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Intellectual Property in Teaching and Learning: Ownership, Fair Use and Commercialization

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Faculty Institute for Teaching and Learning
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Agenda

◆ Student and Faculty Intellectual Property
  – Scenarios – What might occur?
  – Forms of intellectual property (IP)
  – Ownership of faculty IP
  – Ownership of student IP
  – Rights to use IP
    • RIT-owned
    • Student-owned
    • External IP
  – Scenarios – Discussion of

◆ Using Intellectual Property & Related Tools
  – TEACH Act
  – Online copyright tutorials & websites
  – Turnitin – a plagiarism-detection tool

◆ Handouts

◆ Resources
Scenario 1 – Publishing and Protecting IP

- I want to publish my work and present on it at a conference. I assume this means that I don’t need to be concerned with IP protection.
  - *This is INCORRECT.* You can BOTH publish and protect.
Scenario 2 – Students and IP

- A student develops IP as part of a class project or thesis work. The work may continue development of an idea/IP the student had prior to entering RIT. The student wants to start a business around this IP after graduating.
  - How do I both use it for class projects and keep it confidential?
  - Why didn’t my professor tell me the issues around public enabling disclosures and loss of patenting rights?
  - Will my thesis defense be open? Can it be *in camera*?
  - What happens if I use a non-RIT employee on my thesis committee?
  - Must my thesis be cataloged and shelved in Wallace Library immediately after defending?
Scenario 3 – Faculty Research and Teaching

- A faculty member wants to use their ongoing research as a discussion or project topic in a class.
  - Are there any issues/consequences that should be considered before doing this?
  - What are the terms of any funding agreements?
Scenario 4 – Faculty and IP

- A faculty member develops IP in the course of his/her RIT employment. The faculty member now wants to start a company around this IP.
  - Does the faculty member have the right to use the IP in the company?
  - Can a faculty member use his/her RIT grant funding to continue the IP development within the company?
  - Can a faculty member use RIT equipment or computers to continue the IP development within his/her company?
  - The faculty member wants to hire a student to work in the start-up company. Are there any issues to look out for?
Scenario 5 – Employed Students and IP

- A faculty member has a strong research program in *Field X*. A student wants to work with the faculty member in further research in this area. The student has been sent to RIT by his/her employer.
  - What issues does this raise for the faculty member?
INTELLECTUAL PROPERTY – An Overview
Forms of Intellectual Property

- **Trade Secrets**
- **Patents**
  - United States
    - Provisional
    - Full application
  - International
- **Copyrights**
- **Trademarks**
  - Trademark
  - Service Marks
  - Trade Name
Trade Secrets

◆ Definition
  – Confidential, unpatented information that is protected by keeping the information secret

◆ Factors in determining if it is a trade secret
  – Extent information is known in industry
  – Extent measures taken to safeguard secrecy
  – Value of information to owner and competitors
  – Ease/difficulty in independent development
Trade Secrets

◆ Advantages
  – Easy to control
  – Easy and inexpensive (relatively) to protect
  – Indefinite term (determined by degree of protection)
  – No patentability requirements to qualify

◆ Disadvantages
  – Limited ability to exploit information
    • Reverse engineering
  – No protection against independent development
  – No statute law protecting trade secrets

◆ Remedy
  – Injunction or damages
  – Onus is on owner to establish case
Patents

◆ **What is patentable?**
  - Any new and useful art, process, machine, manufacture or composition of matter or any new and useful improvement
  - Includes software and mask works

◆ **Key elements:**
  - Novelty
  - Utility
  - Non-obviousness
U.S. Patents

- First to invent vs. first to file in rest of world
- Term is 20 years from date of application
- One year grace period for prior disclosure
  (no grace period for rest of world)
- Application published 18 months after filing
“New” Classes of Patents

- Software
- Business Methods
Copyright

- Protects manner of expression; not the idea, process or concept
- Precludes actual copying
- Exists automatically on creation of work
  - Legal registration enhances protection
- Term
  - author’s life + 70 years;
  - lesser of 95 years from first publication or 120 years from creation for works for hire
- Creations and works of art
  - drawings/prints
  - architectural plans
  - multimedia works
  - musical works
  - motion pictures
  - internet-distributed content
  - text
  - software
Copyright

- Owned by RIT as “work for hire” of RIT employee
- RIT policy gives ownership to authors for scholarly articles
- Commissioned works are owned by RIT
- CREATE by authorship
- DESTROY only by express dedication to public
Copyright Marking

- Copyright marking is optional but recommended
- Correct marking for RIT owned works is:
  - © Year* Rochester Institute of Technology
  - Note: NTID is NOT a legal entity. Thus the copyright marking for NTID works is the same as the RIT marking above.
- Correct marking for individually-owned works is:
  - © Year* Your Name

Year * = year of first publication
http://www.law.duke.edu/cspd/comics/
Trademarks

Definition

- Identifying mark, word, logo or symbol used by someone in commerce to identify or distinguish his/her goods and services from all others
- Sometimes confused with “tradename” which is the company name under which business is conducted.
INTELLECTUAL PROPERTY – Ownership and Rights to Use
DETERMINING INVENTORSHIP

- Inventorship defined by US Patent Act
  - Inventors determined by law; NOT by research team or RIT
  - Handled differently than authorship of a publication
  - Each inventor must have contributed to the creativity of at least one claim in the patent application
Faculty and IP Ownership

◆ Governing Policies
  – C3.0 Intellectual Property Policy
  – C3.1 Agreement for Commissioned Works
◆ Guiding Principles
  – Work done as RIT employee using RIT facilities and resources is RIT-owned
  – Work commissioned by RIT is RIT-owned
  – Exceptions:
    • Curriculum developed by Faculty at own initiative
    • Scholarly works (e.g. textbooks)
    • Incidental works
  – Work done as outside activities without use of RIT IP, facilities and resources is not owned by RIT
Students and IP Ownership

- **RIT does not own student IP unless:**
  - The student was paid by RIT to perform the work that led to the IP
    - As part of RIT employment
    - Through grant or contract funding secured through RIT
  - The student and RIT entered into an agreement otherwise before the work started
    - Done in certain cases where there is a corporate sponsor for student projects
  - **Note:** To be a work-for-hire there **MUST** be a written agreement stating such
  - RIT cannot give away student IP (ownership or rights to use) without first obtaining permission from the student
IP Created Jointly by Faculty and Student

- **Inventions**
  - Jointly owned by RIT and student unless student was acting as RIT employee in creation of the work
  - RIT and student can each use work (in non-exclusive manner) without accounting to the other
  - Student has option of assigning their undivided half-interest in invention to RIT in exchange for which student will be treated as an RIT employee per C3.0

- **Works of Authorship**
  - Jointly owned by RIT and student unless there was written work-for-hire agreement
  - RIT and student can each use work (in non-exclusive manner) but must account to the other for such use
  - Student has option of assigning their ownership interest in work of authorship to RIT in exchange for which student will be treated as an RIT employee per C3.0
Students and IP Ownership – cont’d

- RIT cannot use student IP without first obtaining permission from the student
  - Other than reviewing and marking a class assignment and then returning it to the student
  - This means, without prior permission of the student, Faculty cannot:
    - Display student work other than during the quarter in which the class work was done
    - Use student work in subsequent class offerings
    - Retain copies of student work beyond the end of the class for which the work was done (exception is thesis copies provided to RIT by student)
Students and Agreements

- **Note:**
  - A student must be 18 years old to sign a legal document; otherwise a parent or guardian’s signature is required

- **Note:**
  - From a legal perspective RIT students are not part of the legal entity RIT. Thus when RIT enters into an agreement with, for example, a company our students are NOT covered by or bound by that agreement.

- **What agreements might our students need to sign in the course of 1) co-op or internship positions, 2) company-sponsored class projects or 3) working as a student employee at RIT?**
  - Confidentiality (Non-Disclosure) Agreements
  - Employment Contracts
  - Employee Assignment forms
  - Non-compete assurances
Guidance When Asking Students to Sign an Agreement

- Only use agreements when necessary; e.g.
  - Confidentiality Agreement
  - Assignment of IP Agreement
- As RIT we cannot offer advice to students on interpretation of agreement terms or what is in student’s best interests.
- We should point out that this will be a legally binding agreement and the student needs to review it carefully before signing.
- We should also remind the student that he/she may wish to have it reviewed by an attorney before signing.
Guidance When Asking Students to Sign an Agreement

- When offering class projects that require confidentiality and/or assignment of IP
  - *MUST* always offer student a choice of project that does not require confidentiality and/or assignment of IP
  - Why?
    - Students may not want to sign such an agreement
    - Student may not be comfortable signing such an agreement
    - Student may not be legally allowed to sign such an agreement; e.g. if already employed by a company that doesn't permit such
External Organizations and Ownership of IP

- Faculty performing outside consulting work
- Students who come to RIT as employees of a company
- Company-sponsored class projects
- Sponsored research
  - Government grant or contract
  - Corporate agreement
  - Other agreements
- IP is licensed-in to RIT
External Organizations and RIT
Use of their IP

- RIT respects the IP rights of IP owners.
- RIT seeks permission of IP owners to use their IP *before* using any externally-owned IP.
Student Use of IP After Graduation

- **Student-owned IP**
  - No issues here. Students own the IP and can do with it as they please.

- **RIT-owned IP**
  - Student will need permission of RIT to continue to use/develop this work after leaving RIT.

- **IP Jointly Owned by RIT and Student**
  - Student and RIT can each continue to use/develop the IP and can license it on a non-exclusive basis.
  - For patented works there’s no requirement to account to the other party; for copyrighted works there is a requirement to account, including sharing of license revenues.
Faculty Use of IP Upon Retirement/Exit

- **RIT-owned IP**
  - Faculty member will need permission of RIT to continue to use/develop this work after leaving RIT.

- **IP Owned Personally by Faculty Member**
  - No issues here. Faculty member owns the IP and can do with it as he/she pleases.

- **IP Jointly Owned by RIT and Faculty Member as an Individual**
  - Faculty member and RIT can each continue to use/develop the IP and can license it on a non-exclusive basis.
  - For patented works there’s no requirement to account to the other party; for copyrighted works there is a requirement to account, including sharing of license revenues.
“To share an asset, usually it must first be divided. But knowledge is one of the few assets that multiplies as it is shared.”

. . . . . Indian proverb
TEACH Act (2002), Section 110(2)
(Technology, Education, and Copyright Harmonization Act)

- For Distance & Blended Learning & Online Environments
  - The ability to display/show and perform copyrighted works in an online environment, regardless of medium
  - Qualifications
    - Institution is a nonprofit, accredited educational institution
    - Has a policy on the use of copyrighted materials- in progress
    - Provides accurate copyright information to faculty, students & staff:
      http://library.rit.edu/researchguides/citing.html
TEACH Act continued…

– Qualifications continued…

• Material is integral to teaching content & will be provided directly by faculty during the relevant lesson, only those students will have access to the materials
• A copyright notice will state that the materials are protected
• Use technology that reasonably limits the students' ability to retain or further distribute the materials
• Make the materials available to students only for a period of time that is relevant to the context of a class session, archiving the materials on a secure server
• Only create one copy to make the transmission
TEACH Act continued…

• **Materials are of the proper type & amount:**
  - Entire performances of non-dramatic literary and musical works (poetry, short story reading, all music sans opera)
  - Reasonable and limited parts of a dramatic literary, musical, or audiovisual works (films & video)
  - Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching

• **Materials the law specifically excludes from its coverage:**
  - Specifically marketed for digital distance education
  - Copies I know or should know are illegal

• **myCourses/FirstClass**
  - Excellent environments for transmitting & archiving
Copyright Resources

◆ Policy on the use of copyrighted materials - in progress

◆ Copyright information for faculty, students & staff:
  – Student & faculty tutorials
  – Basics: fair use, exclusive rights, public domain, etc.
  – Citation formats

http://library.rit.edu/researchguides/citing.html
Turnitin – a plagiarism-detection tool

- Encourages better writing & research skills
  - Citing, quoting, paraphrasing & authoritative materials
- Compares submitted papers to text on the web, its own database, Proquest database
- Best practices:
  - State in syllabus that students will upload papers as part of their class work
  - Have students submit papers electronically to Turnitin
  - An educational tool - sometimes a policing tool
  - Feel free to consult with the PSSC (with faculty permission, students may upload drafts in the Center)
RIT Turnitin Statistics

- 221 Faculty
- 11,468 Students
- 26,499 Submissions

- 85% of RIT student papers have a 0-25% match to copyrighted materials.
- 15% of RIT student papers have a 25-100% match to copyrighted materials.
Handouts

- TEACH Act checklist
- Turnitin - RIT account / instructions
Resources

◆ Technology Licensing Office
  Varda N. Main, Director
  4018 Eastman Building (Bldg. 1)
  475-2986
  Vmain@mail.rit.edu
  http://www.rit.edu/tlo

◆ Publishing and Scholarship Support Services
  Marianne A. Buehler, Head
  1450 Wallace Library (Bldg. 5)
  475-5589
  mabwml@rit.edu
  http://wally.rit.edu/userservices/pubschol/

◆ US Patent and Trademark Office
  – http://www.uspto.gov

◆ US Copyright Office
  – http://www.copyright.gov

◆ Good IP Site
  – http://www.ipmall.fplc.edu