement must be submitted to the MICA Designated Agent using the following contact information:

copyrights@mica.org

Attn: MICA Copyright Agent  
Technology Systems and Services  
Maryland Institute, College of Art  
1300 Mount Royal Avenue  
Baltimore, Maryland 21217

410-225-2201  
410-225-2468

ALL INQUIRIES NOT RELEVANT TO THE ABOVE PROCEDURE WILL RECEIVE NO RESPONSE.

**Dispute Resolution (Arbitration Clause)**

Binding Arbitration. You and MICA each agree to submit to binding arbitration in the event of a dispute, controversy or claim (each, a “Dispute”) arising out of or in connection with these Terms, your or MICA’s rights and obligations under these Terms, the Website, the use of the Website, and/or the information, services and/or products that may be provided by or through or in connection with the Website. The arbitration will be held in Maryland before one arbitrator on an individual basis and not as a class action. You expressly waive any right you may have to arbitrate a dispute as a class action. You also expressly waive your right to a jury trial. You may select one of the following arbitration organizations and its applicable rules: the National Arbitration Forum, Box 50191, Minneapolis, MN 55405-0191 ([www.arb-forum.com](http://www.arb-forum.com)), or JAMS, Two Embarcadero Center Suite 1100 San Francisco, CA 94111 ([www.jamsadr.com](http://www.jamsadr.com)). If you fail to select an arbitration organization within 30 days after notice from MICA, MICA



may select the organization. You may obtain a copy of the rules of each organization by contacting the organization. In the event that any Dispute cannot be submitted to binding arbitration pursuant to the rules of any such organization, such event shall not affect the enforceability of this clause so long as the Dispute may be submitted to binding arbitration with one of the organizations. You and MICA shall agree on one arbitrator to conduct the arbitration and the arbitrator shall be selected pursuant to the applicable rules. Each party shall be responsible for its own attorney, expert and other fees, unless such fees are awarded by the arbitrator to the prevailing party. Notwithstanding anything to the contrary in this Section, to the extent you have in any manner violated or threatened to violate MICA's intellectual property rights, MICA may seek (and you will not contest) injunctive or other appropriate relief in any state or federal court in the state of Maryland, and you consent to exclusive jurisdiction and venue in such courts.

**Arbitration Final.** The arbitrator's award is final and binding on all parties. The Federal Arbitration Act, and not any state law concerning arbitration, governs all arbitration under this clause. Any court having jurisdiction may enter judgment on the arbitrator's award. If any part of this clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. Notwithstanding anything to the contrary contained herein, if the waiver of class action rights contained herein is not enforceable as to any person or persons, such non-enforceability shall apply to such person or persons only, and all other persons shall continue to be governed by the Arbitration Clause.

**Giving Up Right of Class Action.** These Terms provide that all Disputes will be resolved by binding arbitration and not in court or by jury trial. IF A DISPUTE IS ARBITRATED, YOU GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST MICA INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. WITHOUT LIMITATION, THIS INCLUDES GIVING UP YOUR RIGHTS TO BRING OR PARTICIPATE IN A CLASS ACTION AS SET FORTH IN ANY STATE STATUTE.

**California Residents.** If you are a California resident, to the extent permitted by California law, you waive California Civil Code Section 1542, which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor" as well as any other unknown claims under California Civil Code Section 1542 or any statute or common law principle of similar effect.

### **Choice of Law; Jurisdiction and Venue; Waiver of Trial By Jury**

To the maximum extent permitted by law, these Terms are governed by the laws of the State of Maryland, excluding any law or conflicts of law principle that would apply the law of another jurisdiction. NOTWITHSTANDING THE FOREGOING, THE PARTIES EXPRESSLY OPT OUT OF THE MARYLAND UNIFORM COMPUTER TRANSACTIONS ACT ("MUCITA") AS PERMITTED BY SECTION 22-104 OF



MUCITA. To the extent a Dispute is not governed by the Arbitration Clause, you hereby consent to the exclusive jurisdiction and venue of courts in the State of Maryland in all disputes arising out of or relating to the use of the Website or under these Terms; provided, however, that in the event MICA is sued or joined by a third party in any other court or in any other forum in respect of any matter which may give rise to a claim by MICA hereunder, you consent to the jurisdiction of such court or forum over any claim which may be asserted by MICA therein. You irrevocably consent to the exercise of personal jurisdiction by such courts in any such action. In addition, and notwithstanding the foregoing, you irrevocably waive, to the fullest extent permitted by law, any objection that you may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon you and may be enforced in any court in which you are subject to a jurisdiction by a suit upon such judgment. To the Use of the Website is unauthorized in any jurisdiction that does not give effect to all provisions of these terms and conditions, including without limitation this paragraph. To the extent a claim is not governed by the Arbitration Clause, MICA and you each hereby waive the right to a trial by jury in any court and in any suit, action or proceeding, whether in tort, contract, or otherwise, in which any such party is a party, as to any claim arising out of or in connection with these Terms, your or MICA's rights and obligations under these Terms, the Website, use of the Website, and/or the services and/or products that may be provided by or through or in connection with the Website.

### **General**

You agree that no joint venture, partnership, employment, or agency relationship exists between you and MICA as a result of these Terms or use of the Website. MICA's performance of these Terms is subject to existing laws and legal process, and nothing contained in these Terms is in derogation of MICA's right to comply with governmental, court and law enforcement requests or requirements relating to your use of the Website or information provided to or gathered by MICA with respect to such use. If any provision of these Terms shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If any provision(s) of these Terms shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the provision shall be deemed to have been amended to the extent required to render it valid and enforceable, and such court is hereby authorized and directed to amend the provision to the extent that, but only to the extent that, such court determines such amendment is necessary to make it legal, valid, and enforceable. The failure of MICA to enforce any provision of these Terms shall not be construed as a waiver or limitation of MICA's right to subsequently enforce and compel strict compliance with that provision or any other provision of these Terms. These Terms shall be binding upon, inure to the benefit of, and be enforceable by the parties to these Terms and their respective successors, heirs, legatees, personal representatives and permitted assigns. No assignment, delegation or other conveyance of these Terms or of any rights or obligations hereunder may be made by you (by operation of law or otherwise) without the prior

written consent of MICA. MICA may assign its rights and obligations under these Terms to any other party. Unless otherwise specified herein, these Terms constitute the entire agreement between you and MICA with respect to the Website and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and MICA with respect to the Website. A printed version of these Terms and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. It is the express wish of the parties that these Terms and all related documents be drawn up in English. The headings and other captions in these Terms are for convenience and reference only and shall not be used in interpreting, construing or enforcing any of the provisions of these Terms. Those terms and conditions of these Terms that assign liabilities to the parties extending beyond the term of these Terms shall survive termination of these Terms.

### **Privacy Policy**

By using the Website, you consent to MICA's use and disclosure of information about you in accordance with any privacy policy posted by MICA, which is a part of these Terms, without any further notice or any liability to you or any other person.

### **Support**

Unless otherwise agreed in writing by you and MICA, MICA is not obligated to provide, and shall not provide, any support, consulting, interpretation, training or assistance (collectively, "Support") of any kind to you, including without limitation Support relating to use, operation and/or performance of the Website.

### **Viewing Outside the United States**

MICA makes no claims that the Website may be lawfully viewed, accessed or used outside the United States. Access or use of the Website may not be legal by certain persons or in certain countries. If you access or use the Website from outside of the United States, you do so at your own risk and you are responsible for compliance with the laws of your jurisdiction.



## APPENDIX II

### MICA PRIVACY POLICY

THIS DOCUMENT SETS FORTH THE PRIVACY POLICY FOR THE MARYLAND INSTITUTE COLLEGE OF ART (“MICA”) WEBSITE [WWW.MICA.EDU](http://WWW.MICA.EDU) (“WEBSITE”). MICA VALUES THE PROTECTION OF INDIVIDUAL PRIVACY AND IS COMMITTED TO THE PRIVACY OF ITS VISITORS. THIS PRIVACY POLICY SETS FORTH MICA’S PRIVACY POLICY FOR THE WEBSITE, AND GOVERNS THE MANNER IN WHICH MICA COLLECTS, USES, MAINTAINS AND DISCLOSES INFORMATION COLLECTED FROM USERS OF THE WEBSITE. BY USING THE WEBSITE, YOU AGREE TO BE BOUND BY THIS PRIVACY POLICY. IF YOU DO NOT AGREE TO THIS PRIVACY POLICY, DO NOT USE THE WEBSITE IN ANY MANNER. THIS PRIVACY POLICY DOES NOT GOVERN PRIVACY PRACTICES ASSOCIATED WITH OFFLINE ACTIVITIES OR ACTIVITIES OCCURRING ON WEBSITES NOT UNDER MICA’S CONTROL.

#### **The Information MICA Collects**

**Personally Identifiable Information.** During your interactions with the Website, such as when you register with the Website, MICA may wish to collect information that personally identifies who you are, such as your name, address, email address and/or telephone number.

**Anonymous Information.** MICA may collect non-personally-identifiable information during your visit. Examples of non-personally-identifiable information may include your Internet access provider, your computer’s Internet protocol (IP) address, information regarding your user profile, your browser and operating system, the date and time of your visit, the pages you visit, the address of any Website you linked from, and aggregate, statistical data such as usage, traffic patterns and user demographics based on your use of the Website. MICA collects non-personally-identifiable information in order to, among other things, provide you with or assist in the provision of information through the Website, to maintain the performance of the Website, and to make the Website more useful. MICA may also share this non-personally-identifiable information in aggregated form with third parties so that these third parties may provide you with more relevant services and advertisements.

#### **MICA’s Use and Disclosure of Collected Information**

**Personally Identifiable Information Use.** MICA may collect personally identifiable information in order to, among other things, provide you with the information and/or services that you have requested through the Website. MICA retains such personally identifiable information only for as long as is necessary depending on the reason for your submission of such personally identifiable information, and collects no more personally identifiable information than is reasonably necessary to provide you with the services for which such information is collected.



Personally Identifiable Information Disclosure. MICA takes your privacy very seriously. MICA does not sell or otherwise disclose any personally identifiable information to any third parties other than: (i) as required by law; (ii) in the event of a sale, merger, public offering, bankruptcy or other change in control of MICA and/or the Website; or (iii) with your affirmative consent at the time you provide such information. While collecting personally identifiable information from Website users, MICA may ask whether you would like to “opt in” and allow disclosure of your personally identifiable information by MICA to certain specifically identified third party partners of MICA (collectively, “Partners”). In the event you opt in and allow such disclosure, your personally identifiable information will only be disclosed to the previously identified Partner(s).

Opting In Through Other Venues. Please be advised that if you provide consent and allow MICA to disclose your personally identifiable information through one MICA venue (such as the Website), you will be deemed to have “opted in” through all MICA venues.

Disclosure to Agents of MICA. From time to time, MICA may share the information you provide to MICA, including personally identifiable information, with outside contractors, auditors, consultants, or others hired by MICA to assist in providing financial or operational activities on MICA’s behalf including technical and processing services and analysis of website performance. MICA informs these parties about safeguarding personally identifiable information, and requires them to use such personally identifiable information only for an authorized purpose on behalf of MICA and consistent with this Privacy Policy.

### **Electronically Produced Data**

Cookies. MICA, like most standard website servers, may use cookies and other tools to collect information about how you use the Website. A cookie is a small, unique text file that a website can send to your computer hard drive when you visit a site. MICA may use “session cookies”, which terminate when a user closes his or her browser, and/or “persistent cookies”, which remain on the user's computer until manually deleted. Most web browsers can either alert you to the use of cookies or refuse to accept cookies entirely. If you do not want MICA to deploy cookies in your browser, you can set your browser to reject cookies or to notify you when a website tries to put a cookie on your computer. Rejecting cookies may affect your ability to use the Website.

Action Tags. Like most standard website servers, MICA may employ a software technology called action tags (also known as “web beacons”, “single pixel gifs”, “clear gifs” or “web bugs”), which collect information and help to manage cookies, in order to gather information about Website usage. Action tags help MICA identify and track the performance of web pages on the Website, therefore allowing MICA to measure the performance and quality of the Website and to manage Website content. In addition, MICA may use action tags in emails. This allows MICA to gauge the effectiveness of certain communications by showing, for example, how many emails have been opened.

IP Addresses. An IP address is a number that is assigned to your computer when you use the Internet. Like most standard website servers, MICA collects IP addresses and other technical information about your machine through your web browser such as your operating system, browser type and referring URL for the purposes of, among other things, system administration and to ensure the validity of user requests.

Log Files. Like most standard website servers, MICA gathers certain information automatically and store it in log files, which contain information such as, among other things, IP addresses, browser type, operating system, ISP, date/time stamps and referring pages. Among other things, this information allows MICA to track statistics and trends on an aggregate basis.

### **Maintenance of Information and Security**

MICA maintains physical, electronic and procedural safeguards to protect the confidentiality and security of any personally identifiable information that you disclose to MICA. MICA utilizes what MICA believes to be industry standard security measures to protect the loss, misuse and alteration of personally identifiable information under MICA's control, and MICA limits access to your personally identifiable information within MICA to those Staff member(s) who need to know the personally identifiable information to provide information, services and/or products to you. However, due to the nature of the Internet, computer networks, systems and other factors, no transmission of data over the Internet is guaranteed to be completely secure. It may be possible for third parties not under the control of MICA to intercept or access transmissions or private communications unlawfully, regardless of MICA's best intentions. As such, MICA cannot ensure or warrant the security of any information you transmit to MICA, including without limitation personally identifiable information.