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	<i>Chancellor's Cabinet:</i>
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References:	

## AP 3715 Intellectual Property

*(Replaces current SBCCD AP 3710)*

The following intellectual property procedure shall be interpreted consistent with other District policies, including, but not limited to, the District's policy on academic freedom and federal and state statutes and regulations. This procedure shall also be interpreted consistent with all collective bargaining agreements.

### Definitions

For the purposes of this procedure, the following definitions apply to the following words or phrases:

"Administrative Activity" means the execution of the District's management or administrative functions such as preparing budgets, policies, contracts, personnel management, printing course materials and catalogues, maintenance of computer data, long range planning, and keeping inventories of equipment. Teaching and academic endeavors are not administrative activities.

"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.

"District Resources" means all tangible resources including buildings, equipment, facilities, computers, software, personnel, and funding.

"Course Materials" Materials prepared for use in teaching, fixed or unfixed, in any form, including, but not limited to, digital, print, audio, visual, or any combination thereof. Course materials include, but are not limited to, lectures, lecture notes, and materials, syllabi, study guides, bibliographies, visual aids, images, diagrams, multimedia presentations, web-ready content, and educational software.

"Course Syllabus" means a document that includes information about the outline, standards for student evaluation, and additional information which reflects the academic work of the faculty member.

"Digital Encoded Work" means a work (on a bit-sequence) that can be stored on computer-readable media, manipulated by computers, and transmitted through data networks.

"District facilities" include buildings, equipment, and other facilities under the control of the District, that are designated by the appropriate administrative officer as requiring an advance agreement, from non-District personnel and District personnel acting outside the scope of their employment, concerning the disposition of any copyrighted works that are originated with the use of these facilities. Such facilities normally include campus computer centers and normally do not include District libraries.

"District funds," regardless of source, are administered under the control, and responsibility, or authority of the

District.

"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.

"Intellectual Property" means works, products, processes, tangible research property, copyrightable subject matter, works of art, trade secrets, know how, inventions and other creations the ownership which are recognized and protected from unauthorized exploitation by law. Examples of intellectual property include scholarly, artistic, and instructional materials.

"Student" means an individual who was or is enrolled in a class or program at the District at the time the intellectual property was created.

"Student Employee" means a student who is paid by the District, and may include students participating in a work study program or who receive stipends while they are acting within the scope of their employment at the District at the time the intellectual property was created.

"Substantial Use of District Resources" 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. The use of District resources must be important and instrumental to the creation of the intellectual property. The following do not constitute substantial use of the District's resources: (1) incidental use of District resources and/or (2) extensive use of District resources commonly available to District employees. 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 teaching activity.

"Work" means an "original work of authorship fixed in a tangible medium" as used in the Copyright Act.

## **Ownership of Intellectual Property**

The ownership rights to a creation at the District shall be determined generally as set forth below, unless ownership is modified by an agreement.

### **Employee Intellectual Property Rights**

A District employee who is the creator of an academic work in his or her field of expertise owns the copyright in that work. Academic works include textbooks, lecture notes and other course materials, literary works, artistic works, musical works, architectural works and software produced with no more than nominal or incidental use of the District's resources. Academic works described in this paragraph are owned by the employee even though such works may have been developed within the employee's scope of employment.

Intellectual property unrelated to an individual's employment responsibilities at the District, and that is developed on an individual's own time and without the District's support or use of District facilities is the exclusive property of the creator and the District has no interest in any such property and holds no claim to any profits resulting from such intellectual property.

### **District Intellectual Property Rights**

The District owns all other intellectual property, including but not limited to patentable inventions, such as computer software, created by its employees under the following circumstances:

1. If intellectual property is created through the District's administrative activities by an employee working within his or her scope of employment; or
2. If intellectual property is created by an employee executing a duty or specific assignment designated by the District; or
3. If intellectual property is created through the substantial use of District resources; or
4. If intellectual property is commissioned by the District pursuant to a signed contract; or
5. If intellectual property is produced within one of the nine categories of works considered works for hire under copyright law pursuant to a written contract, or
6. If intellectual property is produced from research specifically supported by state or federal funds or third party sponsorship. Grant funds obtained by faculty members for the creation of works shall be considered substantial support provided by the District only if the District is involved in the fiscal administration of the grant.

Where circumstances give rise to District intellectual property rights, as described above, the creator of the potential intellectual property will promptly disclose the intellectual property to the District. The District and the creator may enter into a written agreement whereby the creator executes documents assigning intellectual property rights to the District.

The Chancellor may waive the District's interests in its intellectual property by executing a written waiver.

## **Student Intellectual Property Rights**

District students who created a work are owners of and have intellectual property rights in that work. District students own the intellectual property rights in the following works created while they are students at the District: (1) intellectual property created to meet course requirements using college or District resources, and (2) intellectual property created using resources available to the public. Intellectual property works created by students while acting as District employees shall be governed under provisions for employees.

## **Modification of Ownership Rights**

The general provisions for ownership of intellectual property rights set forth in Section II may be modified by the parties as follows:

### **Sabbatical Works**

Generally, intellectual property created by District employees during a sabbatical is defined as an academic work. However, where a work to be created as part of an approved sabbatical plan requires resources beyond those normally provided to other employees during a sabbatical (substantial use District resources), the parties may enter into an written agreement to define the District and employee's intellectual property rights in the sabbatical work.

### **Assignment of Rights**

When the conditions outlined in the sections on employee intellectual property rights or student intellectual property are met, ownership will reside with the employee or student responsible for creating the intellectual property. In these circumstances, the creator may pursue intellectual property protection, marketing, and licensing activities without involving the District. If such a decision is made, the creator is entitled to all revenues received.

Any person may agree to assign some or all of his or her intellectual property rights to the District.

In the event the creator offers to share or assign intellectual property rights in the creation to the District, the District may support and finance application for intellectual property protection (trademark, patent, or copyright) or it may enter into an agreement for other exploitation of the work, including management, development and commercialization of the property under terms and conditions as may be agreeable to the parties. After evaluating the creator's offer, the District may or may not decide to become involved in a joint investment agreement. A negative response from the District will be communicated in writing to the creator. An affirmative response from the District will be summarized as an offer to enter into a written contract. If the creator accepts the District's proposed contract, any revenues received from commercialization of the intellectual property will be distributed as defined in the contract.

## **Sponsorship Agreements**

A sponsored work is a work first produced by or through the District in the performance of a written agreement between the District and a sponsor. Sponsored works generally include interim and final technical reports, software, and other works first created in the performance of a sponsored agreement. Sponsored works do not include journal articles, lectures, books or other copyrighted works created through independent academic effort and based on the findings of the sponsored project, unless the sponsored agreement states otherwise. Ownership of copyrights to sponsored works shall be with the District unless the sponsored agreement states otherwise. Where a sponsorship agreement does not define ownership of the intellectual property, ownership shall be determined under applicable law. Any sponsorship agreement that provides for ownership of the work by one other than the District generally shall provide the District with a nonexclusive, world-wide license to use and reproduce the copyrighted work for education and research purposes.

## **Collaboration/Partnership Agreements**

The District may participate in projects with persons/organizations that result in the creation of intellectual property. Ownership rights of such intellectual property will be defined by the collaboration/partnership agreement, or shall be determined under applicable law.

## **Special Commissions**

Intellectual property rights to a work specially ordered or commissioned by the District from a faculty member, professional staff member, other District employee, or other individual or entity, and identified by the District, as a specially commissioned work at the time the work was commissioned, shall belong to the District. The District, and the employee shall enter into a written agreement for creation of the specially commissioned work.

## **Use of Substantial District Resources**

In the event the District provides substantial resources to an employee for creation of a work and the work was not created under an agreement (such as a sponsorship agreement, individual agreement, or special commission) the District and the creator shall own the intellectual property rights jointly in proportion to the respective contributions made.

## **Encoded Works/Software for Administrative Activities**

The District may hire an individual or entity to develop software or other encoded works, to be used in the District's administrative activities. The District shall maintain ownership of the intellectual property rights in

such encoded works. Similarly, the District shall have ownership of the intellectual property rights in encoded works created by an employee, even where the work was created out of the employee's own initiative, if the work is related to the employee's job responsibilities. For example, if an employee in the student records office creates a software program, on his own initiative, which will organize student records, such work is related to the employee's job duties and will belong to the District. Where an employee creates a program that does not relate to his or her job duties, and that program was created on the employee's own time, the work belongs to the employee.

## Collective Bargaining Agreement

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.

## Jointly Created Works

Ownership of jointly created works shall be determined by separately assessing which of the above categories applies to each creator, respectively. Rights between joint owners of a copyright shall be determined pursuant to copyright law.

## Work Acquired by Assignment or Will

The District may acquire copyrights by assignment or will pursuant to the terms of a written agreement or testament. The terms of such agreements should be consistent with District policies and these procedures.

## Materials Implicating Third Party Rights

District employees and students must comply with District policies and state and federal laws, including copyright and privacy laws, in creating works. District employees and students must obtain all required licenses, consents, and releases necessary to avoid infringing the rights of third parties. District employees and students with questions or concerns regarding third party rights should direct all inquiries to the **[Insert office or position]**.

## Intellectual Property Coordinator

The **[insert designated position]** shall be the District's Intellectual Property Coordinator. The coordinator shall administer this procedure and will implement the District's Intellectual Property Policy. The Intellectual Property Coordinator will also monitor the development and use of the District's intellectual property. Any questions relating to the applicability of the District Intellectual Property or this procedure may be directed and answered by the Intellectual Property Coordinator.

# Preservation of Intellectual Property Right

## Protection of Rights

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. 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.

## Payment of Costs

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. 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.

# Commercialization of Intellectual Property

## Right of Commercialization

The District may commercialize its Intellectual Property using its resources or it may enter into agreements with others to commercialize the work as authorized by law.

## Distribution of Proceeds

An employee who creates a work and retains an intellectual property interest in such work in which the District maintains intellectual property rights is entitled to share in royalties, licenses, and any other payments from commercialization of the work in accordance with applicable agreements and applicable laws. 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.

## Intellectual Property Account

The District shall deposit all net proceeds from commercialization of intellectual property in its own general intellectual property account. The **[insert authorized position]** 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.

## Notification

The Intellectual Property Coordinator shall provide a copy of these Intellectual Property Procedures to persons upon request. The District shall arrange training on a periodic basis for faculty, staff and/or other persons who are covered by this Intellectual Property Procedure.

## References:

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

## Attachments:

[AP 3715 Intellectual Property - Comments](#)  
[AP 3715 Intellectual Property - Form A](#)  
[AP 3715 Intellectual Property - Form B](#)  
[AP 3715 Intellectual Property - Legal Citations](#)