

**INTELLECTUAL PROPERTY**

AP No. 3715
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**NOTE: THE FOLLOWING PROCEDURE IS LEGALLY ADVISED. LOCAL PRACTICE MAY BE INSERTED. THE FOLLOWING IS TAKEN FROM THE RHC 2004-07 CERTIFICATED CONTRACT, ARTICLE 23, PGS 97-100.**

**I. Introduction**

This procedure is not intended to govern administrative or classified copyrights. Those rights for work prepared outside the course and scope of college employment, shall be regulated by Title 17 of the United States Code.

**II. Purpose**

The District and the RHCFA have a mutual interest in establishing an environment that encourages creativity and innovation of Faculty Members in developing instructional materials and excellence in their field of specialty. To pursue that goal, Article 23: Intellectual Property of the Collective Bargaining Agreement will 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.

**III. Definitions**

"Works" means any material that is eligible for copyright protection including (but not limited to) instructional materials in all media forms (e.g., syllabi, lectures, student exercises, computer software, web-based activities, textbooks, study materials, course management tools and tests) books, articles, dramatic and musical compositions, poetry, 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.

"License" means permission to use a work. A "non-exclusive license" is one (1) 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.

**IV. Ownership of Copyrights****A. Ownership by Faculty Members**

1. The Collective Bargaining Agreement ("the CBA") between the Faculty and the District obligates the Faculty Member to teach their assigned courses, and perform other duties, according to the terms set forth in the CBA. The District, however, acknowledges that the terms of the CBA are not intended and shall not be construed to grant any ownership rights to any materials produced by the Faculty in furtherance of these duties; and that the District does not have an interest under The CBA in any copyrights to work created by the Faculty Members in support of or related to their performance of instructional or other duties, including both classroom and distance education.

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2. All copyrights to works created by Faculty Members shall be owned by the Faculty Member or Members who created the works, even if those works are created in connection with courses they teach, or other duties they perform as Faculty Members, while they are employed by the District and in connection with their employment, unless the work is created under the exceptional circumstances set forth in Section B below.

**B. Ownership by the District**

1. The District will own the copyright to any work or other materials that is created for the purpose of being a part of (i) the documentation of curriculum of the District, such as a course outline or description; an information publication or promotional materials of the College, such as catalogs, class schedules, or advertisements; or an administrative policy of the District.
2. The Faculty and the District foresee a potential mutual interest for the District to provide additional support in the form of extraordinary financial, staff, technical or other resources, or release time, in order to sponsor work to be created by a Faculty Member in addition to his or her obligations under the CBA. In such a case, the District and the Faculty Member enter into an express written agreement regarding the ownership of the copyright of the work. In order that the District acquire any ownership rights to the copyright in said work, the agreement must
  - Be made prior to substantial completion of the work;
  - Set forth a description of the work to be created and a specific time period in which the work that gives rise to the copyright is to be created;
  - Set forth the proportional ownership of the copyright, the terms of use of the work;
  - Include an express waiver by the Faculty Member of the rights in the copyright to which the member would otherwise be entitled under this article.

This paragraph shall not be construed to grant the District any copyright in any work absent such an express written agreement. The Faculty Member shall own the rights to any copyright for work related to, but not included in the description in said agreement or primarily created outside the period of time set forth in the agreement.

**V. Permitted Uses****A. Use of work when copyright is owned by Faculty Member**

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**B.     Uses by Faculty**

1.     The District acknowledges that Faculty Members may use works whose copyrights they own in any way not in violation of any currently existing District Policy, including, for example, authorizing the for-profit publication of such works in return for royalties paid solely to Faculty Members, without any further authorization from the District. The District may not be required to pay royalties or other fees to any Faculty Member for the use of works, to which the Faculty Member owns the copyright, in the performance of that Faculty Member's obligations under the CBA.

**C.     Uses by District**

1.     The District may use works whose registered copyrights are owned by a Faculty Member, with the oral or written consent of that same Faculty Member, 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 (to students in classes); (3) to perform or display such works (for example, in classroom teaching, by web casting, or by broadcasting). There shall be no restriction on use from unregistered copyrights.
2.     The District may not, however, authorize others to use works for which a Faculty Member owns the copyright, unless the District first obtains the written consent of the Faculty Member who owns the work's copyright.
3.     Use of work when copyright is owned by District
4.     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 Section D below), without any further authorization from the Faculty Members who created those works.

**D.     Uses by Faculty**

1.     Faculty Members shall have a non-exclusive license to use works they created, whose copyrights are owned by the District with the oral or written consent of 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 or display such works (for example, in classroom teaching, by web casting, or by broadcasting); and (4) to create derivative works (for example,

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companion materials or updated versions). There shall be no restriction on use from unregistered copyrights.

2. Faculty Members may do these things themselves, but may not authorize them to be done by others, unless they first obtain the written consent of the District.

**VI. Responsibilities****A. Registration of copyright**

1. It shall be the responsibility of the party who owns the copyright, in full or in part, to work to register that copyright with the United States Copyright Office.
2. Acquiring and paying for necessary rights from third parties is the responsibility of the party who owns the copyright.
3. If the creation or use of a work requires rights to be acquired from third parties, such rights shall be acquired and paid for by the party (i.e., the Faculty Member or the District) who owns the copyright to that work or according to the proportionate shares in ownership unless the agreement granting part or all of the copyright states other obligations.

**B. Dispute Resolution**

1. Disputes between Faculty Members and the District concerning Article shall be resolved pursuant to the grievance procedures, Article 16 of the Collective Bargaining Agreement. (RHC Certificated Bargaining Agreement, Article 23).

**VII. Sources / Reference:** 17 USC 101 et seq; 35 USC 101 et seq; and 37 CFR 1.1 et Seq.