Sierra College
ADMINISTRATIVE PROCEDURE                      AP 3715

Intellectual Property

Date Adopted: 5/7/2007
Date Revised: 5/13/2016
Date Reviewed: 5/13/2016
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.; Article 23 of the Agreement between Board of Trustees, Sierra Joint Community College District and Sierra College Faculty Association

The following 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. The ownership rights to any creation at the District shall be determined generally as set forth in this Administrative Procedure, unless ownership is modified by an agreement. All class or research materials developed by a faculty member, including, but not limited to videotapes, computer programs, pamphlets, training materials, outlines, syllabi, audio tapes, and similar materials produced for course sections, shall become the property of that unit member. The right to claim copyright (ownership) of the class or research materials (hereinafter referred to as “intellectual property”) that result from the systematic organization of said materials shall be as follows:

1. Definitions
   For the purposes of this procedure, the following definitions apply to the following words or phrases:
   a. “Assigned Time” or “Assignable Time (also referred to as “Accountable Time”):
      i. “Assigned time – Instructional Faculty” includes lecture hours, laboratory hours, office hours, and other assignments.
      ii. “Assigned time – Special Services Faculty” includes services and activities related to assignment.
   b. “District Resources” means all tangible resources including buildings, equipment, facilities, computers, software, personnel, and funding.
   c. “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 instruction materials.

d. “Substantial Use of District Resources” means use of District resources beyond the normal professional, technology, and technical support generally provided by the District and 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 be 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 faculty. A substantial use of the District’s resources may be implicated in situations where the creator spends such time and energy in the creation of a work that results in a great reduction of the creator’s teaching activity.

e. “Work for Hire” means work that was created by the faculty member within his or her accountable time with the District (See Appendix C, Excerpt from “Works Made for Hire,” Circular 09, U.S. Copyright Office).

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

2. Faculty Intellectual Property Rights

The faculty member claims the copyright of intellectual property if it is created outside his or her assignable time with the District and does not, during its creation, make substantial use of District resources.

3. District Intellectual Property Rights

The District owns all other copyrights, including but not limited to patentable inventions, such as computer software, created by any of its employees under the following circumstances:

- If intellectual property is created through the District’s administrative activities by an employee working within his/her scope of employment; or
- If intellectual property is created by an employee executing a duty or specific assignment designated by the District; or
- If intellectual property is created through the substantial use of District resources; or
- If intellectual property is commissioned by the District pursuant to a signed contract or the class or research is an institutional effort; or
- If intellectual property is produced within one of the nine categories of works considered works for hire under copyright law pursuant to a written contract (See Appendix C, Excerpt from “Works Made for Hire,” Circular 09, U.S. Copyright Office), or
- If intellectual property is produced from research specifically supported by state or federal funds or third party sponsorship.

4. Joint Work

The District and the faculty member share the copyright if intellectual property is created under circumstances in which the faculty member contributes his or her time outside the accountable time to the District and the District contributes District resources, or under other circumstances not outlined above. The agreement delineating the terms of shared copyright
must be signed by the faculty member, SCFA, and the District in advance of the creation of the intellectual property. (See Appendix B, “Joint Work Agreement”)

5. **Royalty Rights**

Royalty distribution rights shall be determined by copyright ownership. Faculty members with full copyright ownership retain full royalty distribution rights. The District with full copyright ownership retains full royalty distribution rights. The use of District resources solely for the delivery of instruction will not be construed as giving the District an interest with regard to intellectual property rights.

If the District and faculty member share copyright ownership, the District, on behalf of both parties, shall be responsible for registering copyright. Royalty distribution rights shall be allocated as follows: One hundred percent of royalties or other profits shall be distributed to reimburse the District and/or faculty member(s) for documented expenses for the creation and production of the intellectual property until all such documented expenses are completely reimbursed. The remainder of any royalties or other profits shall be distributed 50% to the District and 50% to the faculty member(s) sharing the copyright. Distribution of royalty income when there is shared ownership shall be based upon the percentage of ownership as determined above.

6. **Advance Agreement**

Issues of copyright ownership and royalty distribution under the provisions of this Administrative Procedure shall be resolved in advance of the intellectual property’s creation by the Committee on Intellectual Property (see Appendix A, Sample Advance Agreement). This Committee shall consist of an educational administrator selected by the District, a faculty member selected by the Academic Senate and a faculty member selected by SCFA.
Full-time faculty member, Jane Doe (hereinafter referred to as “Doe”), has petitioned the Sierra College Faculty Association (hereinafter referred to as “SCFA”) for an advance determination pursuant to Article 23 of the Collective Bargaining Agreement, that copyright ownership and royalty distribution be resolved in advance, relating to the creation by her/him of a literary work that s/he anticipates creating that having, as its intended subject matter (in general terms), “subject matter of creation.”

Doe plans to work on this effort outside of her/his assignable time with the Sierra Community College District (hereinafter referred to as “District”), and during any future sabbatical time s/he may apply for. In conjunction with this effort, the District is under no obligation, nor will it be, to contribute services, staff, and/or financial resources to the literary work.

Based upon the foregoing, Doe and the District’s Committee on Intellectual Property agree that the above described literary work that Doe anticipates creating shall belong to her/him, and the District claims no copyright or other claim associated with said literary work.

Dated: __________________________
Month Day, Year

Faculty Member: Committee on Intellectual Property:

______________________________ (District Designee)
Jane Doe
______________________________ (SCFA Appointee)

______________________________ (Academic Senate Designee)

Original to Personnel File
cc: Jane Doe
______________________________ District Designee
______________________________ SCFA Appointee
______________________________ Academic Senate Designee
APPENDIX B

Sample Joint Work Agreement

INSERT SAMPLE
Copyright law protects a work from the time it is created in a fixed form. From the moment it is set in a print or electronic manuscript, a sound recording, a computer software program, or other such concrete medium, the copyright becomes the property of the author who created it. Only the author or those deriving rights from the author can rightfully claim copyright.

There is, however, an exception to this principle: “works made for hire.” If a work is made for hire, an employer is considered the author even if an employee actually created the work. The employer can be a firm, an organization, or an individual.

The concept of “work made for hire” can be complicated. This circular refers to its definition in copyright law and draws on the Supreme Court’s interpretation of it in Community for Creative Non-Violence v. Reid, decided in 1989.

**Definition of Law**

Section 101 of the Copyright Act (title 17 of the U.S. Code) defines a “work made for hire” in two parts:

1. a work prepared by an employee within the scope of his or her employment or
2. a work specially ordered or commissioned for use
   1) as a contribution to a collective work,
   2) as a part of a motion picture or other audiovisual work,
   3) as a translation,
   4) as a supplementary work,
   5) as a compilation,
   6) as an instructional text,
   7) as a test,
   8) as answer material for a test, or
   9) as an atlas,

if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.