



## 2710 - Intellectual Property and Copyright

### **Policy**

The Chancellor is directed to develop appropriate administrative procedures to implement the provisions of the Education Code which authorize the securing of copyrights in the name of the district to all copyrightable works developed by the District.

The procedures developed by the Chancellor and approved by the Board of Trustees shall assure that the district may use, sell, give or exchange published materials and may license materials prepared by the district in connection with its curricular and special services.

In the development of these procedures, the Chancellor shall solicit the input of the proper representatives of the college community in accordance with the district's policies regarding shared local decision making as an academic and professional matter and as a condition of employment.

Reference: *Education Code Sections 72207, 81459*

*Adopted: June 28, 2004*

### **Procedure**

#### **Preamble**

The YCCD recognizes and encourages the creation of employee-developed works and course materials as an inherent part of the educational mission. It also acknowledges the privilege of district personnel (faculty, staff and students) to prepare, through individual initiative, articles, pamphlets, books, and course materials, that may be copyrighted by and generate royalty income for the author.

The parties to this agreement believe that the public interest is best served by creating an intellectual environment whereby creative efforts and innovations are encouraged and rewarded, while still retaining for the YCCD and its learning communities reasonable access to, and use of, the intellectual property for whose creation the YCCD has provided assistance.

#### **Purpose and Scope**

This statement sets forth YCCD's policy on copyright ownership.

#### **Definitions**

**Copyright.** Copyright is the intangible property right granted by federal statute for an original work fixed in a tangible form of expression. Copyright provides the owner with the following exclusive rights in a work: to reproduce, to prepare derivative works, to distribute by sale or otherwise, to perform publicly, and to display publicly.

**Work.** A work is any copyrighted expression including, but not limited to, literary work (written lectures are included); musical work including any accompanying words; dramatic work, including any accompanying music; pantomimes and choreographic work; pictorial, graphic, and sculptural work; motion pictures and other audiovisual work; sound recordings; and computer software.

**Course materials.** Course materials are those prepared for use in teaching in any form, including, but not limited to: digital, print, audio, visual, or any combination thereof. Course materials

include, but are not limited to, lectures, lecture notes and materials, syllabi, study guides, bibliographies, visual aids, images, diagrams, multimedia presentations, web-ready content, and educational software.

**Course approval documents.** These documents are submitted, reviewed and approved pursuant to applicable Academic Senate regulations related to the approval of a course of instruction, typically consisting of a course description, a statement of learning objective and a topical outline.

**Designated academic or instructional appointees.** Designated academic or instructional appointees are those YCCD employees who have a general obligation to produce scholarly/aesthetic works or course materials. Included are all appointees with the title of Professor or Instructor. Appointees in other academic titles may also be designated by the appropriate immediate supervisor as having the obligation to produce scholarly/aesthetic works or course materials.

**Independent academic effort.** Independent academic effort is the inquiry, investigation, or research carried out by designated academic appointees to advance knowledge or the arts where the specific choice, content, course, and directions of the effort is determined by the designated academic appointee without direct assignment or supervision by the YCCD. Independent academic effort includes the general obligation of designated academic appointees to produce scholarly/ aesthetic works.

**License.** A license is a contract in which a copyright owner grants to another permission to exercise one or more of the rights under copyright.

**Originator.** An originator is one who produces a work by his or her own intellectual labor. When there is more than one originator, the ownership of each originator's contributions shall be considered separately pursuant to this policy.

**Permissible consulting activities.** Permissible consulting activities are professional or scholarly services provided by the YCCD employees for compensation, which do not interfere with regular YCCD duties, do not utilize YCCD resources, and are not prohibited by terms of the YCCD employment contract or other applicable YCCD agreements or policies.

**Royalties.** Royalties are payments made to an owner of a copyright for the privilege of practicing a right under the copyright.

**Sponsor.** A sponsor is an organization or agency that provides funding, equipment, or other support for the YCCD to carry out a specified project in research, training, or public service pursuant to a written agreement. Sponsors include Federal, State, local, and other governmental agencies as well as private industry, educational institutions, and private foundations.

**Exceptional YCCD resources.** Exceptional resources are YCCD resources (including, but not limited to YCCD facilities and YCCD funds, as described below) significantly in excess of the usual support generally available to similarly situated faculty members. Customary secretarial support, library facilities, office space, personal computers, access to computers and networks, and academic year salary are not considered exceptional YCCD resources.

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

**YCCD funds.** YCCD funds, regardless of source, are administered under the control, responsibility, or authority of the YCCD.

**YCCD facilities.** YCCD facilities include buildings, equipment, and other facilities under the control of the YCCD, that are designated by the appropriate administrative officer as requiring an advance agreement, from non-YCCD personnel and YCCD personnel acting outside the scope of their employment, concerning the disposition of any copyrighted works that are originated with the use of these

facilities. Such facilities normally include campus computer centers and normally do not include YCCD libraries.

## Copyright Ownership by Category of Work

### Course Materials.

#### *A. Ownership of Course Materials Originated by Designated Instructional Appointees.*

Except as provided below, ownership of the rights to Course Materials, including copyright, shall reside with the Designated Instructional Appointee who creates them. However, the YCCD retains a fully paid-up, royalty-free, perpetual, and nonexclusive worldwide license to any Course Approval Documents for the purpose of continuing to teach the course of instruction for which the documents were prepared, with the non-exclusive right to revise and update them as required for this purpose as provided below in *Item B (Course Materials Created with the Use of Exceptional YCCD Resources)*.

#### *B. Course Materials Created with the Use of Exceptional YCCD Resources.*

Ownership of the rights to Course Materials created, in whole or in part, by Designated Instructional Appointees with the use of Exceptional YCCD Resources shall be governed by a written agreement entered into between the Originator(s) and the YCCD. The agreement shall specify how rights will be owned and controlled and how any revenues will be divided if the materials are commercialized. If no agreement is made, then *Item A (Ownership of Course Materials Originated by Designated Instructional Appointees)* will remain in effect.

**Scholarly/aesthetic work.** A scholarly/aesthetic work is a work originated by a designated academic appointee resulting from independent academic effort.

Ownership of copyrights to scholarly/aesthetic works shall reside with the designated academic appointee originator, unless they are also sponsored works or contracted facilities works, or unless the designated academic appointee agrees to participate in a project which has special provisions on copyright ownership pursuant to the *Copyright Agreement and Notification Section* this policy.

**Personal work.** A personal work is a work that is prepared outside the course and scope of YCCD employment (except for permissible non-YCCD consulting activities) without the use of YCCD resources. Ownership of copyrights to personal works shall reside with the originator.

**Student work.** A student work is a work produced by a registered student without the use of YCCD funds (other than Student Financial Aid), that is produced outside any YCCD employment, and is not a sponsored, contracted facilities, or commissioned work. Ownership of copyrights to student works shall reside with the originator.

**Sponsored work.** A sponsored work is a work first produced by or through the YCCD in the performance of a written agreement between the YCCD and a sponsor. Sponsored works generally include interim and final technical reports, software, and other works first created in the performance of a sponsored agreement. Sponsored works do not include journal articles, lectures, books or other copyrighted works created through independent academic effort and based on the findings of the sponsored project, unless the sponsored agreement states otherwise. Likewise, sponsored works do not include sabbatical projects unless an advanced written agreement is made between the YCCD and the faculty member to be on sabbatical.

Ownership of copyrights to sponsored works shall be with the YCCD unless the sponsored agreement states otherwise. Any sponsored work agreement that provides for ownership by other than the YCCD generally shall provide the YCCD with a free-of-cost, nonexclusive, worldwide license to use and reproduce the copyrighted work for education and research purposes.

**Commissioned work.** A commissioned work is a work produced for YCCD purposes by individuals not employed at the YCCD or by YCCD employees outside their regular YCCD employment.

When the YCCD commissions for the production of a work, title normally shall reside with the YCCD. In all cases, copyright ownership shall be specified in a written agreement. Any such agreement which provides for ownership by other than the YCCD, generally shall also provide the YCCD with a free-of-cost, nonexclusive, world-wide license to use and reproduce the copyrighted work for education and research purposes.

**Contracted facilities work.** A contracted facilities work is a work produced by non-YCCD personnel or YCCD personnel acting outside the course and scope of their employment, using designated YCCD facilities pursuant to a written agreement.

Ownership of copyrights to contracted facilities work shall be governed by the agreement permitting use of the specified YCCD facilities. Depending on the nature of the facility and the nature and extent of the use, the agreement may specify that ownership of resulting copyrights rests with the YCCD, or the YCCD simply may be paid a fee for the use of the facility, or some other arrangement may be appropriate.

**Institutional Work.** Except as otherwise provided in this policy, the YCCD shall own all copyrights to works made by YCCD employees in the course and scope of their employment and shall own all copyrights to works made with the use of YCCD resources.

**Work acquired by assignment or will.** The YCCD may acquire copyrights by assignment or will pursuant to the terms of a written agreement or testament. The terms of such agreements should be consistent with this policy on *Copyrights* and other YCCD policies governing such acquisitions.

### **Copyright Ownership of Jointly Originated Works**

Copyright ownership of jointly originated works shall be determined by separately assessing the *Category of Work* of each originator pursuant to the above section. Rights between joint owners of a copyright shall be determined pursuant to copyright law.

### **Copyright Agreement and Notification**

Prior to any use of a YCCD facility by non-YCCD personnel or by YCCD personnel outside YCCD employment, a signed agreement shall be required that specifies the disposition of copyrighted works.

Designated academic appointees participating in sponsored projects must have an agreement on file with the designated campus official which acknowledges: (a) individual and joint responsibility to produce and deliver sponsored works to the sponsor, as required by the terms of the sponsored project agreement, and/or to the YCCD when so requested, and (b) that copyright ownership of sponsored works, unless reserved to the sponsor or otherwise provided for in the sponsored project agreement, shall vest in the YCCD.

Any designated academic appointee, other employee, or student wishing to participate in a specified YCCD project that includes copyright ownership requirements other than provided in the section on *Copyright Ownership by Category of Work Section* of this policy must sign an agreement indicating his or her concurrence with that project's special conditions. The appropriate administrative officer shall designate special YCCD projects that shall require such special copyright agreements.

### **Involuntary Transfer**

When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title, except as provided under title 11. (United States Copyright Law § 201 (e))

### **Release of YCCD Rights**

The YCCD may release its ownership rights in copyrighted works to the originator(s) when, as determined by the YCCD: (a) there are no overriding or special obligations to a sponsor or other third party; and (b) the best interests of the YCCD would be so served. Such release of ownership rights must be contingent on the agreement of the originator(s) that no further effort on, or development of, the work will be made using YCCD resources and that the YCCD is granted a free-of-cost, nonexclusive, worldwide license to use and reproduce the work for education and research purposes.

### **Licensing and Royalties**

Material created for ordinary teaching use in the classroom and in department programs, such as syllabi, assignments, and tests, shall remain the property of the faculty author, but the YCCD shall be permitted to use such material for internal instructional, educational, and administrative purposes, including satisfying requests of accreditation agencies for faculty-authored syllabi and course descriptions.

In an agreement transferring copyright for such works to a publisher, faculty authors are urged to seek to provide rights for the YCCD to use such works for internal instructional, educational, and administrative purposes.

Funds received by the faculty member from the sale of intellectual property owned by the faculty author or inventor shall be allocated and expended as determined solely by the faculty author or inventor.

Funds received by the YCCD from the sale of intellectual property owned by the YCCD shall be allocated and expended as determined solely by the YCCD.

Funds received by the faculty member and the YCCD from the sale of intellectual property owned jointly by the faculty member and the YCCD shall be allocated and expended in accordance with any specific agreement made between the YCCD and the faculty member.

In the event of multiple creators, the creators will determine the allocation their individual shares when the work is first undertaken.

The YCCD may assign or license its copyrights to others. Royalty or income received from such transactions may be shared with the originator(s) of such works, as determined by the appropriate administrative officer, taking into account the originator's contribution, the YCCD's costs, any provisions imposed by sponsors or other funding sources, and any other applicable agreements concerning the copyright.

### **Copyright Responsibility and Administration**

For copyrighted works under their respective jurisdictions, the appropriate administrators are authorized to:

Issue guidelines, implementing procedures, and supplementary local policies consistent with this policy. These may include directives regarding licensure, disposition of royalty income, and other rights related to copyrights. Copies of such guidelines, policies and procedures shall be sent to the President of the college;

Identify campus, laboratory, and other YCCD facilities or projects as having special copyright assignment obligations and issue guidelines and implementing procedures regarding assignment of copyright in works produced using such facilities or projects;

Register copyrights, accept copyrights from third parties, and sell, assign, or grant licenses in the name of the YCCD for any rights to copyrights; and

Release YCCD ownership rights to copyrighted works that are in the name of the YCCD pursuant to the section on the *Release of YCCD Rights*.

### **Creation of Intellectual Property Policy and Rights Committee**

The Intellectual Property Policy and Rights Committee will be a district-wide committee composed of members equally apportioned between faculty (one elected by the MJC Academic Senate, one elected by the Columbia College Academic Senate and one elected by the YFA) and administration (one member appointed by the Chancellor of the YCCD or his/her designee, one member appointed by the MJC President and one member appointed by the Columbia College President.) The committee members shall elect a chair from among themselves each year. At the time of initial appointment or election, each member shall be designated as serving a one or two-year term, so that the term of one faculty committee member and one administration member will expire each year and replacements will be appointed or elected each year. After the first appointment subsequent members shall serve a two-year term, commencing on July 1 and terminating on June 30. Committee members may serve one additional two-year term.

The Committee shall monitor and review technological and legislative changes affecting intellectual property policy and shall report to relevant faculty and administrative bodies, when such changes affect existing policies.

The committee shall serve as a forum for the receipt and discussion of proposals to change existing institutional policy and/or to provide recommendations for contract negotiations.

Disputes over ownership, and its attendant rights, of intellectual property will be decided by the Intellectual Property Policy and Rights Committee.

The committee shall make an initial determination of whether the YCCD or any other party has rights to the invention or other creation, and, if so, the basis and extent of those rights. The committee shall also make a determination on resolving competing faculty claims to ownership when the parties cannot reach an agreement on their own.

The committee will review the merits of inventions, and other creations, and make recommendations for the management of the invention, including development, patenting, and exploitation.

If the inventors/creators disagree with the determination of the committee he/she may appeal to binding arbitration. The cost of the arbitration shall be borne equally by the YCCD and the creator(s).

***Procedure Last Revised: 6/28/04***