

## **Rhode Island School of Design**

### **Policy on Ownership and Use of Intellectual Property Rights**

*March 7, 2003*

#### **Mission**

The mission of this policy is to promote continued art and design excellence and enterprise by clearly defining the terms and conditions under which such work takes place here at RISD. RISD has always enjoyed a spirit of innovation and artistic freedom among its students and faculty. This policy celebrates that spirit by allowing the basic intellectual property rights to remain with the creators of their work in most cases. This policy's goal is to define and preserve our current practices, while supporting them in a fair and consistent manner across all disciplines and at every level of the College.

#### **Policy Overview**

This policy governs the intellectual property rights of faculty, students, staff, and the College in the work product created at or in connection with the College. This policy does so by delineating those works into categories and providing a general default rule for both ownership and usage rights for each of those categories. This policy also provides a set of conditions under which those default rules may be changed, by agreement of the relevant parties, and a set of procedures for its implementation and interpretation.

#### **Definitions**

**Intellectual Property Rights:** All legally protectable intellectual property rights in Works, including copyright, patent, trademark, service mark, and trade secret rights.

**Works:** All works of authorship, artistic works, inventions, and other such work products to which Intellectual Property Rights may attach, including:

**Scholarly and Artistic Works:** Works created by faculty or students in the course of their individual scholarly, academic, and artistic pursuits and in the scope of their respective employment or student status at the College, including instructional materials produced by faculty for use in the course of classroom and studio activities, works of art or scholarship produced by faculty or students in the course of classroom and studio activities, and the like.

**Sponsored Works:** Works created by faculty or students with the sponsorship or other special support of the College or an external entity, including works created in collaboration studios sponsored by external entities, works created in the course of activities sponsored by the College's Research Foundation or with similar special College support provided at the request of faculty or students, and the like.

**College-Commissioned Works:** Works created by faculty or students at the specific request of the College and not in the course of their individual scholarly, academic, and artistic pursuits, including materials created for use in or as special College publications and promotional materials, logos, graphic or other designs, commemorative items, and the like.

**Administrative and Other Works:** Works created by faculty in the course and scope of their employment other than Scholarly and Artistic, Sponsored, and College-Commissioned Works,

including evaluations of student work, correspondence and memos, materials prepared in connection with work on College committees, materials created for use in routine College bulletins, brochures, and catalogs, and the like; and Works created by staff (including student employees) in the course and scope of their employment.

Use Rights: The non-exclusive, royalty-free, perpetual, and irrevocable rights of a specified party to make specified uses of specified Works, with appropriate attribution, in those cases in which the specified party does not hold the Intellectual Property Rights to those Works, including:

Faculty Use Rights: Use Rights of faculty to make, distribute, display, perform, and otherwise use reproductions of, and make derivative works based on, their own Works for noncommercial educational and scholarly purposes, as examples of their own work, and for purposes of exhibition; and to make photographic or similar representational reproductions of their students' Works, and to distribute, display, perform, and otherwise use those reproductions, for noncommercial educational and scholarly purposes and as examples of their students' work.

Student Use Rights: Use Rights of students to make, distribute, display, perform, and otherwise use reproductions of, and make derivative works based on, their own Works for noncommercial educational and scholarly purposes, as examples of their own work, and for purposes of exhibition.

College Use Rights: Use Rights of the College to make photographic or similar representational reproductions of faculty and student Works located at or made available to the College, and to distribute, display, perform, and otherwise use those reproductions, for the noncommercial purposes of education and scholarship, exhibition, accreditation, development, alumni relations, promotion, and the like; as examples of faculty and student work; and for inclusion in its permanent collection and/or archives.

### **General Rules on Ownership and Usage of Intellectual Property**

Faculty own the Intellectual Property Rights in their own Scholarly and Artistic Works, subject only to the College Use Rights. Students own the Intellectual Property Rights in their own Scholarly and Artistic Works, subject only to the College and applicable Faculty Use Rights.

Faculty own the Intellectual Property Rights in their own Sponsored Works, subject only to the College Use Rights, in the absence of an express agreement providing otherwise. Students own the Intellectual Property Rights in their own Sponsored Works, subject only to the College and applicable Faculty Use Rights, in the absence of an express agreement providing otherwise.

The College owns the Intellectual Property Rights in all College-Commissioned Works, subject only to the applicable Faculty or Student Use Rights, in the absence of an express agreement providing otherwise.

The College owns the Intellectual Property Rights in all Administrative and Other Works, subject only to the applicable Faculty or Student Use Rights.

### **Modification of the General Rules by Agreement With Respect to Particular Works**

It is anticipated that the relevant parties may on occasion wish to modify the allocation of ownership and usage rights provided by the general rules with respect to specific Works, particularly in cases involving Sponsored and College-Commissioned Works. The relevant parties may do so if the party whose normal rights under the applicable general rule would be restricted agrees to the desired modification. The burden of

seeking and obtaining such an agreement will rest with the party seeking the modification; if the relevant parties are unable to reach agreement, the allocation of ownership and usage rights provided by the relevant general rule will remain in effect.

### **Procedures**

This policy will be administered by the Office of Academic Affairs. The Office of Academic Affairs will establish reasonable procedures to be adopted by the College to ensure compliance with this policy, including a procedure for considering in a timely manner any questions, objections, complaints, or other challenges arising from or relating to this policy. The Office of Academic Affairs will also create and maintain a set of “Frequently Asked Questions” providing additional information about specific applications of this policy and about intellectual property law and rights generally.

This policy is complete and effective as of the date set out above, and may be amended from time to time by the Provost in consultation with faculty and the Senior Staff, and with the approval of the President. This policy and all amendments will be published by and made available through the Office of Academic Affairs. Amendments will be effective as of their date of publication.

## Rhode Island School of Design

### Frequently Asked Questions About the Policy on Ownership and Use of Intellectual Property Rights

1. If I use College resources in creating a work, does the College have rights to that work for that reason alone?

The College has rights to a work only if it is a Work under the terms of this policy *and* if this policy gives the College rights to that type of Work. In most cases, the question of whether a work constitutes a Work depends on whether the work was created in the course and scope of employment or student status, not on whose resources were used in its creation. While the use of College resources may be relevant to the determination of whether a given work was created in the course and scope of employment or student status and therefore constitutes a Work, it normally is not an independent basis for determining that a work constitutes a Work. Similarly, the fact that no college resources were used to create a given work would not in and of itself mean that the work is not a Work for purposes of this policy. The use of College resources in the creation of a work is a determinative factor only with respect to the category of Sponsored Works.

2. What kinds of College sponsorship or “special support” would make a work a Sponsored Work?

Sponsored Works include Works created “with the sponsorship or other special support of the College”. Examples of such sponsorship or support include grants from the College’s Research Foundation or Professional Development Fund, permission to use the College name or trademarks in connection with the marketing of a Work, College assistance in obtaining patent or similar protection for a Work or in commercializing a Work, or authorization to use College resources beyond those which faculty and students are generally authorized to use by other College rule or policy. Note, however, that the use of College resources cannot be considered “special support”, and the resulting works therefore cannot be treated as Sponsored Works, without the advance agreement of both the College and the relevant faculty member(s) and/or student(s).

3. Who owns the rights to works that I create on my own time or away from campus? Does anyone else have Use Rights to those works under this policy?

Faculty, staff, and students own the rights to their own “personal” works, and those works are *not* subject to Use Rights under this policy. It can, however, sometimes be difficult to determine the precise line between personal works and Works that are subject to this policy. As noted above, the principal test for making that determination is whether the work at issue was created in the course and scope of employment or student status. Time and geography may be relevant to that determination, but, because faculty and students typically, and staff frequently, do not perform their functions during set hours or in set locations, they normally are not independent bases for determining the status of a given work.

4. What works are considered to be “within the scope of faculty employment” for purposes of this policy?

The nature of faculty employment is quite different from the nature of most other people’s employment. Faculty typically do not work set hours or in set locations, and they typically have considerable freedom to choose for themselves the scholarly, academic, and artistic interests they wish to pursue. Moreover, the different categories of faculty have different responsibilities to the College. Accordingly, it is difficult to define the “scope” of faculty employment precisely.

Perhaps the best rule of thumb for determining whether a given work was created within the scope of a

particular faculty member's employment is whether that work is within the class or type of work required by the collective bargaining or other agreement relevant to that faculty member or that normally would be listed in that faculty member's annual report, dossier, or request for reappointment or promotion. The scope of faculty employment will thus necessarily vary among the different categories of faculty. For example, a full-time faculty member is by contract "expected to participate in outside professional activities" that "contribute to that faculty member's . . . better understanding of his or her field(s) and therefore his or her effectiveness as a teacher . . . and . . . growth as an artist, designer, [and] scholar".

Works created by a full-time faculty member in the course of his or her outside professional activities therefore would be considered to have been created within the scope of that faculty member's employment and to be Works for purposes of this policy. Note, however, that the College has and can exercise Use Rights in such Works only to the extent that the faculty member voluntarily brings those Works to or otherwise makes them available to the College. The College has no power under this policy to demand that the faculty member do so; rather, the decision to do so is within the faculty member's discretion.

5. What works are considered to be "within the scope of student status" for purposes of this policy?

For much the same reasons as stated above, it also is difficult to define the "scope" of student status precisely. A good rule of thumb for determining whether a given work was created within that scope is whether that work is within the class or type of work expected for the courses in which the relevant student is enrolled at the time the work is created or that normally would be submitted for faculty critique and/or academic credit.

6. What is the relationship between "Intellectual Property Rights" and "Use Rights"? Can one party hold both?

Intellectual Property Rights represent an ownership interest, while Use Rights represent only a limited permission to exercise Intellectual Property Rights in specified ways. A given party can hold only one or the other of these two forms of rights in a given Work. Thus, for example, a faculty member who holds Intellectual Property Rights in a Scholarly and Artistic Work is not subject to the limits stated in the definition of Faculty Use Rights and is free to make essentially unlimited use of that Work, including commercial use.

7. May a faculty member use representational reproductions of student work in a book or article for which the faculty member receives compensation?

Generally, as long as the book or article is educational or scholarly in nature and the compensation is of the type and within the range normally received by the authors of such publications, the faculty member may do so. Just as the College's status as a nonprofit does not prevent it from charging tuition, the requirement that faculty uses of student works be "noncommercial" does not mean that a faculty member making such use must work for free. Both the selection of works to be reproduced and the publication itself must, however, be motivated primarily by educational or scholarly purposes rather than by the potential for profit. Thus, for example, a book that uses single samples of the works of a number of different students to illustrate a particular teaching technique and that is intended for the educational market would qualify as a "noncommercial educational and scholarly" use, while a "coffee table" book that provides a retrospective of the works of a single famous alumnus and that is intended for the mass market likely would not.

8. How will agreements to modify the general rules be handled and what terms will they contain?

An agreement to modify the general rules may be initiated by any party, though normally agreements to modify the general rule for Sponsored Works will be initiated by the College or external sponsor and agreements to modify the general rule for Commissioned Works will be initiated by the relevant faculty member(s) and/or student(s). Such agreements will frequently be made as part of larger agreements, such as an underlying agreement to conduct sponsored research or other programs, but they also may be made independently. Pursuant to general College policy, any such agreement that involves the College or its interests (including agreements to conduct externally sponsored research or other programs under the aegis of the College) must be approved by the Provost and the Executive Vice President for Administration and Finance.

Such agreements may contain any terms acceptable to the parties, but should allocate the respective rights and obligations of the parties in a manner that is reasonable under the circumstances. As a general guideline, any revenues derived from the relevant Works should be applied first to reimburse the parties for their respective direct costs, with the balance divided in a manner that fairly recognizes the parties' respective contributions. If the parties are unable to reach agreement on the terms of a modification, they may choose either to fall back on the applicable general rule or not to pursue the relevant project.

9. What happens when a given work is created by more than one person?

This policy tracks intellectual property law with respect to the joint creation and ownership of intellectual property rights in works; thus, persons who would be treated as joint owners for legal purposes will also be treated as joint owners for purposes of this policy, and each such person will have and may exercise the rights specified in this policy. To avoid misunderstandings and conflicts, such persons are encouraged to discuss and reach agreement on their rights and obligations with respect to each other before creating such works.

The law concerning joint ownership is quite complicated and is beyond the scope of this FAQ. Additional information concerning this issue may be obtained from the Faculty Research Office or the General Counsel.

10. Who are considered to be "faculty" for purposes of the policy?

For purposes of this policy, "faculty" includes all full-time faculty, faculty on term appointments, part time faculty bargaining unit members, other part-time or adjunct faculty, faculty teaching in CE, summer, and other non-degree programs, and professional librarians covered by the collective bargaining agreement between the College and its full-time Faculty Association.

11. Who are considered to be "students" for purposes of the policy?

For purposes of this policy, "students" includes all persons enrolled in any degree or non-degree program or course at the College.

12. Are student-employees treated as students or staff under the policy?

Student-employees are treated as staff under this policy with respect to works that they create in the course and scope of their student employment and as students with respect to works that they create in the course and scope of their student status.

13. Who will be responsible for enforcing Intellectual Property Rights in Works when they are infringed?

The party that holds the rights that are infringed will be responsible for enforcing (or determining not to enforce) those rights at that party's own expense.

14. May the College retain the originals of student and faculty works, rather than just representational reproductions, and, if so, when?

Pursuant to other College rules and policies, and as stated in the College bulletin, the College may under some circumstances retain original student works. The College may retain original faculty works only with the relevant faculty members' permission. Note, however, that ownership of the original (or a copy) of a work is separate from ownership of the intellectual property rights in that work. Thus, the College's retention of the original of a work does not by itself imply College ownership of the intellectual property rights in that work. Rather, the intellectual property rights in that work will be governed by this policy.