

RUTGERS POLICY

Section: 50.3.7

Section Title: Legal Matters

Policy Name: Copyright Policy

Formerly Book: n/a

Approval Authority: Executive Vice President for Academic Affairs

Responsible Executive: Executive Vice President for Academic Affairs

Responsible Office: Office of Academic Affairs

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Errors or Changes? Contact: Office of Academic Affairs at 732-932-7821

1. **Policy Statement**
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.
2. **Reason for Policy**
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, and contractors whose copyrighted works result in whole or in part from the use of university facilities or resources.
3. **Who Should Read This Policy**
All members of the Rutgers University community
4. **Related Documents**
Policy Section 40.2.5, Consulting or Other Independent Personal Services, Intellectual Property, Honoraria, and Other Miscellaneous Activities
Policy Section 40.2.12.C, Gratuities, Guests, Gifts, and Use of University Resources
Policy Section 50.3.1, Patent Policy
Policy Section 60.3.2, Outside Work for Non-Academic Employees
Policy Section 60.5.8, Conflicts of Interest – Faculty

5. **Contacts**
Office of Academic Affairs
732-932-7821

Office of Research and Graduate and Professional Education
732-932-1500, Ext. 3022

Office of the Vice President and General Counsel
732-932-7697

6. **The Policy**

50.3.7 COPYRIGHT POLICY

I. 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

¹ Policy Section 40.2.5 (*formerly Book 6.1.4*), Consulting or Other Independent Personal Services, Intellectual Property, Honoraria, and Other Miscellaneous Activities

contractors whose copyrighted works result in whole or in part from the use of university facilities or resources. The copyright policy does not replace existing university policies but is subject to them, including those addressing conflict of interest,² conflict of commitment,³ disclosure of activities,⁴ and patents.⁵

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

II. PUBLICATION OF SCHOLARLY WORKS

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

III. OWNERSHIP, RIGHTS, AND RESPONSIBILITIES OF COPYRIGHT

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

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

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

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

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

² Policy Section 60.5.8 (*formerly Book 3.3.10*), Conflicts of Interest – Faculty

³ Policy Section 60.3.2 (*formerly Book 3.6.1*), Outside Work for Non-Academic Employees

⁴ Policy Section 60.5.8 (*formerly Book 3.3.10*), Conflicts of Interest – Faculty

⁵ Policy Section 50.3.1 (*formerly Book 6.4.1*), Patent Policy

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

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

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

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

In cases where the university owns the copyright, the university ordinarily will recognize that faculty creators have: recognition of their contribution as creators; the first opportunity to make revisions of the work (subject to reasonable deadlines and peer review); the right to request a revision or update; the right to have their names removed from a work; and the right to use the work in professional contexts, such as expert witness testimony and consulting, provided the use of such work does not result in a conflict of interest.

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

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

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

IV. USE OF SUBSTANTIAL UNIVERSITY RESOURCES

The use of substantial university resources refers to the use of university funds, facilities, equipment or other resources not ordinarily available to all or most faculty members. Use of substantial university resources may include research funding, paid or release time awarded to

support the creation of the copyrightable work, use of university laboratories or special instrumentation, and dedicated assistance by university employees. This is a listing of examples which in particular circumstances may constitute the use of substantial resources; the list is not intended to be exhaustive nor would use of resources in these categories always constitute use of substantial university resources.

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

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

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

V. **COMMERCIALIZATION**

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

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

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

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

VI. **COPYRIGHT NOTICE AND ADMINISTRATION**

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

⁶ Policy Section 40.2.12.C, (*formerly Book 6.4.2*), Gratuities, Guests, Gifts, and Use of University Resources

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

VII. **FAIR USE**

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

Fair use guidelines

[http://www.libraries.rutgers.edu/rul/rr_gateway/research_guides/copyright/copyright.shtml], negotiated between representatives of publishers and higher education, describe "safe harbors" for uses of copyrighted works. The university encourages individuals anticipating the use of a copyrighted work to consult the guidelines before using the work. If the use of a copyrighted work does not fall clearly within the guidelines, an individual anticipating the use of a copyrighted work is encouraged to conduct a good faith fair use analysis for each such use. Permission shall be obtained for each use of a copyrighted work that does not fall clearly within the guidelines or when a clear and convincing finding of fair use cannot be made.

VIII. **ADMINISTRATION OF THE POLICY**

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

The creator of a copyrightable work shall have the right to appeal a decision of the Vice President for Research and Graduate and Professional Education to the Executive Vice President for Academic Affairs, whose decision shall be final.