

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

10 **Definitions**

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

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

17 "*Author*" or "*Creator*" means an individual who alone or as part of a group of other creators,
18 invent, author, discover, or otherwise create intellectual property.

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

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

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

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

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

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

39 "*Employee*" means an individual employed by the District, and shall include full-time and part-time
40 faculty, classified staff, student employees, appointed personnel, persons with "no salary"
41 appointments, and academic professionals, who develop intellectual property using District
42 resources, unless there is an agreement providing otherwise.

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

47 “*Student*” means an individual who was or is enrolled in a class or program at the District at the
48 time the intellectual property was created.

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

52 “*Substantial Use of District Resources*” means use of District resources (including, but not limited
53 to District facilities and District funds, as described above) significantly in excess of the usual
54 support generally available to similarly situated faculty members. Customary secretarial support,
55 library facilities, office space, personal computers, access to computers and networks, use of
56 course management systems and academic year salary are not considered substantial use of
57 District resources.

58 In such cases where substantial resources have been requested, the District is responsible for
59 obtaining a written agreement with the Originator(s) prior to granting the Originator(s) request.
60 The written agreement will specify ownership and control rights between the District and the
61 Originator(s).

62 “*Work*” means an “original work of authorship fixed in a tangible medium” as used in the
63 Copyright Act.

64 **Ownership of Intellectual Property**

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

67 **Employee Intellectual Property Rights**

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

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

78 **District Intellectual Property Rights**

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

81 (1) If intellectual property is created through the District’s administrative activities by an employee
82 working within his or her scope of employment; or

83 (2) If intellectual property is created by an employee executing a duty or specific assignment
84 designated by the District; or

85 (3) If intellectual property is created through the substantial use of District resources; or

86 (4) If intellectual property is commissioned by the District pursuant to a signed contract; or

87 (5) If intellectual property is produced within one of the nine categories of works considered *works*
88 *for hire* under copyright law pursuant to a written contract, or

89 (6) If intellectual property is produced from research specifically supported by state or federal
90 funds or third party sponsorship. Grant funds obtained by faculty members for the creation of
91 works shall be considered substantial support provided by the District only if the District is
92 involved in the fiscal administration of the grant.
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94 Where circumstances give rise to District intellectual property rights, as described above, the
95 creator of the potential intellectual property will promptly disclose the intellectual property to the
96 District. The District and the creator may enter into a written agreement whereby the creator
97 executes documents assigning intellectual property rights to the District.

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

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

106 **Modification of Ownership Rights**

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

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

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

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

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

142 **Collaboration/Partnership Agreements.** The District may participate in projects with
143 persons/organizations that result in the creation of intellectual property. Ownership rights of such

144 intellectual property will be defined by the collaboration/partnership agreement, or shall be
145 determined under applicable law.

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

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

156 **Encoded Works/Software for Administrative Activities.** The District may hire an individual or
157 entity to develop software or other encoded works, to be used in the District's administrative
158 activities. The District shall maintain ownership of the intellectual property rights in such encoded
159 works. Similarly, the District shall have ownership of the intellectual property rights in encoded
160 works created by an employee, even where the work was created out of the employee's own
161 initiative, if the work is related to the employee's job responsibilities. For example, if an employee
162 in the student records office creates a software program, on his own initiative, which will organize
163 student records, such work is related to the employee's job duties and will belong to the District.
164 Where an employee creates a program that does not relate to his or her job duties, and that
165 program was created on the employee's own time, the work belongs to the employee.

166 **Collective Bargaining Agreement.** In the event the provisions of these procedures and the
167 provisions of any operative collective bargaining agreement conflict, the collective bargaining
168 agreement shall take precedence.

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

172 **Work Acquired by Assignment or Will.** The District may acquire copyrights by assignment or
173 will pursuant to the terms of a written agreement or testament. The terms of such agreements
174 should be consistent with District policies and these procedures.

175 **Materials Implicating Third Party Rights**

176 District employees and students must comply with District policies and state and federal laws,
177 including copyright and privacy laws, in creating works. District employees and students must
178 obtain all required licenses, consents, and releases necessary to avoid infringing the rights of
179 third parties.

180 **Preservation of Intellectual Property Right**

181 **Protection of Rights.** The District shall undertake such efforts, as it deems necessary to
182 preserve its rights in original works for which the District is the sole or joint owner of intellectual
183 property rights. The District may apply for a patent, for trademark registration, for copyright
184 registration, or for other protection available by law on any new work in which it maintains
185 intellectual property rights.

186 **Payment of Costs.** The District may pay some or all costs required for obtaining a patent,
187 trademark, copyright, or other classification on original works for which it exclusively owns
188 intellectual property rights. If the District has intellectual property rights in a jointly owned work,
189 the District may enter into an agreement with the joint owners concerning payment of such costs.

190 **Commercialization of Intellectual Property**

191 **Right of Commercialization.** The District may commercialize its Intellectual Property using its
192 resources or it may enter into agreements with others to commercialize the work as authorized by
193 law.

194 **Distribution of Proceeds.** An employee who creates a work and retains an intellectual property
195 interest in such work in which the District maintains intellectual property rights is entitled to share
196 in royalties, licenses, and any other payments from commercialization of the work in accordance
197 with applicable agreements and applicable laws. All expenses incurred by the District in
198 protecting and promoting the work including costs incurred in seeking patent or copyright
199 protection and reasonable costs of marketing the work, shall be deducted and reimbursed to the
200 District before the creator is entitled to share in the proceeds.

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202 Reference:

203 *17 USC 101 et seq.; 35 USC 101 et seq.; and 37 CFR 1.1 et seq.*

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