

*Milton Academy*  
*Business Conduct Policy*

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# *Introduction*

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Milton Academy operates by means of a decentralized organizational structure through which responsibility is delegated for a variety of business and accounting functions. This delegation is managed through the issuance of policies and procedures prescribing the manner in which business transactions are to be administered, and through the setting of specific limitations and internal control procedures.

All employees charged with these responsibilities should be familiar with the appropriate policies and procedures covered in this document, as well as the following:

- Staff Handbook and Faculty Handbook

This document has been developed to provide further guidance on a variety of general business and ethical issues. While it is impossible to address every conceivable situation that may arise, this handbook should a framework for employees to draw upon in their evaluation of specific circumstances.

## *Working with One Another*

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Milton Academy reaffirms its commitment to the principle of equal opportunity and equal treatment in education and employment regardless of a person's race, color, religion, sex, sexual orientation, sexual identity, age, disability, veteran's status, or national origin. In accepting either a faculty, staff or administrator position at Milton Academy, an individual agrees to share this commitment in the performance of his or her assigned responsibilities and in interaction with faculty, staff, administrators, and students.

Milton Academy strives to provide all employees with a work environment that is free of harassment or other

unreasonable interference with the performance of their Academy duties. We aspire to be a community of colleagues in which mutual respect guides our day-to-day interactions. While the Academy respects an individual's right to self-expression, it expects that the rights and concerns of others who work at Milton are respected as well. At Milton Academy, there is no place in the work environment for conduct that demeans or belittles another person. For these reason, harassment of any kind is unacceptable.

For more information regarding discriminatory harassment, please refer to the faculty and staff handbooks.

# *Confidentiality*

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Many staff and faculty members handle a variety of proprietary and private information concerning colleagues, students, alumni, or others associated with the school, as well as confidential information regarding Academy business. This material may include payroll figures, personal data such as employee home addresses, donor files, or student records. It is the responsibility of all Milton employees to respect the highest level of privacy for their colleagues and other members of the Milton community. Disclosure and

discussion of confidential information obtained from school, or department records, either during or after employment with Milton Academy, is impermissible unless such disclosure is a normal requirement of an employee's position and has been so authorized. If an employee is confronted with a situation in which he or she is unsure about the appropriateness of disclosing certain information, he or she should consult with a supervisor, department chair, dean, or the Department of Human Resources.

## QUESTIONS & ANSWERS

**Q. I received a call from a person outside of the Academy requesting the home addresses of several staff members in my office. Should I release this information?**

A. No. Employees expect the Academy to exercise great discretion in sharing personal information, and their privacy should therefore be respected. An employee's home address and phone number should not be released without his/her consent, unless a case of emergency – a medical crisis, for instance – warrants this action.

**Q. My supervisor is identified as the "responsible person" on a number of budget accounts. I hold paperwork for the account and budget records for our department and have been requested by a coworker to provide information regarding a particular transaction affecting one of the accounts. Should I share this information?**

A. No, only the "responsible person" for that account should answer questions regarding transactions. You should refer the coworker to your supervisor, who can best decide whether or not to provide the answer.

# *Conflict of Interest*

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## **General Purpose**

Milton Academy employees are responsible for performing their duties in good faith and in the best interest of the school. In particular, employees are expected to avoid activities, agreements, business investments or interests, or other situations that materially conflict or appear to conflict with the interests of the school or interfere with the individual's duty to loyally serve the school to the best of his or her ability.

## **Definition of Conflict of Interest**

A conflict of interest exists when an employee is in a position to benefit personally, directly or indirectly, from his or her relationship with an entity or person conducting business with the school. All employees have an obligation to avoid conflict, or the appearance of conflict, between their personal interests and the interests of the school.

## **Typical Conflict Situations Are:**

1. The current or potential involvement of the employee, or a member of his or her family<sup>1</sup>, in a financial or other

relationship that affects, or potentially could affect, his or her independent, unbiased judgment in the discharge of his or her duties to the school. A conflict of interest could arise, for example, from an employee's compensated service as a consultant to, or membership on, a board of directors or a managerial role with respect to an entity doing business with the School.

2. The possession on the part of the employee, or a member of his or her family, of a significant ownership interest in an organization conducting business with the Academy. A significant ownership interest shall mean one percent or more of the stock; one percent or more interest in the profits; or a beneficial interest of one percent or more in an enterprise.

3. Receipt of gifts or other payments or services of financial value from persons or entities doing business with the school other than those specified under "Gifts, Entertainment, and Gratuities."

## **Reporting Conflicts of Interest**

Questions will arise as to whether a specific situation constitutes a conflict of interest. Employees are urged to conduct themselves cautiously and, whenever in doubt, to report the situations to and seek advice from the Academy counsel, or their supervisors, as appropriate.

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<sup>1</sup> "Family Member," used throughout this document, means a person's brothers and sisters (including half siblings and step-siblings), children, grandchildren, great grandchildren (including step-children, step-grandchildren, and step-great grandchildren), ancestors (parents, grandparents, etc., including step-parents and step-grandparents) and spouses and domestic partners (of the person and any person in the foregoing categories), or other persons living in the same household. Family Members include descendants and ancestors by adoption.

Failure to disclose a reportable interest or relationship or neglecting to comply with the school may subject the employee to disciplinary action up to and including termination of employment.

### **Resolving Conflicts of Interest**

The Academy counsel will determine the appropriate resolution for all reported conflicts. The affected employee may appeal that determination to the head of school, whose decision shall be final. For actual or potential conflicts of interest which directly involve the Academy counsel, the head of school's determination shall be final.

## QUESTIONS & ANSWERS

**Q. I intend to use outside printing services to develop the layout for a new brochure to be issued next semester. My wife runs a printing and design shop that can perform this type of work. Can I direct the business to her?**

A. No. There exists a potential conflict of interest since by providing this job to your wife (or any other family member or persons living in your household) you might personally benefit. Also, this situation could affect your unbiased judgment in selecting the most qualified print shop for the project. Therefore, you should not negotiate or approve a contract with the shop.

**Q. I am in tech support in ATS. Last week, my supervisor asked me if I could come over to his house that weekend and upgrade his personally owned computer with the extra memory he recently purchased. I found it hard to say no to his request since I perform the same function for the school. Is this a conflict of interest on his part?**

A. Yes, this would constitute a conflict of interest. Supervisors may not make such requests. This situation can be compared to one in which a supervisor receives a gift from a vendor. Gifts are forbidden by our policies because they may cause the supervisor to feel beholden to the vendor or give the vendor power to coerce the supervisor. In the case of an employee, receipt of a "gift" of the employee's time creates the same opportunity for a conflict of interest, where the obligation of loyalty to Milton becomes secondary to other interests. This is true even if the work is, or appears to be, performed voluntarily; it need not be coerced to be wrong.

## *Vendor Relations & Fair Trade*

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The Milton community should observe the following with regard to vendor<sup>2</sup> relations:

- Individuals who purchase Milton Academy goods or services on behalf of Milton Academy must conduct business in a professional manner that is consistent with the goals of the Academy.
- Qualified vendors must be given equal opportunity to compete for Academy business.
- Individuals should strive to obtain the maximum value for each dollar of expenditure.

- Demand honesty in sales representation, whether offered through the medium of a verbal or written statement, an advertisement, or a sample of the product.
- Make reasonable efforts to arrive at an equitable and mutually beneficial agreement that is in the best interests of the Academy when settling any controversy with a supplier. Procurement decisions must be made with integrity and objectively, free from any personal consideration or benefit.

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<sup>2</sup> “vendor” as used throughout this document, is any firm, corporation, company, or individual with whom the Academy presently, formerly, or potentially conducts business.

# *Gifts, Entertainment, & Gratuities*

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## **Acceptance of Gifts**

No employee or member of their families may accept any gratuitous payment or article of significant value or uncompensated service from an applicant, student, or supplier (including vendors, subcontractors and contractors), except nominal hospitality. In circumstances where refusal to accept a gift would be ungracious, it may be accepted, provided that the value of the gift does not exceed \$100. In cases where it would be considered ungracious to do so, the employee should make clear that the gift is being accepted on behalf of and will be given to the organization. Gifts made under circumstances arising out of a personal, professional, or not-for-profit relationship with any applicant, student, or supplier not related to the operations of the organization and not intended or likely to influence any acceptance decisions or engagement of a supplier by the organization are not within the purview of this policy.

## **Procurement Policy**

Academy policies prohibit the acceptance of gifts or gratuities from vendors, subcontractors and contractors. This includes the use of property or facilities, gift certificates, entertainment, or other favors of value extended to employees or their family members. It is the Academy's objective to award business on the basis of considerations such as quality, service, competitive pricing, and technical abilities. Acceptance of personal gifts or gratuities of any kind from suppliers that could be construed as a means of inducing business with the Academy is inconsistent with this objective.

In addition to the above, the expenditure of Academy funds for gifts to employees or students other than those provided through authorized recognition programs is prohibited.

## QUESTIONS & ANSWERS

**Q. A vendor servicing my department treats me to sporting events. Is this appropriate?**

A. No. Academy policy prohibits employees from accepting gifts of any kind from vendors.

**Q. A consultant working with the Academy has offered to let me stay at his vacation home for the weekend. Should I accept the invitation?**

A. No. Acceptance of this gift would give the appearance of impropriety and therefore would be inappropriate for you to accept the invitation.

**Q. A vendor treats me to a meal occasionally. Is this appropriate?**

A. No, it is not appropriate. This invitation would be interpreted as the vendor trying to influence you. This invitation should not be accepted.

**Q. In attending a conference, a vendor offers to pay for a group dinner or some type of hospitality event. Is this acceptable for me to participate?**

A. Yes. This is acceptable given that other prospective clients are attending and that is part of a conference or meeting event.

# *Proper Accounting*

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Sound business practice calls for each employee to assume responsibility for safeguarding and preserving the assets and resources of the Academy. The following policy statements pertain to all business activities of the Academy and are applicable to all employees. It is the responsibility of all supervisors to ensure that their staff is aware of and familiar with these policy statements.

1. All revenues generated by school activities and all expenditures for goods and services must be recorded and accounted for within Milton's accounting system.

2. The Academy financial system consists of the general ledger and all subsidiary systems (manual and automated) that serve as the basis for ledger entries. All transactions, whether recorded directly into the general ledger or entered through a subsystem, should be transcribed in a way that allows for the preparation of financial statements in conformance with *Generally Accepted Accounting principals (GAAP)*. The Business Office is responsible for the accuracy, integrity, and overall management of the Academy's financial system and should therefore be consulted on any matters relating to accounting policies and procedures.

3. The recording of all financial transactions must be timely, accurate, and clearly identify the true business nature of the transaction. Specific guidance pertaining to the timely

posting of transactions for fiscal year-end is provided in a memorandum to all departments from the Business Office in May of each year.

4. No transaction, whether recorded directly into the general ledger or through a subsystem, nor any supporting documentation, shall be deliberately left incomplete or distorted. No payment made by the Academy should be approved with the understanding that any part of such payment is for any purpose other than that described in the supporting document(s).

5. The use of school funds or assets for any unlawful or improper purpose is prohibited.

6. No bank accounts or services are to be established by individual departments, or others acting on their behalf for the purpose of funding, or to assist in funding, any school activity. The only exception to this rule is for the Parents Association which may maintain its own bank account to further its activities.

7. Each department in the Academy's financial records system has been assigned a "responsible person" – usually a department chair, principal, or designated administrator.

It is the responsibility of every employee responsible for an account or Department to:

- Assure in a timely manner that periodic financial reports are reviewed to determine that all charges and entries are accurate and complete.
- Verify that all entries made to each account have been properly allocated, representing expenses for activities that pertain to the purpose of the DeptID or account.

- Take appropriate action to correct any improper changes allocated to a department or account by notifying a Business Office staff member.

- Ensure that all expenditures are within the available funding limits and budget established in each department or account.

All budget projections provided by those responsible for a department or account must properly reflect activity posted to the financial records system and accurately represent all known activity being recorded.

#### QUESTIONS & ANSWERS

**Q. Although I have been designated the “responsible person” for a particular Academy Department or account, time constraints prevent me from reviewing account activity in detail. Is it acceptable for me to assign this task to a staff member?**

A. Yes, it is acceptable to assign the task. You do, however, remain responsible for ensuring that that person carries out the task in an accurate and timely manner.

# *Whistleblower Policy: Misuse of Academy Assets & Reporting Suspected Fraud*

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Milton Academy places a high level of trust in you, its faculty, staff and administrators, and requires that Academy assets under your control be protected and properly safeguarded from loss and misuse. This responsibility rests with employees at all levels and throughout all departments. Employees cannot take or use for their personal benefit property belonging to the school. The school's property includes its confidential information. Employees may not, therefore, use for their own benefit or for the benefit of their family or disclose to others, confidential Academy information except in the proper performance of their employment duties.

The overwhelming majority of Academy personnel are ethical and well intentioned and do their best to conduct business activities at the highest level of propriety. However, fraud may occur. Fraud is defined as "an act of deceiving or misrepresenting in order to secure unfair or unlawful gain." Embezzlement is defined as "to appropriate (as property entrusted to one's care) fraudulently to one's own use."

Fraud takes many forms. Examples of fraud include untruthful fraudulent financial reporting to hide poor business results, expense report falsifications, dishonest or false worker compensation

or insurance claims, kickbacks, bid rigging, misuse of Academy purchasing and travel credit cards, or theft of assets.

Fraud undermines trust and depletes the Academy and the department involved of vital resources needed for operations. Every member of the Milton community, regardless of his or her position, is expected to cooperate and assist in preventing or identifying fraud.

## **Policy on Reporting Fraud**

Sound business conduct requires that each employee, as a basic condition of employment, assume responsibility for safeguarding and preserving the assets and resources of Milton Academy, particularly those for which he or she is responsible. The following policy serves to remind us of that basic commitment and responsibility.

1. All revenue generated by the school and all expenditures for goods and services, must be recorded and accounted for within the financial accounting system of the institution.
2. No false entries are to be made for any reason in the accounting records of the Academy. Moreover, no payment on behalf of the Academy is to be approved or made with the understanding that any part of such a payment is to be used for any purpose other than that described by the documents supporting the payment.

3. The use of Academy funds or assets for any personal or unlawful purpose is prohibited.

4. The use of any Academy equipment, supplies, or facilities for a revenue generating activity that benefits an individual employee is prohibited, unless written consent is provided by the chief financial officer and head of school.

5. No person in a supervisory or management position is to use the authority of that position to assign an employee to perform non-employment-related tasks.

6. Managers have a responsibility to develop and implement controls to minimize opportunities for fraud to occur.

As a member of the Milton community, you are expected to promptly report any instance of a suspected fraud to Academy counsel. If an instance of suspected fraud is initially reported to a supervisor, chairperson, director, dean, or other responsible person, that person is to report the instance to Academy counsel. Any theft of physical assets should be reported to Campus Safety at 617-898-2911.

It is the policy of Milton Academy that any person is free to lawfully disclose whatever information supports a reasonable good faith belief of suspected employee misconduct. The Academy is committed to protecting employees from interference when making such disclosures. An employee may not

retaliate against an employee who has made a good faith disclosure and is also prohibited from directly or indirectly using the official authority of his or her position or office for the purpose of interfering with the right of an employee to make a disclosure to Academy counsel, the employee's immediate supervisor or other appropriate administrator.

Situations may exist where members of our community feel uncomfortable discussing these matters with their colleagues or supervisors. To assist with these particular situations, the Academy has an agreement with a third party anonymous reporting provider, EthicsPoint, Inc., to maintain a call center for individuals to report any concerns related to financial, regulatory, compliance, environmental health, and campus safety matters. The EthicsPoint application is designed to ensure that any communications will remain as confidential as possible in accordance with the wishes of individuals who make reports using this option. You may access this reporting option by dialing (866) 228-7418. An EthicsPoint Internet based reporting option will also be made available in the coming months.

If presented with reasonable evidence of a suspected fraud, the Academy counsel will conduct an investigation to determine if the reported suspicions of fraud are valid. Academy counsel will also inform the supervisor of any employee under investigation. If, based on the results of the investigation, Academy counsel believes that

fraudulent activities have occurred, the findings will be reported as appropriate, to the head of school, chief financial officer, or director of human resources.

If Academy Counsel is suspected of fraud, such a report should go to the head of school. The head of school will conduct an investigation to determine if the reported suspicions of fraud are valid.

A report made under this policy can have considerable impact on the personal and professional lives of those charged both during the investigation and long term. An employee shall not intentionally misuse the Academy's Whistleblower Policy and procedures. Intentional misuse includes, but is not limited to, frivolous claims, attempts to treat a personal grievance or personnel

dispute as an allegation of wrongdoing, lack of good faith in invoking the policy or any known false, malicious or misleading statements made at any time under the procedures of the policy. Academy counsel will report to the director of human resources, the employee's supervisor, and the head of school the identity of any employee who is believed to have intentionally misused the Whistleblower Policy. After appropriate review by these individuals, excluding Academy counsel, the employee is subject to discipline up to and including termination.

All determinations of significant fraudulent activities will be reported immediately or semiannually to the Trustee Audit Committee and the president of the board, as appropriate.

## QUESTIONS & ANSWERS

**Q. What should I do if I notice that goods being ordered by a coworker for personal use are being charged to a department account?**

A. The misuse of Academy assets for personal gain is improper and considered fraud. You should report your suspicions to your supervisor and to the chief financial officer for investigation and follow-up.

**Q. I recently witnessed one of my fellow employees submitting false receipts for business travel. What can I do?**

A. Report what you have seen to your supervisor and the chief financial officer for investigation and follow-up.

**Q. I'm aware of fraudulent activity taking place at the Academy that I'd like to see stopped but don't want to get involved. Is there any way I can proceed?**

A. The school encourages all faculty and staff members to come forward with any and all honestly believed allegations of fraud or suspected fraud. However, employees may submit information anonymously by using Milton's anonymous EthicsPoint, Inc. reporting option which can be accessed by calling (866) 228-7418. Look for an online reporting option in the coming months.

# *Regulatory Compliance*

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Milton Academy views compliance with federal, state and local regulatory matters as a serious obligation.

Each Milton employee is expected to report any significant instance of suspected noncompliance with a regulatory matter to the Academy counsel. A “significant instance of non-compliance” is defined as any activity or circumstance that could result in the assessment of a monetary or civil fine, penalty, or consent order by an external regulatory body. The Academy counsel should be made aware of any significant instances of regulatory noncompliance by the individuals responsible for enforcement and monitoring to help assess the effectiveness of the Academy’s Compliance Program and for reporting purposes to the Trustee Audit Committee.

Depending on the circumstances of non-compliance, individual managers responsible for compliance in their respective areas may need to confer with the head of school, Academy counsel, accounting, Campus Safety Office and other appropriate offices.

It is the policy of Milton that any person is free to lawfully disclose whatever information supports a reasonable good faith belief of suspected regulatory noncompliance. An employee may not retaliate against an employee who has made a good faith disclosure and is also prohibited from directly or indirectly using the official authority of his or her

position or office for the purpose of interfering with the right of an employee to make such a disclosure.

Situations may exist where individuals feel uncomfortable discussing noncompliance with regulatory matters with their supervisors or responsible managers. To assist with these particular situations, the Academy has an agreement with a third party anonymous reporting provider, EthicsPoint, Inc., to maintain a call center for individuals to report any concerns related to noncompliance with certain regulatory matters. The EthicsPoint application is designed to ensure that any communications will remain as confidential as possible in accordance with the wishes of individuals who make reports using this option. You may access this reporting option by dialing (866) 228-7418. An Internet based reporting option will also be made available in the coming months.

Upon being alerted to an issue of regulatory noncompliance, responsible school managers will be contacted to investigate the matter and develop any action plans necessary to restore compliance. The Academy counsel will be responsible for determining if the action plan has been implemented. Disciplinary action up to and including employment termination will be considered if it is determined that an individual deliberately circumvented compliance with a federal, state and

local regulation or should have been aware of the requirement in the performance of his or her responsibilities but failed to comply.

Any significant and systemic issues related to non-compliance with regulatory matters which cannot be satisfactorily resolved through this process will be escalated to higher levels of management including, as appropriate, the head of school.

A report made under this section can have considerable impact on the personal and professional lives of those charged both during the investigation and long term. An employee shall not intentionally misuse a report and associated procedures under this

section. Intentional misuse includes, but is not limited to, frivolous claims, attempts to treat a personal grievance or personnel dispute as an allegation of wrongdoing, lack of good faith in making a report or any known false, malicious or misleading statements made at any time under the procedures of this section. Academy counsel will report to the director of human resources, the employee's supervisor, and the head of school the identity of any employee who is believed to have intentionally misused a report and procedures under this section. After appropriate review by these individuals, excluding Academy counsel, the employee is subject to discipline up to and including termination.

# Copyright Infringement

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*It is Milton's policy to respect copyrights and to duplicate or reproduce copyrighted materials only as allowed by law or by special agreement.*

Copyright is a form of protection that the law provides to the creators of "original works of authorship ... fixed in any tangible medium of expression, both published and unpublished." (Title 17, United States Code).

Copyright is generally owned by the author of the work, unless the work qualifies as a work for hire under the copyright law, unless the copyright has expired, or unless the author has assigned his or her rights in the work to another person or organization.

Examples of works protected by the copyright law include books, journals, videos, musical recordings, photographs, paintings, dramatic works, and software. Reproduction of copyrighted material without the permission of the copyright owner is a violation of the Copyright Act and a violation of Academy policy unless the reproduction was one allowed under the Doctrine of Fair Use.

Fair use does sometimes allow reproduction of a copyrighted article for the purpose of criticism, comment, scholarship, or research. Considerations for determining whether such a reproduction constitutes fair use include:

- character of use (nonprofit as opposed to commercial);
- nature of the work;
- amount and substantiality of the portion used; and,
- effect of the use on the value or commercial market of the work.

A more detailed explanation of the school's fair use policy can be found in the following section of the Business Conduct Policy.

Copyright permission should never be assumed. According to Copyright Office document FL102, "The safest course is always to obtain permission from the copyright owner before using copyrighted material."

Milton Academy respects the ownership of material governed by copyright laws. All members of the school community are expected to comply with the copyright laws and with the provisions of the licensing agreements that apply to software, printed and electronic materials and all other copyrighted works licensed by the Academy or accessible over the school's network or in its libraries. Individual author, publisher, patent holder, and manufacturer agreements are to be reviewed for specific stipulations.

## QUESTIONS & ANSWERS

### **Q. Can I ever use a copyrighted work without permission of the copyright holder?**

A. There are indeed instances where copyrighted works may be used without the permission of the copyright holder, but each instance must be evaluated individually. Photocopying is a particularly relevant area addressed under fair use. Under the Federal Copyright Act of 1976 and the cases which have interpreted its provisions, copyright permission is not required for the following:

- single copies for personal or scholarly use;
- one time placement of an article on library reserve;
- materials not under copyright protection, e.g., most U.S. government documents and works whose copyright has expired; or
- multiple copies for classroom use, so long as they meet “fair use” standards for brevity, spontaneity, and cumulative effect.

### **Q. I use a spreadsheet application in my work at the school. Would it be considered a violation of Milton policy if I copied the program disks and gave them to a colleague to use in another school personal computer?**

A. Yes, unless a special arrangement has been made between the Academy and the publisher (such as procurement of a multiuser license), one licensed copy of a software product must be obtained for every computer upon which it is run.

### **Q. Do exceptions exist with regard to the copyright law for software?**

A. The only general exception concerns the user’s right to make a backup copy for archival purposes.

## Milton Academy Policy on Fair Use of Copyrighted Materials

### I. Applicability

This policy applies to Milton's faculty, staff, administrators and students.

This policy extends to all works of authorship and creativity covered by federal copyright law. These works include print (e.g., books) and electronic documents, software (including source code and object code), databases, multimedia and audiovisual materials, photographs, music, works of drama, works of art (sculpture), among other types of creative works.

### II. Policy

As the fundamental purposes of the Academy include the creation, compilation, and preservation of knowledge in permanent and transmissible forms and the circulation and diffusion of such knowledge to the Academy community, the Academy holds in the highest regard the rights that govern the creation and diffusion of knowledge, and the laws that define and enforce them. This regard applies to both the rights of creators in and to their creations (copyright) and the rights of students, faculty, or staff to avail themselves for legitimate purposes of others' creations (fair use).

The policy of Milton Academy is as follows:

Members of the Milton community are expected to be mindful of the restrictions imposed on them by copyright law as well as the rights conferred on them by the fair use exemption to the copyright laws. Members of the Milton community are expected to comply with the copyright laws.

Section III of this document contains a definition of copyright and fair use.

### III. Standards Applied

In a nutshell, "copyright" says that you are prohibited from using a work unless you own the copyright or have permission; "fair use" says that you may use the work with neither copyright ownership nor permission if your use is indeed fair under the legal criteria set forth below. Note however, that "copyright" and "fair use" have only been summarized below in Sections III A and III B, respectively. This is a complex area and members of the community should seek guidance when needed.

## A. What is Copyright?

Under U.S. law, “copyright” is a bundle of exclusive rights, conferred by federal statute (the 1976 Copyright Act, found in Title 17 of the United States Code) automatically, upon the author of a work, at the instant of its creation. Creation occurs legally when a work is fixed in a tangible medium of expression for a period of more than transitory duration.

Subject to a number of statutory limitations, none of which – except “fair use” – will be reviewed here, the owner of the copyright in a work has the exclusive right to do and to authorize any and all of the following:

1. To reproduce the copyrighted work in copies;
2. To prepare derivative works (the movie of a book is a derivative work);
3. To distribute copies of the copyrighted work publicly;
4. To perform (e.g., an opera) the copyrighted work publicly;
5. To display (e.g., a sculpture) the copyrighted work publicly, and
6. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

If a person or entity does not own the copyright in a work, does not have permission to do 1-6, and does it anyway, then the individual or entity is infringing. The “fair use” of copyrighted materials is an exemption to these prohibitions.

## B. “Fair Use” Exemption

The “fair use” of a copyrighted work, including copying for purposes such as criticism, comment, news reporting, teaching, scholarship, or research, is not an infringement of copyright. In determining whether any given “use” is “fair,” a court is required to consider the four non-exclusive factors listed in Section 107 of the 1976 Copyright Act:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit education purposes;
2. The nature of the copyrighted work (is it an artistic masterpiece or merely a laborious compilation of readily available but voluminous data);
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

A court is to balance all four factors “flexibly,” is not to rely solely on any one factor, and may consider additional factors it deems appropriate. “Fair use” is intended to enable the court to be just and reasonable in the particular case before it. It is often difficult to predict the outcome of a dispute over “fair use.”

### C. Electronic Course Content

Making an electronic copy of a copyrighted work by any means (e.g., scanning, digitizing, ripping, etc.) constitutes reproduction that is governed by copyright law. Any use of copyrighted electronic course content that would require permission from the copyright owner if the materials were part of a printed coursepack likewise requires the copyright owner’s permission when made available in electronic format, unless one concludes, after reasonable inquiry, that the use qualifies as a fair use [see section III B, above] or other exempt or licensed use for which permission is not required. Copies of copyrighted works, regardless of their format, should include proper attribution and copyright notices.

It is preferable to link to materials already legally available at another site, such as the content in databases rather than scanning or making a digital copy.

### D. Infringement Litigation

Congress and copyright owners take infringement very seriously, and statutory penalties can be draconian. “Statutory” damages (as opposed to “actual” damages, which must be proved with evidence) may be elected by the plaintiff copyright owner and can be as much as \$30,000 per infringed work; in cases of willful infringement, the court may increase an award of statutory damages to any sum up to (and including) \$150,000. Statutory damages are not imposed, however (under a specific statutory exclusion), in any case where an employee of a nonprofit educational institution or library acting within the scope of her/his employment “believed and had reasonable grounds for believing” that her/his use of the copyrighted work was fair use (even though it was in fact an infringement). The word “reasonable” in a statute is a trigger for factual inquiry and, in case of dispute, for judicial resolution of what was “reasonable” in the particular circumstances. Willful infringement of copyright for “commercial advantage or private financial gain” may be criminal, and conviction can result in fines and imprisonment. The creators and distributors of “content” in the electronic age may pursue very actively infringement actions against individuals and institutions.