Policy Number: C3.2 – To be endorsed by AS 1/24/2013

Policy Name: COPYRIGHT POLICY

1. INTRODUCTION

RIT creates, preserves, and disseminates knowledge through teaching, learning, research, and scholarship. RIT encourages the creation and publication of original works of authorship and the free expression and exchange of ideas. These creations and publications may involve faculty, student, staff, and third-party authors that result in copyrightable intellectual property that can be shared with others. The Intellectual Property Policy (C3.0) is intended to protect the interests of both intellectual property creators and RIT, while also ensuring that the RIT Community and society benefit from the fair and full dissemination of knowledge and innovation.

This Copyright Policy (C3.2) is intended to protect the interest of copyright holders, ensure that RIT, its faculty, staff, student and visitors comply with copyright law and the Technology Education and Copyright Harmonization Act, and to ensure that the RIT Community, and society at large, benefit from the fair and full dissemination of copyrighted knowledge and innovation.

C3.0 is the appropriate policy to consult when members of the RIT Community seek to determine if they are creators of Intellectual Property. C3.2 is the appropriate policy to consult when members of the RIT Community seek to determine if they may use the Intellectual Property of another, without that individual’s consent or the payment of royalties and/or licensing fees. Nothing in this Policy should be interpreted to relieve the RIT Community from adhering to other RIT Policies and Procedures, RIT contract provisions, including those in research agreements, or federal and state copyright laws.

2. DEFINITIONS

Terms not defined elsewhere in this policy are defined below.

A. Creator means any individual or group of individuals, affiliated with the university or not, who make, conceive, reduce to practice, invent, author, or otherwise make a substantive intellectual contribution to the creation of Intellectual Property.

B. Copyright means the exclusive right provided by law for a certain term of years to an author, composer, designer, performer, or their assignee to print, publish, perform, and sell copies of the original work.

C. Copyrightable or Copyrighted Work means an original work of authorship fixed in a tangible form that may include: literary works, musical scores, dramatic works, pantomimes and choreographic works, pictorial graphic and sculptural works, motion pictures and other audiovisual works, sound recordings, and computer software.

D. Copyright Law means Title 17, United States Code, section 101 et seq.
D. **Face to Face Teaching Exemption** means the specific exemption to the licensing requirement contained in the Copyright Act, which is only applicable to situations involving face to face instruction at a non-profit educational institution.

E. **Faculty Member** means individuals employed by RIT as collectively defined in RIT policies E 1.0(I) ([Employee Classification and Status-Faculty](#)) and E 6.0(1)(a) and (b) ([Policy on Faculty Rank--Definitions of Faculty Rank](#))

F. **Fair Use** means the non-infringing, legally authorized, use of a Copyrighted Work, including reproductions, for purposes such as criticism, comment, news reporting, teaching, scholarship, or research without obtaining permission of, or payment to, the copyright owner. The test to use Fair Use is briefly set forth in this Policy.

G. **Intellectual Property** or **IP** means and includes any disclosure of inventions, either orally or in writing; inventions and discoveries (patented, patentable, or otherwise); know-how and other trade secrets; processes; unique materials; works of authorship; software; other creative, artistic, or copyrightable works; trademarks and service marks; mask works; and any other tangible or intangible thing protectable at law which has value. IP also includes physical embodiments of intellectual effort; e.g., models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs, biological materials, chemicals, other compositions of matter, plants, research records and data, and laboratory notebooks and reports.

H. **Public Domain** means works that are either ineligible for copyright protection or with expired copyrights. No permission whatsoever is needed to copy or use public domain works.

I. **RIT Community** means any individual authorized to be on the RIT campus including administrators, faculty, staff, students and student organizations, and external organizations and individuals in their operations with RIT.

J. **TEACH Act** means the Technology Education and Copyright Harmonization Act, enacted in 2002. The TEACH Act allows accredited, non-profit, educational institutions, such as RIT, greater access and educational use of Copyrighted Works, and extends Fair Use to online and Distance Learning education when certain requirements have been met by the institution. The Act is discussed in more detail below.

3. GENERAL PROVISIONS

A. **Purpose**. RIT and Copyright Law require that members of the RIT Community respect the proprietary rights of owners of Copyrights and refrain from actions that constitute an infringement of Copyright or other proprietary rights. Generally, an infringement of Copyright or other proprietary rights can be avoided with the express written permission of the Creator of the Copyrighted Work, and in some cases, the payment of a royalty and/or licensing fee. Copyright Law, however, creates several exemptions to the requirement that express permission or the payment of royalties and/or licensing fees are necessary when using another's Copyrighted Work. The purpose of this Policy is to set forth the terms and conditions whereby the RIT Community may use the Copyrighted Work of another without the consent of the Creator or the payment of royalties and/or licensing fees.
B. Scope. All members of the RIT Community shall comply with this Policy, as amended from time to time. This Policy is considered part of the conditions of employment, enrollment, or participation in RIT sponsored events or programs.

C. Ownership of Copyrightable Works. The owner of Copyrightable Works, subject to certain limitations, generally has the exclusive right to reproduce copies of the work, make derivative works, and distribute, perform, display the work, and authorize others to use the work. Ownership of Copyrightable Works at RIT, including Scholarly Works, is governed by the terms of the Intellectual Property Policy (C3.0).

D. Revenue Allocation. Any royalties, fees, income, or other Revenue received by RIT in exchange for access to Copyrightable or Copyrighted Works shall be distributed by RIT to copyright owners pursuant to the terms of the Intellectual Property Policy (C3.0).

4. PROCEDURES

A. Permission to Use Copyrighted Works. Unless a specific provision of this Policy applies, permission shall be obtained from the Creator whenever any member of the RIT Community seeks to use the Copyrighted Works of another.

1. Prior to any use of Copyrighted Works, members of the RIT Community should always first check to make sure that the work is in fact subject to copyright protection and that it is not in the Public Domain. Generally, works registered or first published in the United States before 1923 are in the Public Domain. Works registered or first published in the United States after 1923 may enter the Public Domain upon the passage of a Creator’s life plus a statutory number of years. Additional information relating to the Public Domain can be found at: http://infoguides.rit.edu/copyright.

2. Copyrighted Works that are not in the Public Domain shall only be used in accordance with the provisions of this Policy or with the express permission of the Creator. If the Creator requires the payment of royalties and/or licensing fees, these royalties and/or licensing fees shall be paid prior to the use of the Copyrighted Work.

3. For certain Copyrighted Works, RIT may have already obtained permission from the Creator for their use.

   a) Inquiries regarding audio Copyrighted Works that RIT may have obtained permission to use should be directed to the Senior Associate/Manager Campus Life Facilities.

   b) Inquiries regarding video Copyrighted Works that RIT may have obtained permission to use should be directed to the Director of the Center for Campus Life.

   c) Inquiries regarding Copyrighted Works licensed by the RIT Libraries should be directed to the Director of RIT Libraries.
B. Face to Face Teaching Exemption. Copyright Law provides to non-profit educational institutions the ability to use Copyrighted Works, without the express permission of the Creator and without the payment of royalties and/or licensing fees, when the use of the Copyrighted Work occurs in a face to face teaching situation. The face to face teaching exemption does not apply to online or Distance Learning situations. Online or Distance Learning situations are covered in the TEACH Act provisions of this Policy. The face to face teaching exemption applies when all of the following are met:

1. Copyrighted Works are from legitimate sources. A legitimate source is the Creator or one to whom the Creator has granted permission to license Copyrighted Work. Copies of Copyrighted Works which are made from legitimate sources or from broadcasts, do not meet this face to face teaching exemption requirement.

2. Copyrighted Works must be part of a systematic course of instruction and not for entertainment, recreation, or cultural value. The Faculty Member must be able to show how the use of the Copyrighted Work contributes to the overall course study and syllabus. The course does not have to be a credit course, but must be one recognized by RIT and for which members of the RIT Community must register.

3. Copyrighted Works must be performed, shown, or displayed from the same location in which it is being screened. Broadcasting from outside sources (such as closed-circuit television) does not meet this face to face teaching exemption requirement.

4. Copyrighted Works must be performed, shown, or displayed during regularly scheduled class time, in classrooms or locations devoted to instruction. Library screening rooms, residence hall lounges, restaurants or cafeterias are not considered locations devoted to instruction and would not meet this face to face teaching exemption requirement.

5. The use of Copyrighted Works must be a part of the teaching activities at a non-profit educational institution. RIT is a New York not-for-profit educational institution. Teaching activities conducted at RIT meet this face to face teaching requirement.

6. Attendance at the location devoted to instruction, where the Copyrighted Work will be performed, shown, or displayed, must be limited to members of the RIT Community that are registered for the course or involved in teaching activity (e.g. guest lecturer). No fee specific to the screening shall be charged.

C. TEACH Act. Members of the RIT Community may take advantage of the TEACH Act provisions to use Copyrighted Works in online and Distance Learning courses. The TEACH Act provisions would allow a non-profit educational institution, such as RIT, to use Copyrighted Works, without the express permission of the Creator and without the payment of royalties and/or licensing fees, when all of the following are met:

1. Copyrighted Works must be part of an online or Distance Learning course and not for entertainment, recreation, or cultural value. The Faculty Member must be able to show how the use of
the Copyrighted Work contributes to the overall course study and syllabus. The course does not have to be a credit course, but must be one recognized by RIT and for which members of the RIT Community must register.

2. The use of the Copyrighted Work is limited to members of the RIT Community that are enrolled in the online or Distance Learning course.

3. Access to the Copyrighted Work is limited, either by password or other protection device, to members of the RIT Community that are enrolled in the online or Distance learning course.

4. The Faculty Member must provide to the members of the RIT Community that are enrolled in the online or Distance Learning course written notice of this RIT Copyright Policy and that some of the course materials may be protected by Copyright Law. A statement in the syllabus for the specific online or Distance Learning course shall be sufficient to meet this notice requirement.

D. Fair Use. In situations where the face to face teaching exemption or the TEACH Act provisions are not applicable, members of the RIT Community may use Copyrighted Works, without the express permission of the Creator and without the payment of royalties and/or licensing fees, if their use is considered fair use under the Copyright Law. A use is considered fair use if the Copyrighted Work will be used for the purpose of criticism, comment, news reporting, teaching, scholarship, or parody. If the use of the Copyrighted Work is for one of these purposes, then the member of the RIT Community seeking to use the Copyrighted Work must balance four factors in order to determine if their use is fair use. No single factor is determinative of fair use and all of the factors must be considered. In the absence of express permission of the Creator, the applicability of the face to face teaching exemption or the provisions of the TEACH Act, members of the RIT Community shall engage in this fair use analysis prior to their use of Copyrighted Work. If a balancing of the factors reveals that a proposed use is not fair use, the Copyrighted Work shall only be used with the express written permission of the Creator. If clarification is sought after completing the fair use analysis, questions should be directed, as appropriate, to the Wallace Library, Sr. Manager Instruction & Education Services, or the Provost or his/her designee. If additional clarification is sought by the Sr. Manager Instruction & Education Services, the Provost or his/her designee, then they should contact the RIT Office of Legal Affairs. The four factors are:

1. The purpose or character of the proposed use.

   a) This factor seeks to determine whether the proposed use of the Copyrighted Work is transformative, educational, and for a non-profit, entertainment, or commercial purpose.

   b) Generally, a finding of fair use is likely under this factor if the proposed use of the Copyrighted Work is transformative, educational and for a non-profit purpose.

2. The nature of the Copyrighted Work.

   a) This factor considers the amount of creativity in the Copyrighted Work. It requires an examination of whether the Copyrighted Work was news, factual or fictional in nature, or whether the Copyrighted Work was previously published.
b) Generally, a finding of fair use is likely under this factor if the Copyrighted Work is a factual work that was previously published.

3. The amount of the Copyrighted Work copied or used.

   a) This factor considers the amount of the Copyrighted Work that will be used. It requires an examination into the quantity of the Copyrighted Work to be used, and a determination as to whether the quantity is appropriate for the purpose to be achieved, or central to the entire Copyrighted Work as a whole.

   b) Generally, a finding of fair use is likely under this factor if the proposed use of the Copyrighted Work is small in quantity, appropriate for the purpose being achieved, and not central to the entire Copyrighted Work as a whole.

4. The effect of the use on the potential market for the Copyrighted Work.

   a) This factor considers the effect the proposed use will have on the ability of the Creator to sell his/her Copyrighted Work. It requires an examination into the number of copies of the Copyrighted Work to be distributed, whether the Copyrighted Work is still in print, and if the proposed use will be for limited duration.

   b) Generally, a finding of fair use is likely under this factor if the Copyrighted Work is no longer in print, the proposed use is a one-time limited use, and only a few copies will be made.

D. Digital Millennium Copyright Act (DMCA). The DMCA prohibits circumvention of technological protection measures in Copyrighted Works, and seeks to prevent illegal downloading and electronic copying of Copyrighted Works. All of RIT’s procedures and compliance provisions relating to the DMCA are located at https://www.rit.edu/its/about/digitalcopyright.html. RIT’s specific procedures for receipt of DMCA notices of infringement, responses provided to notices or requestors, possible student sanctions and consequences for violations, as well as the interaction of the DMCA with other RIT information technology policies and standards are set forth at https://www.rit.edu/its/about/ritresponse.html.

Responsible Party: Provost

Effective Date:

Policy History: