



Butte-Glenn Community College District ADMINISTRATIVE PROCEDURE

AP 3710 – Securing of Copyrights

Approved by Leadership: January 2014

Reference: Education Code 72207, 81459, 17 United States Code 201

The Board of Trustees recognizes and encourages the creation of employee-developed materials as an inherent part of the educational mission. The Board also acknowledges the privilege of District faculty and staff to prepare, through individual initiative, articles, pamphlets, books, scholarly works, creative publications, and technology-based materials, including online or hybrid courses, that may be copyrighted by and generate royalty income from the author. Inherent in this are the following general assumptions:

1. That the rights of faculty and staff of the District need to be fairly balanced through collegial dialogue.
2. That the following definitions regarding copyright, royalties, and utilization of all materials will be consistent with the promotion of academic freedom and “fair use” guidelines.
3. That the District is not interested in entering into agreements for the express purpose of achieving a financial gain; the District is interested in receiving fair compensation for use of public resources employed in the creation of such works.

Definition of Copyrightable Material

The following are defined as copyrightable materials by the Butte-Glenn Community College District.

1. Books, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests and proposals.
2. Lectures, musical or dramatic compositions, and unpublished scripts.
3. Films, film strips, charts, transparencies, and other visual aids.
4. Video and audio tapes and cassettes.
5. Live video or audio broadcasts.
6. Program and instruction materials, including online and hybrid courses.
7. Computer programs.

Additional Definitions

“**Works**” means any material that is eligible for copyright protection.

“**District Support**” includes the use of district funds, personnel, facilities, equipment, materials, or technology. District Support may be either Nominal or Substantial, or a combination thereof.

“**Nominal District Resources**” include those that are customarily available or provided in the course of the faculty member's usual appointment or assignment, such as but not limited to the following: support services provided by other employees, standard indirect costs, the use of computers,

photocopy machines, office supplies, the use of an assigned office and telephone, library services, software, multi-media equipment, learning management system for delivery of online learning, compensation for any required training, and performance capture equipment available for use by any faculty member. A budget which is customarily provided for the faculty member's usual appointment or assignment shall be considered a Nominal District Resource.

“Substantial District Resources” shall be direct costs to the District and include the provision of a budget over and above any budget customarily provided for the faculty member's usual appointment or assignment. The assignment by the District of other employees to provide secretarial, technical, or creative services specifically for the creation of the Work shall be considered Substantial District Resources. Expensive or substantial District equipment, facilities, and/or other resources (professional recording and filming studios, professional television cameras, etc.) are Substantial District Resources. Reassigned time or stipends allocated for the creation of specific Works are Substantial District Resource; such specific Works include the creation and delivery of new online courses.

Copyright Ownership

The District encourages faculty, staff, and students to create scholarly and instructional intellectual property. In this context, copyright ownership of such works generally rests with the creator(s) unless their creation is directed by the District, or is subject to a sponsor's agreement that provides for a different ownership.

Faculty

Copyrights for Works created by a faculty member using Nominal District Resources will be owned by the faculty member. This is the case even if those Works are created in connection with courses taught or other duties performed as a faculty member while employed by the District unless an alternative agreement has been specified under the terms of an Intellectual Property Rights Agreement Form (IRP Agreement Form) between the District and faculty member. Such Works cannot be used by the District or any District employee other than the faculty member unless the faculty member has specifically consented to this in the IRP Agreement Form.

Copyrights for Works by a faculty member created under a contract which specifically identifies such Works as being “for hire” shall be the property of the District unless an alternative agreement has been specified under the terms of an IRP Agreement Form between the District and faculty member. Such Works cannot be used by the faculty member unless the District has consented to this in the IRP Agreement Form.

Copyrights for Works created by a faculty member using Substantial District Resources shall belong both to the District and faculty member. All royalties or profits are to be divided as provided in the IRP Agreement Form to be signed before the project is begun. Any use by either the District or the faculty member of pertinent Works must be permitted by the terms of the IRP Agreement Form.

If the Work in question is the creation of a new online course by the faculty member receiving Substantial District Resources, both the District and the faculty member are automatically restricted in their use of such course for an initial two-year period. During this two-year period, the District agrees that no other District employee will use the course. During this same period, the faculty member agrees that he/she will not use the course in any manner other than within his/her District employment. Any exception to this automatic two-year restriction by either party must be documented in an IRP Agreement Form.

Staff

All materials defined as copyrightable developed or executed by a staff member during the course of contractual duties and subject to or eligible for patent, copyright, or any other similar right of

ownership and/or distribution are the properties of the District and the employee with the determination of rights to copyrightable material allocated as follows:

1. A staff member may claim the right to copyright any material created outside of the faculty or staff member's employment with the District. If this creation involves use of District equipment or supplies the staff member shall retain the right to copyright the material, but shall reimburse the District for the cost of production.
2. The District may claim the right to copyright material if the District specifically commissioned it, or the work is identified as an institutional effort. An institutional effort is defined as one in which the work was produced by a District council, committee, or project team or other college entity as part of conducting the business of the District. Otherwise, the right to copyright the material will belong to the staff member responsible for its creation.
3. The District and the staff member may agree to share the right to copyright materials if the work is created by the staff member and the District contributes services, staff, or financial resources necessary for completion. This will be accomplished through a separate contract at the time the project is initiated. Staff should consult with their respective legal counsel and/or bargaining unit before entering into the contract.

Copyright Registration

Responsibility for official registration of copyright will lie with the owner of the copyright. In those cases where there is shared ownership, the District will be responsible for filing for both parties for registration of copyright.

Royalties and Distribution Rights

The ownership of copyright determines royalty distribution rights.

1. When faculty and staff members have full copyright ownership, they retain full royalty distribution rights.
2. When the District has full copyright ownership, it retains full royalty distribution rights.
3. If the District and the faculty and staff member share copyright ownership, royalty distribution rights will be as follows:
 - All royalties or profits will be distributed to reimburse the copyright owners for documented expenses related to the creation and production of materials.
 - Any remaining royalties or profits will be distributed according to the terms of a separate contract.

District Use of Copyrighted Materials for Commercial Distribution

Before the District enters into any agreement for commercial redistribution of an instructional activity performed by the faculty or staff member as part of their employment with the District, the District must first obtain written permission of the faculty or staff member. The District will retain all profits from such commercial redistribution.

In any case of conflict between this administrative procedure and a collective bargaining agreement, the appropriate provision of the collective bargaining agreement shall prevail.

Policing of Infringements

See AP 3750 – Use of Copyrighted Materials

**Butte-Glenn Community College District
Intellectual Property Rights Agreement Form**

1. This work is titled:
2. It is proposed by:
3. The description of this work is as follows:

4. Is this a work created by a faculty member using Nominal District Resources, a work done “for hire,” or a work created by a faculty member using Substantial District Resources?

5. Is there is an expectation for the contribution of Substantial Resources from the District?
If yes, describe:

6. What is the expected faculty contribution and compensation?

7. Ownership of copyrights and royalties to the product shall be _____ % faculty member and
% District.

8. Usage allowed of this work is as indicated in the District/BCEA/PFA Intellectual Property Rights
Policy unless different usage or competition policy is specified here:

Ten working days prior to signing by the faculty member and District, this agreement will be shared with the faculty member’s representative union. BCEA and PFA also recommend that the faculty member personally review this agreement form with a union representative prior to signing. As stated in the Intellectual Property Rights Agreement between the District and the Associations, if the Work in question is the creation of a new online course by the faculty member, both the District and the faculty member are automatically restricted in their use of such course for an initial two-year period. During this two-year period, the District agrees that no other District employee will use the course. During this same period, the faculty member agrees that he/she will not use the course in any manner other than within his/her District employment. Any exception to this automatic two-year restriction by either party must be documented in this Agreement Form.

Faculty Signature _____ Date_____

District Signature_____ Date_____