



AP 3715 INTELLECTUAL PROPERTY

References:

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

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. District resources also means time ordinarily devoted to a faculty member's teaching activity or an employee's employment responsibilities.

“Course Materials” means 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.



“Employee” means an individual employed by the District, and shall include full-time and part-time faculty as defined in BP/AP 7210 Academic Employees, classified staff, student employees, appointed personnel, persons with "no salary" appointments, and academic professionals, who develop intellectual property using District resources, unless there is a written 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 of 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 generally 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 also means the expenditure of 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 a written agreement.

Employee Intellectual Property Rights

Academic Works

A faculty member who is the creator of an academic work in his/her area of expertise, created without a substantial use of District resources, owns the intellectual property rights to that work. Academic works include textbooks, lecture notes and other course materials, literary works, artistic works, musical works and architectural works and software.



Other Intellectual Property

A District employee who is the creator of other intellectual property, including software or other encoded work, owns the intellectual property rights to the property only if the property is unrelated to the employee's employment responsibilities and is created on the employees' own time and without a substantial use of District resources.

District Intellectual Property Rights

Except as otherwise provided in this procedure, the District shall have ownership of all intellectual property rights relating to works or intellectual property created by its employees, including, but not limited to, those created in the following circumstances:

- Intellectual property created through the District's administrative activities by an employee working within his/her scope of employment;
- Intellectual property created by an employee executing a duty or specific assignment designated by the District;
- Intellectual property created through the employee's substantial use of District resources;
- Intellectual property commissioned by the District pursuant to a signed contract (unless the contract provides to the contrary);
- Intellectual property produced within one of the nine categories of works considered works for hire under copyright law, pursuant to a written contract;
- Intellectual property produced from research specifically supported by state or federal funds or third party sponsorship;
- Intellectual property created by an employee that is related to the employee's employment responsibilities, regardless of whether work was created on the employee's own initiative or own time. For example, if an employee in the student records office, on his/her own initiative and his/her own time, creates a software program that will organize student records, such work is related to the employee's job duties and will belong to the District.

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. On request of the District, the creator shall execute documents assigning intellectual property rights to the District.

The Superintendent/President may waive the District's interests in its intellectual property only by executing a written waiver.

Student Intellectual Property Rights

District students who have created a work product are owners of and have intellectual property rights to that product. District students own the intellectual property rights to the following work products created while they are students at the District:

- intellectual property created to meet course requirements using college or District resources, and
- intellectual property created using resources available to the public.

Intellectual property work products 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 above 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 (i.e. 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. (see BP/AP 7341 Sabbatical Leaves)

Assignment of Rights

Any person may agree to assign some or all of his/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.

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 intellectual property rights 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 at no cost to the District.

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 written collaboration/partnership agreement, or in the absence of a written agreement, 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.

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 chair of the District Copyright Committee (see BP/AP 3720 Copyright Compliance and AP 3720 Computer and Network Use).

Intellectual Property Coordinator

The chair of the District Copyright Committee (see BP/AP 3720 Copyright Compliance) shall be the District's Intellectual Property Coordinator. The chair, in consultation with the District Copyright Committee, shall administer this procedure and will implement the District's Intellectual Property Policy (BP 3715 Intellectual Property). The chair 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 chair.

Preservation and Commercialization of Employee/Student Intellectual Property 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 and the creator is entitled to all revenues received.

Preservation of District Intellectual Property Rights



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 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 District 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 written agreements and/or 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 Chief Business Officer 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 chair of the District Copyright Committee shall provide a copy of these procedures to persons upon request. The District may arrange training on a periodic basis for faculty, staff, and/or other persons who are covered by this Intellectual Property Procedure.

Approved: June 1, 2016