

## ARTICLE 26

### INTELLECTUAL PROPERTY RIGHTS

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- 26.1 **PURPOSE:** The District and the United Faculty have a mutual interest in establishing an environment that fosters and encourages the creativity of individual faculty members. In accordance with that mutual goal, the purpose of this Article is to identify the owners and rights to use of 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.
- 26.2 **INTENT:** Public funds are used by the District to compensate and support faculty for instructing and providing specified other services to students and to the institution. If a faculty member is able at the same time or on his or her own time and without District Resources to produce a work with market value, it is the intent of this article that such a work be the property of that faculty member exclusively except where this article explicitly provides otherwise.

26.3 **DEFINITIONS:**

As used in this Article:

- 26.3.1 “Administrative Activity” means the execution of the District’s management or administrative functions such as preparing budgets, policies, contracts, personnel management, printing Course Materials and catalogues, maintenance of computer data, long range planning, and keeping inventories of equipment. Teaching and academic endeavors are not administrative activities.
- 26.3.2 “Course Materials” means materials prepared for use in teaching, fixed or unfixed, 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.
- 26.3.3 “Creator” means an individual who alone or as part of a group of other creators, invent, author, discover, or otherwise create intellectual property.
- 26.3.4 “District Resources” means all tangible District resources including buildings, equipment, facilities, computers, software, personnel, and funding.
- 26.3.5 “Employee” means an individual employed by the District, and shall include full-time and adjunct faculty, classified staff, Student Employees, appointed personnel, persons with “no salary” appointments, and academic professionals who develop intellectual property using District resources, unless there is an agreement providing otherwise.
- 26.3.6 “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 which are recognized and protected from unauthorized exploitation by law. Examples of intellectual property include scholarly, artistic, and instructional materials

26.3.7 "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.

26.3.8 "Student Employee" means a student who is paid by the District, and may include students participating in a work study program or who receive stipends while they are acting within the scope of their employment at the District at the time the intellectual property was created.

26.3.9 "Substantial Use of District Resources" means financial or technical support over and above the cost of the individual faculty's normal compensation, and/or over and above the Ordinary Support provided to similarly situated faculty members by the District.

26.3.10 "Ordinary Support" means reasonable use of the following resources generally made available to similarly situated faculty members: common areas or assigned office space, office computer, local phone use, library use, technical support, and software packages generally made available to the community at large and/or to the faculty member for specific use in the normal course of their employment, and office supplies required for specific use in the normal course of faculty members' employment.

26.3.11 "Work" means an "original work of authorship fixed in a tangible medium" as used in the Copyright Act.

26.4 **OWNERSHIP RIGHTS:** The ownership rights to a creation of Intellectual Property at the District shall be determined generally as set forth below, unless ownership is modified by a written agreement between the District and the Creator, in which case a copy of the written agreement will be provided by the District to United Faculty upon request by United Faculty.

26.4.1 Faculty Intellectual Property Rights - A faculty member who is the Creator of an academic Work in his/her field of expertise owns the copyright in that Work when the academic Works are created within the faculty member's scope of employment and without Substantial Use of District Resources. Academic Works include textbooks, lecture notes or presentations, correspondence course packets, on-line course content shells, media programs, audio and video materials, syllabi and other Course Materials, literary works, artistic works, musical works, architectural works and software produced with no more than Ordinary Support. Academic Works described in this paragraph are owned by the faculty member even though such works may have been developed within the faculty member's scope of employment or modified by the District to meet academic adjustment needs of students as determined by the District to be reasonably required by law and/or District Policy. The District shall retain a nonexclusive, royalty-free license to use, reproduce and modify such Academic Works as needed to make necessary accommodations for students and/or to complete a course in the event a faculty member is unable or unwilling to do so. The District's license shall remain in effect through the end of the last academic year that the faculty member is employed by the District unless a longer term is agreed to in writing between the District and the faculty member.

26.4.2 Employee Intellectual Property Rights – Intellectual Property unrelated to an individual's employment responsibilities at the District that is developed by and Employee on an individual's own time without the District's support or use of District resources is the exclusive property of the Creator and the District has no interest in any such property and holds no claim to any profits resulting from such Intellectual Property.

26.4.3 District Intellectual Property Rights – The District owns all other Intellectual Property, created by its Employees within the scope of their employment and including under the following circumstances:

- 26.4.3.1 If Intellectual Property is created through the District's Administrative Activities by an Employee; or
- 26.4.3.2 If Intellectual Property is created by an Employee executing a duty or specific assignment designated by the District; or
- 26.4.3.3 If Intellectual Property is created by faculty members through the Substantial Use of District Resources; or
- 26.4.3.4 If Intellectual Property is commissioned by the District pursuant to a signed contract; or
- 26.4.3.5 If Intellectual Property is produced from a sponsored research agreement entered into by the District and/or College specifically supported by state or federal funds or third party sponsorship.
- 26.4.3.6 Where circumstances give rise to District Intellectual Property rights, as described above, the Creator of the potential Intellectual Property will promptly disclose the Intellectual Property to the District. The District and the Creator may enter into a written agreement whereby the Creator executes documents assigning intellectual property rights to the District.

## 26.5 **MODIFICATION TO OWNERSHIP RIGHTS**

26.5.1 Mutual Agreement. The District and one or more faculty member(s) may enter into a separate written agreement for a specific project. In this case, the right to claim copyright will be governed by the terms of the specific agreement. Any such agreement shall be executed using the template set forth in Appendix IP or, if not using the template, shall require United Faculty consent by being a co-signatory to the agreement. Whenever the District or a college offers to provide extra compensation (excluding reassigned time) to develop copyrightable material, there shall be an explicit agreement pursuant to these provisions. The District and UF may agree to additional intellectual-property-use agreements in addition to those in Appendix IP.

26.5.2 Sabbatical. When a faculty member develops Works as part of an approved sabbatical or while on reassigned time specifically connected to the development of the Works, the faculty member shall own the Works and have the full rights of ownership including the rights to any royalties. However, where a Work to be created as part of an approved sabbatical plan requires resources beyond those normally provided to other Employees during a sabbatical (Substantial Use of District Resources), the parties may enter into a written agreement to define the District and Employee's Intellectual Property rights in the sabbatical work. When the faculty member owns the Works created during a sabbatical, the District shall have a nonexclusive, perpetual, royalty-free license to use, reproduce and modify the Works.

26.5.3 Sponsorship Agreements. A sponsored work is an Intellectual Property first produced by or through the District in the performance of a written agreement between the District 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. Ownership of Intellectual Property created pursuant to sponsored works shall be with the District unless the sponsored agreement states otherwise.

26.5.4 Legal Protection. Responsibility for registration or legal protection of the Intellectual Property will lie with the owner of the Intellectual Property.