

Takoda Institute Intellectual Property Policy

I. Purpose or Scope

The unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject students and individuals to civil and criminal liabilities. Almost all of the music, movies, television shows, software, games and images found on the Internet are protected by federal copyright law. The owner of the copyright in these works has the right to control their distribution, modification, reproduction, public display and public performance. It is therefore generally illegal to use file sharing networks to download and share copyrighted works without the copyright owner's permission unless "fair use" or another exemption under copyright law applies.

Fair use under the federal Copyright Act allows the use without permission of copyrighted material for the purpose of criticism, comment, news reporting or teaching under certain limited circumstances. There is no blanket exception from liability for students or employees of educational university, however, and whether the use of copyrighted material without permission falls with "fair use" or one of the other exceptions in the Act depends on a very detailed, case-by-case analysis of various factors. Students should be aware that sharing music, videos, software and other copyrighted materials is very likely not to be considered a "fair use" and therefore may be a violation of the law. A violation of Takoda Institute's policy for use of its information technology system can result in termination of network access for the student and/or other disciplinary action including removal of the student from Takoda Institute.

Summary of Civil and Criminal Penalties for Violation of Federal Copyright Laws

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under section 106 of the Copyright Act (Title 17 of the United States Code). These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement. Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or "statutory" damages affixed at not less than \$750 and not more than \$30,000 per work infringed. For "willful" infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys' fees. For details, see Title 17, United States Code, Sections 504, 505. Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense. For more information, please see the website of the U.S. Copyright Office at www.copyright.gov.

Takoda Institute's policies in regard to copyright infringement via the Internet prohibit the illegal downloading or unauthorized distribution of copyrighted materials using Takoda Institute's information technology system. Takoda Institute's

policies prohibit use of Takoda Institute’s computer network to engage in illegal copying or distribution of copyrighted works such as by unauthorized peer-to-peer file sharing (i.e., the sharing of copyrighted works, typically in digital or electronic files) without permission.

As a creative community of teachers, artists and scholars, Takoda Institute is committed to encouraging the creation of new works, new ideas, and new forms of creative and scholarly expression. This Policy on Intellectual Property is provided to protect the interests of those who create as well as the interests of Takoda Institute itself, which supports this creative and scholarly work.

This document expresses Takoda Institute’s policy regarding ownership and usage rights with respect to Intellectual Property (as hereinafter defined). It covers all those who are a part of Takoda Institute – faculty, staff, students, visiting artists, visiting scholars, or other participants enrolled, employed or affiliated with Takoda Institute , and this Policy governs in all circumstances, unless Takoda Institute has modified it through a written agreement connected to a sponsored or commissioned work or as part of work under a grant or contract. Should there be any conflict between the provisions of this Policy and the terms of a separate written agreement between Takoda Institute and any party, the terms of that separate written agreement will govern. This Policy is not intended to limit “fair use” as defined by U.S. laws.

II. Definitions (if applicable)

The following terms are used throughout the Policy and are defined as follows:

- A. *Copyright* - Copyright is the intangible property right granted for a limited period of time by federal statute (Title 17 of the U.S. Code) for an original work of authorship fixed in any tangible form of expression. Copyright provides the owner with five exclusive rights, including the exclusive right to reproduce the work, to prepare derivative works based on the work, to distribute copies of the work to the public by sale or other transfer of ownership (or by rental, lease, license or lending), to display the work publicly and to perform the work publicly (if relevant).
- B. *Commissioned Work* - A Commissioned Work is defined as a Work (as defined in paragraph K) that is produced or created pursuant to a written agreement with the Institution and for Institution purposes by (a) individuals not under the employ of the Institution or (b) Institutional Employees (as defined in paragraph D) acting outside the scope of their regular Institution employment, as determined by their existing Institution employment arrangement or contract.
- C. *Independent Academic Effort or Creative Activity* - Independent Academic Effort or Creative Activity is defined as the inquiry, investigation, research, or creative activity that is carried out by faculty, staff and Students of the Institution working on their own, that advances knowledge or the development of the arts, sciences, humanities, or technology where the specific direction, methodology, and content of the pursuit is determined by the faculty, staff member(s), or Student(s) without the direct assignment, supervision, or involvement of the Institution.

- D. *Institutional Employee* - An Institutional Employee is a full-time or part-time faculty member, visiting faculty, adjunct faculty, artist, scholar, or fellow (as defined in the Faculty Handbook), or a full-time or part-time staff member (as defined in the Staff Handbook), or Student, who is employed by the Institution or who is working under an Institution contract, either expressed or implied.
- E. *Intellectual Property* - Means: (i) trademarks, service marks, brand names, trade dress, assumed names, trade names, slogans, URLs, domain names, logos and other indications of source, sponsorship or affiliation, together with all associated goodwill (whether the foregoing are registered, unregistered or the subject of a pending application for registration); (ii) inventions, developments, improvements, discoveries, know how, concepts and ideas, whether patentable or not, in any jurisdiction; (iii) patents, patent applications and patent disclosures; (iv) trade secrets and proprietary or confidential information; (v) writings and other works of authorship, whether subject to copyright protection or not, in any jurisdiction, including but not limited to literary works (such as books, scholarly articles, journal articles and other articles, theses, research, course syllabi, curricula, exams, instructional and evaluation materials for classes, courses, labs or seminars, study guides, student rosters and attendance forms, grade reports, assessment of student work and projects, course or program proposals, software, data and databases, lecture and presentation materials); musical works (including any accompanying words); dramatic works (including any accompanying music); pantomimes and choreographic works; pictorial, graphic, and sculpture works (including graphic designs; illustrations, photographs, paintings, sculptures and other works of art); motion pictures and other audiovisual works (including films, audio and video recordings and multimedia projects); sound recordings; architectural works; and compilations; and (vi) copyrights, copyright registrations and applications for registration of copyrights in any jurisdiction.
- F. *Patent* - A United States patent is a grant which gives the owner of the patent the right to exclude all others from making, using, or selling the claimed invention in the United States for a set period of time. Similar rights are granted in other countries, but the discussion of Patents in this Policy will focus specifically on United States patent rights.
- G. *Sponsored Work* - Sponsored Work is a Work (as defined in paragraph K) that is produced or created under an agreement between the Institution and a sponsor which provides the Institution with ownership and/or usage rights to the Work and Intellectual Property produced under the agreement. Sponsored works do not include works created through independent academic effort or creative activity, even when based on the findings of the sponsored project, so long as an agreement does not state otherwise.
- H. *Student* - A Student is a regularly registered, full- or part-time, undergraduate or graduate at the Institution, including students attending the Institution as "special status students": e.g., as participants in Professional Institute for Educators (PIE), Continuing Education (CE), the Pre-College or Saturday programs, or in exchange programs or through special grants or fellowships.
- I. *Substantial Institutional Resources* - Any substantial use of Institution equipment, facilities, time, personnel, or funds, and use of Institution resources that are not "commonly provided", is considered a use of "Substantial Institutional Resources." This use does not include resources commonly provided to Institution faculty and

staff, such as offices, library facilities, basic artistic facilities, and everyday telephone, computer, and computer network support. However, substantial time spent in the use of these latter resources may constitute the use of "Substantial Institutional Resources." Resources not considered "commonly provided" include specially procured equipment or space, additional staffing or personnel, utilization beyond normal work hours of Institution personnel, and monetary expenditures that require a budget. Faculty may use the basic artistic facilities unless use infringes on student use of those facilities for coursework.

- J. *Trademark and Service Mark* - A trademark or service mark is any word, phrase, name, symbol, logo, slogan, device, or any combination thereof that is used in trade to identify and distinguish one party's goods or services from those of others.
- K. *Work* - The term "Work" as used in this Policy shall be defined to include all of the items identified in Sections (i), (ii), (iv) and (v) of the definition of Intellectual Property in paragraph E.
- L. *Work Made for Hire* - A "Work Made for Hire" is defined as a Work (as defined in paragraph K) prepared by an employee within the scope of his or her employment. Consistent with the Copyright Act of 1976, as amended, a Work Made for Hire under this Policy also includes a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

Examples of works made for hire include software programs created within the scope of an employee's duties by a staff programmer, a newspaper article written by a staff journalist for the newspaper that employs him/her, and a musical arrangement or ditty written for a music company by a salaried arranger on its staff.

III. Policy Provisions

A. *Faculty, Staff and Student Works*

1. General Rule.

Subject to the exceptions noted in this Policy, as a general rule, Takoda Institute does not claim ownership of Intellectual Property developed through Independent Academic Effort or Creative Activity and that is intended to disseminate the results of academic research and scholarship, and/or to exhibit forms of artistic expression on the part of faculty, staff, and Students.

2. Exceptions to the General Rule.

Exceptions to the general rule set forth in III.A.1 above include Intellectual Property developed by faculty, staff, Students and Institutional Employees under any of the following circumstances:

- (a) The Intellectual Property is developed as a Sponsored Work.
- (b) The Intellectual Property is developed as a Commissioned Work.
- (c) The Intellectual Property is developed using Substantial Institutional Resources.
- (d) The Intellectual Property is developed by the creator within the scope of his or her employment with Takoda Institute and constitutes a Work Made for Hire.
- (e) The Intellectual Property is developed by a creator who is assigned, directed or funded by Takoda Institute to create the Intellectual Property.
- (f) The Intellectual Property is developed under a grant, program or agreement which provides Takoda Institute with ownership rights, in whole or in part, to the Intellectual Property.

Under the circumstances described in Section III.A.2(a) through (f) above, the Intellectual Property shall be owned by Takoda Institute (or by Takoda Institute and any other party as specified in any written grant, program or agreement).

The creator of any Intellectual Property that is or might be owned by Takoda Institute under this Policy is required to make reasonable prompt written disclosure of the Work to an officer designated by Takoda Institute's President, and to execute any document deemed necessary by Takoda Institute to perfect legal rights in Takoda Institute and enable Takoda Institute to file applications for registration when desired.

3. Ownership Rights in Specific Types of Works.

For purposes of clarification and without limiting the general rule and exceptions set forth in Sections III.A.1 and 2 above, ownership rights in the following types of Works are allocated as set forth below:

(a) Curricular materials including course outlines, curricula, lesson plans, course handouts, PowerPoint and other presentation materials (in all forms and media), course content and syllabi are deemed to be Works Made for Hire and therefore all Intellectual Property associated therewith is owned by Takoda Institute. Likewise, student rosters, attendance forms, interim grade reports, and assessments of student projects, including all Intellectual Property associated therewith, belong solely to Takoda Institute.

(b) Unless developed under the circumstances set forth in Section III.A.2 (a) through (f), or a written agreement provides otherwise, scholarly articles and papers written for publication in journals, presentations and scholarly papers prepared for seminars and

conferences, and personal lecture or teaching notes are typically not considered to be owned by Takoda Institute as Works Made for Hire or otherwise.

(c) If any Intellectual Property to be owned by Takoda Institute under Section III.A.2 (a) through (f) above is developed jointly with a non-Institution party, the parties respective ownership and usage rights in the resulting Intellectual Property shall be set forth in a written agreement.

(d) Where Intellectual Property is to be developed using Substantial Institutional Resources, authorized representatives of Takoda Institute will develop a written agreement with the user of those resources, which must be executed by the parties prior to use of the resources, to identify the nature and terms of the use, including possible reimbursements or other systems of compensation back to Takoda Institute .

(e) Unless a Work is developed under the circumstances set forth in Section III.A.2 (a) through (f), or a written agreement provides otherwise, all Intellectual Property created by faculty during sabbatical are owned by the faculty.

(f) Unless the Work is developed under the circumstances set forth in Section III.A.2 (a) through (f), or a written agreement provides otherwise, Intellectual Property created by a Student working on his or her own, or developed in the context of a course, is owned by the Student and Takoda Institute will not use the Student's Work without the Student's permission to do so.

(g) Students working on a project governed by an existing written agreement to which Takoda Institute is a party are bound by all terms of that agreement.

(h) Students hired to carry out specific tasks that contribute to Intellectual Property of Takoda Institute retain no rights of ownership in whole or in part to that Intellectual Property or to the Student's contribution to that work.

(i) Students who wish to work collaboratively with Institutional Employees on projects which involve the creation of Works and Intellectual Property are required to sign and deliver an acceptable written agreement to Takoda Institute outlining their rights before commencing work on such projects. Either party has the right to initiate such agreement.

(j) The rights of Takoda Institute to a perpetual, worldwide license (exclusive or non-exclusive, as Takoda Institute deems necessary), to use and reproduce copyrighted materials for educational, research, and promotional purposes must be included in any agreement with a non- Institution sponsor.

B. *Independent Contractor Works.*

As a general rule, Takoda Institute will own Intellectual Property created by an independent contractor if a written agreement signed by the parties so provides, or Takoda Institute has specially ordered or commissioned the work and such work is designated as a Work Made for Hire in a signed written agreement between the parties. If Takoda Institute does not own the Intellectual Property created by an independent contractor, it shall have a right or license to use any Work produced by the independent contractor in the course of performance of the contract, in accordance with the parties' agreement.

IV. Institution's Usage Rights

To the extent that faculty, staff or Institutional Employees retain ownership of Work and Intellectual Property according to this Policy, Takoda Institute shall have a permanent, non-exclusive, worldwide, royalty free right and license to make educational use of such Work and Intellectual Property, including the right to use, reproduce, distribute, display, perform and modify (i.e. create derivative works) such Work and Intellectual Property in all forms and media now known or hereafter existing in connection with its curriculum, courses of instruction and educational programs, and any related accreditation or promotion of Takoda Institute . Where practicable, Takoda Institute will use best efforts to cite the creator of the Work if Takoda Institute exercises such usage rights.

V. Institution's Marks

Intellectual Property comprised of or associated with Takoda Institute 's Trademarks and Service Marks, including but not limited to its name, logos, slogans, insignia, and other symbols of identity (collectively the "Marks") belongs exclusively to Takoda Institute and/or its affiliates. This Policy is designed to protect the reputation of Takoda Institute and its affiliates, and to prevent the illegal or unapproved use of Takoda Institute 's Marks.

No Institution Mark may be used without the prior, written authorization of the appropriate authorities of Takoda Institute. However, faculty, staff, and Students may identify their status or professional affiliation with Takoda Institute as appropriate, but any use of Takoda Institute's Marks in this regard must avoid any confusing, misleading or false impression of affiliation with, or sponsorship or endorsement by, Takoda Institute. No products or services may be marked, offered, sold, promoted or distributed with or under Takoda Institute's Marks without Takoda Institute's prior written permission and compliance with the licensing policies of Takoda Institute. All requests for use of Institution Marks must be submitted in writing to an officer designated by the President. The designated Institution officer retains information concerning what marks, names, logos, symbols, insignias, and related words, phrases, and images currently comprise Takoda Institute 's Marks.

VI. Substantial Use of Institution Resources

Although “Substantial Institutional Resources” is defined (see Section II. Terminology), it is acknowledged that such resources and their use may change over time, with changes in technology, physical infrastructure of Takoda Institute, modes of employment, etc. Therefore, this Policy allows the Academic Policy Advisory Committee to review the definition of “substantial use” from time to time and implement any changes or clarification to the definitions which Takoda Institute deems necessary in order to establish an appropriate standard.

VII. Review Scheme

Questions concerning this Intellectual Property Policy should be addressed to the Dean of Academic Affairs.

VIII. Reservation of Rights

Takoda Institute reserves the right at any time in its sole discretion to modify and/or make changes to the Policy as advisable or appropriate. Takoda Institute agrees, however, that it will endeavor to notify the entire Institution community through both print and electronic means of its intention to make modifications and/or changes to the Policy at least 30 working days prior to their enactment.

IX. Effective Date

This Policy supersedes any preexisting Intellectual Property policy of Takoda Institute and will remain in effect until modified or revoked by Takoda Institute. This Policy will be binding on all parties who create Intellectual Property after the effective date, and this Policy and other agreements that represent modifications to this Policy shall remain binding on such creators even after their relationship with Takoda Institute changes or terminates.

X. Governing Law

This Policy shall be governed by and interpreted under applicable federal laws pertaining to intellectual property and applicable state law, without regard to choice of law provisions.