

**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,<sup>1</sup> and contractors whose copyrighted works result in whole or in part from the use of university facilities or

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<sup>1</sup> 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,<sup>2</sup> conflict of commitment,<sup>3</sup>  
44 disclosure of activities,<sup>4</sup> and patents.<sup>5</sup>

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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).

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## 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.

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## 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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<sup>2</sup> University Regulations Section 3.3.10

<sup>3</sup> University Regulations Section 3.6.1

<sup>4</sup> University Regulations Section 3.3.10

<sup>5</sup> 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.

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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.

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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.

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#### 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.

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

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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.

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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.

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## 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.<sup>6</sup> Any commercialization of  
186 intellectual property should be consistent with these overriding purposes.

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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**

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

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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.

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## 215 **Fair Use**

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<sup>6</sup> 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.  
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### 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.  
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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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