

**Proposed Draft Copyright Policy
For Rutgers University Community Comment
3/09/05**

Preamble

Rutgers, The State University of New Jersey is dedicated to the creation, preservation, and dissemination of knowledge and ideas through research, teaching, and service. The university is committed to creating knowledge and ideas for the improvement of the human condition, to preparing students to meet the needs of a changing society, and to advancing the well being of our communities, state, nation, and world. The U.S. Constitution provides that copyright is intended “to promote the Progress of Science and the useful Arts.” In establishing this copyright policy, Rutgers seeks to create an environment in which its members will realize this worthy purpose.

The objectives of university copyright policy are to:

- Preserve and protect academic values that foster the open and free exchange of ideas and the traditional practices and privileges with respect to the dissemination of scholarly works
- Assure that the university’s involvement in the creation of scholarly and instructional works is used to promote the broadest public good
- Promote and support the use of information technology in the instructional, research, and service missions of the university for the advancement of learning
- Encourage members of the university community to be responsible users of copyrighted works and to take full advantage of fair use rights in their research, teaching, and service activities

Neither ideas nor facts may be copyrighted. Copyright law protects the tangible expression of original works of authorship and describes the categories of works that may be copyrighted. Copyright owners have certain exclusive rights subject to some exceptions, including “fair use,” which permits some limited use of copyrighted materials. This policy sets forth the rights and responsibilities of the university, its faculty, students, and employees in their roles as members of the university community in creating and using copyrighted works. This policy is also applicable to all persons, including research collaborators, visiting researchers, consultants,¹ and contractors whose copyrighted works result in whole or in part from the use of university facilities or

¹ University Regulations Section 6.1.4.4

42 resources. The copyright policy does not replace existing university policies but is subject
43 to them, including those addressing conflict of interest,² conflict of commitment,³
44 disclosure of activities,⁴ and patents.⁵

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46 Because the information technology environment is changing rapidly, it is impossible to
47 envision every form of copyrightable work or the situation in which it might be created.
48 As a result, this policy is broad, and is based on the principles described above. Its
49 implementation will require ongoing interpretation and review (see the section below
50 concerning the Administration of the Policy).

51

52 **Publication of Scholarly Works**

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54 Faculty at the university must be free to choose and pursue areas of study, to share the
55 results of their intellectual efforts with colleagues and students, and to use and
56 disseminate their own creations. This policy reasserts and upholds these important
57 academic values. By longstanding academic custom and tradition, faculty are free to
58 publish scholarly and artistic works they have created, such as books, monographs,
59 journal articles, musical compositions, and artwork in pursuit of their research. Nothing
60 in this policy shall be construed to override this basic academic custom and tradition.

61

62 **Ownership, Rights, and Responsibilities of Copyright**

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64 This policy reaffirms the faculty's rights to retain copyright ownership to the scholarly
65 and artistic works they create, such as books, monographs, journal articles, musical
66 compositions, and artwork, in whatever format they are created, print or electronic,
67 without regard to the extent of university resources involved in the creation of these
68 works.

69

70 Faculty, teaching assistants, and graduate assistants also own copyright to pedagogical
71 materials, including materials in electronic format or posted to a website, that they
72 develop in the regular course of their teaching duties using resources ordinarily available
73 to all or most faculty members (as described in the section of this policy concerning Use
74 of Substantial University Resources). Copyright to works created by a teaching assistant
75 or graduate assistant at the direction of a faculty member or the university typically will
76 be owned by the faculty member or the university.

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78 Students typically will own the copyright to works created as a requirement of their
79 coursework, degree, or certificate program. The university, however, retains the right to
80 use student works for pedagogical, scholarly, and administrative purposes.

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² University Regulations Section 3.3.10

³ University Regulations Section 3.6.1

⁴ University Regulations Section 3.3.10

⁵ University Regulations Section 6.4.1

82 Subject to the traditional freedom to publish scholarly and artistic works (as described in
83 the section of this policy concerning the Publication of Scholarly Works), the university
84 owns copyright to the works created by faculty, students, staff, and visitors as follows:

- 85 ■ Works created at the university's direction, unless the university enters into a
86 written agreement that provides otherwise
- 87 ■ Works created by staff within the scope of their employment
- 88 ■ Works created by students in their capacity as employees of the university
- 89 ■ Works created as a result of external funding where the terms of the funding
90 require that copyright be in the name of the university

91
92 With the exception of traditional scholarly and artistic works as noted above, the
93 university also may elect to own the copyright to works created using substantial
94 university resources (as described in the section of this policy concerning Use of
95 Substantial University Resources).

96
97 Copyrightable works that also qualify for protection under patent laws as inventions or
98 discoveries or that arise from matters that also are covered by the university's patent
99 policy, shall be owned by the university and governed by the university's patent policy,
100 unless the university elects not to file a patent application or otherwise commercialize
101 information that has been disclosed to it, or unless the university assigns its rights in the
102 invention or discovery to the creator. The university claims no ownership of copyright to
103 un-patentable software unless the software was created at the university's direction, made
104 use of substantial university resources, or was created by non-faculty employees working
105 within the scope of their employment.

106
107 Rights pertaining to copyright ownership may be allocated or shared with others. Works
108 created collaboratively by students, staff, faculty, and/or others may be owned in whole
109 or in part by the university if they fall within one of the categories described above.
110 When works are created collaboratively with other entities or institutions, the university's
111 interests and rights in such works shall be recognized and protected as consistent with
112 this policy.

113
114 Individuals who are not regular employees are routinely engaged by various university
115 units to prepare specific works which support the functions of the unit and the university.
116 For the unit and the university to retain control of such a work for all purposes, copyright
117 law requires that the individual execute a written assignment of copyright with respect to
118 the work. Accordingly, when consultants or contractors are retained the consultant or
119 contractor should execute an agreement which includes the required assignment prior to
120 the work being performed. For most purposes, the university's standard consulting
121 agreement is required.

122
123 In cases where the university owns the copyright, the university ordinarily will recognize
124 that faculty creators have: recognition of their contribution as creators; the first
125 opportunity to make revisions of the work (subject to reasonable deadlines and peer
126 review); the right to request a revision or update; the right to have their names removed
127 from a work; and the right to use the work in professional contexts, such as expert

128 witness testimony and consulting, provided the use of such work does not result in a
129 conflict of interest.

130

131 The university also will consider written requests by the creators of works to which the
132 university may assert copyright ownership by virtue of this policy to transfer copyright of
133 the work to the creator. The university will act expeditiously in considering such
134 requests.

135

136 In cases where the creator owns the copyright, the creator is encouraged to acknowledge,
137 in a form appropriate to the nature of the work, the university's support in the creation of
138 the work. The university retains exclusive rights to determine whether the university's
139 name or logos, including those of any unit of the university, may be used in the
140 provenance of the work, although the name of the university or unit may be used to
141 identify the affiliation of the creator. The university's name shall not be used in a manner
142 that suggests endorsement or commercial association.

143

144 In the interest of the broadest dissemination of new knowledge for the public good, the
145 university supports and encourages creators who assign their copyright to retain the right
146 to use their work within the university for educational, research, and public service, and
147 to retain the right to make their work available in publicly accessible electronic archives.

148

149 **Use of Substantial University Resources**

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151 The use of substantial university resources refers to the use of university funds, facilities,
152 equipment or other resources not ordinarily available to all or most faculty members. Use
153 of substantial university resources may include research funding, paid or release time
154 awarded to support the creation of the copyrightable work, use of university laboratories
155 or special instrumentation, and dedicated assistance by university employees. This is a
156 listing of examples which in particular circumstances may constitute the use of
157 substantial resources; the list is not intended to be exhaustive nor would use of resources
158 in these categories always constitute use of substantial university resources.

159

160 Exceptions may occur in situations where creators use university facilities and resources
161 in the creation of works of artistic imagination.

162

163 Use of any or all of the following resources ordinarily available to all or most faculty are
164 not considered "use of substantial university resources:" academic year salary and
165 benefits, salary received on sabbatical, office space, library resources, personal computers
166 and the university's computer infrastructure, normal use of secretarial staff and supplies,
167 use of instructional support services, such as teaching excellence centers or the Office of
168 Instructional Technology, and small awards to faculty from certain internal grant
169 programs. The faculty will own copyright to pedagogical materials (including materials
170 in electronic format or posted to a website) developed in the regular course of their
171 teaching duties using resources ordinarily available to all or most faculty members.

172

173 If a faculty member embarks on creating a work that may make use of substantial
174 university resources, the faculty member may consult with his or her department chair or
175 dean for advice on copyright to the created work. When a substantial use of university
176 resources is expected in the creation of a copyrightable work, chairs and/or deans may
177 consult the Office of the Executive Vice President for Academic Affairs, which will,
178 where feasible, make this determination before the work is created, and shall inform the
179 relevant faculty member(s) as expeditiously as possible.

180

181 **Commercialization**

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183 It is the mission of the university as a public institution to further education and research.
184 Rutgers University's resources are to be used solely for university purposes and not for
185 personal nor for any other non-university purposes.⁶ Any commercialization of
186 intellectual property should be consistent with these overriding purposes.

187

188 Before commercializing any work to which it owns the copyright, the university shall
189 consult with the principal creator. Where there are commercial opportunities for a
190 copyrightable work in which the university may have an ownership interest, the creator
191 shall promptly disclose the work to the university. In cases of commercialization where
192 direct competition with the university might exist, the creator shall consult with his or her
193 dean prior to commercializing a work to which he/she owns the copyright. When the
194 creator owns the copyright, he/she is encouraged to provide the university with the first
195 opportunity to commercialize a work.

196

197 If the creator/copyright owner commercializes a work, the creator/copyright owner shall
198 endeavor to retain for the university a non-exclusive, non-transferable royalty-free right
199 to use the work within the university for educational, research, and public service
200 purposes.

201

202 In cases where the university commercializes a work, any revenue sharing with the
203 faculty creator shall be determined by a negotiated written agreement.

204

205 **Copyright Notice and Administration**

206

207 Copyright to all university-owned works shall be held in the name of Rutgers, the State
208 University of New Jersey.

209

210 The individual decanal or administrative unit in which the work was created will
211 ordinarily have primary responsibilities for the administration of copyrights and
212 permissions for those works. Any commercial sale or licensing of university-owned,
213 copyrightable works shall follow university procedures.

214

215 **Fair Use**

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⁶ University Regulations Section 6.4.2.C

217 The fair use provision of the copyright law is an important exemption to the exclusive
218 rights of copyright owners. Because there is no blanket exemption in copyright law for
219 educational or scholarly use of copyrighted works, each use must meet the fair use test.
220 The university encourages members of the Rutgers community to exercise fair use rights
221 appropriately in their teaching, research, and service activities.
222

223 Fair use guidelines [note the location of the guidelines here], negotiated between
224 representatives of publishers and higher education, describe “safe harbors” for uses of
225 copyrighted works. The university encourages individuals anticipating the use of a
226 copyrighted work to consult the guidelines before using the work. If the use of a
227 copyrighted work does not fall clearly within the guidelines, an individual anticipating
228 the use of a copyrighted work is encouraged to conduct a good faith fair use analysis for
229 each such use. Permission shall be obtained for each use of a copyrighted work that does
230 not fall clearly within the guidelines or when a clear and convincing finding of fair use
231 cannot be made.
232

233 **Administration of the Policy**

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235 The Vice President for Research or his/her designee shall be charged with interpreting
236 and administering this policy. The Executive Vice President for Academic Affairs shall
237 appoint a standing Copyright Policy Advisory Committee to advise the Vice President for
238 Research, as appropriate, on interpretation and enforcement of this policy, amendments to
239 this policy, the resolution of disputes on copyright matters including ownership, and other
240 matters. The Advisory Committee shall include an equal number of faculty members and
241 administrators with experience in these issues. Faculty members of the University Senate
242 shall recommend faculty representatives to the Executive Vice President for Academic
243 Affairs for appointment to this Committee. A member of the Office of University
244 Counsel shall be available to advise the Committee. The Committee shall be chaired by
245 the Vice President for Research or his/ her designee.
246

247 The creator of a copyrightable work shall have the right to appeal a decision of the Vice
248 President for Research to the Executive Vice President for Academic Affairs, whose
249 decision shall be final.
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