

10/01/2008

**ROCHESTER INSTITUTE OF TECHNOLOGY  
INTELLECTUAL PROPERTY POLICY  
DRAFT to C3.0 v12.1**

**1. INTRODUCTION**

RIT's mission is to provide educational programs preparing students for successful careers in a global society. In pursuit of this mission, RIT creates, preserves, and disseminates knowledge through teaching, learning, and scholarship. That knowledge may involve faculty, student, staff, and third party authors and inventors. It takes the form of intellectual property and is a way of partnering with others, both locally and nationally, in an effort to share and transfer ideas. This Policy seeks to protect the interests of both intellectual property creators and RIT, while also ensuring that the RIT community and society benefits from the fair and full dissemination of knowledge.

This Policy should be read together with the procedures promulgated hereunder, the RIT Honor Code and the other policies of RIT, including, but not limited to, the Individual Conflict of Interest and Commitment Policy, RIT policies for externally funded projects, and copyright policies. RIT's policies are available online at [www.rit.edu/academicaffairs/manual](http://www.rit.edu/academicaffairs/manual). The electronic version of this Policy will, from time to time, contain "Frequently Asked Questions" which interpret and detail the applicability of the Policy to various practical situations.

**2. EFFECTIVE DATE**

This Policy will be effective on \_\_\_\_\_, 2008 for all Personnel except Students, for whom this Policy will be effective on September 1, 2008 ("Effective Date"). It will apply to all Intellectual Property disclosed on or after the Effective Date. Intellectual Property disclosed before the Effective Date will remain subject to the RIT Intellectual Property Policy approved October 15, 1997, unless otherwise agreed by RIT and all Creators of the Intellectual Property.

**3. DEFINITIONS**

Terms not otherwise defined herein have the meanings 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. **Equity** means shares of common or preferred stock, options to purchase, warrants and other convertible instruments, and any other instruments representing an ownership interest in a commercial venture or the right to acquire the same. However, Equity shall not include the receipt of real or personal property, e.g., real estate or equipment.

C. **Expressed Assignment** means an explicitly stated task or duty. An Expressed Assignment can be conveyed verbally or in writing and can be within or outside the Scope of Employment.

D. **Include or including** means including but not limited to.

E. **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.

F. **Personnel** means all RIT staff and faculty, full-time, part-time and emeritus including Student Employees acting within the Scope of Employment, non-employee consultants, visitors, visiting professors, adjuncts and others using Resources.

G. **Resources** means any support administered by or through RIT, including funds, facilities, equipment or Personnel, and funds, facilities, equipment, or Personnel which are provided by governmental, commercial, industrial, or other public or private organizations and administered or controlled by RIT.

H. **Revenue** means all cash and non-cash consideration paid by a third party in exchange for specific Intellectual Property rights. Revenue does not include research support in any form (e.g., from Sponsored Research Agreements, restricted grants, or unrestricted grants), tuition income, and contract income.

I. **Scope of Employment** means all activities related to: (i) the field or discipline of the faculty member's appointment, including the general obligation of a faculty member to teach, to do creative work, and to conduct research; and (ii) the employment responsibilities of non-faculty Personnel for which such Personnel receive compensation from RIT, where compensation is any consideration, monetary or otherwise, including the ability to use Resources. When determining the employment responsibilities of non-faculty Personnel consideration should be given to that individual's job description.

J. **Significant Use of Resources** means use of Resources, including assistance from Personnel that is not incidental and is material to the development of the applicable Intellectual Property. RIT acknowledges that the precise determination of what usage of Resources shall be considered significant, or of when the identity of a project resides with RIT rather than with particular individuals, involves the exercise of judgment based on the circumstances and on practices within the discipline. Although it is the responsibility of the dean or appropriate Divisional Vice President to evaluate situations and determine if substantial use of resources has occurred, Personnel have an obligation to notify their supervisor when their work may involve more than nominal use. Nominal and incidental use of resources includes, the use of routinely available office type equipment, including assigned office space, desktop computers, telephones and copiers. "Significant use of resources" includes:

- (1) the use of specialized, research-related facilities, equipment or supplies, provided by RIT for academic, personal, or research and development purposes;
- (2) more than incidental use of RIT non-faculty personnel, including Graduate Students; or

(3) extended use of Personnel's time and energy in creating or promoting the work that results in significantly reduced levels of job performance.

K. **Sponsored Research Agreement** means a grant, contract, cooperative agreement, or other agreement under which research or development activities will be carried out, or any other agreement administered by RIT that relates to Intellectual Property created under such agreement.

L. **Internally Funded Research** means any research project completely funded by an RIT division, college, or department with internal funds or funds donated to RIT from external sources.

M. **Student Employee** means Students, who are also RIT employees, acting within the Scope of Employment.

N. **Undergraduate Student** means matriculated individuals enrolled at RIT as candidates for a bachelor's degree or associate's degree. Undergraduate Student shall also include matriculated individuals enrolled at RIT as candidates in a combined master's and bachelor's program who have not reached the appropriate number of credit hours sufficient to be classified as Graduate Students.

O. **Graduate Student** means matriculated individuals with a bachelor's degree and enrolled as candidates for an advanced degree. Graduate Student shall also include candidates in a combined master's and bachelor's program who have reached the appropriate number of credit hours sufficient to receive in their field of study, but not yet holding, a bachelor's degree.

P. **Students** means Undergraduate Student, Graduate Student, non-matriculated Students and students in not for credit programs.

#### 4. GENERAL PROVISIONS

A. Purpose. The purpose of this Policy is to set forth the terms and conditions whereby RIT, Personnel and Students establish and maintain their interests in Intellectual Property created by or used at RIT, taking into account RIT activities, applicable laws, federal policies, and the mission of RIT. However, it is acknowledged that such activities and other factors are diverse and subject to sometimes rapid change. Therefore, this Policy cannot and should not be mechanically applied to every situation that might arise. Decisions are expected, in the exercise of professional judgment, to best serve the public, result in the effective and efficient transfer of knowledge, and to be consistent with RIT policies and objectives. Procedures under this Policy shall be established by the Intellectual Property Policy Committee and shall be consistent with interpretations of this Policy. In the event of a conflict between the procedures established and this Policy, this Policy shall govern. Subject to the foregoing, this Policy also recognizes certain general principles:

- (1) RIT encourages the wide dissemination of ideas and creative works produced at RIT for the greatest possible public benefit.
- (2) the traditional right of scholars to publish should be protected.

(3) if RIT support makes an enterprise possible or if RIT provides extra or special support, either with money, facilities, equipment or staff, for the development or production of ideas and works, it is reasonable for RIT to be reimbursed for its extra or special costs and/or to participate in the fruits of the enterprise if the resulting ideas or works are introduced commercially.

B. Scope. All Personnel and Students 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 a Sponsored Research project, and shall be included in the Institute Policies and Procedures Manual.

C. Unauthorized Actions. Personnel and Students may not: (1) sign agreements or take any action on behalf of RIT unless they are authorized agents of RIT and have the express permission of their Division Vice President or Dean; or (2) make unauthorized use of RIT's name. RIT will not honor unauthorized actions or agreements.

D. Acquisition. RIT may acquire ownership or use of Intellectual Property by assignment, license, gift, or any other legal means. RIT shall administer such Intellectual Property in accordance with this Policy unless otherwise required by the terms of the acquisition.

E. Administration of Non-RIT-Owned Intellectual Property. At the request of the owner, Intellectual Property not owned by RIT may be administered by RIT. This Policy shall govern that administration unless RIT agrees otherwise in writing.

F. Externally Funded Research. All Intellectual Property developed by Personnel or Student Employees performing work sponsored by governmental, commercial, industrial, or other public or private organizations shall belong to RIT, unless otherwise specified in a written agreement or applicable federal or state laws and regulations. However, on a case-by-case basis, RIT may agree to assign ownership or licensing rights to the sponsor, subject to RIT's right to reproduce and otherwise use the Intellectual Property for research and educational purposes. The Vice President of Research shall approve any such agreement.

G. Internally Funded Research. All Intellectual Property developed by Personnel or Student Employees performing work under Internally Funded Research shall belong to RIT. However, on a case-by-case basis, RIT may agree to assign ownership or licensing rights, subject to RIT's right to reproduce and otherwise use the Intellectual Property for research and educational purposes. The Vice President of Research shall approve any such agreement in writing.

H. Commissioned Work. Any IP produced by Creator in connection with RIT's Expressed Assignment, whether such assignment is with or without additional pay, is Commissioned Work. Commissioned Work shall be owned by RIT, subject to any contractual obligations. RIT shall have the exclusive right to use the Commissioned Work for the purposes for which they were created. If not otherwise prohibited by the terms of the assignment or commission, the Creator shall have the royalty-free right to modify, enhance, or otherwise create derivative works of the Commission Work for use outside the original scope of the Commissioned Work.

I. Original Work. Any IP produced by Creator or Personnel is Original Work. Original Work shall be owned by the Creator or Personnel unless it:

(1) is subject to any claim of ownership by another entity or individual. In that case, Original Work shall be owned by the other entity or individual with the valid claim of ownership.

(2) was created with the substantial use of RIT resources. In that case Original Work shall be owned by RIT: or

(3) was created in connection with an Expressed Assignment or commissioning. In that case, Original Work shall be owned by the entity or individual providing the Expressed Assignment or commission.

J. Curriculum. Any IP produced by Creator or Personnel, which is educational material created for classroom and learning programs including syllabi, assignments, and tests, is Curriculum. Curriculum shall be owned by the Creator or Personnel unless it:

(1) is subject to any claim of ownership by another entity or individual. In that case, Curriculum shall be owned by the other entity or individual with the valid claim of ownership.

(2) was created with the Significant Use of RIT resources. In that case Curriculum shall be owned by RIT.

(3) was created with the receipt of additional compensation or under conditions providing for course release for the purpose of its creation. In these cases Curriculum shall be owned by RIT.

(4) was created in connection with an Expressed Assignment or commissioning. In that case, Curriculum shall be owned by the entity or individual providing the Expressed Assignment or commission, or

(5) was created under the specifically assigned duties of Personnel other than faculty. In that case, Curriculum shall be owned by RIT.

## 5. OWNERSHIP AND USE

A. RIT General. RIT shall have the right to reproduce and otherwise use for research and educational purposes any IP, whether owned by RIT, Personnel or Graduate Student created in whole or in part through the use of any Significant Resources. RIT further reserves the right to pursue multiple forms of legal protection for IP which it owns or for which it claims ownership. Software, for example, may be protected by copyright, patent, trade secret, and trademark. In addition, RIT shall own all rights in:

(1) patentable inventions and copyrightable works created by Personnel while on paid leave, including sabbatical, that is a direct result of Personnel's duties to RIT; and

(2) IP as stated in written agreements. If RIT wishes to secure additional rights in any IP, it shall so specify in writing at the time it provides the Resources.

B. Responsibilities of Personnel and Students.

(1) Assignment. For Intellectual Property and other work to which RIT has or had rights of ownership or use under this Policy, Creators, Personnel and Students shall, upon request, execute all appropriate legal documents, including assignments, and perform such acts designed to assist RIT or its assignees in proving or benefiting from such rights, all as deemed appropriate by RIT but at no out-of-pocket expense to applicable Creators, Personnel and Students.

(2) Students. Students may be requested to grant rights in Student-owned IP to RIT or others as a condition of access to certain class projects, independent research projects, or other programs at RIT. Students who choose not to grant rights in Student-owned IP shall not participate in these class projects, independent research projects, or other programs, but shall be given the opportunity to participate in alternative projects which do not require the granting of rights in Student-owned IP.

(3) Use. All Personnel and Students are responsible for complying with RIT policies and guidelines, and all applicable laws regarding Intellectual Property.

(4) Personnel. Newly employed Personnel shall disclose in writing to the Director of the Intellectual Property Management Office any IP they own or have developed, which they plan to continue using, teaching, or doing research while employed at RIT. The Vice President of Research shall determine the appropriate ownership of this IP, in consultation with the Office of Legal Affairs. Should it be determined that the Personnel do not own the IP, its use at RIT may be restricted. Should it be determined that the Personnel own the IP, its use at RIT shall be consistent with other RIT policies and procedures, including but not limited to the Individual Conflict of Interest and Commitment Policy. The decision of the Vice President of Research may be appealed to the Intellectual Property Policy Committee. The decision of the Intellectual Property Policy Committee may be appealed to the Provost or the appropriate Divisional Vice President whose decision shall be final.

#### C. Responsibilities of RIT

(1) Use of Resources. When RIT authorizes or directs efforts to create a work involving the Significant Use of Resources, it shall enter into a written agreement addressing the extent of use of such Resources, the schedule for the project (if appropriate), control over the work and its revisions, and ownership of the resulting IP, if any.

(2) Revenue Sharing. RIT shall remit to Creators their share of Revenue as specified in Section 7 of this Policy.

D. Undergraduate Students. Undergraduate Students own IP they create unless it is subject to another provision of this Policy or it is created under Sponsored Research Agreements or Internal Research and Development funded programs.

E. Graduate Students. Graduate Students own IP they create unless it is subject to another provision of this Policy, is created under Sponsored Agreements or the Graduate Student received a scholarship, stipend, research grant or research assistantship. In the event the Graduate

Student received an RIT administered scholarship, stipend, research grant or research assistantship, RIT shall own any IP created by the Graduate Student. It is not the intent of RIT to unreasonably delay the publication of required graduate theses on the basis that they contain IP owned by RIT. In the event that publication of a graduate thesis must be delayed due to disclosure of RIT IP, the Intellectual Property Management Office shall promptly resolve the disclosure issue so as not to impact the Graduate Student's graduation.

## **6. IP ADMINISTRATION**

A. Disclosure. All Intellectual Property in which RIT has an ownership interest under this Policy and that has the potential to be brought into practical use for public benefit or for which disclosure is required by law shall be reported promptly in writing by the Creator to the Intellectual Property Management Office using the disclosure form provided by that office, as amended from time to time. The disclosure of the subject matter of the discovery or development shall be full and complete and identify the Creator. The Creator shall furnish such additional information and execute such other documents from time to time as may be reasonably requested.

B. Evaluation. The Director of the Intellectual Property Management Office may convene Technical Review Panels. These Technical Review Panels shall be responsible for making recommendations regarding whether RIT should seek Intellectual Property protection for specific inventions or creations. Members of these Technical Review Panels must have some level of expertise in the content of the disclosure and knowledge in Intellectual Property issues related to teaching, research or commercialization. The Director of the Intellectual Property Management Office shall determine the number of Members to be on these various Technical Review Panels. These Technical Review Panels are expected to make recommendations to the Intellectual Property Policy Committee regarding evaluation, patenting and licensing of the specific IP considered. The Intellectual Property Policy Committee shall review the recommendation made by the Technical Review Panel and make a recommendation to the Provost. The Provost shall have ultimate responsibility for determining whether RIT should seek protection for specific inventions or creations. The Intellectual Property Policy Committee shall consist of five members. One member shall be appointed by the Academic Senate, one by the Staff Council and one by the Graduate Student Association; two members from the Institute community shall be appointed by the Provost. The members shall serve staggered three year terms. Initially, two members shall serve two year terms and two shall serve three year terms.

C. Questions Related to University Ownership. If there is a question as to whether RIT may have a valid ownership claim in any IP, the IP should be disclosed in writing to RIT by the Creator. The disclosure shall not affect the Creator's claim. RIT will provide the Creator with a written statement as to RIT's ownership interest.

D. Timely Evaluation. RIT will inform the Creator in writing of its final decisions regarding protection, commercialization, and/or disposition of IP which they have disclosed to RIT within 90 days. However, specific terms of agreements with external parties may be proprietary business information and subject to confidentiality restrictions.

E. Assignment of RIT IP to Creator(s). If RIT decides to cease development or protection of any RIT-owned IP, ownership may be assigned to the Creator as allowed by law

subject to the rights of sponsors and to the retention of an internal use license to, at least, reproduce and otherwise use the IP for RIT's purposes of education, research, and public service on an irrevocable, royalty-free, non-exclusive basis. The assignment or license may be subject to additional terms and conditions, such as Revenue sharing with RIT or reimbursement of the costs, when justified by the circumstances of development.

F. Commercialization of RIT IP by Creator. RIT may, at its discretion and consistent with the public interest, license Intellectual Property to the Creator or Personnel. The Creator must demonstrate technical and business capability to commercialize the IP and may be required to assume the cost of statutory protection. Agreements with Creators will be subject to review by the appropriate Dean or Vice President ultimately responsible for the Creator's College or division to ascertain compliance with RIT policies, including the Individual Conflict of Interest and Commitment Policy. The Creator may appeal the initial decision of the appropriate Dean or Vice President to the RIT Intellectual Property Policy Committee. The decision of the Intellectual Property Policy Committee may be appealed to the Provost or the appropriate Divisional Vice President whose decision shall be final.

G. Acceptance of Independently Owned Intellectual Property. RIT may accept assignment of IP from others provided that such action is determined to be consistent with this Policy and provides some value to RIT.

H. Consulting Agreements and Arrangements. Personnel engaged in external consulting work or businesses, whether formalized in writing or not, are responsible for ensuring that those consulting agreements and arrangements are not in conflict with RIT contractual agreements, this Policy or other RIT policies, including the Individual Conflict of Interest and Commitment Policy. Personnel should make this Policy and their RIT obligations known to others with whom they make such agreements or arrangements.

I. Statement by Creators. Creators of IP owned by RIT may be required to state that to the best of their knowledge the IP does not infringe on any existing patent, copyright or other legal right of third parties; that if a work is not original with the Creators, all necessary permissions have been obtained; and that the work contains no libelous or otherwise offensive material or material that invades the privacy of another.

J. Administrative Responsibility. RIT's President has ultimate authority for the stewardship of Intellectual Property developed at RIT. Primary responsibility for this Policy has been delegated to the Provost and through the Provost to the Vice President of Research, who shall, be responsible for establishing operational guidelines and procedures for the administration of IP, including determination of ownership, assignment, protection, licensing, marketing, maintenance of records, oversight of Revenue collection and distribution, approval of individual exceptions, and initial resolution of disputes among Creators and/or other affected individuals, entities, or RIT organizations.

K. Contractual Authority. Licenses, options for licenses, and other agreements related to commercialization of Intellectual Property will be granted in the name of RIT. All such contracts shall be executed by the Vice President of Research.

L. Guidelines and Procedures. General guidelines and procedures for the administration of IP and this Policy shall be established by the Vice President of Research.

M. Preferential Treatment of Sponsors. Each Sponsored Research Agreement shall provide that all IP developed as a result of the sponsored research project shall belong to RIT unless otherwise specified in writing. The sponsor may receive an option to license the resulting IP on terms to be negotiated, such option to be exercised within a specified period following the disclosure of the IP. When the nature of the proposed research allows identification of a specific area of Intellectual Property or application which is of interest to the sponsor, RIT may accept research agreements with terms which entitle the sponsor to specific commercial rights within the defined field of interest. Otherwise, the specific terms of licenses and rights to commercial development shall be based on negotiation between the sponsor and RIT at the time of exercise of an option by the sponsor and shall depend on the nature of the Intellectual Property and its application, the relative contributions of RIT and the sponsor to the work, and the conditions deemed most likely to advance the commercial development and dissemination of the relevant Intellectual Property. Where an exclusive license is deemed appropriate, the license agreement shall require diligent commercial development of the IP by the licensee. RIT may also determine, on a case-by-case basis, that it is in RIT's interest to assign ownership of resulting IP to the sponsor as an exception to this Policy when circumstances and any applicable federal law or regulation warrant such action, in accordance with guidelines established by RIT Intellectual Property Committee.

N. Appeals. After following the administrative guidelines and procedures established under this Policy, any Creator may appeal to the RIT Intellectual Property Policy Committee to seek resolution of complaints or questions regarding the matters addressed in this Policy. The decision of the Intellectual Property Policy Committee may be appealed to the Provost or the appropriate Divisional Vice President whose decision shall be final.

## 7. REVENUE DISTRIBUTION

A. Generally. All Revenue received by RIT shall be governed by this Policy, and RIT shall have no financial obligation to any Creator, or designated beneficiary of Creator, with respect to Intellectual Property except in accordance with this Policy.

B. Reimbursement/Reserve. When Revenue is received, all out-of-pocket payments or obligations attributable to protecting the applicable IP, marketing, licensing or administering the IP may be deducted from such Revenue. When determining the actual amount of all out-of-pocket payments or obligations attributable to the applicable IP, RIT shall take into account all payments made on a cumulative basis for each licensing transaction. At the sole discretion of RIT, under certain circumstances, a reasonable reserve for anticipated future expenses, including defense against infringement or enforcement actions and other legal fees and expenses may also be deducted from Revenue. The Revenue remaining after such deductions is defined as Net Cumulative Revenue. RIT shall distribute Net Cumulative Revenue due Creators, or their designated beneficiaries, under this Policy at least annually.

C. Distribution. RIT will distribute Net Cumulative Revenue according to the following chart:

<b>Recipient</b>	<b><u>Net Cumulative Revenue</u></b> <b>\$0 - \$10,000</b>	<b><u>Net Cumulative Revenue</u></b> <b>Over \$10,000</b>
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RIT Creator(s)	100%	50%
RIT Creator(s) Home Department(s)	-	15%
College Dean or Appropriate Division VP's Department	-	10%
Central Administration	-	25%

To further encourage faculty and staff to file patents, the Creator(s) will share in an incentive payment of \$500 when a regular (non-continuation) US patent is filed and an incentive payment of \$500 when a US patent is issued.

If there are multiple Creators, Net Cumulative Revenue shall be divided equally among them absent a mutual written agreement to the contrary. If there is any dispute among Creators, RIT will, subject to applicable law, make the final determination of the allocation of Net Cumulative Revenue.

D. Equity Distribution. If RIT receives or is entitled to receive Equity under the terms of an agreement, the Equity or its proceeds shall be shared in the same proportions as indicated for Net Cumulative Revenue in the above chart subject to the following. When RIT accepts Equity, RIT, taking into account any legal restrictions and the wishes of each Creator involved, shall: (i) arrange for the Creator to receive his or her share of Equity directly upon execution of the relevant agreement; or (ii) take all equity, including the Creator's share, in the name of RIT, in which case the Provost will make decisions regarding Equity disposition based upon business judgment and publicly available information, and will coordinate with the appropriate RIT officials if necessary. In such latter case, the Creator's sole right shall be the receipt of the appropriate share of such Equity or its cash equivalent at such time and in such form as the Provost shall deem appropriate. In no event shall RIT or any related individual be responsible for any fluctuation in the value of the Equity or in any other way related to the administration of the Equity by RIT.

Personnel or Students not qualified to hold the Equity under applicable law shall designate a qualified person to receive the Equity. If no designee is named within thirty days after a written request by RIT to do so, the right to a share of the Equity shall be forfeited to RIT.

E. Exception When Creator Has No Entitlement. If RIT accepts research support in the form of a Sponsored Research Agreement or unrestricted grant as part of the consideration in an Intellectual Property license in lieu of an option fee, license fee royalty, or other consideration, the Creator and other recipients of Net Revenue shall have no entitlement to receive a share.

F. Revenue From Actions for Defense or Enforcement of IP Rights. When RIT receives Revenue from third parties resulting from successful actions for the purpose of defending or enforcing RIT's rights in its Intellectual Property, such Revenue may first be used

to reimburse RIT (or the sponsor or licensee, if appropriate) for all expenses incurred in such actions. The Creator and other recipients of Net Revenue shall be entitled to recovery of lost royalties from the remaining Net Revenue, in the same proportions as specified in the chart above.

G. Co-Owned IP. Sometimes Intellectual Property is co-owned with another institution or entity. In such cases, RIT will enter into an inter-institutional agreement with such entity under which income and expenses will be shared and responsibility for IP protection will be assigned. RIT may also engage a third party to license IP if the third party has special expertise, and the third party may be allocated a portion of the related Revenue. In each instance, the remaining Net Revenue will be distributed according to this Section 7.

H. Departure from RIT. A Creator's share of Net Revenue will continue after the Creator has left RIT.