

**Fairmont State  
Board of Governor  
Meeting of December 13, 2007**

**AGENDA**

**Call to Order**

1. Approval of Minutes (October 24, 2007)

*Tab 1    Action Item*

**Faculty Senate Report** *(Chuck Shields)*

**Faculty Assembly Report** *(Tom Stose)*

**Classified Staff Report** *(Mary Jo Rutherford)*

**Student Government Report** *(Kasha Brown)*

**Foundation Report** *(Jean Ahwesh)*

**FSU Academic Affairs & FS Student Life Committee Items** *(Jim Griffin)*

1. Approval of Copyright Policy

*Tab 2    Action Item*

**Finance, Personnel, Facilities, External Relations Committee Items** *(Bob Kittle)*

1. Finance Report
2. Approval of revisions to BOG Policy 2: Naming or Renaming of Facilities, Organizational Units, Assets and Events

*Tab 3*

*Tab 4    Action Item*

**Pierpont Community & Technical College Program & Off-Campus Service Committee Items** *(Michele Casteel)*

*(Nothing at present)*

**Committee of the Whole**

**Old Business**

**New Business**

**President's Report** *(Dan Bradley)*

**President's Report** *(Blair Montgomery)*

**Public Comment**

**Possible Executive Session**

Motion Wording:

\_\_\_\_\_ moved pursuant to §6-9A-4-2b of the WV Code that the Board go into Executive Session to discuss personnel and personnel matters, which if discussed in public might adversely affect the reputation of any person.

**Next meeting date is Thursday, February 14, 2008 in Board Room – Falcon Center**

**Fairmont State University**  
**BOARD OF GOVERNORS**  
**MINUTES**  
October 24, 2007

**1. Call to Order**

A meeting of the Fairmont State Board of Governors was held on October 24, 2007 beginning at 2:00 p.m. in the Board Room at the Falcon Center. Present at the meeting were Board Members: Carl Friebe, Jim Griffin, Robert Kittle, Andy Kniceley, Shane Livingston, Shirley Stanton, Skip Tarasuk and Donna Trickett. Absent were Michele Casteel, Janet Crescenzi, Leslie Lovett and Larry Mazza. Also in attendance were: President Dan Bradley, Jean Ahwesh, Michael Belmear, Mike Bestul, Sarah Hensley, Larry Lawrence, Maria Rose and Rick Porto. Robert Kittle called the meeting to order.

**2. Approval of Minutes**

Carl Friebe moved the minutes of June 14, 2007 and August 27, 2007 meetings be approved. Jim Griffin seconded. Motion carried.

**3. Constituent Reports**

- 1) Chuck Shields reported for Faculty Senate
- 2) Thomas Stose reported for Faculty Assembly
- 3) Harriet Bower reported for Classified Staff Councils
- 4) Kasha Brown reported for Student Government
- 5) Jean Ahwesh reported for Foundation

**4. FSU Academic Affairs & FS Student Life Committee Item**

Jim Griffin brought a recommendation from the committee to approve a program name change. Carl Friebe seconded. Motion carried.

1. Resolved, that the Fairmont State Board of Governors approve the program name change from Intelligence Research and Analysis (IRA) to National Security and Intelligence (NSI).

**5. Finance, Personnel, Facilities, External Relations Committee Items**

Bob Kittle brought a recommendation from the committee to approve the following proposals. Andy Kniceley seconded. Motion carried.

1. The Financial Report and the Cash Handling Audit was accepted by the Audit Committee.
2. Resolved, that the Fairmont State Board of Governors approve the proposed Information Technology Policy.
3. Resolved, that the Fairmont State Board of Governors approve the proposed Bookstore Policy.

**6. President Report**

President Bradley gave a report.

**7. Public Comment**


Sue Kelley and Harry Baxter made comments.

**8. Executive Session**

Carl Friebel moved pursuant to §6-9A-4-2b of the WV Code that the Board go into Executive Session to discuss personnel and personnel matters, which if discussed in public might adversely affect the reputation of any person. Andy Kniceley seconded. Motion carried.

At the end of executive session Jim Griffin moved that this Board adjourn executive session and reconvene in open session. Andy Kniceley seconded. Motion carried.

There being no further business, the meeting was adjourned.

A handwritten signature in cursive script that reads "Robert E. Kittle". The signature is written in black ink and is positioned above the printed name.

Robert E. Kittle, Chair

**Fairmont State University Board of Governors  
December 13, 2007**

**ITEM:** Approval of Copyright Policy

**COMMITTEE:** Academic Affairs and Student Life

**RECOMMENDED RESOLUTION:** *Resolved*, that the Fairmont State Board of Governors approve the attached Copyright Policy.

**STAFF MEMBER:** Thelma Hutchins/Phil Mason

**BACKGROUND:**

This policy was developed by a faculty/staff committee. Public comment was gathered over the summer and early fall. As stated in the policy, the purpose is to provide a summary of copyright law as it relates to the use of copyright-protected works in the classroom, the library, and throughout the Fairmont State campus community. The policy is designed to provide guidelines and procedures for obtaining copyright permission to use these works.

**Draft**  
**Fairmont State Board of Governors**  
**Policy #X**  
**Copyright Policy**  
**Effective Date:**

**SECTION 1: GENERAL**

**1.1 REASON FOR THE POLICY**

The purpose of the Fairmont State University Copyright Policy is to provide a summary of copyright law as it relates to the use of copyright-protected works in the classroom, the library, and throughout the Fairmont State campus community. The policy is designed to provide guidelines and procedures for obtaining copyright permission to use these works.

There are many gray areas surrounding U.S. copyright law. The goal of this policy is to provide Fairmont State University faculty, librarians, students, administrators, employees, and others with a standard approach for addressing complex copyright issues. The policy covers classroom issues such as photocopying, online and distance education, and course packs. It also covers library uses for print and electronic reserves, interlibrary loan, and document delivery.

While this policy provides practical advice and procedures on copyright-related matters, it is not a substitute for legal advice that should be obtained when necessary. In order to be more efficient in administering copyright-related procedures and policies, Fairmont State University has established a Copyright Office. This office serves as the official recipient for reports of infringement and the source of “take down notices” for electronic content in the event such a notice is received. The office serves as the registered copyright agent and manages the ongoing coordination of copyright permissions and intellectual property issues.

**1.2 POLICY STATEMENT AND REGULATORY COMPLIANCE**

*It is the policy of Fairmont State University that all members of the university community must comply with U.S. copyright law.*

Copyrighted materials may be copied freely by the owner of the copyright on the materials.

**SECTION 2: COPYRIGHT BASICS**

**2.1 What Is Copyright?**

Copyright is an area of law that provides creators and distributors of creative works with an incentive to share their works by granting them the right to be compensated when others use those works in certain ways. Specific rights are granted to the creators of creative works through the U.S. Copyright Act (Title 17, U. S. Code). If an individual wishing to use a work is not the copyright holder for that specific work, as determined by law, the individual ordinarily must obtain

copyright permission in order to reuse or reproduce that work. There are exceptions in the Copyright Act for certain academic uses, and permission is not required for certain other actions, such as reading or borrowing original literary works from a library collection.

## 2.2 Key Definitions

When used in this policy statement, the term **Copyright** shall be understood to mean that bundle of rights that protect original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. **Works of authorship** (including computer programs) include, but are not limited to the following: literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works (photographs, prints, diagrams, models, and technical drawings); motion pictures and other audiovisual works; sound recordings; and architectural works; and original data. **Tangible media** include, but are not limited to, course materials (including syllabuses, student assignments, lesson plans); online courses, course packs, books, periodicals, manuscripts, CD recordings, films, tapes, and computer disks.

The following definitions are presented in Section 101 of Title 17 and are of use in understanding the aspects of Copyright law.

- **Literary works** are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.
- **Pictorial, graphic, and sculptural works** include two-dimensional and three-dimensional works of fine, graphic, and applied art; photographs, prints and art reproductions; maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.
- **Sound recordings** are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.
- A work is **created** when it is fixed in a copy for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.
- A work is **fixed** in a tangible medium of expression when its embodiment in a copy, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is “fixed” for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

- A *pseudonymous work* is a work on the copies of which the author is identified under a fictitious name. The author under his/her real name would hold the copyright barring any contracts or stipulations to the contrary.
- A *collective work* is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.
- A *compilation* is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term compilation includes collective works.
- A *derivative work* is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a derivative work.
- A *joint work* is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

### 2.3 What Is Protected by Copyright?

Rights granted by the Copyright Act are intended to benefit the creators of original works of authorship, including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. This may be interpreted to mean that virtually any creative printed work, including books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, other printed materials, and unpublished materials, such as analysts' and consultants' reports, are protected by copyright. Copyright protection also extends to non-print materials including electronic content, computer programs and other software, sound recordings, motion pictures, video files, sculptures, and other artistic works. Among the exclusive rights granted to those authors are the rights to reproduce, distribute, publicly perform, and publicly display their works.

These rights provide copyright holders control over the use of their creations and an ability to benefit, monetarily and otherwise, from the use of their works. Copyright also protects the right to "make a derivative work," such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or journals; and the rights of attribution and integrity for authors of certain works of visual art. Copyright law does not protect ideas, data, or facts.

In the U.S., the general rule of copyright duration for a work created on or after January 1, 1978, is the author's life plus 70 years after the author's death. Works created by companies or other types of organizations generally have a copyright term of 95 years. The following chart may be used as a guideline for determining when works pass into public domain.

### 2.4 When works pass into the public domain

DATE OF WORK	PROTECTED	TERM
Published before 1923	Now In Public Domain	None
Published from 1923-1963	When published with notice	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964-1977	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act, which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-21-2002	1-1-78, the effective date of the 1976 Copyright Act, which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years (or if work of corporate author- ship, the shorter of 95 years from publication, or 120 years from creation)

*[Adapted, on the basis of 1998 amendments to 1976 copyright law, from Libraries and Copyright: Copyright Law in the 1990s, Laura N. Gasaway and Sarah K. Wiant (Washington, D.C.: Special Library Association, © 1994)]*

## 2.5 What can be Copyrighted?

Fairmont State University, which includes Pierpont Community & Technical College, fully supports the development, production, and dissemination of intellectual property by its faculty members, students, administrators, and administrative staff. Fairmont State University believes that the public interest is best served by creating an intellectual environment in which creative efforts and innovations are encouraged and rewarded, while still retaining for the University reasonable access to, and use of, the intellectual property for whose creation the University has provided some form of assistance.

*(In the development and promulgation of the Fairmont State University Intellectual Property Policy considerable use has been made of the suggestions/guidelines of the American Association of University Professors (AAUP) and of the American Federation of Teachers Higher Education (AFT.)*

The intellectual property policy of Fairmont State University

- seeks to protect and promote the valued and traditional academic freedom of Fairmont State University's faculty, staff, and students in matters of the creation of intellectual property;
- seeks to balance fairly and reasonably the rights of authors, sponsors, and Fairmont State University;
- seeks to ensure that any copyrightable material in which Fairmont State University has an interest is utilized in a manner consistent with the public good.

This copyright statement takes as its guiding assumption that the person (or persons) who create the intellectual property, shall solely and exclusively own the intellectual property. [As the AAUP Statement on Copyright points out, "It has been the prevailing academic practice to treat the



faculty/staff member as the copyright owner of works that are created independently and at the faculty/staff member's own initiative for traditional academic purposes."]. In this respect, Fairmont State University recognizes and reaffirms the traditional academic freedom of its faculty and staff to publish freely without restriction. In keeping with this philosophy, Fairmont State University will neither construe the provision of office space or library facilities as constituting significant use of university space or facilities, nor will it construe the payment of salary from instructional accounts as constituting significant use of university funds, except for those situations where the funds were paid specifically to support the development of such material.

## 2.6 Who Owns the Intellectual Property Copyright?

There are four limited and expressly defined sets of circumstances where Fairmont State University may claim ownership of the copyright.

- Special works created in circumstances that may properly be regarded as **made for hire**. (See the AAUP *Statement on Copyright* for an extended discussion of work for hire). A work will not be treated as **made for hire** merely because it is created with the use of University resources, facilities, or materials of the sort traditionally and commonly made available to faculty members]
- Negotiated contractual transfers
- **Joint works** as described in the Copyright Act, where the institution can be considered a co author
- Copyright ownership of all materials (including software, but excluding theses) which are developed in the course of or pursuant to a sponsored research grant, contract, or other agreement.

2.6.1 Fairmont State University shall have **exclusive ownership** of copyright only in the following 3 circumstances:

- The University expressly directs a faculty member, administrator or staff member to create a specified work, or the work is created as a specific requirement of employment or as an assigned institutional duty that may, for example, be included in a written job description or an employment agreement. Under these circumstances, the product would be developed as a **work for hire** and commissioned by the University and specified as such in a written contract or other appropriate document. Under these special circumstances, the work shall be owned solely by the University both in copyright and distribution. The University has the responsibility for the registration of copyrightable works for which it has exclusive ownership. The University recognizes two exceptions to the "work for hire" relationship it may have with a faculty member under a specific contractual relationship. Exceptions:
  1. Online courses developed through the University's established online course development grant program, whereby a faculty member is provided a stipend for course development and first-time delivery of the course are not considered works for hire in this policy, but rather are considered to be jointly owned by the faculty creator and the University. (Please refer to section on joint ownership.)
  2. Intellectual property, of any kind, created by a faculty member during a formal sabbatical leave that is wholly or partially funded by the University will be solely

and exclusively owned by the faculty member who created it. The faculty member will retain all copyright ownership privileges including all royalty rights.

- The creator of the work in question has voluntarily transferred the copyright, in whole or in part to the institution. Such transfer shall be in the form of a written document signed by the creator.
- Ownership of material created as a result of a sponsored research grant, contract or other agreement shall be determined in accordance with the terms of the sponsored research or other agreement. In the absence of such terms, the copyright shall become the property of the University. Normally, research contracts sponsored by the various agencies of the federal government provide the government with specific rights to the copyrightable material developed in the performance of the research. These rights may consist of title to such data vesting solely in the federal government or the reservation of a royalty-free license to the government, with title vesting in the University. In some cases, the federal government prohibits any private copyright ownership. Grants and other types of sponsored research agreements, whether by a governmental agency or private industry, may, on the other hand, provide no specific provision concerning the rights in such material.

#### 2.6.2

Fairmont State University shall have **joint ownership** in the following circumstance:

- The University has contributed to a **joint work** under the Copyright Act. The institution can exercise joint ownership under this clause when it has contributed specialized services, facilities and additional compensation for the production of the work that goes beyond what is traditionally provided to faculty members generally in the preparation of their course materials. Such arrangement is to be agreed to in writing, in advance, and in full conformance with other provisions of copyright law. The University, would, in reality, have a limited license to use the stated work permitting it to use the “joint work” for the benefit of its students and employees. It would not have the right to the distribution or commercialization of the work, nor could it make any modifications to the work, the exception being appropriate updating of informational materials associated with courses of any kind. Changes in course content or pedagogy would not be permitted under this joint ownership policy. Specialized services include a developmental stipend, release time, specialized technical support, specialized hardware/software (purchased by the University for the specific project), copyright clearances, student employment support, including graduate assistant support. In these instances, the creator of the work (as identified under explanation of “Works of Authorship” shall retain the rights to intellectual property (copyright) contained therein but distribution or commercialization of the work requires the consent of the creator and the University. As the intellectual property owner, the creator has the exclusive right of revision and/or creation of derivative works. Revision of course (face to face, hybrid or fully online) content would be required solely at the discretion of the academic unit that offers the course or in response to changes in the technology used to offer the course. The University would have no proprietary interests in any creative work of any kind unless specific contractual agreements are made with the creator prior to actual development. Any and all royalty income from the marketing of any work of commercial value shall belong solely to the creator. The University will lay no claim to such royalties.

- As stated earlier, online courses developed through the University's established online course development grant, whereby a faculty member is provided a stipend for course development and first-time delivery of the course shall be joint ownership in the limited way described in this statement.

## **2.7 Who May Use Intellectual Property?**

University policy allows for Fairmont State University to use works created by faculty members without charge for educational and administrative purposes within the institution, including distance education through online courses. Faculty members are encouraged to include such uses in their agreements transferring copyright for such works to a publisher. These uses enable the University to operate more efficiently for such purposes as complying with accreditation agency requests, but do not infringe on legitimate faculty rights.

Material created for ordinary teaching use in the classroom and in department programs, such as syllabuses, assignments, and tests shall remain the property of the faculty author, but the University shall be permitted to use such material for internal instructional, distance education and administrative purposes, including satisfying requests of accreditation agencies for faculty-authored syllabuses and course descriptions. In any agreement transferring copyright for such works to a publisher, faculty authors are urged to seek to provide rights for the University to use such works for internal instructional, educational, and administrative purposes.

## **2.8 Ownership of student created works**

Fairmont State University treats intellectual property created by students in the same manner that it does intellectual property created by faculty.

Theses created by students shall be governed by the following provisions:

- Copyright ownership of theses generated by research which is performed in whole or in part by the student with financial support in the form of wages, salaries, stipend, or grant from funds administered by the University shall be determined in accordance with the terms of the support agreement, or in the absence of such terms, shall become the property of Fairmont State University.
- Copyright ownership of theses generated by research performed in whole or in part utilizing equipment or facilities provided to Fairmont State University under conditions that impose copyright restriction shall be determined in accordance with such restrictions.
- Copyright ownership of theses, not within the previous provisions of this policy, shall be the property of the author. However, the student must, as a condition of a degree award, grant royalty-free permission to the Fairmont State University to reproduce and publicly distribute copies of the thesis.

## **2.9 COPYRIGHT ROYALTIES**

1. Royalty income received by Fairmont State University through the sale, licensing, leasing or use of copyrightable material in which the University has acquired a copyright interest.

will be shared with the author, the author's college/school and department. Questions of authorship that cannot be resolved by the chairperson of the originating department shall be directed to the Copyright Office for review and resolution. The accumulated gross royalties received by Fairmont State University will usually be distributed as follows:

- a. 50% to the author(s)\*;
- b. 30% to the University;
- c. 10% to the originating department;
- d. 10% to the originating college or school.

\*Any revenues generated from copyright royalties that would be due Fairmont State University would be received by the Fairmont State University Foundation and distributed according to the delineated schedule.

Where, after review, authorship cannot be determined, the percent share of royalties intended for the author shall be distributed instead to the originating department. (As used herein, the phrase "originating department" means the department, laboratory or center which administered the funds, space or facilities used in developing the copyrightable material.)

The University reserves the right as its discretion to deduct from gross royalty income prior to any such distribution, expenses such as litigation which may be incurred in enforcing or defending the copyright or in licensing the copyrightable material.

Publications not prepared within the scope of a University employee's duties are excluded from the ownership provisions of this category. Textbooks developed through the use of classes are excluded from the provisions of this category, unless such textbooks are developed using the University-administered funds paid specifically to support such textbook development.

## **2.10 COPYRIGHT AGREEMENTS**

The policies set forth above constitute an understanding which is binding on Fairmont State University faculty, staff, and students, as a condition of their participating in Fairmont State University research programs or their use of funds, space, or facilities. Where Fairmont State University may have an obligation to assign rights in copyrights to a sponsor, or may itself acquire rights under this policy, it will require a formal copyright agreement.

## **2.11 How to Obtain Copyright Permission**

If a use falls under a copyright exemption or is subject to fair use, there is no need to gain permission.

In all other cases, and even sometimes when an individual may think it is fair use but still wants to be safe, permission of the copyright owner should be requested before making use of the material. If the owner says no, and the specific use is not within fair use, the material may not be used. If the

owner says no, and the specific use is within the fair use guidelines, the material may be used, but the instructor may have to go to court to defend its use.

Permission to use copyright-protected materials, when required, should be obtained prior to using those materials. It is advisable to obtain permission in writing (including email) and to ensure that the Fairmont State University Copyright Office has a copy of each permission form or letter.

A request for permission to use copyrighted materials should contain a brief description of the material to be used and how it will be used. A space should be left so that the recipient can sign the form and return it to grant permission. No response is not permission; in fact, no response should be treated as a lack of permission. Otherwise, use of the materials must be at the risk of the user.

The time to obtain permission may vary and, where possible, it is recommended that the permissions procedure start at least six months prior to the time that use of the materials is desired. The Copyright Clearance Center is the fastest resource for obtaining copyright permission.

Information to be included in the request for permission:

- Title of the material
- Creator/author of the material
- Publisher of the material
- Description of the material
- ISBN or ISSN, if applicable
- Date of publication, if applicable
- Purpose for which the requestor wants to reproduce the item (research, educational, etc.)
- How the material is to be reproduced (e.g., photocopied, digitized)
- Where the reproduced material will be used or will appear and for how long

### **SECTION 3: FAIR USE**

The doctrine of fair use, embedded in section 107 of the Copyright Act of 1976, addresses the needs of scholars and students by limiting the rights of copyright ownership. However, what constitutes fair use is expressed in the form of guidelines rather than explicit rules.

#### **Four Guiding Principles**

To determine fair use, four factors must be considered:

1. The **purpose and character** of the use, including whether the copied material will be for nonprofit, educational, or commercial use. While this factor at first seems reassuring to educators, several courts have held that the absence of financial gain is insufficient for a finding of fair use.
2. The **nature** of the copyrighted work, with special consideration given to the distinction between a creative work and an informational work. For example, photocopies made of a newspaper or newsmagazine column are more likely to be considered fair use than copies of a musical score or a short story. Duplication of material originally developed for

classroom consumption is less likely to be a fair use than is the duplication of materials prepared for public consumption. For example, a teacher who photocopies a workbook page or a textbook chapter is depriving the copyright owner of profits more directly than if copying one page from the daily newspaper.

3. The **amount, substantiality, or portion** used in relation to the copyrighted work as a whole. This factor requires consideration of 1) the larger work that is copied and used, and 2) the significance of the copied portion.
4. The effect of the use on the **potential market** of the copyrighted work. This factor is regarded as the most critical one in determining Fair Use; and it serves as the basic principle from which the other three factors are derived and to which they are related. If the reproduction of a copyrighted work reduces the potential market and sales, and therefore, the potential profits of the copyright owner, that use is unlikely to be found a fair use.

Fair use is an ambiguous concept and the law does not state exactly what uses of a copyrighted work will be considered fair uses under the law and may, therefore, be used without obtaining permission. Individuals who are not lawyers may often need to be interpreters of the law in everyday circumstances, and answers as to how much reproduction may be considered fair use often remain unclear.

Frequently scholarly and association publishers will exempt educational uses of their materials from a strict observance of the copyright law. Such exemptions must be stated within the published materials. In such cases, it is permissible to copy the materials without permission or compensation, up to and including the limits set by the publishers, even if they exceed fair use requirements. The publisher may not claim rights in published materials that exceed those established under law.

Publishers generally have established copyright clearance offices and practices that allow for educational uses in excess of legal limitations. Frequently, all that is required is a written request for permission to use materials for classroom purposes.

## Guidelines

These guidelines are based on the 1998 Conference on Fair Use (CONFU) report to Congress. The guidelines were meant to be minimum guidelines for what constitutes educational fair use. They have not been passed into law and represent the conditions under which educators can use copyrighted materials without getting consent of the author or creator of the work. They are guidelines to assist the Fairmont State community in making decisions about whether or not an intended use of copyrighted materials is fair or is an infringement.

- 1) A teacher may make (or request to be made) a **single copy** of any of the following for his or her scholarly research, for use in teaching, or for preparation to teach a course.
  - A chapter from a book;
  - An article from a periodical or newspaper;
  - A short story, short essay or short poem, whether or not from a collective work;

- A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.
- 2) A teacher may make (or request to be made) multiple copies for classroom use or discussions (not to exceed more than one copy per pupil) provided that:
- The copying meets the tests of **brevity, spontaneity, and cumulative effect**; and
  - Each copy includes a notice of copyright.

### Test of Brevity

- **Poetry**
  - A complete poem if less than 250 words and if printed on not more than two pages, or
  - An excerpt from a longer poem of not more than 250 words
- **Prose**
  - A complete article, story, or essay or less than 250 words, or
  - An excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less
- **Illustration**
  - One chart, graph, diagram, drawing, cartoon, or picture per book or per journal issue
- **Special works**
  - Works in poetry, prose, or “poetic prose” which fall short of 2,500 words in their entirety and
  - Which often combine language with illustrations and are intended sometimes for children and at other times for a more general audience

### Tests of Spontaneity

- The copying is at the request and inspiration of the individual teacher, and
- The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

### Tests of Cumulative Effect

- The copying of the material is only for one course in the school in which the copies are made.
- Not more than one short poem, article, story, essay, or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- There shall not be more than nine instances of such multiple copying for one course during one class term.

The following uses are prohibited:

A teacher may **not** copy to create, replace, or substitute for

- Anthologies,
- Compilations, or
- Collective works (e.g. course packs)

A teacher may **not** make a copy of or from works intended to be “consumable” in the course of study or of teaching. These include

- Workbooks,
- Exercises,
- Standardized tests,
- Test booklets,
- Answer sheets, and like consumable material.

Copying shall **not**

- Substitute for the purchase of books, publishers’ reprints, or periodicals;
- Be directed by higher authority;
- Be repeated systematically by the same instructor for the same course; for example, an instructor may not copy the same item for a class each time the class is taught, even if there are intervening semesters in which the class is not taught, or if the class is taught at different off-campus program centers or cohorts, and
- Shall not be charged to the student beyond the actual cost of the photocopying.

To use materials in teaching that fall outside of the scope of fair use, an instructor can create a course pack.

## **Types of Use**

### **Classroom Handouts**

Based on Fairmont State University’s fair use analysis, classroom handouts fall into two categories: one that requires permission and one that does not. If the handout is a new work for which the instructor could not reasonably be expected to obtain permission in a timely manner and the decision to use the work was spontaneous, that work may be used without obtaining permission. However, if the document is planned in advance, repeated from semester to semester, or involves works that have existed long enough that one could reasonably be expected to obtain copyright permission in advance; the instructor must obtain copyright permission to use the work.

### **Course packs**

An academic course pack is a collection of materials (usually photocopied) used in the classroom and distributed either in class handouts or in a book format. Course packs commonly are available through the campus bookstore. Most publishers grant “clearances” for course packs—that is, for a fee, publishers give permission for their books and/or articles to be copied and distributed in educational settings. These clearances usually last for one semester. After that, the instructor must seek clearance again. In addition to the paper course packs, some companies now will assist in provision of electronic course packs used in distance learning and electronic teaching programs.

After many court rulings on course packs, it has been clearly established that instructors need to obtain permission before reproducing copyrighted materials for any academic course pack. When ordering course packs, it is important to clarify who will obtain permission for the course pack--the



bookstore, the faculty member, or a member of the administrative staff. Deferring responsibility for copyright permission will not provide the instructor any protection against a claim of copyright infringement.

#### **SECTION 4: FAIRMONT STATE UNIVERSITY LIBRARIES AND COPYRIGHTED MATERIAL**

4.1: This section of the copyright policy provides guidance to the Fairmont State University community regarding the lawful uses of those copyrighted works that are made available within or through the libraries. If the library owns a copy of a publication, the library may place that copy on reserve without obtaining copyright permission. If the library wishes to reproduce additional copies of a work and place them on reserve for students to review, in either paper or electronic format, the library must obtain copyright permission. Copyright protection applies to the reproduction, alteration, distribution, and performance of a variety of creative works, including printed materials, sound and video recordings, visual artwork, online databases, and software.

#### **4.2 Copying for Scholarly Needs or Library Print Reserves**

All materials placed on library reserves must comply with federal copyright law and with Fairmont State University copyright policy. Any readings that are not clearly within the scope of the fair use provisions of 17 U.S.C., Section 107, cannot be added to the reserve system without the permission of the copyright holder. Library Circulation personnel will pass the request for permission on to the Librarian who has responsibility for copyright clearance. The process may take several weeks, and publishers often refuse such requests.

#### **4.3 Electronic Reserves**

The Libraries of Fairmont State have electronic reserves available through the Docutek system. It is preferable to link to materials already legally available at another site rather than scanning or making a digital copy of copyrighted materials. The libraries have access to thousands of full-text journals through electronic databases to which access has been purchased by the institution. Databases such as *JSTOR* and *Academic Search Premier* provide legally permissible ways to use links in electronic reserves and WebCT/Vista.

Fairmont State's electronic reserves are structured to limit access only to students who are registered in the course for which the items have been placed on reserve and to instructors and staff responsible for the course or the electronic system.

The guidelines of the libraries adhere to the fair use test factors. Assuming that any request for documents to be placed on electronic reserves meets the fair use test, the request will also be subject to the following limitations:

- Only one article from a single journal, magazine, or newspaper issue, one very brief excerpt from a single book, one chart/graph/illustration from a source, or one poem from a work may be placed on electronic reserve per semester. Any item(s) selected must constitute only a small percentage of the total amount of assigned reading for the course (less than 10%).
- The library will make only one scanned copy to be placed on reserve. Copies will be stored as PDF files. Access will be password-protected and restricted to students who are currently enrolled in the class for which the reserve reading is assigned. Files may be viewed or printed to a printer, one copy per person; saving the document to a thumb drive or other device is not permitted.
- Reserve files will be removed at the end of each semester unless they are the professor's own work, or have received permission for use by the copyright holder;
- All requests for electronic reserves need to be accompanied by a request form. A notice of copyright appears on the opening page for each course, and copyright guidelines for use must be accepted by the user before access to the documents is granted.

Items that may **not** be placed on electronic reserves include the following:

- Course packs,
- Consumables, such as workbooks,
- More than one article from the same issue of a journal,
- More than one chapter from the same book, unless several chapters represent less than 10% of the entire book,
- An entire book,
- Any material, not in the public domain, that has already been placed on reserve/electronic reserve and for which there is no permission from the copyright holder,
- Any material for which the instructor, the library, or a unit of the educational institution does not possess a lawfully obtained copy. Articles obtained by interlibrary loan or personal subscriptions may not be used.

#### 4.4 Photocopying in the Library

It is permissible to photocopy copyright-protected works in the Fairmont State Libraries without obtaining permission from the copyright owner, under the following circumstances:

- **Library user requests for articles or short excerpts.** At the request of a library user or another library on behalf of a library user, the Fairmont State Library may make one reproduction of an article from a periodical or a small part of any other work. The reproduction must become the property of the library user, and the library must have no reason to believe that the reproduction will be used for purposes other than private study, scholarship, and research. In accord with Section 108 of the Copyright Act, the library must display the register's notice at all photocopier locations (see Copyright Warning Sign for Copiers).
- **Archival reproductions of unpublished works.** Up to three reproductions of any unpublished work may be made for preservation or security or for deposit for research use in another library or archive. This may be a photocopy or a digital reproduction. If it is a digital reproduction, the reproduction may not be made available to the public outside the library or archive premises. Prior to receiving any of the three reproductions permitted

under this provision from another library or archive, the Fairmont State library must make a reasonable effort to purchase a new replacement at a fair price. The reproducing library or archive must also own the work in its own collection.

- **Replacement of lost, damaged or obsolete copies.** The Libraries of Fairmont State may make up to three reproductions, including digital reproductions, of a published work that is lost, stolen, damaged, deteriorating or stored in an obsolete format. Any digital reproduction must be kept within the confines of the library (that is, available on its computer by not placed in a public network.)
- **Library user requests for entire works.** One reproduction of an entire book or periodical may be made by the Fairmont State library at a library user's request, or by another library on behalf of a library user upon certain conditions being met. These conditions include the library determining after reasonable investigation that an authorized reproduction cannot be obtained at a reasonable price. Once made, the reproduction must become the property of the library user. The library must have no reason that the reproduction will be used by the user for purposes other than private study, scholarship and research, and the library must display the register's notice at the place library users make their reproduction requests to the library.

#### 4.5

#### **Photocopying for Students**

The Libraries of Fairmont State University and the Fairmont State University Copy Center may make reproductions for library users (students, faculty, etc.), provided that the following criteria are met:

- The libraries/Copy Center makes one reproduction of an article from a periodical or a small part of any other work.
- The reproduction becomes the property of the student.
- The libraries/Copy Center has no reason to believe that the reproduction will be used for purposes other than private study, scholarship and research.
- The libraries/Copy Center displays the register's notice at the place library users make their reproduction requests to the library.

#### 4.6

#### **Copying for Document Delivery and Interlibrary Loan**

##### 4.6.1

#### **Document Delivery Services**

It is important to maintain a distinction between Interlibrary Loan (ILL) and Document Delivery Service (DDS). Photocopying for Document Delivery Services requires copyright permission.

##### 4.6.2

#### **Interlibrary Loan Services**

The CONTU (National Commission on New Technological Uses of Copyright Works) guidelines on photocopying under Interlibrary Loan Arrangements were developed to assist librarians and copyright proprietors in understanding the amount of photocopying under interlibrary loan arrangements that is permitted under the copyright law.

Subsection 108(g)(2) of Title 17 deals, among other things, with limits on interlibrary arrangements for photocopying. It prohibits systematic photocopying of copyrighted materials but permits interlibrary arrangements “that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.”

The Fairmont State University Libraries will request no more than five copies of articles from the most recent five years of a journal title to which the library does not subscribe. Requests in excess of the five-in-five rule require payment of a royalty fee. The Libraries will contact the Copyright Clearance Center (<http://www.copyright.com>) to determine royalty fees and to handle permissions, whenever necessary.

If a library user makes a request for or uses a photocopy or reproduction for purposes in excess of fair use, the user may be liable for copyright infringement. The Libraries of Fairmont State University reserve the right to refuse to accept a copying request if, in its judgment, fulfilling that request would involve a violation of copyright law.

The Fairmont State University Libraries will share photocopies of articles from journals in databases with other libraries via interlibrary loan only in accord with permissions granted within the licensing agreements of each database vendor.

Interlibrary loan personnel are legally obligated to display prominently the following notice and to include the same text on any request format:

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. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of Copyright Law.

#### **4.6.3 Photocopying by Students**

Photocopying by students at Fairmont State University is subject to a fair use analysis as well. A single photocopy of a portion of a copyright-protected work, such as a copy of an article from a scientific journal made for research, may be made without permission. Photocopying all the assignments from a book recommended for purchase by the instructor, making multiple copies of articles or book chapters for distribution to classmates, or copying material from consumable workbooks, all require permission.

## **SECTION 5 MATERIALS**

## **COPYRIGHT AND AUDIOVISUAL/MULTIMEDIA**

### **5.1**

#### **Classroom Use of Films and Video**

Possession of a film or video does not confer the right to show the work. The copyright owner specifies, at the time of the purchase or rental, the circumstances in which a film or video may be “performed.” For example, videos (cassettes and DVDs) from a video rental outlet usually bear a label that specifies “Home Use Only.” However, whatever their labeling or licensing, use of these media is permitted in an educational institution as long as certain conditions are met.

Section 110(1) of the Copyright Act of 1976 permits

Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance or the display of individual images is given by means of a copy that was not lawfully made...and that the person responsible for the performance knew or had reason to believe was not lawfully made.

The Copyright Act and portions of the House Report (94-1476) combine to provide a more detailed list of conditions:

1. They must be shown as part of the instructional program.
2. They must be shown by students, instructors, or guest lecturers.
3. They must be shown either in a classroom or other school location devoted to instruction such as a studio, workshop, library, gymnasium, or auditorium if it is used for instruction.
4. They must be shown either in a face-to-face setting or where students and teacher(s) are in the same building or general area.
5. They must be shown only to students and educators.
6. They must be shown using a legitimate (that is, not illegally reproduced) copy with the copyright notice included.

Further, the relationship between the film or video and the course must be explicit. Films or videos, even in a face-to-face classroom setting, may not be used for entertainment or recreation, whatever the work’s intellectual content.

### **5.2**

#### **Use of Films and Video Outside of the Classroom**

The Libraries of Fairmont State University often purchase a public performance license, when one is available, that covers a number of the instructional ~~of the~~ videos in the collection. All videos owned by the University may ordinarily be viewed by students, faculty, or staff at workstations located in the library, or, in the case of DVDs, on some computers available on campus. These videos may also be viewed at home (e.g., in a dorm room or apartment), as long as no more than a few friends are involved. Larger audiences, such as groups that might assemble in a residence hall living room, require explicit permission from the copyright owner for “public performance” rights.

### 5.3 Satellite TV

### Copying Videotapes/Off-Air Recording of Broadcasts, Including

Copying videotapes without the permission of the copyright owner is illegal. An exception is made for libraries to replace a work that is lost or damaged if another copy cannot be obtained at a fair price (Section 108 of the Copyright Act of 1976). Fairmont State University schools and departments will not duplicate any film or videotape without written authorization indicating that the copyright holder possesses all applicable rights to the work, including literary rights upon which the work is based; music rights (composition and performance); rights to all graphic and visual elements (including slides, still photographs, graphs) contained in the work; and performing artists' releases. When written authorization is obtained, the requestor should be sure that the number of copies of the work that can be made and the length of time those copies can be retained are specified. The copyright holder should indemnify the University against any infringement actions pertaining to the work.

Absent any formal agreement, "Guidelines for Off-the-Air Recording of Broadcast Programming for Educational Purposes," an official part of the Copyright Act's legislative history, applies to most off-air recording:

1. Videotape recordings may be kept for no more than **45 calendar days** after the recording date, after which time the tapes must be erased.
2. Videotaped recordings may be shown to students only within the **first 10 school days** of the 45-day retention period.
3. Off-air recordings must be made only **at the request** of an individual instructor for **instructional** purposes, not by staff members who make the recordings in anticipation of future requests.
4. The recordings are to be shown to students no more than two times during the 10-day period, and the second time only for necessary instructional reinforcement.
5. The taped recordings may be viewed after the 10-day period only by instructors for evaluation purposes, in order to determine whether to include the broadcast program in the curriculum in the future.
6. If several instructors request videotaping of the same program, duplicate copies are permitted to meet the need; all copies are subject to the same restrictions as the original recording.
7. The off-air recordings may not be physically or electronically altered or combined with others to form anthologies, although they do not need to be shown in their entirety.
8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
9. These guidelines are to be applied only at nonprofit educational institutions, which are further expected to establish appropriate control procedures in order to maintain the integrity of the guidelines.

Some public broadcasting services, such as the Public Broadcasting Service and the Agency for Instructional Television impose similar restrictions but limit use only to the seven-day period following the local broadcast.

In 1981, an Ad Hoc Committee on Copyright Law negotiated guidelines for off-air recording of broadcast programming for educational purposes. These guidelines represent the committee's "consensus as to the application of fair use to the recording, retention, and use of television broadcast programs for educational purposes." They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

These guidelines are not embedded in the Copyright Act and it is unclear how courts may choose to apply them. Without explicit legislative or judicial acts, **strict adherence** to the guidelines may serve as some protection should an issue of infringement arise.

## **5.4 Sound Recordings**

### **5.4.1 Non-Music Recordings**

Cassettes or disks may not be copied unless replacement recordings from a commercial source cannot be obtained at a fair price. Recording brief excerpts is considered fair use.

### **5.4.2 Music Recordings**

A single copy may be made for the purpose of conducting aural exercises or examinations. Otherwise, the restrictions on copying non-music recordings apply.

## **5.5 Slides and Photographs**

### **5.5.1 *Reproduction of Slides and Photographs***

Whenever possible, Fairmont State University should either purchase slides and photographs from authorized sources or should borrow from institutions that offer licensing for single-copy reproduction. Regardless of the source, further copying is prohibited.

### **5.5.2 *Display of Slides and Photographs***

Copyright extends control over display as well as reproduction of slides and photographs. However, Section 110 of the Copyright Act of 1975 addresses the display of copyrighted slides and photographs in educational settings by permitting "display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction" as long as the copy of the artwork was lawfully made. The purpose of the display must be integral to the course.

## **5.6 Digital Images**

As photographic and electronic technology has advanced, producing high-quality reproductions of visual images has become easier, cheaper, and more accessible. Confusion over intellectual

property rights of visual images arise over the many ways they are created and the many sources that may be related to a particular image. Determining the holders of the rights connected with such images requires an understanding of the source of the image, the content portrayed, and the creation of the image, both for original visual images and for reproductions. Images are often transferred from a book to a slide to a color transparency, etc, and there may be copyright holders at each reproduction format.

Fairmont State University may digitize new, lawfully acquired analog visual images to support permitted educational uses unless the images are readily available in useable digital form for purchase or license at a fair price.

Thumbnail images of lawfully acquired images may be included in a visual catalog for use at Fairmont State. These thumbnail images may be combined with descriptive text in a visual catalog, searchable by a variety of fields.

### **5.6.1 Access, Display, and Distribution on Fairmont State's Secure Network**

Fairmont State may display and provide access to images digitized under fair use guidelines on a secure network. Technological controls and institutional policies should protect the rights of copyright holders, and users need to be made aware of these rights. A notice must be provided that the digital images available on a secure network are not to be downloaded, copied, retained, printed, shared, modified, or otherwise used, except within the permitted educational fair use guidelines.

Fairmont State may display an educator's compilation of digital images on the secure network for classroom use, after-class review, or directed study, provided that access is restricted only to students enrolled in the course during the semester that the academic course is given.

Access, display, or distribution of such visual images beyond the institution's secure network is not permitted.

Time limitations apply to the use of images digitized by Fairmont State. Images digitized from a known source and not readily available in a useable format for purchase or license at a fair price may be used for one academic term and may be retained in digital format while the institution seeks permission from the copyright holder. Permission is required for any uses beyond the initial use. Where the copyright holder is unknown, the digitized image may be used for up to three years from first use, provided that a reasonable inquiry is conducted by Fairmont State as permission is sought to digitize, retain, and reuse the image. If, after three years, sufficient information to seek permission is unavailable, any further use is subject to the four-factor fair use analysis.

### **5.6.2 Display of Digital Images by Educators, Scholars, and Students**

An educator may:

- Display digital images for educational purposes, including face-to-face teaching of curriculum-based courses, and research and scholarly activities at a nonprofit educational institution.





Up to 10% or 1000 words of a source, whichever is less. An entire poem of less than 250 words, but no more than three (3) poems or excerpts by one poet. No more than five poems or excerpts from one anthology.

**6.2.3**                      *Music, Lyrics, Music Video*

Up to 10% but not more than thirty (30) seconds from an individual work.

**6.2.4**                      *Illustrations, Photographs*

No more than five (5) images by one artist or photographer. No more than 10% or 15 images, whichever is less, from any single published work.

**6.2.5**                      *Numerical Data Sets*

Up to 10% or 2500 fields or cell entries, whichever is less.

**6.2.6**                      *Internet Sources*

It is often difficult to determine what is copyright protected and what is in the public domain, but the multimedia creator is responsible for adhering to copyright law.

**6.2.7**                      *Opening Screen Notice*

Credit for the sources and display the copyright notice and copyright ownership information if shown in the original source must be provided. In providing credit, the user must adequately identify the source of the work, giving a full bibliographic description where available (including author, title, publisher, and place and date of publication). The copyright notice includes the word "Copyright" or the copyright symbol ©, the name of the copyright holder, and the year of first publication.

**6.2.8**                      *Integrity of Sources*

Any alterations made on copyrighted items must be noted.

**SECTION 7**                      **COMPUTER SOFTWARE**

7.1                              When mass-market software is purchased by Fairmont State University, the institution normally acquires a license or licenses to use the software only on the storage device purchased, or on the file downloaded. Under such a license, the institution will have the right only to load it on a single computer, or on as many computers as licenses owned by the institution. Under such licenses, the institution typically will have the right to make one copy for archival purposes only or, in limited circumstances for purposes of maintenance or repair. This means that the institution may neither make nor distribute copies of the software for any other reason without first obtaining permission from the copyright holder or its agent. Permission would

include a license that allows the user to make copies of the software beyond a single use (for instance, for use on several computers in a lab or library). The license may also allow an individual to make a copy of the software on a home computer or laptop, but the software license must be checked to determine whether this is permitted.

## 7.2 **Peer-to-Peer (P2P) File Sharing**

The issue of P2P file sharing is receiving increasing attention in the U. S and around the world. P2P file sharing is not itself illegal. However, it is often used for unauthorized downloading and uploading of copyright-protected material such as music, movies, video games, computer software, and photographs. Several courts have determined that substantial P2P file sharing of copyright-protected works generally does not fall within the fair use defense. Fairmont State University does not allow P2P file sharing in residence halls on campus.

Students who engage in substantial P2P file sharing of copyright-protected materials may be subject to serious liability. Fairmont State University is under no obligation to accept responsibility for, or to help defend, the activities of students in illegal file sharing.

## 7.3 **Illegal Online Content**

Fairmont State University is in compliance with the Digital Millennium Copyright Act and complies with the conditions as follows:

- Fairmont State University has a Copyright Office that should receive notification of copyright infringement claims and the officer has been registered with the U.S. Copyright Office.
- Fairmont State University has copyright compliance policies and has implemented procedures for handling complaints of copyright infringement that occur on the institution's networks or servers. The policies include a procedure for terminating the accounts of repeat alleged copyright infringers and do not interfere with measures by copyright owners to identify and protect their works. These policies will be posted on Fairmont State University's website.
- Fairmont State University has developed and implemented an educational program to ensure that faculty, staff, and students and others at the institution understand copyright law. The institution has a team of individuals with expertise in copyright law, and the campus community has access to legal resources including LexisNexis.

## 7.4 **The TEACH Act**

The Technology, Education, and Copyright Harmonization Act of 2002 (TEACH Act) amends the Copyright Act. The TEACH Act

- recognizes that the physical classroom may also include the electronic classroom and would permit students to access digital materials in a course.
- recognizes that storage of copyrighted materials on a server is permitted, provided that it is asynchronous use of copyright performances and displays.

- recognizes that digitized versions of works can be made provided they are not available in a digital format. If they are available in digital format, the TEACH Act does not apply and permission of the author is needed, or it must meet fair use.
- allows the display of any work in "an amount comparable to that typically displayed in the course of a live classroom setting."
- only provides in-class "performances" or displays.
- requires that the performance or display must be technologically limited to only enrolled students in the class.
- permits the transmission of an entire non-dramatic literary or musical work.

## **7.5 DISTANCE EDUCATION AND COURSE MANAGEMENT SYSTEMS**

In 2002, the Technology, Education and Copyright Harmonization (TEACH) Act became law and expanded the latitude universities, including Fairmont State University, have for the performance and display of copyright-protected materials in a distance education environment, including through the use of Course Management Systems (CMS).

The copyright requirements for TEACH and CMS postings are similar to those of classroom handouts, but extend the traditional rules for those handouts to the digital transmission of materials to distance education students. If the use is spontaneous and will not be repeated, copyright permission is not required; however, the content may not remain posted for extended periods of time. If the use is planned, repeated, or involves works that have existed long enough that one could reasonably expect to receive a response to a request for copyright permission, copyright permission must be obtained.

## **SECTION 8 COPYRIGHT NOTICE**

Copying, displaying and distributing copyrighted works may infringe the owner's copyright. Fairmont State University's Copyright Policy provides information about whether use of a copyrighted work is a fair use or requires permission. Any use of computer or duplicating facilities by students, faculty or staff for infringing on the use of copyrighted works is subject to appropriate disciplinary action as well as those civil remedies and criminal penalties provided by federal law.

### **8.1 Warning Concerning Copyright Restrictions**

*The copyright law of the United State (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.*

*Fairmont State University reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.*

## 8.2

### Copyright Warning Sign for Photocopiers

The following signage should be affixed to all copying machines at Fairmont State University facilities:

**NOTICE: THE COPYRIGHT LAW OF THE UNITED STATES (TITLE 17 U.S. CODE) GOVERNS THE MAKING OF PHOTOCOPIES OR OTHER REPRODUCTIONS OF COPYRIGHTED MATERIAL. THE PERSON USING THIS EQUIPMENT IS LIABLE FOR AND INFRINGEMENT.**

## SECTION 9

### CONTENT USE FOR BUSINESS PURPOSES

While copyright compliance focuses on the use of content for educational purposes, in the course of daily operations there are many instances where educational guidelines do not apply. Examples of such use include a staff member who copies a trade magazine article to share with colleagues, a marketing person who copies press articles for use in public relations or recruiting, or a faculty member who uses third-party materials in a non-academic presentation or speaking opportunity. In these instances, the fair use analysis will usually produce a different result from an educational (classroom-related) use and each user would need to obtain copyright permission from the copyright holder or its agent.

## SECTION 10

### COPYRIGHT AND FOREIGN WORKS

The United States is a member of the leading international copyright treaty, the Berne Convention. As such, when Fairmont State University uses a copyright-protected work from another country, the protections provided to works by U.S. copyright law automatically apply to the use of that work as well (assuming that the use takes place in the U.S.). The Copyright Clearance Center has many reciprocal licenses to allow use of materials from other countries.

## SECTION 11

### FACT FINDING QUESTIONS

Once an individual has identified those materials needed, and has determined that copyright permission is required, the copyright holder must be identified. If the copyright holder is not listed on the work, locating the appropriate person or entity to grant permission may take some investigative and creative work.

The Copyright Office of the Library of Congress (<http://www.loc.gov>) may be of assistance in locating a copyright owner if the work is registered. It should be noted that copyright is

automatically granted to all works upon their being written down and that registration with the Copyright Office is not required.

The following process for obtaining copyright permission at Fairmont State University may be used.

- **Obtaining Copyright Permission Directly from the Copyright Holder**

The instructor should plan ahead when requesting copyright permission directly from the copyright holder. It may take several weeks or longer to identify and locate the copyright holder. For most print and online publications, the publisher is usually a copyright holder capable of providing permission. If the copyright holder cannot be identified, a request for a search may be made to the U.S. Copyright Office. However, copyright registration is not required for copyright protection. Publisher and author trade associations, as well as online search engines, are helpful resources for locating copyright holders. At a minimum, the permission request should include the following:

1. The requester's name, address, telephone number, and email address
2. The requester's title, position, and institution's name
3. The date of the request
4. The title of the work to be copied with a description and a citation of that work
5. A description of how the work is to be used, by whom, and for how long
6. A signature line for the copyright holder to sign, signifying that permission has been granted.

A lack of response from the copyright holder, under U.S. law, does not convey permission. Some works may contain materials—text, images, and graphics—from multiple copyright holders and may require separate authorization from each one. Simply acknowledging the source of the content is not a substitute for copyright permission.

- **Obtaining Copyright Permission Through Copyright Clearance Center**

The Copyright Clearance Center provides a streamlined and efficient way to obtain permission to use copyrighted information in both print and digital formats. Usage rights to the most sought-after journals, books, publishers, and other copyright holders worldwide are available at <http://copyright.com>. In many cases, instant authorization may be provided for the use of copyright-protected content. The Center will also make every effort to secure the rights to use copyrighted material.

## SECTION 12

## FREQUENTLY ASKED QUESTIONS

A list of frequently asked questions will be compiled, over time, to help readers understand how the policy affects them and their responsibilities under it.

## SECTION 13

## RESOURCES USED IN DEVELOPING THE FAIRMONT STATE UNIVERSITY COPYRIGHT POLICY

Copyright Clearance Center. *The Campus Guide to Copyright Clearance*.  
<http://www.copyright.com>

Albion College Copyright Policy. <http://www.albion.edu/library/copyright2/main.htm>

CONTU (National Commission on New Technological uses of Copyrighted Works); CONTU Guidelines on Photocopying –Interlibrary Loan Arrangements.  
<http://www.eni.org/docs/infopols/CONTU.html>

American Library Association. <http://www.ala.org>

University of Texas System. <http://www.utsystem.edu/OGC/intellectualProperty/>

Winthrop University. <http://www.winthrop.edu>

Columbia University. <http://www.columbia.edu>

Eastern New Mexico University.  
<http://www.enmu.edu/academics/library/information/copyright.shtml>

Wellesley College. <http://www.wellesley.edu/Library/copyright.html>

Stanford University. <http://www.stanford.edu/DoR/rph/5-2.html>

Southeastern Louisiana University. <http://www2.selu.edu/copyright/slucopyright.htm>

Digital Millennium Copyright Act of 1998.

Carnegie Mellon University. <http://www.cmu.edu/policies/documents/copyright.html>

**Board of Governor's  
Financial Report  
for the Month End October 2007**

**Unrestricted and Auxiliary Funds:**

Attached are the Unrestricted Fund reports for the University, Community and Technical College, Board of Governor's and the Board of Governor's Auxiliary Fund.

There are two areas of budget change within the University and Community and Technical College reports since the September report. They are:

- There has been a 1% shift in enrollment percentage (from 67%/33% to 66%/34%). This shift has effected a change in both support services operating cost revenue and expense categories. This shift favored the University's budget by \$70,000 approximately.
- We are working on a revision to the teaching chargeback formula and computer programs. We realized in August we had our programs using course ownership to drive the chargeback instead of who paid for the faculty teaching the course(s). This needs fixed, and we are working with both president's to assure that both agree with the new program logic. The effect of this change favored the Community and Technical College's budget by approximately \$400,000 for the 2007 fiscal year. In this October report we have adjusted FY 2008 budgets partially in this category this value and we will post the additional values to the budgets. Once we determine where actual will fall after the spring term classes are settled in (March time frame) we will be making additional budget adjustments based on actual outcome. Please Note: Both presidents' are committed to making adjustments to their business plans to cure this shift in teaching chargeback budgets and actual. Further, we are working to transfer funds to the Community and Technical College from the University for fiscal year 2007 re-calculation of the teaching chargeback with the new formula once approved by both presidents.



The BOG and Auxiliary fund budgets are in balance (slight negative condition exists in the Auxiliary Fund and this should be fixed in December sometime.

**Restricted Reports:**

Please also find attached the University and Community and Technical College Restricted Fund reports and the narrative reflecting changes to grants since the end of September.

**Fairmont State University**  
**Actual Vs. Budget Statement of Revenues and Expenses**

	Current Year 08	Prior Year 07	Period	Oct	Current Unrestricted LEVEL 2	
					Actual Current Year	Actual To Budgeted Current Year
		Budgeted Current year				Prior Actual To Prior Year End
<b>OPERATING REVENUES</b>						
Tuition and Fees		18,169,281.70			8,868,884.14	48.81
Faculty Services Revenue		1,550,000.00			0.00	0.00
Federal Grants and Contracts		0.00			0.00	15.82
State/Local Grants and Contracts		0.00			-35,000.00	0.00
Operating Costs Revenue		2,496,048.60			598,426.89	23.97
Support Services Revenue		3,581,781.87			803,138.71	22.42
Other Operating Revenues		280,052.00			64,945.46	23.19
<b>Subtotal:</b>		<b>26,077,164.17</b>			<b>10,300,395.20</b>	<b>39.50</b>
<b>OPERATING EXPENSES</b>						
Salaries		19,514,103.44			5,273,568.29	27.02
Benefits		5,204,458.03			1,369,966.23	26.32
Student financial aid - scholarships		957,199.50			625,529.46	65.35
Utilities		1,384,525.00			327,899.00	23.68
Supplies and Other Services		5,993,730.29			1,681,030.75	28.05
Equipment Expense		849,660.15			431,228.61	50.75
Loan cancellations and write-offs		0.00			0.00	0.00
Fees retained by the Commission		173,249.00			86,624.50	50.00
Assessment for Faculty Services		1,693,000.00			0.00	0.00
Assessment for Support Services		198,528.16			36,075.09	18.17
Assessment for Tuition, Aux. and Capital Costs		2,759,124.31			1,306,888.00	47.37
Assessment for Operating Costs		165,834.67			46,844.97	28.25
<b>Subtotal:</b>		<b>38,893,412.55</b>			<b>11,185,654.90</b>	<b>28.76</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>						
State appropriations		12,166,895.00			5,110,096.00	42.00
Gifts		25,000.00			12,500.00	50.00
Investment Income		351,336.00			55,764.86	15.87
Interest on capital asset related debt		0.00			0.00	26.40
<b>Subtotal:</b>		<b>12,543,231.00</b>			<b>5,178,360.86</b>	<b>41.28</b>
<b>EXCLUDE OPERATING ACCOUNT</b>						
Exclude - Assets		-390,956.46			-48,642.91	12.44
Exclude - Construction		0.00			0.00	2.55
Exclude - Transfers for Debt Service		0.00			0.00	100.00
Exclude - Transfers for Financial Aid Match		-150,320.00			-75,160.00	0.00
Exclude - Indirect Cost Recoveries		791,048.01			131,034.61	50.00
Exclude - Transfers - Other		20,971.22			20,971.26	16.56
<b>Subtotal:</b>		<b>270,742.77</b>			<b>28,202.96</b>	<b>10.42</b>
<b>OPERATING INCOME/LOSS</b>		<b>-12,816,248.38</b>			<b>-885,259.70</b>	<b>6.91</b>
<b>BALANCE</b>		<b>-2,274.61</b>			<b>4,321,304.12</b>	<b>*****</b>
						<b>690.86</b>

FZRPR03

Fund %

NOV-29-07

**Pierpont Community & Technical College**  
**Actual Vs. Budget Statement of Revenues and Expenses**

	Current Year 06	Prior Year 07	Period Oct	Current Unrestricted LEVEL 2	
	Budgeted Current year	Actual Current Year	Actual To Budgeted Current Year	Prior Actual To Prior Year End	
<b>OPERATING REVENUES</b>					
Tuition and Fees	6,635,277.11	3,129,270.43	47.16	47.77	
Faculty Services Revenue	1,693,000.00	0.00	0.00	0.00	
State/Local Grants and Contracts	0.00	0.00			
Auxiliary enterprise revenue	0.00	-50.74			
Operating Costs Revenue	165,834.67	46,844.97	28.25	99.37	
Support Services Revenue	198,528.16	36,075.09	18.17	0.10	
Other Operating Revenues	164,281.00	35,571.00	21.65	0.00	
<b>Subtotal:</b>	<b>8,856,920.94</b>	<b>3,247,710.75</b>	<b>36.67</b>	<b>36.98</b>	
<b>OPERATING EXPENSES</b>					
Salaries	4,980,966.00	1,334,553.78	26.79	25.35	
Benefits	1,150,713.00	280,886.12	24.41	24.62	
Student financial aid - scholarships	410,000.00	223,665.82	54.55	52.29	
Utilities	0.00	881.35			
Supplies and Other Services	1,457,878.59	323,839.19	22.21	19.63	
Equipment Expense	78,664.73	16,076.21	20.44	24.34	
Loan cancellations and write-offs	0.00	0.00			
Fees retained by the Commission	95,395.00	47,697.50	50.00	59.16	
Assessment for Faculty Services	1,550,000.00	0.00	0.00	0.00	
Assessment for Support Services	3,581,781.87	803,138.71	22.42	0.00	
Assessment for Tuition, Aux. and Capital Costs	1,382,608.88	631,946.00	45.71	0.00	
Assessment for Operating Costs	2,496,048.60	598,426.89	23.97	5.62	
<b>Subtotal:</b>	<b>17,184,056.67</b>	<b>4,261,111.57</b>	<b>24.80</b>	<b>13.92</b>	
<b>NONOPERATING REVENUES (EXPENSES)</b>					
State appropriations	8,114,815.00	3,456,989.00	42.60	42.12	
Gifts	1,000.00	0.00	0.00	0.00	
Investment Income	214,602.00	26,373.90	12.29	26.99	
<b>Subtotal:</b>	<b>8,330,417.00</b>	<b>3,483,362.90</b>	<b>41.81</b>	<b>41.67</b>	
<b>EXCLUDE OPERATING ACCOUNT</b>					
Exclude - Assets	0.00	0.00		5.65	
Exclude - Construction	0.00	0.00		100.00	
Exclude - Indirect Cost Recoveries	24,055.42	2,588.93	10.76	5.17	
Exclude - Transfers - Other	0.00	0.00		-130.37	
<b>Subtotal:</b>	<b>24,055.42</b>	<b>2,588.93</b>	<b>10.76</b>	<b>45.19</b>	
<b>OPERATING INCOME/LOSS</b>	<b>-8,327,135.73</b>	<b>-1,013,400.82</b>	<b>12.17</b>	<b>-9.12</b>	
<b>BALANCE</b>	<b>27,336.69</b>	<b>2,472,551.01</b>	<b>9044.81</b>	<b>-623.46</b>	

FZRPR03

Fund %

NOV-29-07

**Fairmont State BOG Support**  
**Actual Vs. Budget Statement of Revenues and Expenses**

		Current Year 08	Prior Year 07	Period Oct	Current Unrestricted LEVEL 2		
		Budgeted Current year	Actual Current Year	Actual To Budgeted Current Year	Prior Actual To Prior Year End		
<b>OPERATING REVENUES</b>	Tuition and Fees	411,149.27	109,671.82	26.67	59.16		
	Tuition and Fees Support Services Revenue	522,815.00	249,473.00	47.72	49.83		
	Federal Grants and Contracts	0.00	1.55				
	State/Local Grants and Contracts	0.00	0.00		0.00		
	Private Grants and Contracts	0.00	32,140.00				
	Other Operating Revenues	341,928.68	117,161.90	34.27	-8.76		
	<b>Subtotal:</b>	<b>1,275,892.95</b>	<b>508,448.27</b>	<b>39.85</b>	<b>37.36</b>		
<b>OPERATING EXPENSES</b>	Salaries	617,511.00	173,476.02	28.09	31.69		
	Benefits	121,117.00	73,706.08	60.86	25.33		
	Student financial aid - scholarships	11,143.00	-163,287.84	-1,465.38			
	Utilities	0.00	475.11		0.00		
	Supplies and Other Services	700,080.25	206,749.72	29.53	40.00		
	Equipment Expense	11,676.20	20,846.31	178.54	24.00		
	Loan cancellations and write-offs	0.00	0.00		0.00		
	<b>Subtotal:</b>	<b>1,461,527.45</b>	<b>311,965.40</b>	<b>21.35</b>	<b>33.80</b>		
<b>NONOPERATING REVENUES (EXPENSES)</b>	Investment Income	155,520.00	23,353.64	15.02	26.11		
	<b>Subtotal:</b>	<b>155,520.00</b>	<b>23,353.64</b>	<b>15.02</b>	<b>26.11</b>		
<b>EXCLUDE OPERATING ACCOUNT</b>	Exclude - Assets	0.00	0.00				
	Exclude - Transfers for Capital Projects	81,445.00	79,515.00	97.63	100.00		
	Exclude - Transfers - Other	-42,339.30	-42,339.30	100.00	0.00		
	<b>Subtotal:</b>	<b>39,105.70</b>	<b>37,175.70</b>	<b>95.06</b>	<b>-12.37</b>		
<b>OPERATING INCOME/LOSS</b>		<b>-185,634.50</b>	<b>196,482.87</b>	<b>-105.84</b>	<b>7.03</b>		
<b>BALANCE</b>		<b>8,991.20</b>	<b>257,012.21</b>	<b>2858.49</b>	<b>-17.73</b>		

FZRPR03

Fund %

NOV-29-07

**Fairmont State BOG Support**  
**Actual Vs. Budget Statement of Revenues and Expenses**

	Current Year 08	Prior Year 07	Period Oct	Auxiliary		
					Auxiliary - Bd. of Governors	
			Budgeted Current year	Actual Current Year	Actual To Budgeted Current Year	Prior Actual To Prior Year End
<b>OPERATING REVENUES</b>						
Auxiliary enterprise revenue			7,279,418.94	3,461,313.90	47.55	45.24
Auxiliary Support Services Revenue			4,554,341.00	2,192,947.00	48.15	49.57
Other Operating Revenues			100,788.60	35,889.89	35.61	54.89
<b>Subtotal:</b>			<b>11,934,548.54</b>	<b>5,690,150.79</b>	<b>47.68</b>	<b>46.98</b>
<b>OPERATING EXPENSES</b>						
Salaries			1,791,399.00	599,974.14	33.49	35.48
Benefits			551,187.72	136,327.70	24.73	34.37
Student financial aid - scholarsh(p)s			365,000.00	147,878.00	40.51	58.17
Utilities			689,627.00	195,593.75	28.36	22.92
Supplies and Other Services			4,262,831.20	1,856,929.87	43.56	39.12
Equipment Expense			74,000.00	64,167.74	86.71	30.50
Loan cancellations and write-offs			1,131.00	0.00	0.00	0.00
<b>Subtotal:</b>			<b>7,735,175.92</b>	<b>3,000,871.20</b>	<b>38.80</b>	<b>36.83</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>						
Interest on capital asset related debt			-100,472.60	-50,236.30	50.00	
<b>Subtotal:</b>			<b>-100,472.60</b>	<b>-50,236.30</b>	<b>50.00</b>	<b>0.00</b>
<b>EXCLUDE OPERATING ACCOUNT</b>						
Exclude - Assets			-49,000.00	-295.00	0.60	42.85
Exclude - Construction			0.00	0.00		
Exclude - Transfers for Debt Service			-3,547,920.08	-1,749,981.08	49.32	49.98
Exclude - Transfers for Financial Aid Match			-3,425.00	-1,712.50	50.00	50.00
Exclude - Transfers to Plant Reserves			-556,304.95	0.00	0.00	0.00
Exclude - Transfers for Scholarships			0.00	0.00		
Exclude - Transfers - Other			53,789.32	59,789.32	111.15	0.00
<b>Subtotal:</b>			<b>-4,102,860.71</b>	<b>-1,692,199.26</b>	<b>41.24</b>	<b>39.74</b>
<b>OPERATING INCOME/LOSS</b>			<b>4,199,372.62</b>	<b>2,689,279.59</b>	<b>64.04</b>	<b>64.04</b>
<b>BALANCE</b>			<b>-3,960.69</b>	<b>946,844.03</b>	<b>-23906.04</b>	<b>-1272.56</b>

FZRPR03

Fund %

NOV-29-07

**RESTRICTED FUNDS**  
**Budget Change Analysis for October 2007**

**University:**

**Revenues:**

- Federal Grants & Contracts **increased \$395,491.92**. NASA \$27,000.00, Outreach \$152,009.91, Title III \$364,507.00 and close out of FY 07 Gear Up (\$148,015.99).
- State Grants & Contracts **increased \$20,000.00**, \$5,000.00 for Diversity of Scholarship grant and \$15,000.00 for TEP from State Dept. of Ed.
- Private **increased \$23,000.00**, \$20,000.00 for TEP from Benedum Foundation and \$3,000.00 for SIFE
- Other Operating Revenue did not change.

**Expenditures:**

- Salaries and Benefits **increased \$158,109.38**. \$132,666.03 for Outreach grant, \$230,963.00 for Title III grant, \$12,000.00 for NASA grant, (\$2,536.35) to close out Learning FAST grant, and (\$214,983.30) to close out Gear Up 07.
- Utilities **decreased (\$27,640.00)** for Gear Up close.
- Student Financial Aid scholarships **increased \$11,000.00** for NASA space grant.
- Supplies and Other Services **increased \$321,736.12**. (\$3,143.39) for Learning FAST close, \$4,705.00 SIFE, \$5,000.00 Diversity of Scholarship, (\$22.50) close out 07 DOH, \$35,000.00 TEP grant, \$14,317.25 for ERC grant, \$83,130.18, \$3,000.00 for NASA for Title III grant, \$179,749.58 for Gear Up.
- Equipment Expense **decreased (\$38,899.18)**. \$5,868.84 for Learning FAST, \$295.00 for SIFE, \$5,000.00 for ERC, \$1,000.00 for NASA, \$50,413.82 for Title III (\$101,476.84) for Gear Up.
- Assessment did not change.
- Investment income did not change.
- Exclude-Assets **decreased (\$2,738.09)** all for Gear Up budget clean up.
- Exclude-Transfers for Fin Aid Match did not change.
- Exclude – Indirect Cost **decreased (\$171.48)** \$17.63 for ERC and (\$189.11) for TEP grant.
- Exclude --Transfers did not change.

**Pierpont Community & Technical College:**

**Revenues:**

- Federal Grants &. Contracts did not change.
- State Grants & Contracts **increased \$59,500.00** for Cafeteria Managers Institute.
- Other Operating Revenue did not change.

**Expenditures:**

- Salaries and Fringes did not change..
- Student Financial Aid did not change.
- Supplies and Other Services **increased \$52, 501.02** for Cafeteria Managers Institute..
- Equipment Expense **decreased (\$1,926.02)** for HUD grant close out.
- Investment Income did not change.
- Exclude – Assets did not change.
- Exclude- Construction did not change
- Exclude- Transfers for Fin Aid Match did not change.
- Exclude – Indirect Cost **increased \$8,925.00** Cafeteria Managers Institute.
- Exclude – Transfers Other did not change.

Fairmont State University  
**Actual vs Budget Statement of Revenues and Expenses**  
 Current Year 2008 Prior Year 2007 Oct Current Restricted  
 LEVEL 2

		Budgeted Current Year	Actual Current Year	Actual to Budgeted Current Year	Prior Actual to Prior Year End
<b>OPERATING REVENUES</b>					
	Federal Grants and Contracts	33,376,931.05	11,093,256.53		
	State/Local Grants and Contracts	6,601,659.38	2,719,929.01	33.24%	38.61
	Private Grants and Contracts	3,348,675.00	1,190,167.27	41.20%	50.09
	Other Operating Revenue	0.00	0.00	35.54%	51.77
<b>Sub Total</b>		<b>43,327,265.43</b>	<b>15,003,352.81</b>	<b>34.63%</b>	<b>41.55</b>
<b>OPERATING EXPENSES</b>					
	Salaries	2,149,157.62	508,781.17	23.67%	31.51
	Benefits	417,636.34	101,872.39	24.39%	28.35
	Student Financial Aid-Scholarships	33,386,760.00	14,027,131.33	42.01%	48.01
	Utilities	862.00	9,858.00	1143.62%	33.33
	Supplies and Other Services	5,735,684.24	544,289.40	9.49%	23.34
	Equipment Expense	1,040,238.14	167,827.29	16.13%	33.01
	Assessment for Support Services	0.00	0.00	0.00%	0.00
<b>Sub Total</b>		<b>42,730,338.34</b>	<b>15,359,759.58</b>	<b>35.95%</b>	<b>43.81</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>	Investment Income	0.00	0.00		0.00
<b>Sub Total:</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00%</b>	<b>0.00</b>
<b>EXCLUDE OPERATING</b>					
	Exclude - Assets	-190,888.11	-6,000.00	3.14%	0.18
	Exclude - Transfers for Fin Aid Match	107,204.00	53,602.00	50.00%	101.47
	Exclude - Indirect Cost Recoveries	-790,639.72	-118,623.64	15.00%	37.16
	Exclude - Transfers - Other	-7,679.28	-7,679.28	100.00%	0.00
<b>Sub Total:</b>		<b>-882,003.11</b>	<b>-78,700.92</b>	<b>8.92%</b>	<b>9.85</b>
<b>OPERATING INCOME/LOSS</b>		<b>596,927.09</b>	<b>-356,406.77</b>	<b>-59.71%</b>	<b>-15.77</b>
<b>BALANCE</b>		<b>-285,076.02</b>	<b>-435,107.69</b>	<b>152.63%</b>	
<b>GRANT INCOME RECEIVED IN PRIOR FISCAL YEAR</b>		<b>319,904.74</b>			
<b>Adjusted Year End Balance</b>		<b>34,828.72</b>			



Pierpont Community and Technical College  
Actual vs Budget Statement of Revenues and Expenses

Current Year 2008 Prior Year 2007 Oct Current Restricted

LEVEL 2

		Budgeted Current Year	Actual Current Year	Actual to Budgeted Current Year	Prior Actual to Prior Year End
<b>OPEATING REVENUES</b>	Tuition and Fees	63,029.00	13,042.81	20.69%	40.22
	Federal Grants and Contracts	13,618,701.04	4,901,925.96	35.99%	47.85
	State/Local Grants and Contracts	1,836,382.32	674,406.85	36.72%	54.07
	Private Grants and Contracts	983,325.00	248,531.60	25.27%	61.36
	Other Operating Revenues	162,925.78	19,168.48	11.77%	12.95
<b>Sub Total</b>		<b>16,664,363.14</b>	<b>5,857,075.70</b>	<b>35.15%</b>	<b>48.98</b>
<b>OPERATING EXPENSES</b>	Salaries	427,338.90	71,263.47	16.68%	24.77
	Benefits	93,693.92	20,119.87	21.47%	26.19
	Student Financial Aid-Scholarships	15,989,762.00	5,631,410.77	35.22%	47.45
	Supplies and Other Services	387,667.40	46,973.87	12.12%	32.41
	Equipment Expense	105,710.39	24,982.69	23.63%	24.59
	Assessment for Support Services	-3.91	0.00		0.00
<b>Sub Total</b>		<b>17,004,168.70</b>	<b>5,794,750.67</b>	<b>34.08%</b>	<b>45.94</b>
<b>NONOPERATING REVENUES (EXPENSES)</b>	Investment Income	0.00	0.00		0.00
<b>Sub Total:</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00%</b>	<b>0.00</b>
<b>EXCLUDE OPERATING</b>	Exclude - Assets	-18,560.00	-15,235.00	82.09%	66.62
	Exclude-Construction	0.00	0.00		0.00
	Exclude - Transfers for Fin Aid Match	46,541.00	23,270.20	50.00%	152.85
	Exclude - Indirect Cost Recoveries	-24,093.53	-2,109.84	8.76%	5.17
	Exclude - Transfers - Other	0.00	0.00		0.00
<b>Sub Total:</b>		<b>3,887.47</b>	<b>5,925.36</b>	<b>152.42%</b>	<b>-307.62</b>
<b>OPERATING INCOME/LOSS</b>		<b>-339,805.56</b>	<b>62,325.03</b>	<b>-18.34%</b>	<b>-583.82</b>
<b>BALANCE</b>		<b>-335,918.09</b>	<b>68,250.39</b>	<b>-20.32%</b>	
<b>WORKFORCE DEVELOPMENT REVENUES RECEIVED IN PRIOR FISCAL YEAR</b>		<b>212,674.19</b>			
<b>GRANT INCOME RECEIVED IN PRIOR FISCAL YEAR</b>		<b>253,123.74</b>			
<b>Adjusted Year End Balance</b>		<b>129,879.84</b>			

**Fairmont State Board of Governors**  
**December 13, 2007**

**ITEM:** Revision of BOG Policy #2: Naming or Renaming of Facilities, Organizational Units, Assets and Events

**COMMITTEE:** Finance, Personnel, Facilities, External Relations

**RECOMMENDED RESOLUTION:** *Resolved*, That the Fairmont State Board of Governors approves the attached revisions to BOG Policy #2: Naming or Renaming of Facilities, Organizational Units, Assets and Events

**STAFF MEMBER:** Sarah Hensley/Rebecca Herod

**BACKGROUND:**

The proposed revisions are to bring BOG Policy #2 into line with best practices and to more clearly define the process for commemorative tributes and naming.

## **FAIRMONT STATE UNIVERSITY BOARD OF GOVERNORS POLICY # 2**

### **TITLE: NAMING OR RENAMING OF FACILITIES, ORGANIZATIONAL UNITS, ASSETS AND EVENTS**

#### **SECTION 1. GENERAL**

1.1 Scope Policy regarding the naming or renaming of buildings or organizational units at Fairmont State College.

1.2 Authority ~~West Virginia Code § 18B-1-6~~

1.3 Effective Date ~~December 5, 2001~~

#### **SECTION 2. POLICY**

2.1 Approval by the Fairmont State College Board of Governors is required for the naming or renaming of facilities and organizational units, such as schools, assets and events at Fairmont State College.

2.2 The President of the College, after consultation with appropriate faculty, students and staff, is responsible for making the recommendation to the Board of Governors.

2.3 A building or organizational unit may be named for an individual if that individual has rendered distinguished service to the institution or made a significant contribution. The individual may not have been employed at the institution during the three (3) previous years.

2.3.1 Nominations and suggestions for the naming of facilities or assets may come from any member of the campus or local community.

2.3.2 Nominations in writing should be sent to the Fairmont State College Contribution Recognition Committee, in care of the Office of Institutional Advancement, Erickson Alumni Center. The Vice President for Institutional Advancement will co-chair the committee with the Vice President for Administration and Finance.

2.3.3 Following initial research and review, nominations will be forwarded to the committee, which will consist of representatives from the following offices/areas: Assistant to the President, President of Faculty Senate, President of Classified Staff Council, and one full-time student appointed by the President of the Student Government.

2.3.4 The committee will review the nominations and make a formal recommendation to the President of the College.

2.4 In all cases, a gift naming opportunity must be identified with the name of an individual or entity that has made (or plans to make) a gift to Fairmont State College, the Fairmont State Community & Technical College, the Fairmont State College Foundation, Inc., or any of its affiliates in fund raising, e.g., the Alumni Association or the Letterman's Association.

2.4.1 Suggested minima are given below and must be in compliance with any applicable state programs or regulations:

Building \$1.5 – 2 million or at least one half of the cost of construction plus significant support for an endowed maintenance fund for the facility.

School or Division \$1.5 – 2 million (for scholarships, program, and faculty support)

Endowed Chair \$1,000,000+

Endowed Professorship \$500,000

A Program Center within an existing Building or Facility (i.e., major athletic or arts area) 250,000+  
Special Facility Area \$100,000+ (gallery, lab, specially equipped lecture room, library or media collection)  
Garden/Outdoor Reception  
Area/Plaza/Grandstand Areas \$100,000—150,000  
Classrooms \$25,000—50,000  
Lecture Halls \$100,000  
Main Entrances/Gates \$50,000  
Lounges/Corridors/Pedestrian Malls \$25,000  
Offices \$5,000—10,000  
Walkways \$10,000  
Benches 1,000

**OTHER**

Endowed Lecture Series \$25,000+  
Endowed Visiting Professor \$300,000  
Endowed Named Scholarship \$10,000+

2.5 Events, such as golf outings and concert or lecture series, may be named for individuals, corporations, organizations, or other donors. The Office of Institutional Advancement, the President of the College, and others as assigned by the President, will set the appropriate minimum gift amount for each event to be named.

**TITLE: POLICY ON COMMEMORATIVE TRIBUTES AND NAMING**

Scope: Policy regarding the naming or renaming of buildings or organizational units at Fairmont State University

Authority: West Virginia Code § 18B-1-6

Effective Date: Originally approved December 5, 2001; *Revised December 13,*

2007

1. **PURPOSE:** The following policy and procedures apply to the commemorative naming of physical spaces and/or other entities the University Commemorative Tributes Committee will take under consideration, such as buildings, portions of buildings, streets or other physical facilities, and to the erection and plan for donor recognition walls or hanging of plaques, portraits or other permanent memorials honoring individuals or organizations on the campuses or outlying properties of the university, as well as specific academic units, such as departments, schools, colleges, institutes, or centers that may be named in honor of individuals.
2. **POLICY:** The University will approve commemorative namings of buildings, physical facilities, specific academic components, and the erection of plaques, signs, and portraits as a commemorative tribute in appropriate instances where the

university has significantly benefited from the relationship with the person or organization and such naming brings no adverse reflection on the university.

## **2.1. Policy on Process to Secure a Naming Opportunity**

- a. The University Commemorative Tributes Committee is responsible for reviewing proposals for the naming of buildings, other physical facilities, centers, institutes, etc., and for making recommendations to the President.
- b. After review, the president will submit his/her selected proposals for commemorative tributes to the Board of Governors.
- c. Board of Governors will act on those proposals recommended by the President. Final approval rests with the Board of Governors.
- d. The Board of Governors authorizes the President, upon the recommendation of the Commemorative Tributes Committee, to approve the erection of plaques, permanent signs and other memorials (such as bricks and benches), and the commissioning and hanging of portraits related to the naming.
- e. This policy applies only to the naming of facilities in honor of persons or organizations and does not apply to the identification of rooms or facilities with numbers, letters, colors, or generic terms.
- f. Commemorative Tributes Committee: The Commemorative Tributes Committee will consist of the following:
  - President, Pierpont Community and Technical College
  - President, Fairmont State Foundation, Inc., Board of Directors
  - University Provost and Vice President for Academic Affairs
  - Vice President for Administrative and Fiscal Affairs
  - Vice President for Institutional Advancement
  - Vice President for Student Affairs
  - Assistant Vice President for Facilities
  - President of the Faculty Senate
  - President of the Faculty Assembly
  - President of the University Classified Staff
  - President of the C&TC Classified Staff
  - President of the Student Government Association
- g. As the university's organizational structure evolves, the President is authorized by the Board of Governors to adjust the titles of the committee's membership to reflect those organizational changes.
- h. Committee membership will be a minimum of five and a maximum of 12 members.
- i. A minimum of five committee members will constitute a voting quorum.
- j. Committee representatives may send a proxy designate empowered with voting privileges.

## 2.2. Policy for All Commemorative Tributes

- a. Consideration should be given to the desirability of an appropriate relationship between the use of the physical facility and the person or organization for which the facility is named.
- b. In reviewing proposals for names of buildings or other facilities, it is appropriate for the members of the Commemorative Tributes Committee to contact appropriate members of the university community to obtain and/or validate information.
- c. Any building or other facility bearing the name of a person or organization should be clearly identifiable, distinctive, significant, enduring, and functional and should reflect honor on the person or organization for which it is named. Portions of buildings or rooms within buildings generally should meet these same criteria. In addition, names assigned to portions of buildings or rooms should be helpful to users in identification of the facilities.
- d. This policy applies only to the naming of facilities in honor of persons or organizations and does not apply to the identification of rooms or facilities with numbers, letters, colors, or generic terms.

## 2.3. Policy for Names in Tribute of Corporate Entities

- a. Corporate names are considered to be generally appropriate for naming of internal spaces. Such naming opportunities must be stated in the proposal, as part of the negotiation, prior to consideration by the Commemorative Tributes Committee.
- b. Corporate names are not considered to be appropriate for the external identification of campus buildings.
- c. Internal physical spaces may be named for a negotiated period of approximately ten years or less.
- d. Exceptions may be granted in extraordinary situations.

## 2.4. Policy for Building Names in Tribute of Individuals

- a. Entire buildings, building additions, or portions of buildings may be named in honor of an individual or individuals.
- b. The naming of a building, part of a building, or other facility or property of the university is a high honor and would not be done casually. The honor is reserved for those who have made extraordinary contributions to the University through their achievements in service and/or in financial support to the university.
- c. To merit recognition in the naming of a building or portion of a building, an individual's relationship to the university should be truly exceptional in both quality and impact and be of significant duration.

- d. When financial contributions are a factor, the level of contribution needed to name a building, addition to a building, or portion of a building (as may be the case in a major renovation project) will vary depending on the financing considerations, purpose, size, prominence on campus, and the level of private support needed for construction. Such gift commitments must be payable over a defined pledge term and the donor must provide a legally binding commitment enforceable against his/her assets/estate until the pledge is retired.
- e. In cases of existing construction, outright gifts and/or irrevocable deferred gifts, e.g., life income plans, may be used. The amount credited toward the naming opportunity will be based on the present value of the charitable gift plan.
- f. In cases of new construction and when financial support is needed for construction, only outright gifts of readily marketable assets may be used.
- g. The required gift level for naming spaces within buildings, such as auditoriums, classrooms, laboratories, etc., will be established following the same principles as to naming of existing major facilities.
- h. In the event that a pledge or gift commitment is not met, the institution may choose to revoke naming privileges.
- i. Buildings or other physical facilities are not named for an individual who has been employed by the university during the year preceding the naming.
- j. Building names should reflect honor on the university as well as on the person or persons being honored and are considered to be permanent.
- k. In the unlikely event a named building is demolished and replaced, any new building erected in that same area will contain a historical record in the form of a plaque indicating the existence of the previously named structure and honoring the individual for which it was named.

## **2.5. Plaques and Portraits, and Miscellaneous Items of Recognition**

- a. Donor walls, plaques, portraits, and miscellaneous items (bricks, benches, etc.) should be encouraged to commemorate truly outstanding contributions, either in service or financial support, of persons or organizations.
- b. Such tributes should be located inside or outside buildings or facilities that have strong identification with the persons or organizations being honored.
- c. The cost of such plaques, portraits, and miscellaneous recognition items generally should be borne by donors interested in the tributes.
- d. All external designs need to be reviewed and approved by the university architect in order to assure compliance with the university's master plan.

## **2.6. Departments, Schools, Colleges, Institutes, Centers, or Other Academic Units**

- a. A major academic unit may be named in honor of an individual in recognition of service to the university and/or in recognition of financial contributions sufficient to provide physical facilities and equipment for its

academic and/or research programs, or which would provide sufficient income to cover an appropriate portion of the annual operating costs of the unit, or both.

- b. The name applied to an academic unit should be appropriate to its purpose, and should reflect honor on the university as well as upon the person for which it is named.
- c. Because the life of a university center or institute is not expected to continue indefinitely, gift funding for an institute or a center may be accomplished by endowment or current gifts. If accomplished by a current gift, the name of the institute or center shall generally be limited to the term during which the expendable gift provides funding. The policies and procedures for naming the center or institute shall be the same as for naming other major academic units of the university.



**Fairmont State  
Board of Governor  
Meeting of December 13, 2007**

**AGENDA**

**Call to Order**

1. Approval of Minutes (October 24, 2007)

*Tab 1    Action Item*

**Faculty Senate Report** *(Chuck Shields)*

**Faculty Assembly Report** *(Tom Stose)*

**Classified Staff Report** *(Mary Jo Rutherford)*

**Student Government Report** *(Kasha Brown)*

**Foundation Report** *(Jean Ahwesh)*

**FSU Academic Affairs & FS Student Life Committee Items** *(Jim Griffin)*

1. Approval of Copyright Policy

*Tab 2    Action Item*

**Finance, Personnel, Facilities, External Relations Committee Items** *(Bob Kittle)*

1. Finance Report
2. Approval of revisions to BOG Policy 2: Naming or Renaming of Facilities, Organizational Units, Assets and Events

*Tab 3*

*Tab 4    Action Item*

**Pierpont Community & Technical College Program & Off-Campus Service Committee Items** *(Michele Casteel)*  
*(Nothing at present)*

**Committee of the Whole**

**Old Business**

**New Business**

**President's Report** *(Dan Bradley)*

**President's Report** *(Blair Montgomery)*

**Public Comment**

**Possible Executive Session**

Motion Wording:

\_\_\_\_\_ moved pursuant to §6-9A-4-2b of the WV Code that the Board go into Executive Session to discuss personnel and personnel matters, which if discussed in public might adversely affect the reputation of any person.

**Next meeting date is Thursday, February 14, 2008 in Board Room – Falcon Center**

## Notes