

## **MICA's IP Policy – Key Points**

MICA's IP policy aims to do two things:

- to help faculty, students and staff understand the basic copyright laws that determines when, how and under what terms we can copy or use the original works of others. This *copyright* portion of the policy is binding as it is part of the Copyright Law and MICA has no discretion over it. MICA's copyright regulations are not different from that of other higher education institutions.
- To help faculty, students and staff understand the ways in which their *intellectual property* (that is, original works created by them), specifically, its uses and ownership will be protected and managed. These policies are created by MICA and are designed to guide our decisions and plans in terms of IP. We have some discretion over their design and oversight.

## **Copyright Law**

The copyright law protects the rights of authors / creators to their original works. These are the right to reproduce (make multiple copies of one's works), use (including, creating other works from it), display (show in public venues), perform (in the case of performance works) and distribute (to share with others).

It is therefore illegal to

- reproduce a copyright protected work without the permission of the author / creator;
- to create a new work using parts of such work without the permission of the author / creator;
- to display or perform such work without the permission of the author / creator;
- to distribute or share such work with others without the permission of the author / creator.

## *Fair Use*

There are however cases where / when it is acceptable for you to use copyright protected work without their permission. Such uses are considered to be '*fair use*'.

Some potential cases where fair use might occur include

- criticism, comment, news, reporting: when you are citing another person's work so as to discuss or report it;
- teaching: when you are citing another person's work or making multiple copies of such works for use in classroom or studio teaching;
- scholarship and research: when you are citing or presenting another person's work for one's own research, creative work and scholarly writing.

In these cases, it is fair use however only under some circumstances. The Copyright Act proposes the '*four factor test*' to help determine when a particular use of another person's work *may* constitute 'fair use'. So before using a copyright protected work, it is useful to carefully consider the following four factors:

- *the purpose and character of your use of that work*. Is it for commercial purposes or for non-profit uses and how extensively is the work being transformed by the use? Educational and non-profit uses are generally preferred over commercial uses. Uses that add new meaning or significantly change the work are generally preferred over uses that merely copy without much alteration or new meaning.
- *the nature of the copyright protected work*. Informative and factual works (like scientific or historical texts) are more likely to be **accepted as** fair use than creative works (artworks, films, compositions, etc.). Unpublished works are considered to be suitable for fair use.
- *the amount and substantiality of the portion used*. How large is the portion used in relation to the entire copyright protected work and how important is the portion used in relation to the 'essence' of the work. Smaller portions and use of less important portions of the work are generally preferred.
- *the effect of the use on the potential market for the work*. How does the use of the work affect its commercial success or potential demand? If the use is likely to reduce the potential market for the work then it is less likely to be considered fair use.

If you determine that it is indeed fair use after considering the four factors in your particular case, then it is useful to document this rationale in some form – this could simply be a series of brief responses to each of these factors.

### *Permission for Use of Copyright Materials*

In all cases *where fair use is not applicable* and you would still like to use the copyright protected work then it is necessary to secure rights and permissions from the author / creator. Some important things to remember when doing this:

- Seek permissions and contact the copyright owner as early as possible before the anticipated date of use.
- Clearly identify in which specific ways and where you would like to use the copyright protected work.
- Identify all owners of copyright protected work and ensure that you seek permissions from all of them before the use.
- In some cases, permissions would need *licensing* arrangements with the copyright owner, where the owner allows you to use their image for a price.

### *Copyright Compliance*

- All faculty, staff and students are expected to comply with all copyright laws.

## **Intellectual Property**

MICA recognizes that faculty and students own the rights to all copyright protected works that they create as part of their own creative, academic and scholarly activities. These works are their Intellectual Property (IP).

MICA owns all the works created by staff within their scope of employment as they are on 'Work for Hire' with the institution.

There are *three* situations when faculty's and students' IP rights to their works is determined differently:

- their works are created with *Substantial MICA Resources*;
- such works are created as part of projects that are supported by external sponsors / organizations through formal agreements with MICA;
- the works incorporate MICA-owned intellectual property.

### *Participation Agreements*

In all such cases where faculty and students do not enjoy their usual rights to own and use the works they create, 'Participation Agreements' will be developed.

- These participation agreements will clarify the rights of the sponsors, MICA, faculty and students to own and to use those works.
- While it is usual for the sponsoring organization to own the rights to the works, this could be negotiated differently in specific participation agreements.
- Faculty and/or students however will always retain the rights to exhibit and publish the works as well as use them for educational purposes.

### *Substantial MICA Resources*

What are 'Substantial MICA Resources'? When faculty's and students' work involves a significant portion of institutional resources (in the form of funds, use of dedicated space and specialized equipment, etc.) that are not ordinarily available to faculty and students, then it is considered to be using 'Substantial MICA Resources'.

- The Provost or designee will determine what constitutes Substantial MICA resources in a particular project in consultation with the faculty involved and an IP Advisory Committee
- In cases where Substantial MICA Resources have been used, MICA will usually own these works unless this is differently agreed to in a particular Participation Agreement.

### *Externally Sponsored Projects*

- When the creation of works is supported by an external sponsor (a corporation or non-profit organization) through formal agreements with MICA, the sponsor will

usually own these works, unless this is differently agreed to in the particular Participation Agreement.

- MICA owns works created using grants from federal agencies, unless this is differently agreed to in the particular Participation Agreement.

#### *Intellectual Property Revenue Sharing*

- MICA will share net revenue (revenue after costs) generated from IP created using Substantial MICA Resources, in externally sponsored projects done through formal agreements with MICA and in projects created using MICA-owned IP with the faculty involved in creating it.

- The actual amounts and proportions of how these revenues are shared among the faculty, department and MICA will be decided in discussion with the faculty and indicated in the Participation Agreement of the project.

#### *Disclosure of Invention*

- When a faculty member involved in a project that uses Substantial MICA Resources expects to create original and innovative IP that has potential value, she/he should alert the Provost or designee to this as soon as they identify this possibility. This is called 'Disclosure of Invention'.

- The Provost will determine within 90 days whether MICA is interested in owning and protecting such IP and inform the faculty involved.

- Where MICA has interest in this IP, the faculty involved shall assist the Provost in securing this IP.

- Where MICA has decided to not own and protect this IP, the faculty involved is free to own and utilize the IP.

#### *Protection and Use of MICA's Intellectual Property*

- MICA produces a lot of original works that are copyrightable. However, MICA can choose which of these works to protect with copyright.

- MICA personnel who wish to use MICA-owned IP must contact the Provost to obtain permission before using it.

- External parties wishing to use MICA-owned IP must sign license agreements with the Provost before using it.

#### **Administration of IP Policy**

The IP policy will be administered by the Office of the Provost in consultation with an IP Advisory Committee comprised of faculty and staff.