

# Article 28

# Intellectual Property

## 28.1 Purpose

The District and the LRCFT have a mutual interest in establishing an environment that fosters and encourages the creativity of individual faculty members in responding to the educational needs of a diverse student population. In accordance with that mutual goal, the purpose of this article is to identify the owners of the copyrights to certain works that may be created by faculty members and to identify the uses that may be made of those works by faculty members and the District.

## 28.2 Definitions

As used in this article:

- a. *Works* means any material that is eligible for copyright protection including, but not limited to, books; articles; dramatic and musical compositions; poetry; instructional materials, e.g., syllabi, lectures, student exercises, multimedia programs, and tests; fictional and non-fictional narratives; analyses, e.g., scientific, logical, opinion or criticism; works of art and design; photographs; films; video and audio recordings; computer software; architectural and engineering drawings; and choreography.
- b. *License* means permission to use a work. A “non-exclusive license” is one that gives permission to use a work while that same work may also be used by the party who gave the permission and by others to whom permission is also given.
- c. *Substantial Support* means financial support over and above the cost of the faculty member’s normal compensation, office space, office computer, local telephone use, minimal office supplies and copy services. Substantial support would include extra compensation or the provisions of reassigned time to create a work, the cost of providing secretarial, technical, legal or creative services specifically for the creation of a work, as well as the cost or value of the use of expensive District equipment or facilities (such as professional film or recording studios).

## 28.3 Works Covered

- a. This article identifies the copyright ownership of many works created by a faculty member in connection with the courses he/she teaches, or other duties he/she performs as a faculty member while he/she is employed by the District and in connection with their employment; and it addresses the use of those works by faculty members and the District.
- b. This article does not cover all works created by faculty members, even if those works are in some sense related to their duties. It does not cover works created primarily for purposes that are separate from a faculty member’s teaching or other duties as a faculty member, such as: novels, even if written by faculty members who teach literature; business books, even if written by faculty members who teach business; art works, even if created by faculty members who teach art; or music, even if composed by faculty members who teach music.

- c. This article does not cover works created by faculty members for their own personal use that are not intended to be distributed to others, even if created in connection with their duties, such as a faculty member's personal lecture notes.
- d. The copyrights to works that are not covered by this article shall not be owned by the District under Article 28.4.2a below, and the District is not authorized to use such works under Article 28.5.1b below.

## 28.4 **Copyright Ownership**

### 28.4.1 Ownership by Faculty Members

The copyrights to works covered in this article will be owned by faculty unless the work is created under the circumstances described in Article 28.4.2a below.

### 28.4.2 Ownership by the District

The District will own the copyright to works covered in this article when:

- a. The District has provided substantial support for creation of the work. The faculty member who created the work may acquire the work's copyright by mutual agreement.
- b. Circumstances relating to the nature of the work. For the purposes of defining faculty ownership interests, the District will also own the copyright to any work, such as a course outline, administrative policy, or information brochure, that is formally reviewed by the District and becomes part of its curriculum, policies, or administrative or promotional literature.

### 28.4.3 Process for Documenting District Ownership and Faculty Member's Option

- a. If the District is to be the owner of the copyright to a work, the faculty member and the District shall sign an agreement specifying the terms and conditions of ownership.

## 28.5 **Permitted Uses**

### 28.5.1 Use of Work When Copyright is Owned by Faculty Member

- a. Uses by Faculty Member  
The District acknowledges that faculty members may use works whose copyrights they own in any and all ways they may wish, including, for example, authorizing the for-profit publication of such works in return for royalties paid solely to faculty members, subject only to the District's non-exclusive license to use those works (set forth in the following subsection below), without any further authorization from the District.
- b. Uses by District  
The District shall have a non-exclusive license to use works whose copyrights are owned by faculty members in the following ways: (1) to

reproduce such works (for example, by photocopying them, by duplicating computer disks on which they have been saved, or by installing them on computer networks); (2) to distribute such works (for example, to students in classes); (3) to perform such works (for example, in classroom teaching by webcasting or by broadcasting); (4) to display such works (for example, over the web); and (5) to create derivative works (for example, companion materials or updated versions).

- c. The District may not authorize others to do these things without the written consent of the faculty member who owns the work's copyright.

#### 28.5.2 Use of Work When Copyright is Owned by District

- a. Uses by District

Faculty members acknowledge that the District may use works whose copyrights the District owns in any and all ways it may wish, including, for example, authorizing the for-profit publication of such works in return for royalties paid solely to the District, subject only to the non-exclusive license of the faculty member who created the work to use it (in the manner set forth in the following paragraph), without any further authorization from the faculty members who created those works. The District has a right to expect that faculty members will use, in the course of their regular employment, works for which they received nominal support or that are made in the course of their employment (i.e. syllabi, tests) without additional compensation.

- b. Uses by Faculty Member

Faculty members shall have a non-exclusive license to use works they created, whose copyrights are owned by the District, in the following ways: (1) to reproduce such works (for example, by photocopying them, by duplicating computer disks on which they have been saved, or by installing them on computer networks); (2) to distribute such works (for example, to students in classes); (3) to perform such works (for example, in classroom teaching by webcasting or by broadcasting); (4) to display such works (for example, over the web); and (5) to create derivative works (for example, companion materials or updated versions).

#### 28.5.3 Use of Names of Faculty Members and District

- a. District's Use of Faculty Member's Name

The District agrees that when it uses a work created by a faculty member (regardless of who owns the work's copyright), the District will identify the faculty member who created the work for as long as the work continues to be used by the District.

- b. If the District does not wish to identify the faculty member, the District may ask the faculty member for authorization not to do so and the faculty member has the option, but not the obligation, to release the District from this obligation.

- c. If the faculty member does not wish his/her name to be used in this manner, the faculty member has the right to require the District not to identify him/her and, in such a case, the District agrees not to do so or to stop doing so as soon as reasonably possible.
- d. If the District fails to identify a faculty member under circumstances when it should have, or identifies a faculty member under circumstances when it should not have, the faculty member shall be entitled only to a reasonable remedy that takes into account the seriousness of the violation and will not automatically be entitled in all cases to a remedy that requires the District to recall and destroy all existing copies of works that fail to include or omit the faculty member's identification.

#### 28.5.4 Faculty Member's Use of Name of District

- a. Faculty members agree that when they use works they have created (regardless of who owns the works' copyrights), those works will identify the creators' relationships with the District or college, for as long as they continue to be employed by the District. (For example, if a faculty member creates an on-line course that identifies the faculty member as its author, the faculty member's name shall be followed by the name of the college at which the faculty member teaches.)
- b. If for any reason a faculty member does not wish to identify his/her relationship with the District, the faculty member may ask the District for authorization not to do so. The District has the option to release the faculty member from this obligation.
- c. If for any reason the District does not wish its name to be used in this manner, the District has the right to require the faculty member not to identify his/her relationship with the District, and in such a case, the faculty member agrees not to do so or to stop doing so as soon as reasonably possible.
- d. If the faculty member fails to identify the District or college under circumstances when he/she should have, or identifies the District or college under circumstances when he/she should not have, the District shall be entitled only to a reasonable remedy that takes into account the seriousness of the violation and will not automatically be entitled in all cases to a remedy that requires the faculty member to recall and destroy all existing copies of works that fail to include or omit the District's or college's identification.

## 28.6 **Responsibilities**

### 28.6.1 Registration of Copyright

It shall be the responsibility of the party who owns the copyright to each work to register that copyright with the United States Copyright Office.

28.6.2 Acquiring and Paying for Necessary Rights from Third Parties

If the creation or use of a work requires rights to be acquired from third parties, such right shall be acquired and paid for by the party, i.e., the faculty member or the District, who owns the copyright to that work. In some cases, the cost of acquiring necessary rights from third parties, if paid by the District, may itself constitute “substantial support” from the District so the District would become the owner of the copyright to such works simply because it paid to acquire those rights.

28.6.3 Determining and Documenting Copyright Ownership When Two or More Faculty Members Create and Own the Copyright to a Work

If a work whose copyright would be owned by a faculty member (rather than by the District) is created by two or more faculty members, it is the responsibility of those faculty members to determine the manner in which they share ownership of the copyright to that work, and it is their responsibility to prepare (or have prepared at their own expense) a written agreement between them documenting their determination. No grievance against the District may be asserted by faculty members arising out of any consequences of their failure to make or document an agreement concerning the manner in which they share ownership of the copyright to such a work.

28.7 **Authorization of Individual Agreements the Terms of Which Differ From Those Described Above**

Faculty members and the District may, if they wish, enter into individual agreements with one another concerning copyright ownership and usage rights to specific works, the terms of which differ from those set forth above. The terms of any such individual agreement will supercede the terms of this article, once such an agreement is signed by the faculty member and the District. Any such agreement will be provided to the LRCFT.

28.8 **Dispute Resolution**

Disputes between faculty members and the District concerning this article shall be resolved pursuant to the grievance procedures contained in Article 13, Dispute Resolution.