

ARTICLE 26 : INTELLECTUAL PROPERTY

26.1 Purpose and Scope

The understandings regarding Intellectual Property that are set forth in this Article are intended to:

- (a) encourage faculty to engage in the production of scholarly works, creative publications, and technology-based materials;
- (b) promote the right of faculty members to benefit from their scholarly work; and
- (c) avoid copyright disputes by facilitating advance agreement between faculty members and the District regarding ownership and use of such works.

26.2 Copyright Definitions

26.2.1 *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 are specified in advance by written agreement. The District shall pay additional compensation for these added duties. For example, consider the case of Molly the Math Teacher. Through a written project agreement, she is hired by the District to prepare a novel computer program which teaches mathematical concepts to her students in her math class. All materials specified in the agreed-upon project proposal shall be considered to be "Commissioned Works."

26.2.2 *Institutional Works* are defined and directed by the District for a specific District purpose. For example, all materials produced by any District committee whose members include both faculty and District officials shall be considered to be "Institutional Works."

26.2.3 *Derivative Work* is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adopted. A work consisting of editorial revisions, annotations, elaborations or other modifications which, as a whole, represent an original work of authorship, is also a derivative work as defined here.

26.2.4 *Intellectual Property* means any work that is eligible for copyright, including, but not limited to, literary works, books, articles, dramatic and musical compositions, poetry, instructional material (e.g., syllabi, lectures, student exercises, multimedia programs, and tests), analysis (e.g., scientific, logical, opinion or criticism), works of art and design, including pictorial, graphic and sculptural works, photographs, films, audio and video recordings, computer-based programs and media (e.g., software or computed code in forms such as CD-ROM, video disk, compressed video, 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.

- 26.2.5 *Joint Work* is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.
- 26.2.6 *License* is a contract in which a copyright owner grants to another permission to exercise one or more of the rights under the copyright.
- 26.2.7 *Personal Work* is intellectual property that is prepared outside the course and scope of District employment without the use of District resources. For example, consider the case of Patti the Professor who teaches Accounting in the Business Department. While employed by the District, she maintains a private accountancy business that advises clients from her home using no district-supported equipment or facilities. For her business, she creates a novel tax computation software program that she uses on behalf of her clients and charges them for this use. This software program shall be considered to be “Personal Work.”
- 26.2.8 *Royalty* is payment made to an owner of a copyright for the privilege of exercising a right under the copyright.
- 26.2.9 *Scholarly or Aesthetic Work* is intellectual property originated by a faculty member resulting from independent academic effort. Such works include, but are not limited to, faculty-prepared textbooks, lecture notes, syllabi, journal articles, review, and other course materials such as outlines, workbooks, presentations, and laboratory manuals, as well as literary, musical and artistic works, and periodicals or other serial publications. For example, consider the case of Paul the Professor who teaches Calculus in the Math Department. If while employed by the District, he creates lecture notes, outlines and workbooks for his student’s use in his courses taught at the College, his lecture notes, outlines and workbooks shall be considered to be “Scholarly Work.”
- 26.2.10 *Substantial Support* means financial support over and above the cost of the faculty member’s regular compensation, office space, office computer, local telephone use, minimal office supplies and copy services. Substantial support includes extra compensation or the assignment of reassigned time to create the work, 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. Neither District-sponsored training, the use of an electronic learning management system (such as eCollege), nor compensation to a faculty member while on sabbatical, standing alone, constitutes substantial support as defined here.

26.3 Copyright Ownership

- 26.3.1 Scholarly/Aesthetic Works are the property of the faculty member and the copyright will be owned by the faculty member.
- 26.3.2 Institutional Works are the property of the District.

- 26.3.3 Commissioned Works are the property of the District, unless otherwise stated in a written agreement prepared before the project is initiated.
- 26.3.4 Personal Works are the property of the faculty member and the copyright will be owned by the faculty member.
- 26.3.5 When substantial support is provided by the District to aid a faculty's work, the faculty member and the District shall sign a written agreement prior to the initiation of the project stating that this work-for-hire may be owned by the District. This agreement shall also define the terms of the substantial support offered by the District, including but not limited to the extra compensation and/or the assignment of reassigned time to create the work. The faculty member may choose to retain the right to copyright the material, but shall reimburse the District for the reasonably assessed cost of the substantial support provided. In certain circumstances, the District and the faculty may agree to share the right to the copyrighted materials. This will be accomplished through a separate contract at the time the project is initiated. In the event that the parties cannot come to the terms of a written agreement, either party shall have the option of seeking mediation to promote a settlement. Should the parties fail to agree on a written agreement and both parties wish to execute the project then the rights of the parties shall be determined according to applicable law.
- 26.3.6 At the District's discretion, the District may seek the right to market any work(s) recognized as the property of a faculty member through a license that shall be agreed upon in writing, with consultation of the Faculty Association and the faculty member involved. In the event that the parties cannot come to the terms of a written agreement, either party shall have the option of seeking mediation to promote a settlement. The absence of any such signed agreements shall mean that the faculty member continues to be the sole copyright owner, rather than the District.
- 26.3.7 Before a faculty member makes substantial use of District facilities, equipment and resources to create a work, he/she shall seek approval from their Department Chair and/or Dean of Academic Affairs, as determined by the District. If the request is approved, the Dean of Academic Affairs and the faculty member, with consultation of the Faculty Association, if requested by the faculty member, shall enter into a signed agreement specifying the degree to which District facilities, equipment and resources will be permitted to be used.
- 26.3.8 With respect to current intellectual property created, generated or produced prior to the date of this signed contract, it is understood that the faculty member shall be the sole owner, rather than the District.
- 26.3.9 With respect to intellectual property deemed by this Article to be owned by a faculty member either individually or jointly (herein referred to as "owner"), the owner shall offer the District "fair use" of this property solely for the purposes of teaching and classroom use in regularly scheduled classes held by the District. This "fair use" exception shall be limited to the courses where the owner's participation has already

been scheduled and the owner becomes unable to complete the assignment. In the case of termination of employment, the owner retains all property rights.

26.4 Creation of Intellectual Property during paid sabbatical

26.4.1 Rights in connection with intellectual property created during a sabbatical leave shall be the subject of written agreement of the parties. In the event that the parties cannot come to the terms of a written agreement, either party shall have the option of seeking mediation to promote a settlement. Should the parties fail to agree on a written agreement and both parties wish to pursue the sabbatical project then in the absence of agreement, the rights of the parties shall be determined according to applicable law.

26.5 Grant funded work

26.5.1 Ownership and use of works stemming from grant-funded projects shall be subject to and determined by the terms of the grant. This provision shall not be deemed to create a beneficial interest for any Grantor.

26.6 Copyright registration

26.6.1 Responsibility for official registration of copyright will lie with the owner of the copyright. When the District and faculty member(s) share ownership, the District will be responsible for filing for registration of copyright for both parties.

26.7 Royalties and distribution rights

26.7.1 Unless mutual agreement is made to the contrary, the ownership of copyright determines royalty distribution as follows:

- (a) When faculty has full copyright ownership, they retain full royalty and distribution rights;
- (b) When the District has full copyright ownership, the District retains full royalty and distribution rights;
- (c) When the District and faculty member(s) share copyright ownership, all royalties and profits will be distributed to reimburse the copyright owners for documented expenses related to the creation and production of the materials. Any remaining royalties and profits will be distributed equally among the owners or according to a different percentage under the terms of a separate, written agreement.

26.8 Dispute resolution

26.8.1 Disputes between faculty members and the District concerning this Article shall be resolved pursuant to the grievance procedures, except that an arbitrator who is an expert in copyright law shall be chosen by the parties, unless the parties agree otherwise, or, if the parties are unable to agree on an arbitrator, chosen in accordance with the commercial arbitration rules of the American Arbitration Association.