

## **Article 52**

### **INTELLECTUAL PROPERTY**

#### **52.0 Introduction**

The District recognizes and encourages the intellectual scholarship and academic creativity of faculty employees as an inherent part of the education mission of the colleges. To that end, this article seeks to protect and promote the right of faculty members to benefit from their scholarly work and to avoid copyright disputes by facilitating advance agreement between faculty members and the District regarding ownership and use of scholarly works.

All rights to Works as defined in 52.1B shall be owned by the faculty member if the District fails to make or document ownership agreements.

#### **52.1 Definitions**

The following definitions shall apply to this article:

- A. Intellectual Property includes all “Work” and “Works”.
- B. The terms “work” and “works” mean any material eligible for copyright protection, including (but not limited to) course materials such as course handouts, syllabi, lecture notes, student exercises, workbooks, study guides, laboratory manuals, multimedia programs, tests, literary works, books, articles, fictional or non-fictional narratives, reviews, dramatic and musical compositions, poetry, complete online courses including those created with a course management system, and other course materials related to online courses or web-related materials, analysis (e.g., scientific, logical, opinion or criticism), works of art and design, including pictorial, graphic and sculptural works, photographs, films, video and audio recordings, 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), original “mask works” (i.e., original images derived from semi-conductor chip products), architectural and engineering drawings and choreography. A “Work” or “Works” may be recorded in any enduring medium (for example, print, film, or digital media, etc.) or in any electronically mediated form (for example, video or audio broadcast, html transmissions, or email attachments), or may exist in any tangible form (for example, a sculpture, painting, or structure).
- C. A “Scholarly Work or Aesthetic Work” is intellectual property originated by a faculty member at their own initiative resulting from independent academic effort for classroom, education, or professional purposes. *For example, an instructor who teaches in the Math Department creates lecture notes, outlines and workbooks for his students’ use in his courses taught at the College. His lecture notes, outlines, and workbooks are “Scholarly Works.”*

- D. “Commissioned Works” are defined and directed by the District for a specific District purpose. Faculty members’ contributions to such work are outside their normal duties, and shall be specified in advance by written agreement. The District shall pay additional compensation for these added duties. *For example, the District asks an instructor who teaches in the Math Department to prepare a computer program which teaches mathematical concepts to her students in her math class. The instructor enters into an agreement with the District to prepare this “Commissioned Work” and is compensated extra for doing so.*
- E. “Institutional Works” are defined and directed by the District for a specific District purpose. *For example, all materials produced by a District committee whose members include both faculty and District officials are “Institutional Works.”*
- F. “Personal Works” are works prepared outside the course and scope of District employment without the use of District resources. *For example, an instructor who teaches in the Accounting Department also has a private accountancy business advising clients from her home using no District resources. She creates a tax computation software program that she uses on behalf of her clients and charges them for this use. This software is a “Personal Work.”*
- G. “Substantial Support” means financial support over and above the cost of the faculty member’s regular compensation and the office space, office computer, local telephone use, office supplies, and copy services regularly provided to faculty of that particular type  
Substantial support includes extra compensation, the cost of providing secretarial, technical, legal, or creative services specifically for the creation of the work, as well as the cost or value of the use of District equipment or facilities. Substantial Support shall exclude District-sponsored training, the use of an electronic learning management system (such as Angel), any software management system for on-line instruction, assessment or virtual classroom instruction, and compensation to a faculty member while on sabbatical.

## **52.2 Ownership of Intellectual Property and Copyright**

- A. Scholarly or Aesthetic Works are the property of the faculty member and the copyright shall be owned by the faculty member.
  - a. The District may not use work(s) created by the faculty member in any way it may wish, including, for example, authorizing the for-profit publication of such works in return for royalties paid solely to the District without written authorization from the faculty member(s) who created the works.
  - b. The District shall have no “fair use” rights except for purposes of teaching and classroom use in regularly scheduled classes where the owner’s participation in the teaching or classroom use has already been scheduled and the owner becomes unable to complete the assignment. (The owner’s participation shall be evidenced by the

assignment of load to the owner.) In the case of termination, or voluntary discontinuance of employment, or retirement the faculty member retains all property rights.

- c. The District shall not transmit or record for transmission, without the faculty member's written prior consent, any classroom instruction, lecture or other instructional or performance event produced by the faculty member as part of a program of distance learning where the owner's participation in the teaching or classroom use has already been scheduled. (The owner's participation and written consent shall be evidenced by the assignment of load to the owner.) The District, however, may not sell or re-transmit any such recording except under the terms of a written agreement between the District and the faculty member specifying the terms of such re-transmission or sale, including distribution of net profits from the sale or rebroadcast.
- d. The District and the faculty member agree that the faculty member shall maintain the exclusive right to royalties and non-transferable, perpetual, worldwide license to use works owned by the faculty in the following ways:
  - 1. to reproduce such works (for example, by photocopying them, by duplicating computer disks on which they have been saved, or by installing them on computer networks)
  - 2. to distribute such works (for example, to students in classes)
  - 3. to perform such works (for example, in classroom teaching, broadcasting, or webcasting)
  - 4. to display such works (for example, over the web including audio or video streaming)
  - 5. to create derivative works (for example, companion materials or updated versions).

The District shall not authorize others to do these things without the written agreement of the faculty member(s) who own the work.

- e. When the member requests substantial support the request must be provided in writing to the Department Chair. Prior to approval, the Department Chair shall transmit the request to the Vice-President of Instruction for approval. The faculty member and the District shall sign a written agreement prior to the initiation of the work which defines the terms of the substantial support to be provided. The agreement shall specify whether the work shall be a "Commissioned Work" or a "Scholarly or Aesthetic Work." The agreement shall also specify whether the work shall be owned solely by the faculty member, or whether ownership shall be shared between the parties.

B. Institutional Works are the property of the District.

C. Personal Works are the property of the faculty member and the copyright shall be owned by the faculty member. District resources shall not be used to create, develop or commercialize works unrelated to the faculty member's employment nor shall the creation of such works interfere with the faculty member's ability to perform their assigned responsibilities.

- D. Commissioned Works are the property of the District unless otherwise stated in a written agreement between the District and the faculty member prepared before the project is initiated.

**52.3 Other Issues**

- A. All rights to “works” shall be owned by the faculty member if the District fails to make or document ownership agreements.
- B. Joint Works  
A joint work is a work prepared by two or more authors with the intention that their contribution be merged into inseparable or interdependent parts of a unitary whole. The contribution of each author must constitute separate, independently-copyrightable subject matter for joint authorship to arise.
  - a. Joint Works created by two or more faculty members: Ownership of copyrights to joint works shall be determined by the provisions of this Article.
  - b. Joint Works created by one or more faculty members and the District: The District and the faculty member(s) involved shall sign a written agreement prior to initiation of the Joint Works. This agreement shall encompass who has the right to license, market, or profit by this Joint Works.
- C. Creation of Works during Paid Leaves  
Unless otherwise agreed to in a written agreement between the District and the faculty member, the provisions of this Article shall apply to the faculty member while on paid leaves to the same extent that it applies while the faculty member is not on paid leave.
- D. Grant-Funded Work  
In the case of works created by faculty members under a grant or sponsored project accepted by the District, the ownership provisions and terms of the grant or sponsored project agreement shall determine ownership. If the grant fails to specify such ownership provisions and terms, the faculty member and the District shall enter into a written agreement specifying the ownership provisions and terms prior to approval of the grant or sponsored project.
- E. Royalties  
A royalty is a payment made to an owner of a copyright for the privilege of exercising a right under the copyright. Unless mutual written agreement between the District and the faculty member is made to the contrary, the ownership of copyright determines royalty distribution as follows:
  - 1. When the faculty member has full copyright ownership, they retain full royalty and distribution rights.
  - 2. When the District has full copyright ownership, the District retains full royalty and distribution rights.
  - 3. When the District and faculty member(s) share copyright ownership, all royalties and profits shall be distributed to

reimburse the copyright owners for documented expenses related to the creation and production of the materials. Any remaining royalties and profits shall be distributed equally among the owners or according to a percentage under the terms of a separate, written agreement.

F. Prior Works

The terms of this Article shall apply to intellectual property created, generated, or produced prior to the date of this signed contract. Previously existing “Scholarly or Aesthetic Works” for which there is no written agreement shall be considered the property of the faculty member regardless of whether the District provided substantial support in the development of the work.

The faculty member shall retain all rights to copyrights, trademarks, trade secrets, trade dress and patents and Works (per 52.1B) created prior to the agreement of this article, and the District shall not have prescriptive easement rights to any such Works.

**52.4 Copyright Registration and Distribution Rights**

1. Registration of Copyright. Responsibility for official registration of copyright shall lie with and occur at the option of the owner of the copyright. In cases of joint ownership, the written agreement between the two parties shall specify the responsibility for copyright registration. Instructions and forms for registering copyright may be found online at [www.copyright.gov/register](http://www.copyright.gov/register).
2. Acquiring and Paying for Necessary Rights from Third Parties. If the creation or use of a work requires rights to be acquired from third parties, such right shall be acquired and paid for by the party who owns the copyright to that work (i.e., the faculty member or the District).
3. Determining and Documenting Copyright Ownership. - When two or more faculty members create and own the copyright, in accordance with the provisions of this Article, it is the responsibility of those faculty members to determine the manner in which they share ownership of the copyright to that work, and it is their responsibility to prepare (or have prepared at their own expense) a written agreement between them documenting their determination. No grievance against the District may be asserted by faculty members arising out of their failure to make or document ownership agreements.

**52.5 THE ROLE OF ACE IN THE DEVELOPMENT OF WRITTEN AGREEMENTS BETWEEN THE DISTRICT AND INDIVIDUAL FACULTY MEMBERS**

In developing any written agreements between a faculty member(s) and the District concerning ownership of works and copyright and/or associated royalties, ACE shall be a party to the negotiations within the scope of representation

(Government Code Sec. 3543.2). Before initiating any negotiations with any faculty member over a written agreement pursuant to this Article, the District shall notify ACE. This in no way precludes any faculty member from utilizing his or her own counsel.