

AP 3710 Securing of Copyright

Preamble

The Chaffey Community College District (CCCD) recognizes and encourages the creation of employee-developed works and course materials as an inherent part of the educational mission. It also acknowledges the privilege of district personnel (faculty, staff and students) to prepare, through individual initiative, articles, pamphlets, books, and course materials, that may be copyrighted by and generate royalty income for the author.

It is the District's belief that the public interest is best served by creating an intellectual environment whereby creative efforts and innovations are encouraged and rewarded, while still retaining for the District and its learning communities reasonable access to, and use of, the intellectual property for whose creation the District has provided assistance.

Purpose and Scope

This statement sets forth Chaffey Community College District's policy on copyright ownership.

Definitions

Copyright. Copyright is the intangible property right granted by federal statute for an original work fixed in a tangible form of expression. Copyright provides the owner with the following exclusive rights in a work: to reproduce, to prepare derivative works, to distribute by sale or otherwise, to perform publicly, and to display publicly.

Work. A work is any copyrighted expression including, but not limited to, literary work (written lectures are included); musical work including any accompanying words; dramatic work, including any accompanying music; pantomimes and choreographic work; pictorial, graphic, and sculptural work; motion pictures and other audiovisual work; sound recordings; and computer software.

Course materials. Course materials are those prepared for use in teaching 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 approval documents. These documents are submitted, reviewed and approved pursuant to applicable Curriculum Committee regulations related to the

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approval of a course of instruction, typically consisting of a course description, a statement of learning objective and a topical outline.

Designated academic or instructional appointees. Designated academic or instructional appointees are those District employees who have a general obligation to produce scholarly/aesthetic works or course materials. Included are all appointees with the title of Professor or Instructor. Appointees in other academic titles may also be designated by the appropriate immediate supervisor as having the obligation to produce scholarly/aesthetic works or course materials.

Independent academic effort. Independent academic effort is the inquiry, investigation, or research carried out by designated academic appointees to advance knowledge or the arts where the specific choice, content, course, and directions of the effort is determined by the designated academic appointee without direct assignment or supervision by the District. Independent academic effort includes the general obligation of designated academic appointees to produce scholarly/ aesthetic works.

License. A license is a contract in which a copyright owner grants to another permission to exercise one or more of the rights under copyright.

Originator. An originator is one who produces a work by his or her own intellectual labor. When there is more than one originator, the ownership of each originator's contributions shall be considered separately pursuant to this policy.

Permissible consulting activities. Permissible consulting activities are professional or scholarly services provided by District employees for compensation, which do not interfere with regular District duties, do not utilize District resources, and are not prohibited by terms of the District employment contract or other applicable District agreements or policies.

Royalties. Royalties are payments made to an owner of a copyright for the privilege of practicing a right under the copyright.

Sponsor. A sponsor is an organization or agency that provides funding, equipment, or other support for the District to carry out a specified project in research, training, or public service pursuant to a written agreement. Sponsors include Federal, State, local, and other governmental agencies as well as private industry, educational institutions, and private foundations.

Exceptional District resources. Exceptional resources are District resources (including, but not limited to District facilities and District funds, as described below)



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used significantly in excess of what is customarily available to similarly situated faculty members. Customary or normal use of secretarial support, library facilities, office space, personal computers, and District computers and networks during the academic year are not considered exceptional use of District resources. For the purposes of this policy, “District funds” and “District facilities” are defined as:

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

District facilities. District facilities include buildings, equipment, and other facilities under the control of the District.

Request for Exceptional Use of District Resources

In such cases where exceptional resources have been requested by the originator, the District’s copyright administrative facilitator is responsible for obtaining a written agreement with the originator(s) prior to granting the originator(s) request. The written agreement will specify ownership and control rights between the District and the originator(s).

Copyright Ownership by Category of Work

Course Materials. *Ownership of Materials Originated by Designated Instructional Appointees.* Except as provided below, ownership of the rights to Course Materials, including copyright, shall reside with the Designated Instructional Appointee who creates them. However, the District retains a fully paid-up, royalty-free, perpetual, and nonexclusive worldwide license to any Course Approval Documents for the purpose of continuing to teach the course of instruction for which the documents were prepared, with the non-exclusive right to revise and update them as required for this purpose as provided below in (*Course Materials Created with the Use of Exceptional District Resources*).

Course Materials Created with the Use of Exceptional District Resources. Ownership of the rights to Course Materials created, in whole or in part, by Designated Instructional Appointees with the use of Exceptional District Resources shall be governed by a written agreement entered into between the originator(s) and the District. The agreement shall specify how rights will be owned and controlled and how any revenues will be divided if the materials are commercialized. If no agreement is made, then *Ownership of Course Materials Originated by Designated Instructional Appointees* will remain in effect.

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Scholarly/aesthetic work. A scholarly/aesthetic work is a work originated by a designated academic appointee resulting from independent academic effort. Ownership of copyrights to scholarly/aesthetic works shall reside with the designated academic appointee originator, unless they are also sponsored works or contracted facilities works, or unless the designated academic appointee agrees to participate in a project which has special provisions on copyright ownership pursuant to the *Copyright Agreement and Notification Section* this policy.

Personal work. A personal work is a work that is prepared outside the course and scope of District employment (except for permissible non-District consulting activities) without the use of District resources. Ownership of copyrights to personal works shall reside with the originator.

Student work. A student work is a work produced by a registered student without the use of District funds (other than Student Financial Aid), that is produced outside any District employment, and is not a sponsored, contracted facilities, or commissioned work. Ownership of copyrights to student works shall reside with the originator.

Sponsored work. 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. 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 of District resources), the parties may enter into a written agreement to define the District and employee's intellectual property rights in the sabbatical work.

Ownership of copyrights to sponsored works shall be with the District unless the sponsored agreement states otherwise. Any sponsored work agreement that provides for ownership by other than the District generally shall provide the District with a free-of-cost, nonexclusive, worldwide license to use and reproduce the copyrighted work for education and research purposes.

Commissioned work. A commissioned work a work produced for District purposes by individuals not employed by the District or by District employees outside their regular District employment.

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When the District commissions for the production of a work, title normally shall reside with the District. In all cases, copyright ownership shall be specified in a written agreement. Any such agreement which provides for ownership by other than the District, generally shall also provide the District with a free-of-cost, nonexclusive, world-wide license to use and reproduce the copyrighted work for education and research purposes.

Contracted facilities work. A contracted facilities work is a work produced by non-District personnel or District personnel acting outside the course and scope of their employment, using designated District facilities pursuant to a written agreement. Ownership of copyrights to contracted facilities work shall be governed by the agreement permitting use of the specified District facilities. Depending on the nature of the facility and the nature and extent of the use, the agreement may specify that ownership of resulting copyrights rests with the District, or the District simply may be paid a fee for the use of the facility, or some other arrangement may be appropriate.

Institutional Work. Except as otherwise provided in this policy, the District shall own all copyrights to works made by District employees in the course and scope of their employment and shall own all copyrights to works made with the use of District resources.

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 this policy on copyrights and other District policies governing such acquisitions.

Copyright Ownership of Jointly Originated Works.

Copyright ownership of jointly originated works shall be determined by separately assessing the Category of Work of each originator pursuant to the above section. Rights between joint owners of a copyright shall be determined pursuant to copyright law.

Copyright Agreement and Notification.

Prior to any use of a District facility by non-District personnel or by District personnel outside District employment, a signed agreement shall be required that specifies the disposition of copyrighted works.

Designated academic appointees participating in sponsored projects must have an agreement on file with the District's copyright administrative facilitator which acknowledges: (a) individual and joint responsibility to produce and deliver sponsored



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works to the sponsor, as required by the terms of the sponsored project agreement, and/or to the District when so requested, and (b) that copyright ownership of sponsored works, unless reserved to the sponsor or otherwise provided for in the sponsored project agreement, shall vest in the District.

Any designated academic appointee, other employee, or student wishing to participate in a specified District project that includes copyright ownership requirements other than provided in the section on Copyright Ownership by Category of Work Section of this policy must sign an agreement indicating his or her concurrence with the project's special conditions. The District's copyright administrative facilitator shall designate special District projects that shall require such special copyright agreements.

Involuntary Transfer

When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title, except as provided under title 11. (United States 8 Copyright Law § 201 (e))

Release of District Rights

The District may release its ownership rights in copyrighted works to the originator(s) when, as determined by the District: (a) there are no overriding or special obligations to a sponsor or other third party; and (b) the best interests of the District would be so served. Such release of ownership rights must be contingent on the agreement of the originator(s) that no further effort on, or development of, the work will be made using District resources and that the District is granted a free-of-cost, nonexclusive, worldwide license to use and reproduce the work for education and research purposes.

Licensing and Royalties

Material created for ordinary teaching use in the classroom and in department programs, such as syllabi, assignments, and tests, shall remain the property of the faculty author, 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.

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In an agreement transferring copyright for such works to a publisher, faculty authors are urged to seek to provide rights for the District to use such works for internal instructional, educational, and administrative purposes.

Funds received by the faculty member from the sale of intellectual property owned by the faculty author or inventor shall be allocated and expended as determined solely by the faculty author or inventor.

Funds received by the District from the sale of intellectual property owned by the District shall be allocated and expended as determined solely by the District.

Funds received by the faculty member and the District from the sale of intellectual property owned jointly by the faculty member and the District shall be allocated and expended in accordance with any specific agreement made between the District and the faculty member.

In the event of multiple creators, the creators will determine the allocation their individual shares when the work is first undertaken.

The District may assign or license its copyrights to others. Royalty or income received from such transactions may be shared with the originator(s) of such works, as determined by the appropriate administrative officer, taking into account the originator's contribution, the District's costs, any provisions imposed by sponsors or other funding sources, and any other applicable agreements concerning the copyright.

Copyright Responsibility and Administration

For copyrighted works under their respective jurisdictions, the appropriate administrators are authorized to:

- Issue guidelines, implementing procedures, and supplementary local practices consistent with this policy. These may include directives regarding licensure, disposition of royalty income, and other rights related to copyrights. Copies of such guidelines, policies and procedures shall be sent to the Superintendent/President or designee;
- Identify campus, laboratory, and other District facilities or projects as having special copyright assignment obligations and issue guidelines and implementing procedures regarding assignment of copyright in works produced using such facilities or projects;
- Register copyrights, accept copyrights from third parties, and sell, assign, or grant licenses in the name of the District for any rights to copyrights; and



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- Release District ownership rights to copyrighted works that are in the name of the District pursuant to the section on the Release of District Rights.

References: Education Code Sections 72207 and 81459;
17 United States Code Section 201

Approved: 04/18/17