

BP 3715 Intellectual Property Rights

Reference: *17 U.S. Code Sections 101 et seq.;*
35 U.S. Code Sections 101 et seq.;
37 Code of Federal Regulations Sections 1.1 et seq.

Introduction

The District recognizes and encourages the intellectual scholarship and academic creativity of employees as an inherent part of the educational mission of the college

The District, the Academic Senate, and all other campus constituent groups believe that the public interest is best served by creating an intellectual environment whereby creative efforts and innovations can be encouraged and rewarded, while still retaining for the college reasonable access to, and use of, the intellectual property for whose creation the college or university has provided assistance.

It is in the interest of the District, the Academic Senate, and all other campus constituencies to protect and promote the right of employees to benefit from their scholarly and institutional work, and to avoid copyright disputes by facilitating advance agreement between employees and the District regarding ownership and use of scholarly works.

1. Definitions

A. Author or Creator

Means an individual who alone or as part of a group of other creators, invent, author, discover, or otherwise create intellectual property.

B. Employee

Means an individual employed by the District, and shall include full-time and part-time faculty, classified staff, student employees, appointed personnel, persons with “no salary” appointments, and academic professionals, who develop intellectual property using District resources, unless there is an agreement providing otherwise.

C. Intellectual Property

Intellectual Property rights refer to works that may be eligible for copyright protection. This includes, but is not limited to:

1. course materials such as course handouts, syllabi, lecture notes, student exercises, workbooks, study guides, laboratory manuals, multimedia programs, tests, literary works;
2. books, articles, fictional or non-fictional narratives, reviews;

3. dramatic and musical compositions, poetry, and choreography;
4. complete online courses including those created with a course management system;
5. other course materials related to online courses or web-related materials;
6. analysis (e.g. scientific, logical, opinion or criticism);
7. works of art and design, including pictorial, graphic and sculptural works, photographs, films, video and audio recordings;
8. computer-based programs and media (e.g. software or computed code of their representation in forms such as CD-ROM, video disk, compressed video, digital, web-based material and the like);
9. Architectural and engineering drawings.

D. Form of Intellectual Property

Intellectual Property works may be found in:

1. Any enduring medium (for example, print, film, or digital media, etc.), or
2. Digitally encoded works that can be stored on computer-readable media, manipulated by computers, and transmitted through data networks form (for example, video or audio broadcast, html transmissions, or email attachments), or
3. Other tangible forms (for example, as sculpture, painting, or structure).

E. District Substantial Support

1. "District Resources" includes all tangible resources including buildings, equipment, facilities, computers, software, personnel, and funding.
2. "Substantial Support" means use of District resources beyond the normal professional, technology, and technical support generally provided by the District and extended to an individual or individuals for development of a product, project or program.
 - a. Examples of Substantial Support could include, but are not limited to:
 - i. extra compensation for a work.
 - ii. The cost of providing secretarial, technical, legal, duplication, technological or creative services specifically for the creation of the work.
 - iii. A substantial use of the District's resources may be implicated in situations where the creator spends such time and energy in the creation of a work that results in a great reduction of the creator's contractual obligations.
 - b. Examples of normal professional, technology, and technical support generally provided by the District would include, but are not limited to:
 - i. the employee's regular compensation and the office space.

- ii. office computer, local telephone use, office supplies, and copy services regularly provided to an employee in the normal course of their employment.
- iii. District sponsored training customarily provided to an employee.
- iv. District tech support customarily provided to an employee.
- v. the use of an electronic learning management system.
- vi. any software management system for on-line instruction, assessment or virtual classroom instruction.
- vii. Compensation to a faculty member while on sabbatical.
- viii. COC Foundation support to the Scholarly Lecture program or mini-grant programs.

F. Categories of Intellectual Property works

1. Institutional Work

Institutional Works are those standard and ordinary works conducted by the District for specific District administrative purposes, excluding teaching and academic endeavors. Institutional works do not grant any intellectual property rights to their creators.

Examples of these would include, but are not limited to:

- a. preparing budgets, policies, contracts, personnel management,
- b. course schedules and catalogues,
- c. maintenance of computer data,
- d. long range planning,
- e. Keeping inventories of equipment,
- f. Promotional and other materials produced by the Public Information Office,
- g. Works that must be approved by a college committee,
- h. all materials produced by accreditation committees,
- i. course outlines approved by the Curriculum committee.

2. Commissioned Work

All Commissioned Works are the property of the District, unless otherwise stated in a written agreement between the District and the employee prepared before the project is initiated,

- a. A commissioner work is a one-time work that is defined and directed by the District for a specific District purpose.
- b. This includes, but is not limited to, any works:
 - i. Commissioned by the District pursuant to a signed contract;
 - ii. Produced by research specifically supported by Federal, State, or third party sponsorship;
 - iii. Produced through substantial use of District resources or facilities;
 - iv. The District may provide additional compensation for a commissioned work, but any such compensation must be agreed to in writing before the project begins;
 - v. Commissioner works are outside of an employee's normal duties, and must be agreed to by both the employee and the District.

3. Personal Work

Personal works are prepared outside the course and scope of District employment responsibilities, and are produced without the use of District resources or facilities. Personal Works are not subject to this policy.

- a. Since Personal Works are the property of the employee, any copyright shall be owned exclusively by the employee.
- b. When creating a personal work, the creation of such works shall not interfere with the employee's ability to perform assigned responsibilities.
- c. An employee shall not use any District resources to create, develop or commercialize works.

4. Scholarly Work (or Aesthetic Work)

Scholarly works are considered the intellectual property of the employee.

- a. Scholarly works are those where the employees contributions:
 - i. Originate through their own initiative;
 - ii. Are the results of independent academic efforts for classroom, education, or professional purposes, and
 - iii. Do not rely on substantial District support.

5. Sabbatical Works.

Generally, intellectual property created by District employees during a sabbatical is defined as an academic work.

- a. If substantial district resources and facilities are required to complete a sabbatical project, the District and the employee must first enter into an agreement to define the limit and scope of the District's support, as well as to define the District and employee's intellectual property rights in the sabbatical work.

2. District Use of Scholarly Works

- a. Material created for ordinary teaching use in the classroom (including on-line teaching) and in department programs, such as syllabi, assignments, and tests, shall remain the property of the employee, but the District shall be permitted to use such material for internal instructional, educational, and administrative purposes, including satisfying requests of accreditation agencies for faculty-authored syllabi and course descriptions.
- b. By accepting the assignment of a distance learning course as part of their faculty load, a faculty member implicitly authorizes the District to transmit or record for transmission, any classroom instruction, lecture or other instructional or performance event produced by the faculty member as part of that specific distance learning section. It is understood that such authorization is only for a specific course section during a specific semester.

3. District Restrictions on Use of Employees' Scholarly Works

- a. Scholarly Works are the property of the employee and the copyright shall be owned by the employee. The District and the employee agree that the employee shall maintain the

exclusive right to royalties and non-transferable, perpetual, worldwide license to use works owned by the employee.

- b. The District may not authorize the for-profit publication of such works in return for royalties paid solely to the District without written authorization from the employee (s) who created the works.
- c. The District may not sell or re-transmit any recording of any classroom instruction, lecture or other instructional or performance event produced by the employee for transmission, except under the terms of a written agreement between the District and the employee specifying the terms of such re-transmission or sale, including distribution of net profits from the sale or rebroadcast.
- d. The District shall not authorize anyone to create derivative works (for example, companion materials, or updated versions) without the written agreement of the employee (s) who own the work.

4. Employee Responsibilities on Scholarly Works

- a. If a scholarly work is created by two or more employees, it is the responsibility of the employees to determine the manner in which they share ownership of the copyright to that work.
- b. It is their responsibility to prepare (or have prepared at their own expense) a written agreement between them documenting their determination.
- c. No grievance against the District may be asserted by employees arising out of any consequences of their failure to make or document an agreement concerning the manner in which they share ownership of the copyright
- d. It is the responsibility of the employee to ensure that any scholarly work does not include intellectual property owned by others. If it does include such intellectual property, the employee is responsible for obtaining the appropriate releases/permissions for the use of the material.
- e. As the copyright for Scholarly Works are held by the employee, the District assumes no liability for any legal action arising from the contents of the scholarly work.

5. Use of Names, Logos

- a. The District's names, logos, and trademarks are copyrighted material that may not be used without consent of the District.
- b. Employees may use their employment title for any work that they create while an employee of the District.
- c. If for any reason the District does not wish its name or the College's name to be identified, the District has the right to require the employee not to identify his or her relationship with the District; and in such a case, the employee will agree to stop doing so as soon as reasonably possible.

- d. The District agrees that when it uses a work created by an employee the District will identify the employee who created the work, for as long as the work continues to be used by the District.

6. Alternative Copyright Agreements

- a. The CEO may waive the District's property rights by executing a written waiver.
- b. Employees and the District may, if they wish, enter into individual agreements with one another concerning copyright ownership and usage rights to specific works, the terms of which differ from those set forth above.
- c. The terms of any such individual agreement will supersede the terms of these procedures, once such an agreement is signed by the employee and an authorized representative of the District.
- d. In the event the provisions of these procedures and the provisions of any operative collective bargaining agreement conflict, the collective bargaining agreement shall take precedence.

7. Commercialization of Intellectual Property

- a. The District may commercialize any work in which it maintains intellectual property rights using its resources or it may enter into agreements with others to commercialize the work as authorized by law.
- b. The District shall undertake such efforts, as it deems necessary to preserve its rights in original works for which the District is the sole or joint owner of intellectual property rights.
- c. The District may apply for a patent, for trademark registration, for copyright registration, or for other protection available by law on any new work in which it maintains intellectual property rights.
- d. The District may pay some or all costs required for obtaining a patent, trademark, copyright, or other classification on original works for which it exclusively owns intellectual property rights.
- e. If the District has intellectual property rights in a jointly owned work, the District may enter into an agreement with the joint owners concerning payment of such costs.
- f. At times the District may share intellectual property rights with employees. The employees are entitled to share in any royalties, licenses, and other payments from commercialization of these works in accordance with applicable agreements signed beforehand with the District.
- g. All expenses incurred by the District in protecting and promoting the work, including costs incurred in seeking patent or copyright protection and reasonable costs of marketing the work, shall be deducted and reimbursed to the District before the creator is entitled to share in the proceeds.

- h. The District shall deposit all net proceeds from commercialization of intellectual property in its own general intellectual property account. The District may use the account to reimburse expenses related to creating or preserving the District's intellectual property rights or for any other purpose authorized by law and District policy including the development of intellectual property.

8. Student and Members of the Public Intellectual Property Rights

- a. District students own the intellectual property rights for intellectual property created to meet course requirements using college or District resources.
 - i. Students completing assignments for an outside entity as part of an internship, project based learning assignment, service learning assignment, etc. do not necessarily own the intellectual property rights related to their assignments. Clarification should be determined with the external agency prior to the start of the assignment. In the absence of such clarification, the intellectual property rights belong to the outside agency.
- b. The methods used by faculty to grade, certify, and assess a student's intellectual work created to meet course requirements shall not be construed as a violation of a student's intellectual property rights.
- c. Members of the public who create intellectual property using district resources available to the public retain the rights to those intellectual works.

9. Development of Procedures

- a. The District will develop procedures to ensure for the recognition, administration, and assignment of Intellectual Property Rights.
- b. These procedures will be consistent with other District policies, including, but not limited to, the District's policy on academic freedom and federal and state statutes and regulations.
- c. In addition to procedures for general District implementation of this policy, there shall be specific procedures developed for employees, students, contractors, and volunteers.
 - i. Employees
 - a. Any procedures that would impact faculty members will be mutually agreed upon with the Academic Senate.
 - b. These procedures shall also be interpreted consistent with all collective bargaining agreements.
 - ii. Students
 - a. The District will develop procedures to ensure the protection of students' intellectual property rights.
 - b. Protection of student intellectual property rights shall not be construed to interfere with the role of the faculty in assigning grades to students' enrolled in college courses.

iii. Third Party Contractors

- a. The District will develop procedures to coordinate intellectual property rights between the district and any outside contractor.
- b. Assignment of Intellectual property rights shall be specified in any contract or agreement signed by the District.

iv. Volunteers

- a. The District will develop procedures to coordinate intellectual property rights between the district and any person not acting in the capacity of an employee, student, or contractor.

See Administrative Procedures AP 3715
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