



RUTGERS POLICY

Section: 50.3.16

Section Title: Legal Matters

Policy Name: Legacy UMDNJ policies associated with Intellectual Property: Educational Use of Copyrighted Works

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Responsible Executive: Vice President for Research and Economic Development

Responsible Office: Office of the Vice President for Research and Economic Development

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Errors or changes? Contact: policies@hr.rutgers.edu

1. **Policy Statement**

The policy covers Copyright Policies for employees who are employed within positions

2. **Reason for the Policy**

To provide guidelines to assist departments/units around university copyright policies

3. **Who Should Read This Policy**

Rutgers employees who are employed in positions

4. **Related Documents**

5. **Contacts**

Vincent Smeraglia, Office of Innovation and Technology Commercialization, 732-235-9356, ext. 3021

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6. **The Policy**

**50.3.16 LEGACY UMDNJ POLICIES ASSOCIATED WITH INTELLECTUAL PROPERTY:
EDUCATIONAL USE OF COPYRIGHTED WORKS**

I. **PURPOSE**

To establish policy for the use of copyrighted works of others by University faculty, staff and students for educational and other academic purposes.

II. ACCOUNTABILITY

Under the direction of the Executive Vice President for Academic and Clinical Affairs, the Vice President for Research shall ensure compliance with this policy. The Deans, President/CEOs of the Healthcare Units and Vice Presidents in conjunction with the Director, Office of Patents and Licensing shall implement this policy.

III. APPLICABILITY

- A. This policy applies to all University faculty, staff and students.
- B. This policy covers all copyrighted works of others that are incorporated in University documents, publications, courses and computer files.
- C. Use of copyrighted works under this policy include, but are not limited to: (1) reproduction of the work; (2) distribution of the work to others by sale, rental, lease or broadcasting; (3) performance of the work in the case of performing arts, audio and audiovisual work; and (4) displaying the copyrighted work, including audiovisual works by broadcasting and on Web sites. Written permission from the owner of the copyright is required in all these instances.

IV. GENERAL PRINCIPLES

- A. The University respects the legal rights of the owners of copyrights. Copyrighted works may be incorporated in University documents, publications and courses only if in compliance with copyright laws.
- B. University faculty, staff and students shall respect the legal rights of owners of copyrights. This includes the use of the materials of others in courses, publications, journals, research projects, videos, computer software, video tapes, conference presentations, etc.
- C. It is the policy of Rutgers University to adhere to the requirements of the United States Copyright Law of 1976, as amended (Title 17, United States Code, hereafter referred to as the "Copyright Act"). This policy applies only to copyrighted materials. Uncopyrighted materials may therefore be copied without restriction. Works authored by the United States Government or by some states are not copyrighted. Works published after March 1, 1989 do not require a copyright notice and should therefore be presumed to be under copyright protection. States and their instrumentalities are liable for violations of the Copyright Act and all remedies for copyright infringement apply to states as well as to private individuals (PL 101-553). The University does not condone copyright infringement by any faculty, staff or student; individuals who violate copyright are not protected by the University and may be subject to University disciplinary actions, civil litigation and/or criminal prosecution. Files belonging to the University or any University employee and containing copyrighted material may be subject to subpoena.
- D. It is the policy of Rutgers University to invoke the doctrine of "Fair Use," as defined by Section 107 of the Copyright Act, in order to enable legal copying of copyrighted materials by faculty, staff and students without seeking the permission of a copyright holder and without the payment of royalty fees to the copyright holder. "Fair Use" for educational purposes may not be automatically invoked simply on the basis of copying copyrighted material for educational purposes nor on the basis of such copying being made by a non-profit organization. Each claim of "Fair Use" must instead be evaluated against four criteria:
 - 1. the purpose and character of the use;
 - 2. the nature of the copyrighted work;
 - 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.

Guidelines for "Fair Use" are discussed in Section V below.

V. POLICY

The following guidelines reflecting copyright laws have been adopted by Rutgers to provide faculty, staff and students with general guidance on the use of copyrighted works and to reduce the risk of copyright infringement. Copyright infringement is a criminal act as well as a civil violation and may result in grave consequences to the University and to the individual.

A. Faculty and Classroom Copying of Copyrighted Material

1. Single copying

A single copy may be made by a faculty member or staff member (or for a faculty or staff member at his/her individual request) of any of the following:

- a. a chapter from a book;
- b. an article from a periodical or newspaper;
- c. a short story, short essay or short poem, whether or not from a collective work;
- d. a chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper.

"Systematic" copying of single articles that has the cumulative effect of copying an entire journal issue or volume without permission from the copyright holder or without payment of royalty fees is a violation of the Copyright Act and constitutes a criminal act.

2. Copies of copyrighted material used in slides

Copies of quotations, passages and other material taken from a copyrighted material may be used in a classroom electronic slideshow provided that:

- a. the quotations, passages, or other material are linked to the source of the material, if the source material is available on the internet.
- b. if the source of the material used is not available on the internet, then the material must be properly attributed to its source or permission for the use received from the copyright holder.

3. Electronic copies of copyrighted material placed online

Copies of copyrighted materials for use in the classroom, for an assignment, or for a discussion may be posted online by a faculty member for access by students of the class, provide that:

- a. posting of journal articles, magazine articles, book passages or other copyrighted material is on a password protected website;
- b. there is a limited period of time allowed for which students may access the password protected website in order to retrieve the article or copyrighted material;

- c. the purpose and the character of the use is educational and noncommercial;
- d. the nature of the copyrighted works being posted is predominately factual (such as a paper from a scientific journal);
- e. the effect of the use will not be substantially adverse to the potential market for or value of the copyrighted works; and
- f. a good faith attempt was made to limit the use of the copyright works for educational purposes.

4. Multiple copying for classroom use

Multiple copies (no more than one copy per student in a course) for classroom use or discussion may be made by or for a faculty member giving the course, provided that:

- a. the test for brevity and spontaneity as provided in the examples below is met;
- b. the cumulative-effect test as defined below is met; and
- c. each copy includes a notice of copyright.

Any copying of copyrighted material which exceeds these limits must have the written permission of the copyright holder or royalty fees must be paid.

5. Examples of "brevity" are:

- a. Prose: either a complete article, story or essay of less than 2,500 words or an excerpt from any prose work of not more than 1,000 words or 10 percent of the work, whichever is less, but, in any event, a minimum of 500 words. Each of these numerical limits may be expanded to permit the completion of an unfinished line of an unfinished prose paragraph.
- b. Illustration: one chart, graph, diagram, drawing, cartoon or picture per book or periodical issue.
- c. Special works: Certain works in prose often combine language and illustration and fall short of 2,500 words in their entirety. Such special works may not be copied in their entirety, but an excerpt comprising not more than two pages and containing not more than 10 percent of the words found in the text may be copied.

6. Examples of "spontaneity" are:

- a. The copying is an immediate need as a result of the inspiration of the individual faculty member.
- b. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission to copy from the copyright holder.

7. Examples of "cumulative effect" are:

- a. The copying is for only one course in the school.

- b. Not more than one short article, story or essay or two excerpts is copied from the same author, nor more than three from the same collective work or periodical volume during one class semester.

The limitations in a and b above shall not apply to current news periodicals, newspapers and current news sections of other periodicals.

- c. There are not more than nine instances of such multiple copying for one course during one class semester.

8. Examples of **prohibitions** based on brevity and spontaneity are:

- a. copying used to create, replace or substitute for anthologies, compilations or collective works, regardless of whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately;
- b. copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests, test booklets, answer sheets and similar consumable materials.
- c. Copying:
 - 1. to substitute for the purchase of books, publishers' reprints or periodicals;
 - 2. that is directed by higher authority (e.g., a faculty member directing his/her students to copy an article);
 - 3. which is repeated with respect to the same item by the same faculty member from semester to semester.
 - 4. where costs and charges for copying are charged to the student beyond the actual cost of the photocopying.

B. Music and Audiovisual Use in the Face-to-Face Classroom

If copyrighted music or audiovisuals are used in a face-to-face conventional class, some utilizations may be made under "Fair Use." No more than ten percent of a copyrighted work of music may be used, but not repeated for the course in the next semester, unless permissions have been obtained from the copyright holder. Under provisions of Section 110 of the Copyright Act, a lawfully obtained copyrighted film or videocassette not labeled "Home Use Only" may be aired in a face-to-face class, provided that such airing is within the scope of the educational intent of the course. No copy of such a film or videocassette may be made without first securing the permission of the copyright holder.

C. Individual (and Student) Copying of Copyrighted Material

Rutgers University has no mechanisms to monitor photocopying. For this reason, photocopy machines (including self-services machines) have posted warnings that the copying of copyrighted materials is subject to the Copyright Act.

D. Copy-Center Copying of Copyrighted Material

The Department of Printing and Duplicating Services may legally provide faculty and staff with single or multiple copies of copyrighted materials that meet the guidelines outlined in Section V.A above (See University Policy, Central Printing & Duplicating Services, 00-01-55-55:00). The Department of Printing and Duplicating Services reserves the right to refuse to make copies of materials when such copying, in its judgment, is not in

compliance with the Copyright Act. Faculty, staff and students are also advised that they, as individuals, remain responsible for compliance with the Copyright Act when they make use of off-campus copy vendors.

E. Library Copying of Copyrighted Material

1. Internal library copying

The Libraries may legally provide faculty, staff, students and the general public with single copies of copyrighted materials that meet the guidelines outlined in Section V.A above. Each copy thus made must include either the copyright notice from the material provided or shall be stamped with the following notice:

“This material may be protected by copyright law (Title 17, U.S. Code).

The Libraries will not make multiple copies under any circumstances. The Libraries may make one copy of a copyrighted journal article for placement on reserve for class use upon receipt of a written request of the course teacher. Each copy thus made shall bear the following notice:

“This material may be protected by copyright law (Title 17, U.S. Code).”

The Libraries will not make multiple copies of articles for placement in the Reserve Collection. The Libraries reserve the right to refuse to make copies of copyrighted materials which are not in compliance with the Copyright Act.

2. Inter-library loan

Libraries may also be liable under the law for acquisition of copyrighted materials obtained via inter-library loan from other libraries. The inter-library loan convention permits the securing of, for example, photocopied journal articles from other libraries. This convention, set forth by the Commission on New Technological Uses of Copyrighted Works (CONTU), permits as "Fair Use" the annual request of a maximum of five journal articles per journal title for the then-current five-year period. Paper records and computerized records of inter-library loan requests shall be retained by the Libraries for a period of three years.

F. Copying for Broadcast

Copying of copyrighted materials for broadcast purposes, including broadcasts utilizing copyrighted printed works, video, music or other recordings, whether for “live” video broadcasts or pre-recorded video programs, presents a special set of problems with regard to copyright compliance. The University environment has at least five specific areas of broadcast activity which must be considered: closed-circuit, interactive, distance-learning classes; closed-circuit medical consultations and peer conferences; educational offerings or conferences which are broadcast to the external environment by satellite or other broadcast means; and Web-based, distance-learning courses as well as Web-based material distributed to the public through programs and mechanism such as Apple Corporation’s iTunes University[®]. In the case of closed-circuit broadcasts, it is assumed that such broadcasts are not-for-profit and are aired from a specific classroom, conference room or consultation room at a specific site (e.g., RBHS Campus). If programs containing copyrighted materials are aired for commercial gain by Rutgers, "Fair Use" may not be invoked and permissions from all copyright holders must be obtained. The guidelines below refer to only those airings which incorporate copyrighted material.

1. Closed-circuit, live, interactive, distance- learning classes

- a. Display or copying of copyrighted materials for closed-circuit, live, interactive, distance-learning classes shall closely follow "Fair Use"

guidelines for print materials as described in Sections V.A.1 and 2 above. Each such class shall begin with a text screen that states:

“This class session may contain copyrighted material legally available to this class session as set forth in Title 17 of the United States Code.”

Copies of such a broadcast may not be made by the host nor by the receiving site unless permission to do so has been granted by the copyright holder.

- b. A teacher having used a specific copyrighted item under terms of “Fair Use” in a closed-circuit, live, interactive, distance-learning class session may not use that item in a following class session, nor from semester to semester, unless specific permission to do so has been granted by the copyright holder.
- c. As in the case with face-to-face conventional classroom use of copyrighted material, students at both the host classroom and the receiving classroom in a closed-circuit, interactive, distance-learning class may be provided with copies of printed or graphic (but not music nor audiovisual) copyrighted material (one copy per student). Each copy provided must bear the following copyright statement:

“This material may be protected by copyright law (Title 17, U.S. Code).”
- d. If copyrighted music or audiovisuals are used in a closed-circuit, interactive, distance-learning class, some utilization may be made under “Fair Use.” No more than 10 percent of a copyrighted work of music may be used, but may not be repeated for the course in the next semester unless permission has been obtained from the copyright holder (see Section V.B above). Under provisions of Section 110 of the Copyright Act, a lawfully obtained copyrighted film or videocassette not labeled “Home Use Only” may be aired to a closed-circuit, interactive, distance-learning class, provided that such airing is within the scope of the educational intent of the course. No copy of a closed-circuit, live, interactive, distance-learning class containing such a film or videocassette may be made without first securing permission of the copyright holder.
- e. In any closed-circuit, live, interactive, distance-learning class session which utilizes copyrighted material, it is the responsibility of the faculty member to assure that such utilization is lawful.

2. Closed-circuit, live, medical consultations and peer conferences

- a. Closed-circuit, live, peer conferences or medical consultations may make use of print or graphic (but not music or audiovisual) copies (one copy per conference attendee) of copyrighted material. Each copy provided must bear the following copyright statement:

“This material may be protected by copyright law (Title 17, U.S. Code).”
- b. Assurance of copyright compliance is the responsibility of the moderator of such closed circuit, live consultations or conferences.
- c. If copies are to be made of such live consultations and peer conferences which include copyrighted material, permission must be obtained from the copyright holder.

3. Broadcasts to the external environment

Broadcasts to the external environment (non-Rutgers or non-Rutgers-related) which make use of satellite or other broadcasting technology may fall into two general categories: not-for-profit educational and for-profit commercial (which might be educational).

- a. In the case of all external-environment, for-profit, live or for-profit, pre-recorded broadcasts, regardless of educational intent, all uses of copyrighted material must be accompanied by permission from the copyright holder or his/her/its royalty-and-permissions agent. Additionally, if copies are to be made of such broadcasts, permission to copy must be obtained. Non-authorized copying of such broadcasts is illegal.
- b. In the case of external-environment, not-for-profit, educational, live broadcasts which make use of copyrighted material, the same rights and prohibitions as outline in Section V.F.1 above may apply. If subscription and/or licensing fees are assessed to the recipient of such broadcasts, the broadcasts are for-profit and thus subject to permission and the payment of royalties. In any event, copies may not be made of such broadcasts without the permission of the copyright holder or his/her/its royalty-and-permissions agent.
- c. In the case of all external-environment, pre-recorded broadcasts, permission must be obtained for use of all copyrighted material. A pre-recorded broadcast must include a list of all copyrighted material and the statement of permission for that material. Additionally, copies may not be made of such broadcasts without the permission of the copyright holder or the royalty-and-permissions agent.

4. Web-based, distance-learning courses

- a. All uses of copyrighted material must be accompanied by permission from the copyright holder or the appropriate royalty-and-permissions agent. Copyright material may include printed works, videos, music or graphics. The document should include a list of all copyrighted material and the statement of permissions for that material.
- b. If the students involved in the Web-based, distance-learning courses are provided with copies of printed or graphic material, permission to copy must be obtained.
- c. Permission must be obtained for copying of the digitalized material and any distribution to others.
- d. Links may be made to other Web sites. However the material on other Web sites may not be copied without permission.
- e. If the course is given only once, if the copy meets the tests for brevity and cumulative effect, and if each copy has a notice of copyright, then the material may be used without obtaining permission.

5. Web Based, Public Learning Material

- a. University materials that are posted for public educational use, such as to iTunes University®, are subject to normal copyright restrictions. Copyrighted material should not be posted unless permission has been granted by the copyright holder. If the material has been created for educational purposes or has relied substantially upon the use of University resources, the University shall be the holder of the copyright.
- b. original content created by an employee that has been uploaded for public educational use still remains the sole property of the creator of the content, that is, of the faculty member that originally creates and posts the material.
- c. permission must be obtained for copying of the digitalized material and any distribution to other parties, including the public.
- d. Links may be made to other internet sites. However the material on other internet sites may not be copied without permission given from the copyright holder.

G. Computer-Related Copying

Computer-related copying may take many forms, such as copying of software, printing of items from computerized files, and downloading of computerized files or items from computerized files to hard disk or to diskette. Many items within computerized files are copyrighted or are subject to licensed control. Users of computers must exercise care in the use of such materials. The following guidelines relate only to the copying of copyrighted or licensed materials.

1. Copying of software

Software operating systems and application programs should be considered copyrighted material unless they are termed “free-ware” or “public domain” by their producers and manufacturers. In most cases, a software program carries a license to which the purchaser agrees upon purchase or at the time of the software’s installation. It is customary for software producers to permit the creation of one archival or “back-up” copy for each installation permitted by the license. A license may be for one installation or for multiple installations of a specific software program. Copies of licenses for software programs which are purchased by Rutgers departments or individuals shall be kept on file within the department or by the individual as long as the software is in use. Certain basic utility and applications programs are made available to Rutgers individuals and departments as “site license” programs. Such site-licensed programs will generally have only one license for the campus or for the institution as a whole. Licenses for such programs are kept on file centrally at the Campus or University.

- a. Copying, adapting and electronic transmission of computer software is strictly forbidden by personnel and students, except:
 - i. in strict compliance with Public Law 96-517, Section 10(b) which, in amending Section 117 of Title 17 (U.S. Code) to allow for the making of computer software back-up copies, states (in part) “...it is not an infringement of the owner (purchaser) of a copy of a computer program to make or authorize the making of another copy or adaptation of a computer program provided:

- (1) "that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or
- (2) "that such a new copy and adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful."
- ii. where appropriate, written consent from the copyright holder is obtained;
- iii. where the software is in the public domain or is "free-ware," and that fact can be verified.
 - (1) Illegal copies of software may not be used on computers.
 - (2) Software (whether on tape or CD-ROM) may not be installed so as to permit multiple use or multiple-site use unless such permission is granted by the software license itself, or granted by the copyright holder or royalty-and-permissions agent.

2. Copying of computerized files and their contents

- a. Copies (to paper or downloaded to disk) may legally be made of computerized files and their contents, provided that the program license does not forbid such copying. Generally, a computerized file will carry an on-screen warning if copying is not permitted.
- b. Care must be exercised in the copying of material found in other home pages on the Internet. Some home pages may contain copyrighted materials but may neglect to inform visitors to their Web sites or home pages of the presence of such copyright protection material. It is the position of Rutgers that the presence of such copyrighted material is the responsibility of the owner of the Web site or home page, and liabilities for copyright non-compliance must rest with that owner. Rutgers home pages and Web sites may not include copyrighted material unless permission has been granted by the copyright holder or the royalty-and-permissions agent.
- c. Legally obtained copies of copyrighted materials may legally be scanned by use of telefacsimile equipment or by use of scanners attached to computers for purposes of transmission. Materials thus copied must bear the following statement:

"This material may be protected by copyright law (Title 17, U.S. Code)."

Such materials may not be scanned for storage in digital form unless permission to do so has been granted by the copyright holder. If such permission has been granted, the scanned and stored material must bear the following statement:

"This material may be protected by copyright law (Title 17, U.S. Code)."

- d. Rutgers faculty, staff and students may not incorporate copyrighted material into locally-created databases which are installed on Rutgers machines which are housed on Rutgers property unless specific written authorization and permission has been granted to do so by the copyright holder or the royalty-and-permissions agent. Any permitted copyrighted material shall be identified as such on a screen within a body of the program or as a footnote where such display of copyrighted material normally occurs.

H. Copyrighted Material Incorporated into Articles, Books, Courseware, Videos

Faculty, staff and students shall carefully consider the use of copyrighted material in all works prepared by them. This includes any copyrighted work of others incorporated in journal articles, books, courseware, software, video and conference material created for academic research as well as educational purposes. Faculty and staff are required to obtain permission and/or licenses from the copyright owner in order to reproduce, publish, distribute or display the copyrighted work.

I. Legal Advice Regarding Copyright

Before any faculty, staff or student takes action or causes action to be taken that could possibly infringe any "exclusive right in copyrighted works" that are not exempted under the law or are not clearly "Fair Use" under the guidelines delineated above, the matter must be submitted in writing to the Office of Legal Management for legal advice. Submissions in writing must include:

1. the work (original, reasonable facsimile or reproduction) which could possibly be infringed;
2. a description of the use/action contemplated or anticipated that could possibly cause the infringement;
3. an explanation as to why the use/action is necessary and how it is of benefit to Rutgers; and
4. all related pertinent materials, including timelines and deadlines that have a bearing on the amount of time available for rendering the legal advice.

J. Seeking Permissions

Permissions for copyrighted materials may be obtained through a variety of mechanisms. For most of the journal literature, permissions information is available at the Copyright Clearance Center, Inc. (CCC), 222 Rosewood Drive, Danvers, MA 01923, telephone (508)750-8400, fax (508) 750-4744. Many book publication permissions may be obtained at CCC as well. Music permissions information may generally be obtained from ASCAP, One Lincoln Plaza, New York, NY 10023, telephone (212) 621-6000, or BMI, 320 W. 57th Street, New York, NY 10019, telephone (212) 586-2000. Information on intellectual property and related matters may be obtained from the International Confederation of Societies of Authors and Composers (CISAC) (home page <http://cisac.org>). Many book and software permissions may be obtained by writing directly to the author. Publishers of books frequently provide addresses for their authors.

VI. SANCTIONS

Non-compliance with this policy may result in disciplinary actions under University employee and student policies and procedures, civil litigation, and/or criminal prosecution.