

ARTICLE 30. INTELLECTUAL PROPERTY

It is the policy of the Chabot-Las Positas Community College District to encourage unit members to create materials as an inherent part of the educational mission of the colleges.

The Vice Presidents have the primary responsibility for administering this policy.

**30A. Definitions**

**30A.1 Materials**

Materials include, but are not limited to, those listed below:

- a. Books, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, proposals, manuscripts, poems, essays, and memoranda;
- b. Lectures, musical or dramatic compositions (including accompanying words), and unpublished manuscripts;
- c. Films, filmstrips, slides, charts, transparencies, and other visual aids;
- d. Video and audio tapes and cassettes;
- e. Live video or audio broadcasts;
- f. Programmed and instructional materials;
- g. Computer programs and/or software in any medium;
- h. Works of art or models;
- i. Processes;
- j. Machines;
- k. Manufacture of tools and other articles;
- l. Chemical compositions;
- m. Scientific and musical instruments;
- n. Sound recordings;
- o. Architectural works;
- p. Interactive audio/visual software systems in any medium;
- q. Data collection instruments for conference workshop presentation;
- r. Materials for conference presentations;
- s. Dramatic works, including any accompanying music, lectures, and unpublished scripts; and/or
- t. Distance Education courses and materials.

**30A.2 Definition of “Primarily Relied on”**

In this regulation, the term “primarily relied on” shall mean the following:

If the copyrightable or patented material is prepared because the District supplies extra or special support directly for that purpose, the product is

considered substantially supported by the District and there is additional resource cost to the District. “Extra” or special District support includes those support costs which would not have been incurred by the District in the absence of the development of the project. For example, concurrent use of District facilities generally does not generate additional out-of-pocket costs to the District. However, if extra or special District support is provided, the District will specify that extra or special support in writing and will normally retain copyright.

### **30B. Ownership**

Upon a unit member’s disclosure to the District of a patentable work, the District and its employees and agents shall maintain said disclosure in strict confidentiality.

The ownership and disposition of materials will fall into one of the following categories:

#### ***30B.1 Ownership Rights of Faculty***

- a. Ownership of copyrights or patents, including royalties derived from materials, developed by unit members outside their normal teaching, scholarly, or employment activities shall belong exclusively to the unit member whether these materials are related to the unit member’s employer or not.
- b. Ownership of copyrights or patents, including royalties derived from materials, developed by unit members during their normal teaching, scholarly, or employment activities when unit members have not primarily relied on District facilities, equipment or support services, shall belong exclusively to the unit member(s) who developed the materials.
- c. Ownership of copyrights or patents, including royalties derived from materials developed by unit members during their normal teaching, scholarly, Sabbatical, Workload Banked Leave or other employment activities when the unit members primarily relied on District facilities, equipment, or support services, shall belong exclusively to the unit member subject to the following conditions:
  - (1) The District retains the right to recover its developmental costs associated with the creation of the materials when the unit member has primarily relied on District resources to create the materials. The Vice President(s) or designee, and the unit member who developed the material shall determine the District’s developmental costs, which will be based on the unit member’s primary reliance on and/or use of the District’s facilities, equipment, or support services. Together they shall also determine the methods by which the developmental costs shall be recovered.
  - (2) In the case of a disagreement, a panel of three persons, consisting of a representative selected by the Vice President(s), a representative selected by the unit member who developed the materials, and a third member, mutually agreed upon by the other two, shall meet to resolve the issue.

If the unit member who developed the material is not satisfied with the outcome of the above panel, the unit member shall have one of the following remedies:

- (a) Grievance Procedure in [Article 7](#) of this Agreement.

The unit member who perceives to be aggrieved by an alleged violation of this Article shall be entitled to the usual and customary grievance remedies as provided in [Article 7](#) of this Agreement; or

- (b) Bypass the Grievance Procedure in Article 7 of this Agreement.

A unit member who perceives to be aggrieved by an alleged violation of this Article shall be entitled to pursue the matter in a court of competent jurisdiction, without resorting to the grievance or arbitration provisions of this Agreement, provided he or she notifies the Faculty Association. If a unit member elects to seek such judicial relief, the Association shall have no jurisdiction over the case and no duty of fair representation with respect to said action. A unit member electing such judicial remedies, by such election, waives his or her right to pursue a grievance over the matter which is the subject of said legal action. Any decision, settlement, or resolution resulting from said suit shall not be considered precedent for interpreting any provision of this Agreement.

- (3) The District shall retain the non-exclusive, non-transferable, royalty-free license to use the copyrighted or patented material developed by a unit member primarily relying on District support.

### **30B.2 Ownership Rights of the District**

Ownership of copyright or patents, including royalties derived from materials developed as part of specifically ordered and funded projects commissioned by the District, shall reside in the District unless there is a written agreement regarding ownership between all parties concerned and signed by them prior to the initiation of the project. In the event the District does not utilize and/or market the funded project which the District owns within three (3) years from the date of completion of the project, the District shall be required to show significant cause as to why ownership of copyright or patent and royalty rights should not automatically revert to the creating unit member(s). If significant cause cannot be established, materials shall automatically revert to the unit member(s) creator(s). In the event a disagreement arises over the definition of significant cause, the matter shall be referred to the three-person panel described in [Section 30B.1.c.\(2\)](#) above, and thereafter be pursued by the appropriate remedy as outlined in [Section 30B.1.c.\(2\) \(a\) \(b\)](#) above.

In any case, the District shall retain the non-exclusive, non-transferable, royalty-free license to use the copyrighted or patented material which the District commissioned and funded.