



RUTGERS POLICY

Section: 50.3.15

Section Title: Legal Matters

Policy Name: Legacy UMDNJ policies associated with Intellectual Property: Copyrights & Royalties

Formerly Book: 00-01-05-30-00, Former Policy 90.4.2

Approval Authority: President of Rutgers University

Responsible Executive: Vice President for Research and Economic Development

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

Originally Issued: July 1, 1987

Revisions: 8/17/2011, 7/1/2013, 7/17/2013 (Policy renumbering)

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**
All 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
Patrick Sinko, Office of Research Advancement
(732) 445-3831, ext. 213
6. **The Policy:**

50.3.15 LEGACY UMDNJ POLICIES ASSOCIATED WITH INTELLECTUAL PROPERTY: COPYRIGHTS & ROYALTIES

I. PURPOSE

To set policy regarding copyrights and royalties for all copyrightable material created by University personnel related to or within the scope of their employment at the University.

II. STATEMENT OF PRINCIPLES

The University encourages the dissemination of knowledge and development of creative work that fulfills its educational, research and service missions and benefits the public it serves. The University supports the preparation and publication of copyrightable works resulting from the teaching, research, scholarly and artistic endeavors of faculty, staff and students as part of their

roles at the University. The University seeks to foster an intellectually stimulating environment in which creative efforts and innovations are encouraged and rewarded, the careers of its members are enhanced, and the University's reputation and prestige are furthered. The University respects, acknowledges and promotes the intellectual property rights in works created by its members. The University strives to maintain a balance among the interests of Creators, sponsoring bodies and the University in copyrightable material and income resulting from such works.

All University personnel are encouraged to retain ownership of the copyright to Traditional Works of Scholarship (as defined herein) or to obtain a perpetual license from the copyright owner to reproduce, distribute, perform, and/or display the work and to make Derivative Works therefrom.

III. 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 Technology Transfer and Business Development shall implement this policy. The Deans shall ensure that each new faculty member receives a copy of this policy or is directed to it on the University's web site.

IV. APPLICABILITY

This policy shall apply to the following persons: full-time and part-time faculty, postdoctoral appointees, housestaff, non-faculty employees and student employees.

V. DEFINITIONS

- A. "Creator": Person who transforms ideas into a tangible form of expression thereby creating Copyrightable Material.
- B. "Copyrightable Material": Material that is subject to U.S. copyright laws, including, but not limited to, literary works, musical works, dramatic works, choreographic works, graphic works, photographic works, cardiographic, radiographic and pictorial works (e.g., x-rays, images), sculptural works, audiovisual and videotaped works, sound recordings, films, theses, and works in electronic media (e.g., digitized works and network transmission of digitized works, multimedia broadcast, web-based products, recorded materials, remote transmission of information, instructional software, CD-ROMs).
- C. "Derivative Works": Copyrightable Material based on or derived from one or more already existing copyrighted works. Derivative works include, but are not limited to, new versions, translations, dramatizations, fictionalizations, reproductions, compilations, revisions and condensations.
- D. "Traditional Works of Scholarship": Copyrightable Material reflecting research and/or creativity which is considered evidence of accomplishment in the Creator's academic discipline or professional field, and is specifically created for predominant use by persons or entities other than the University and/or its students. Such works include, but are not limited to, books, book chapters, journal articles, abstracts, student theses, plays, poems, pictorial and sculptural works, films, cassettes, musical compositions and other literary works.
- E. "Institutional Works": Copyrightable Material created (1) specifically or predominantly for use by or at the University, or (2) at the request or behest of the University, or (3) under the specific direction of the University, or (4) by a person acting within the scope of his or her employment at the University, or (5) under a written contract between the Creator and the University, or (6) under a contract between the University and an external agency. "Traditional Works of Scholarship" will not be considered "Institutional Works" for the purposes of this policy.

- F. "Instructional Materials": A type of "Institutional Work," including textbooks and study guides, used for the instruction of students, housestaff and/or postdoctoral fellows.
- G. "Other Intellectual Property": Any Copyrightable Material other than Traditional Works of Scholarship, Institutional Works and Instructional Materials.
- H. "University Resources": Tangible resources provided by the University to a Creator, including funds, office space, lab space, equipment, electronic network resources (hardware and software), support personnel, secretarial support, research, teaching and lab assistants, assistance from medical students or residents, media specialists or illustrators, supplies, utilities. Funds include grants and contracts or awards made to the University by an extramural sponsor.

VI. REFERENCES

- A. Patents Policy 50.3.14
- B. Educational Use of Copyrighted Works Policy 50.3.16

VII. POLICY

A. Copyright Ownership

1. Institutional Works and Instructional Materials as defined herein shall be deemed as having been created within the scope of employment of the Creator. Copyright ownership of such works shall vest with the University unless otherwise agreed in writing. Rights associated with copyright ownership become enforceable where the University has sought and obtained a copyright, which shall be done where the University determines that the material is commercially viable.
2. Traditional Works of Scholarship as defined herein shall be deemed as having been created outside the scope of employment of the Creator. Copyright ownership of such works shall vest with the Creator.
3. Ownership of the copyright in Other Intellectual Property will be determined by the University on a case-by-case basis, based upon the level of use of University Resources in its creation.
4. Absent the establishment of such by law or contract, the University shall assert no ownership rights to any Copyrightable Material developed by a Creator before joining the University.

B. Marking and Disclosure

1. Copyrightable Material shall be marked at the earliest possible opportunity with the copyright symbol "©" or the word "copyright" or the abbreviation "Copr.", the year of first production or publication, and the name of the owner of the copyright in the work.
2. The Creator shall promptly file a copyright disclosure form with the Director, Office of Technology Transfer and Business Development for any (a) Institutional Works, (b) Instructional Materials and (c) Other Intellectual Property created with the use of University Resources.
 - a. The disclosure form shall be filed when the material is in final form or when it is close to completion. Should the Creator desire that the University release its ownership rights in the copyright in the disclosed work, the disclosure form should contain such a request.

- b. The University may release its ownership rights to the Creator when, as determined by the Director, Office of Technology Transfer and Business Development (1) there are no overriding special obligations to a sponsor or other third party, and/or (2) the best interests of the University would be so served. The University shall make this decision within 90 days of receipt of the disclosure form.
- c. If the Director denies the Creator's request that the University's ownership rights in the copyright be released to the Creator, the Creator may appeal this decision to the University Intellectual Property Faculty Committee for final decision. The University will endeavor to seek qualified faculty representation from all Schools on this committee.
- d. The Director, Office of Technology Transfer and Business Development shall file an application to register the University's copyright interest in the disclosed work when copyright ownership remains with the University.

C. Rights to License, Market and Use Copyrightable Material

- 1. Traditional Works of Scholarship and Other Intellectual Property created without the use of University Resources:
 - a. The Creator has the right to determine his/her own licensing, marketing and use of these materials.
 - b. When a Creator departs from the University, she/he shall grant the University a license to distribute, display and reproduce this Copyrightable Material and to produce Derivative Works therefrom for educational and research purposes within Rutgers, except if copyright ownership of Traditional Works of Scholarship has been transferred to a publisher as a requirement of publication.
- 2. Institutional Works, Instructional Materials and Other Intellectual Property created with the use of University Resources:
 - a. The University, through the Office of Technology Transfer and Business Development, shall have the right to determine the licensing, marketing and use of material for which the University has sought and obtained copyright ownership. This determination shall take into account the interests of the University, the public and the Creator, including the Creator's preferences.
 - b. The Creator shall have the right to be identified or to refuse to be identified as the Creator by the University and by subsequent licensees and assignees, except as required by law.

D. Royalties and Revenue Distribution

- 1. Traditional Works of Scholarship, and Other Intellectual Property that is created without the use of University Resources: All revenue from material within these categories belongs exclusively to the Creator.
- 2. Institutional Works, Instructional Materials and Other Intellectual Property that is created with the Use of University Resources: A fee of 10% shall be paid to the Office of Technology Transfer and Business Development. This fee as well as other expenses (e.g., legal fees, registration fees, other licensing fees) shall be subtracted before revenue is distributed. The remaining revenue from material within these categories shall be divided as follows:

- a. The Creator shall receive 40%.
 - b. The department/program/unit/center employing or contracting with the Creator shall receive 25%; primary consideration in the use of this portion of the revenues shall be given to support the Creator's further research or his/her other creative efforts at the University.
 - c. The School in which the Creator has an academic appointment or the administrative or patient care unit in which the Creator is employed shall receive 25%; this portion of the revenues shall be utilized at the discretion of the pertinent Dean, Vice President or President/CEO of the Healthcare Unit.
3. In the event of the Creator's death, any compensation payable under this policy shall be paid to his/her estate or assignees.
- E. Traditional Works of Scholarship that are created as, or are transformed into, electronic media by faculty will be treated in a similar manner as other Traditional Works of Scholarship.
- F. Except where otherwise provided, resolution of disputes concerning the application of this policy or the ownership of copyrights shall be brought directly to the Vice President for Research, who shall, in consultation with the Senior Vice President and General Counsel and appropriate Dean or other Vice President, render a final decision within 30 calendar days.