

**Rutgers University Senate
Academic Standards, Regulations and Admissions Committee (ASRAC)**

**Endorsement of Draft University Copyright Policy
October 21, 2005**

The Committee recommends that the Senate adopt the following resolution:

The Senate endorses the proposed University Draft Copyright Policy on which this report is based, and which is posted online at <http://senate.rutgers.edu/copyrightpolicy.pdf> .

Background and Summary

Copyright law protects the tangible expression of original works of authorship.¹ Copyright owners have, in general, the right to control dissemination of their work (subject to some exceptions, such as for “fair use” by others) for the term of the copyright. Copyright attaches at creation of the work even if it does not contain a formal copyright mark. Copyright generally belongs to the creator of the work, although exceptions can arise when, for instance, the creator is employed by another.

For the past several years, a University task force, under the leadership of University Librarian Marianne Gaunt, has been attempting to revise and update Rutgers copyright policy. The purpose of this policy is to clarify when and whether Rutgers would seek to assert copyright over the work of a member of the Rutgers community, whether student or member of the faculty or staff, or of outsiders such as consultants whose copyrighted works result in whole or in part from the use of University resources. The policy is not intended to lessen faculty control over their works. Thus, the policy is not intended to take away the rights that faculty now enjoy.

The task force first released a draft policy in 2003, and asked for comment by the University community and the Senate. The Executive Committee then referred the matter to ASRAC. Since then, ASRAC has discussed the matter repeatedly with Ms. Gaunt. She has addressed our comments in our meetings, taken them to the task force for consideration, and presented new drafts that seek to reflect our input. She has presented to us multiple drafts intended to try to meet our concerns while accommodating the felt needs of the University. We believe the most recent draft well addresses the issues we have raised, and therefore

¹ Copyright should be distinguished from patent, which covers invention. Neither the University’s policy nor this report is concerned with patent. Copyrightable works that qualify for protection under patent law will be covered by Rutgers’ patent policy (lines 97-102).

deserves the Senate's support.

We have found Ms. Gaunt to be exceptionally cooperative. Her sincerity in working with us helped foster an atmosphere of compromise wherever possible. Her behavior has been a model for the administration to follow in working with the Senate, and we hope that others within the administration will emulate her.

We have appended the proposed copyright policy. Senators should refer to it to see its exact language. Here are some comments on aspects of the policy:

1. Faculty retain copyright ownership to the scholarly and artistic works they create without regard to the extent of Rutgers resources involved in the creation of the works (lines 64-68). This restates traditional Rutgers policy.
2. Faculty, teaching assistants, and graduate assistants own copyright to pedagogical materials (including materials posted 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 (lines 70-73). Rutgers, however, can claim copyright if the materials were developed using "substantial university resources" a term discussed below. We emphasize that, under the policy, Rutgers cannot claim copyright for traditional scholarly and artistic works. We understand that the primary purpose of taking copyright is to ensure that Rutgers can use the results of the project for educational purposes, rather than for Rutgers to seek revenue.
3. 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 (lines 74-76). This represents a change from early drafts, which treated work by TAs or GAs as belonging to Rutgers even if the work was not created at the direction of Rutgers or a faculty member. The alteration allows a TA or GA to own the copyright if he or she did not create the work at the direction of a faculty member or the university.
4. Students typically will hold the copyright to works created as a requirement of their coursework, degree, or certificate program, but Rutgers retains the right to use student works for pedagogical, scholarly and administrative purposes (lines 78-80). A faculty member might, for instance, want to use a student paper as an example to use in future classes or to illustrate a student approach in a scholarly work.
5. Rutgers will generally assert copyright to works created at the university's direction, to works created by staff within the scope of their employment, and works created by students in their capacity as employees of the university (lines 82-91). All of these are works essentially created at Rutgers' direction.
6. The creator has used "substantial university resources" if the creator has used

“university funds, facilities, equipment or other resources not ordinarily available to all or most faculty members” (lines 151-152). This includes use by the creator of major funding, paid or release time (not including normal leaves), use of university laboratories, and dedicated assistance by university employees. (The list in the copyright policy is not exhaustive.) In these situations, Rutgers might claim copyright ownership of pedagogical materials. But Rutgers might also elect not to do so. (See the quotation from Ms. Gaunt’s e-mail below.)

7. The creator has not used “substantial University resources” if the creator uses specified resources such as salary, office space, library resources, the university’s computer infrastructure, normal use of secretarial staff and supplies, and small awards to faculty from internal grant programs (lines 164-170). This and the item directly above were the topic of the most intensive discussion between ASRAC and Ms. Gaunt. We understand that the task force is concerned about allowing Rutgers to claim copyright over pedagogical materials that had been commissioned by a dean or a department to improve instruction in a department, rather than materials created to teach an individual course. Several of our members suggested that the task force try to draw a distinction along these lines. In response, Ms. Gaunt pointed out that other institutions, such as Columbia University and the University of North Carolina, have used the task force’s approach with apparent success. In an e-mail to ASRAC that accompanied this draft, she commented as follows:

We reviewed again policies from numerous university copyright policies and have determined that this phrase is used most frequently. Our policy is very much like other university policies in this regard. What we did change is the language on what might be considered substantial university resources. That change is a statement these items *may* be considered substantial rather than *are* considered. We also added a sentence that explicitly states that the examples listed are only that: examples. This will allow for circumstances where the use of such things as laboratories might not be considered substantial. We have not provided specific examples, because the details of each case [are] specific to the circumstances . . . [As with] fair use, without all the details you can’t draw an accurate conclusion.

Finally, she pointed out that a copyright policy must be general to meet rapid change in the information technology environment. It is inevitable, then, that discretion must be granted to decision-makers.

We are persuaded of the cogency of Ms. Gaunt’s analysis, and so we endorse the task force’s approach. We are especially pleased that the policy includes a mechanism for allowing a faculty member to obtain a ruling in advance from the Executive Vice President for Academic Affairs about whether copyright could be claimed by Rutgers. This device should prevent confusion in borderline

situations.

We believe that in other respects the policy is not controversial. We recommend that the Senate endorse it.

The policy is posted online at <http://senate.rutgers.edu/copyrightpolicy.pdf> .