INTELLECTUAL PROPERTY

PURPOSE

The purpose of this intellectual property policy is to:

1. Protect instructional quality;
2. Protect the investment of time and resources on behalf of the College District;
3. Encourage the creativity of faculty, staff, and students; and
4. Support sharing of instructional materials and resources among faculty and staff.

DEFINED

This policy covers all types of intellectual property and applies to other types not listed here, regardless of whether they are protected by patent, copyright, trade secret, or other law. The following examples are not exhaustive:

1. Inventions;
2. Discoveries;
3. Trade secrets;
4. Trade and service marks;
5. Writings;
6. Art works;
7. Musical compositions and performances;
8. Software;
9. Literary works; and
10. Architecture.

OTHER DEFINITIONS

In this policy, the following definitions apply:

1. “College District-Supported Work” is intellectual property that was or will be created, modified, developed, or reproduced under one or more of the following circumstances:
   a. By a College District employee in the course and scope of employment.
   b. Except for a “scholarly work,” a work considered created in the course and scope of employment if it is related to an employee’s job responsibilities, whether or not the employee was specifically requested to create the work. Job responsibilities include tasks or activities that are included in a position description that are assigned by the supervisor or that are commonly expected of all persons in the job category. Creation of the work would normally

occur during College District time with College District resources, but an employee's use of personal time or other facilities will not change its characterization as a College District-supported work if it is related to the employee's job responsibilities.

c. By a College District employee through efforts undertaken, in whole or in part, when the employee is on duty to conduct College District business. This provision shall not apply to convert the ownership of a "scholarly work" to a College District-supported work for faculty.

2. "Incidental Use" of College District resources means that the normal consumption of College District-owned supplies or College District-paid utilities as is consumed in the ordinary course of work or study by the routine authorized actions of similar types of employees or students. Examples of incidental use are use of electronic mail, remote connection through a College District server, word processing, or other computing resources provided to all College District employees or students without restriction to quantity of use, library materials available to the public, and use of College District resources according to an approved course of instruction.

3. "Personal Work" is intellectual property that is unrelated to the employee's job responsibilities, and the employee has not used College District resources to create the property.

APPLICABILITY

All College District employees and students are covered by this policy, as well as anyone using College District facilities under the supervision of College District personnel.

OWNED BY AN EMPLOYEE

Intellectual property is owned by an employee:

1. If such intellectual property is unrelated to the employee's job responsibilities and the employee did not use College District resources to create the property (personal work);

2. If it is an invention that has been released to the inventor in accordance with this policy; or

3. If the intellectual property is embodied in a professional-, faculty-, or student-authored scholarly, educational (i.e., course materials), artistic, musical, literary, or architectural work in the author's field of expertise (from here on, a "scholarly work").

Unless it is a scholarly work created by someone who was specifically hired or required to create it or commissioned by the College

District, the College District, not the creator, shall own the intellectual property.

PROFESSIONALS AND RESEARCHERS

The use of the terms “professionals,” “faculty members,” and “students” is intended to encompass all those individuals who routinely create scholarly works.

For example, if a library administrator writes a book about Texas history, his or her field of expertise, the College District will not assert ownership of the book. Similarly, if an employee writes a scholarly journal article, the College District will not assert ownership of the work, even though the author is not a faculty member.

In the case of educational materials that involve significant College District resource contributions, the College District retains rights, for example, to use the work and to recover its investment. In some cases [see JOINT OWNERSHIP, below], the College District may be a joint author and owner of such works.

SCHOLARLY WORK

Scholarly works are owned by their author/creator if the author is a professional, a faculty member, or a student. Their scholarly works do not have to be disclosed to or reviewed by the institution. Scholarly works are usually protected by copyright rather than patent. Copyright protects works of authorship from the moment of their fixation in a tangible medium of expression, that is, instantly and automatically. As a result, the rigorous institutional review given to possibly patentable inventions is unnecessary to protect an interest in copyright works.

The College District’s primary interests with scholarly works owned by professionals, faculty members, and students are to allocate and recover resources that may be contributed to the creation of such works. If a project involves the use of significant College District resources, the creator and the College District shall agree before the project begins on use of facilities, allocation of rights to use the work, recovery of expenses, and sharing of benefits from commercialization of the work.

WORKS CREATED WITHIN THE SCOPE OF EMPLOYMENT

Except for scholarly works, works related to an employee’s job responsibilities, even if he or she is not specifically requested to create them, shall belong to the College District as works-for-hire. A copyright work is related to an employee’s job responsibilities if it is the kind of work he or she is employed to do, at least in part, for use at work, or for use by fellow employees, the College District, or the College District’s clients. The work should be performed substantially at work using work facilities, but use of personal time or other facilities to create the work will not change its basic nature if it is related to the employee’s job as described above. Works that have nothing to do with job duties shall remain the property of an

employee, so long as the employee makes no more than incidental use of College District facilities.

For example, if an employee's job with the College District is related to safety, a software program that the employee creates on the employee's own initiative to run on each employee's computer to show a graphic of the nearest fire exits is related to job duties and will belong to the College District, although no one asked the employee to create it and some of the programming was completed at home on a personally owned computer. A program that the employee creates that does not relate to his or her job, that is not used at work by the employee or others, and that was created on personal time shall belong to the employee.

EMPLOYEES SPECIFICALLY HIRED OR REQUIRED TO CREATE A WORK

An employee will know if he or she has been specifically hired or required to create a work in part by considering the employee's job description. For example, faculty members are required by the College District to create certain materials for use by their departments. In other cases a faculty member may be hired to create specific materials, such as online course materials for a specific class or department. In such a case, the College District shall own the copyright in the materials and any other resulting intellectual property.

There are several ways to clarify circumstances that are confusing or are exceptions to the more general rules.

Professionals, faculty members, or students employed to create specific intellectual property or hired to create intellectual property generally shall review and sign the single-page acknowledgment to clarify ownership of the works they create. The acknowledgment also applies to other employees who are hired to create intellectual property and to whom the royalty-sharing provisions may not apply, as discussed below.

INTELLECTUAL PROPERTY COMMITTEE

In general, employees should ask questions about the ownership of intellectual property before its creation to avoid misunderstanding.

The College District recognizes that individual questions may arise that call for specific and individual consideration. The Chancellor shall designate an Intellectual Property Committee, to be composed of such administrators and faculty representatives as he or she deems appropriate, to address and resolve such questions in a manner consistent with College District property.

Any one of these circumstances shall result in ownership by the College District if the intellectual property:

1. Is created by an employee within the scope of employment;

2. Is created on College District-paid time, with the use of College District facilities, or with state financial support;

3. Is commissioned by the College District:

   a. Pursuant to a signed contract; or

   b. If it fits within one of the categories of works considered works-for-hire under copyright law, including contribution to a collective work, part of a movie or other audiovisual work, a translation, a supplementary work, a compilation, an instructional text, a test, answer material for a test, or an atlas.

4. Results from research supported by federal funds or third-party sponsorship through the College District.

ELECTRONICALLY DEVELOPED COURSE MATERIALS

In general, electronically developed course materials (EDCM) embody text, graphics, and sound created by an employee directing a course or used by that employee with the permission of the creator. Ownership of the resulting intellectual property varies according to the following circumstances. For example:

1. If an owner of a personal or scholarly work independently combines that work into HTML documents without more than incidental use of College District resources, a personal or scholarly work owned by the creator is the result. If the faculty member or employee who is the owner of a personal or scholarly work requests authorized personnel to copy a course or its content, or both, from a template or shell in “BlackBoard” or similar system into another template or shell in the same system, the copying process is considered an incidental use.

2. If an owner of the same personal or scholarly work delivers it to a College District employee who combines the work, for example, with additional expression and linking organization into an HTML document, then the resulting work is a College District-supported work, jointly owned by the College District and the employee. The College District’s ownership interests extend to the EDCM but not to the underlying work(s).

Therefore, a faculty member’s lecture notes, manuscript excerpts, graphs, exam questions, and similar material that constitute scholarly or personal works retain that status despite incorporation into EDCM, but the addition of original expression by others within the scope of their employment makes the final product a College District-supported work.

A College District-supported work results when the EDCM contains any underlying College District-supported work, regardless of the manner of creation of the EDCM.

If an employee receives a stipend or release time, the College District-supported work is owned by the College District.

JOINT OWNERSHIP

Joint ownership of intellectual property between an employee and the College District is likely to be the case for works protected by copyright, such as multimedia courseware products and distance learning materials. Anyone who contributes the kind of expression protected by the law is a joint author if the contribution is intended to be part of the integrated whole. The College District's employees who work as programmers, graphic artists, video technicians, script writers, and the like create this expression. When added to a faculty member's contribution, the result is a jointly authored work, owned by the College District and the faculty member. There can be other author-owners as well.

SHARING ROYALTIES OR OTHER BENEFITS FROM COMMERCIALIZATION

In the majority of cases, the owner, whether the College District or an employee, shall retain all royalties or other benefits from any commercialization of the intellectual property with the following exceptions:

1. An employee owner shall share benefits with the College District from commercializing a College District invention released to the employee or if the work embodying the intellectual property required significant resource contributions from the College District to create or develop the intellectual property. In this case, the parties shall execute an agreement regarding the sharing arrangement before starting the project that will result in creation of the intellectual property.

2. The College District shall share royalties from commercialization of intellectual property it owns if the work is an invention, discovery, trade secret, trade or service mark, or software, regardless of how protected.

If an employee/creator was hired specifically or required to create the intellectual property or the work was commissioned by the College District, the royalty-sharing provisions of this policy shall not apply, and the owner (the College District) shall retain all benefits from commercialization.

ACTIONS

Intellectual property includes works protected by copyright, patent, trade secret, and other laws, but all intellectual property is not handled in the same way. Scholarly works are handled differently from inventions, discoveries, and ideas because concerns about protecting them are different, as explained above.

INVENTIONS	The College District shall normally own all inventions created by employees within the scope of their employment and must be sure that it can legally protect the invention if it hopes to license it. Since publication of the idea embodied in the invention bars the filing of a patent application in every country in the world besides the United States, and starts a one-year clock running on the right to file a patent application in the United States, publication is a very important event–one the College District would like to know about before it happens. Because of these concerns, inventors shall be required to disclose their inventions to the College District well before they have submitted any information about the invention for publication, made any public disclosure, or even made a private disclosure to a commercial entity. Occasionally, the inventor may wish to file a patent application while the College District's review is proceeding. If the College District authorizes such a patent application and then decides later to assert its interest, the inventor shall be reimbursed by the College District for patent expenses.
PATENTS AND OTHER LEGAL PROTECTIONS	If intellectual property belongs to the College District, the College District may secure patent or trademark protection. Copyrights do not require significant time or expense, and individuals who own a copyright work or invention may secure protection themselves, at their own expense.
EQUITY INTEREST AND MANAGEMENT	Although the College District is free to take an equity interest in a licensee as partial or full consideration for the license of College District intellectual property, it could be a conflict of interest for an employee of the College District to also be an employee, officer, director, or stockholder in a corporation or other business entity that licenses College District intellectual property. Because of this possible conflict of interest, College District employees may hold equity interests in licensees or may be employees, officers, or directors only if approval is granted by the College President or Chancellor.
APPROVAL AND EXECUTION OF DOCUMENTS	Patent, technology, and software license agreements, and other agreements that convey an interest in College District intellectual property, are reviewed by the College District's legal counsel.