



Pima County Community College District Administrative Procedure

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PURPOSE

The purpose of this AP is to provide the framework for allocation and protection of the respective ownership rights of the College, its employees and students in the Intellectual Property developed at the College.

SECTION 1: Scope

The AP applies to all College employees, students, and independent contractors.

SECTION 2: Definitions

The following definitions apply to this AP. Any capitalized word, where used, refers to a term defined in this section.

“**AP**” means this Administrative Procedure

“Artistic Works” means Works of visual arts and performing arts, in any medium of expression other than Software, including musical Works; dramatic Works; pantomimes and choreographic Works; motion picture and other audiovisual Works; pictorial, graphic, sculptural and architectural Works.

“Commissioned Works” means any Works the development of which is specifically requested and authorized by the College and where the College and the developer enter into a written agreement specifically concerning the development of such Works.

“Employee” includes temporary and regular full-time and part-time faculty, staff, and student-employees. Visiting faculty and scholars, and other individuals not normally considered employees, academic or otherwise, will be considered Employees for the purposes of this AP if, during their time at the College significant resources are used to support the Work, or, as a condition of receiving access to College resources, they are obligated to contractually agree to this AP.

“Faculty” means anyone employed at the College to provide instruction or as educational support faculty.

“Independent Contractor” means an individual or entity engaged to perform services and commonly referred to as consultant, freelancer, contractor, etc.

“Instructional Materials” means all Works, regardless of their form, that are developed for use in systematic instructional activities. Instructional Materials include, but are not limited to, the following: syllabi, course outlines; multimedia courseware; course workbooks; instructional or lab manuals; presentations; lecture notes and other similar Works.

“Intellectual Property” (or “IP”), for purposes of this AP, means all forms of legally recognized intellectual property including Works of Authorship (protected by the Copyright laws), inventions and discoveries (protected by the Patent laws), and trademarks and trade names (protected by the Trademark laws).

“Inventions” mean all devices, discoveries, processes, methods, uses, products or combinations, that might be patentable at any time under the Federal Patent Act as now existing or hereafter amended or supplemented.

“License” means a right given by the owner of the Intellectual Property to another individual or entity to use Intellectual Property for certain specified, non-commercial purposes.

“Net Income” means the gross revenue received from the commercialization of Intellectual Property less all costs incurred by the College for producing and marketing the Intellectual Property and for obtaining, licensing, or maintaining Intellectual Property protection.

“Significant Use of College Resources” includes, but is not limited to, any of the following: use of College-paid time within the employment period; access to and use of equipment, computing resources, and facilities not generally available to the public; assistance of College support staff not generally available to the public; procurement of supplies or services using College funds; use of grant funding.

The following do not constitute Significant Use of College Resources: the use of one’s office space; the use of library resources; the use of personal workstations, or personal computers.

Additionally, the College does not construe the use of instructional materials, instructional labs, and instructional facilities by Students as a condition of enrollment and fulfillment of course requirements at the College as a Significant Use of College Resources.

“Scholarly Works” means all Works, regardless of their form, that reflect research, creativity, and/or academic effort. Scholarly Works include, but are not limited to scholarly publications; textbooks; journal articles; research bulletins; monographs; literary Works and book reviews.

For purposes of this AP, Scholarly Works also include Instructional Materials and all Works developed during the College-approved Sabbaticals.

Artistic Works, if developed for instructional and/or academic purposes, are also included in Scholarly Works.

“Scope of Employment” means any activity listed or described in the Employee’s job description and employment contract (where applicable), as well as any other necessary ancillary activity, that the Employee does or is expected to conduct in order to perform the Employee’s job duties and responsibilities. Activities performed during the Employee’s temporary or permanent position reassignment within the College, as approved in accordance with College policies, are treated as those performed within the Employee’s Scope of Employment with the College.

“Sabbatical” (“Sabbatical Works”) means all Intellectual Property developed during sabbaticals as authorized and approved in accordance with the College policies.

“Software” for purposes of this AP, means a set of statements or instructions -- lines of code -- used directly or indirectly in a computer to bring about a certain result. Software is a form of copyrightable intellectual property.

“Student” means any person who was or is enrolled in a class or program at the College at the time the intellectual property was created.

“Works” for purposes of this AP, mean all original works of authorship, regardless of form, covered by the U.S. Copyright Act. Works of authorship include the following categories and have the meaning given to them by the Copyright Act: (1) literary Works; (2) musical Works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic Works; (5) pictorial, graphic, and sculptural Works; (6) motion pictures and other audiovisual Works; (7) sound recordings; and (8) architectural Works. Works also include inventions and discoveries that may be patented.

SECTION 3: Intellectual Property Owned by College

The College retains the following categories of Intellectual Property:

3.1 Commissioned Works

The College retains ownership of all Works it commissions from College Employees, Students, or Independent Contractors.

For all Commissioned Works, the College shall ensure that, prior to any such Work’s development, the College and the creator of the Work enter into a written agreement specifying that the ownership of the Work vests in the College.

3.2 Intellectual Property Developed within the Scope of Employment

With the exception of certain Scholarly Works (addressed in Section 4.1.2), all Intellectual Property developed by College Employees within the scope of their employment with the College is owned by the College.

Employees who develop Intellectual Property covered by this Subsection are entitled to a share of Net Income earned from the commercialization of that Intellectual Property, as stated in and subject to the conditions of Section 5.

3.3 Intellectual Property Developed with Significant Use of College Resources

With the exception of certain Scholarly Works (addressed in Section 4.1.2), all Intellectual Property developed with Significant Use of College Resources is owned by the College.

Employees and Students who create Intellectual Property covered by this Subsection are entitled to a share of Net Income earned from the commercialization of that Intellectual Property, as stated in and subject to the conditions of Section 5.

SECTION 4: Non-College Owned Intellectual Property

The College does not claim ownership to the following categories of Intellectual Property:

4.1 Certain Employee-Developed Intellectual Property

4.1.1 College Employees own all **non-commissioned Intellectual Property that is both created outside the scope of employment with the College and without Significant Use of College Resources.**

- i. As a condition for using any such Employee-owned Intellectual Property in College course instruction, the Employee shall grant the College a license to use the Intellectual Property for educational purposes. The compensation for and duration of licenses shall be negotiated by the College and the Employee who wishes to use the Intellectual Property for their class before the commencement of the class. Notwithstanding the preceding sentence, in no event shall the license be granted for a period less than the duration of the course in which the Intellectual Property will be used and in no event shall the compensation exceed the fair market value, based on the cost of a license for use of comparable Intellectual Property for a similar period of time. Use of Employee-owned Intellectual Property for course instruction shall be subject to all applicable College approval processes as a condition of use.

4.1.2 Additionally, notwithstanding Sections 3.2 and 3.3, the College disclaims ownership in **non-commissioned Scholarly Works** developed by College Faculty while employed by the College, subject to the following conditions:

- i. The College retains a royalty-free, irrevocable, non-exclusive license to use and reproduce all such Scholarly Works for educational purposes.
- ii. While employed at the College, Employee must comply with the College “Conflict of Interest” policies.
- iii. After separation from the College, Employee may not misuse the College’s name in connection with the Scholarly Works covered by this Subsection 4.1.2.

4.2 Certain Student-Developed Intellectual Property

4.2.1 Students own the Intellectual Property they develop in the fulfillment of course requirements or that is a product of their participation in class work or a College-sponsored activity.

- i. As a condition of enrollment in the course or participation in a College-sponsored activity, the Student grants and the College retains a royalty-free, irrevocable, non-exclusive license to use and reproduce such Intellectual Property for educational purposes and to promote the programs and activities of the College.
- ii. Intellectual Property developed by two or more Students is owned jointly by the Students.

4.2.2 All Intellectual Property the Students develop at the College’s request that is outside of a course or graduation requirement shall be treated as Commissioned Work owned by College, and the conditions stated in Section 3.3 will apply to such Intellectual Property. The College grants Students a royalty-free, non-exclusive, irrevocable license to use such Intellectual Property for educational, personal (i.e. portfolio), or similar non-commercial purposes.

4.3 Intellectual Property Developed Pursuant to Third-Party Agreements

The ownership of Intellectual Property developed as a result of a written agreement between the College and a third party shall be determined according to the terms of the agreement. In the event the agreement does not specify ownership, the ownership shall vest in the College.

For purposes of this AP, Third-Party Agreements include but are not limited to the following: grants, scholarship agreements, partnerships and sponsorship agreements.

SECTION 5: Revenue (Net Income) Allocation and Distribution

5.1 All Net Income distribution is subject to the following conditions:

- i. Employee or Student discloses the Intellectual Property to the IP Committee pursuant to this AP.
- ii. Distribution is not otherwise contrary to the Employee's employment or other contract with the College;

5.2 The distribution of Net Income shall be determined by the IP Committee. For IP created as the result of work for which an Employee is paid by the College or which resulted from the significant use of College resources (by an Employee or a Student), the creator shall receive a minimum of 25% of the Net Income. If there is more than one creator, the percentage will be divided equally among the creators unless they agree in writing to a different allocation. The revenue sharing shall not be construed as wages to an Employee, but rather as separate income derived from the commercialization of IP.

In no event shall the College be required to maximize the Net Income for the IP Property at issue.

SECTION 6: Implementation and Enforcement

6.1 Departments Responsible

The College Copyright (IP) committee, Office of General Counsel, and Finance Department, shall coordinate to implement and enforce this AP. Among the functions and responsibilities are the following:

- i. Drafting and revising the IP terms for all relevant College agreements, including the College employment agreements, course development agreements, etc. in coordination with the College department or unit responsible for management of the agreement.
- ii. Ensuring that third-party agreements contain provisions addressing allocation of IP rights.

- iii. Taking steps to securing and negotiating licenses for certain non-College owned works, addressed in Section 4.1.2 of this AP
- iv. Responding to inquiries regarding IP Ownership
 - v. Interpretation of this AP
- vi. Where applicable, filing Copyright and Patent Applications
- vii. Licensing of IP

6.2 Employee Responsibilities

Each Employee shall promptly and fully disclose to the IP Committee Chair any IP created by that Employee or resulting from work carried out under the Employee's direction for which the Employee believes there may be commercial value. The IP Committee shall make available a disclosure form.

The Employee shall limit the use of the College's name in any commercial context involving IP owned by the Employee to identifying the Employee's position with the College, unless he or she has received additional, written authorization from the IP Committee.

The Employee shall cooperate fully with the College in the application and any other related activities to establish and protect rights in the IP.

6.3 Student Responsibilities

Each Student shall promptly and fully disclose to the IP Committee Chair or to a Vice President of Instruction any IP created by the Student using significant College resources that was not created as part of a course or College-sponsored activity for which the Student believes there may be commercial value. The IP Committee shall make available a disclosure form.

The Student shall limit the use of the College's name in any commercial context involving IP owned by the Student to identifying the Student's affiliation with the College, unless he or she has received additional, written authorization from the IP Committee.

The Student shall cooperate fully with the College in the application and any other related activities to establish and protect rights in the IP.

6.4 Ownership Determination

All questions regarding the determination of IP ownership shall be referred to and decided by the IP Committee.

6.5 Dispute Resolution

If an Employee or Student does not agree with an interpretation or decision made by the IP Committee and informal resolution efforts are unsuccessful, the Employee or Student may appeal, in writing, within 30 days of the disputed decision to the Chancellor, who may delegate responsibility for the review and appeal decision. The written appeal notice must include an explanation of the basis for the appeal and be accompanied by the materials relevant to the issue(s) in dispute. The appeal review and decision shall be completed within 30 days of receipt of the written appeal notice, unless the reviewer determines that the circumstances require additional time, in which case the reviewer shall provide a written explanation and revised timeline to the appealing Employee or Student. The decision of the reviewer is final.