

CALIFORNIA FEDERATION OF TEACHERS
Educational Technology Committee

**A Framework
for
Contract Negotiations
Related to
Educational Technology Issues**

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Preamble: Purpose & Overview

A. History & Purpose

This document presents a framework for issues surrounding educational technology, including a discussion of the benefits and costs. The first draft of this document contained contract and policy language that is now two years old. The pace of change in educational technology requires ever-changing policies and agreements. Some Locals have more experience than others in this area and some have also recently negotiated language related to these issues. Sharing our experiences, knowledge and sample contract language should benefit us all.

In 1998 the CFT Community College Council formed a Distance Education and Technology Issues Committee. Their task was researching and writing a document that would be used as a guide to negotiating the “best possible” contract language for distance education at the Community College level. This original committee was composed of Bob Grill, Paul Jordan, Dan Kaplan, Deborah Ludford, Lynn McMurrey, Robert Perrone, Dennis Smith, and Tom Tyner. The burning issues at that time were: intellectual property rights; access to decision making on technological issues; pay for creating and teaching online courses; and best practices for offering online curriculum.

By mid 1999 a first iteration of the “Framework” Document was presented to the Community College Council by the committee and the CCC endorsed continuing the work of the Distance Education and Technology Issues committee as one of the top five priorities for 1999-2000. With that authority, the committee began a critique of the structure, tone, and content of the document. The Committee agreed that the second version of the document would be a primer and a checklist for local negotiating teams. The document would focus on ideal language and possibly the areas and degrees of latitude between the opening ideal language and the negotiated actual language contained in the appendices.

In March of 2000 the second version of the “Framework Document” was presented at the CFT Convention in a workshop entitled “Framework for Negotiating Technology Issues”. In 2001 the CCC committee was folded into the CFT Educational Technology Committee because it was recognized that the issues we were discussing were ongoing, and that the ever changing nature of technology would necessitate an ever changing document. It was also seen that these issues were important at ALL levels of education.

The larger committee saw the necessity of a paid researcher to continuously peruse the mountains of online material, and the inexhaustible material available from other AFT locals and other educational labor organizations across the nation in order to keep our document current and relevant. A line item addressing that fact was placed in the CFT budget in 2001.

Since the process began the committee has arrived at a sense of what constitutes good (or model) policy regarding educational technology. We have included a rationale for the policy and model contract language. Actual language represents negotiated compromise rather than that which is entirely in the best interests of our faculty and students; however, some locals have negotiated good language so that some of the model contract language does include existing language from AFT, NEA, and AAUP contracts. The Appendix includes language from four existing faculty contracts.

B. Organization and Overview

We have divided educational technology issues into six categories. These issues, however, are not entirely discrete and some overlap occurs. Each category contains three subsections: a general rationale for policy that reflects best practices; a presentation of model contract language on that issue, and a bibliography of resources. The primary resource person for each section is listed in the Table of Contents; e-mail addresses are provided on the cover page.

Distance Education: We discuss the history and evolution of distance education. The issues raised have to do with its impact on the quality of education, with how to foster a creative and innovative academic environment, property rights, and fair compensation.

Intellectual Property Rights: Academic freedom, creativity, market share, and copyright royalties are all components of the section dealing with intellectual property.

Access to Technology: A discussion of access, compensation, workload, training, and support for faculty use of educational technology.

Process for Making Decisions Related to Educational Technology: Faculty must retain their primary role in relation to the planning for and purchasing of technology for use by those faculty responsible for instruction, library/learning resources, and counseling. The best way to achieve faculty primacy is through the creation of a district technology committee comprised of representatives from the Local, the administration, and a liaison from the Academic Senate.

Technology and the Work Environment: Communication between faculty and students, between faculty and their unions, and among faculty members is sacrosanct. Privacy and security, faculty rights, intellectual property and an ergonomically sound environment are included. The mantra chanted by administrators up and down the state that innovations in information technology engender a necessary loss of privacy must be changed.

Contracting Out of Educational Technology: Contract language should address all possible methods that might be used, whether intentionally or not, to undermine the integrity of the bargaining unit by having its work performed outside of the district.

C. Utilization and Scope of the Resources Presented in This Document

By its very nature and purpose, the document presents language regarding only issues under the purview of faculty bargaining units, i.e. working conditions, etc. The Committee presents the issues contained herein with a view that these should be model conditions for any working environment. As such, permission is granted to model the views and information in any way that is useful and constructive for your purposes. The websites and resources in the chapter bibliographies are widely available on periodical databases available in any of our community colleges libraries (EBSCOHost, Proquest, etc.). Please note that the bibliographical resources present more than just one viewpoint, with the interest of providing true understanding and expertise in the forefront of our consideration.

D. Acknowledgements

Much acclamation is due the original set of authors, who worked diligently for two years to construct the original document: Dennis Smith (Chair); Bob Grill; Dan Kaplan; Lynn McMurrey; Robert Perrone; Paul Jordan; Heidi Preschler; and Don Brown. The Committee sincerely thanks Mary Bergan, CFT President, and David J. Strom, AFT National Legal Director, for their advice and suggestions for the current revision

of our Framework document. We also thank the many individual faculty members from around the state who have favored us with their issues, suggestions, and insights.

E. Future

The impact of technological changes is most pronounced in the community colleges and universities, but that is changing rapidly. Clearly technology is rapidly becoming fully implemented in K-12 as well. The word “college” is used quite often in our document. Generally, similar principles apply to all levels of education, so just substitute the term “school” where necessary. An arena of education, which is continuing to evolve from K-University, is that of the “hybrid” class, where traditional methods of interaction are combined with any and every level of technology. We will continue our efforts to refine our suggestions as needs are presented to us.

As suggested above, this Framework is a living document--a work-in-progress. Hence, we call for full participation by faculty at all levels from all segments to step forward and contribute to the dialog concerning educational technology issues. However, to assist in this process, it is the intention of the Committee to provide an ongoing and continual editing and updating of the document. This requires ongoing research and dialogue. CFT needs to dedicate financial and human resources to this issue in order to provide faculty with the information necessary to successfully navigate and negotiate the issues of educational technology.

Section 1: Distance Education

A. Rationale for Policy Statements

Distance education may be broadly defined as a condition of learning where instructor and student are physically separate for most, if not all, of the experience. Interaction by some medium--currently audio, video, and computer technologies-- allows for students and instructor to engage in the process of education. Historically, distance education has been delivered via the mail, audio tapes, or in prerecorded telecourses. The student experience has been essentially one of self-study and has lacked the essential ingredients of interactivity and effective student/instructor contact. Current technologies, however, can provide for both interactivity and for effective student/instructor communication.

The new technologies currently use interactive television, computer e-mail, telephones, and online interaction through web sites. Faculty work conducted in these environments should be recognized throughout the probationary and tenure periods as equally legitimate to other teaching endeavors in the community colleges. These efforts should also be recognized as what they are--experimental efforts using new technologies and new modes of pedagogy. Faculty should receive recognition for the risks that they are taking in innovative and new mediums and should be rewarded for taking the initiative in this realm.

Faculty must retain academic responsibility and control over instruction provided by the various modes of distance education, including the decision to award credit for distance courses generated at the campus or by transfer from other campuses or districts. Just like any other course, no distance learning course or methodology shall be offered or accepted for credit unless it has been reviewed and approved by the faculty through customary procedures at that college. The decision as to whether or not to participate in distance education shall be exclusively at the discretion of the faculty member.

If distance education courses are approved, they should always be structured to include substantial faculty-student and student-student interchange. Interactive courses are clearly preferable to previously recorded

courses, which not only fail to allow student interchange, but also "freeze" the curriculum, making it static in time. Opportunities for on-site meetings with other students and a faculty member during the term are strongly recommended, especially meetings on the campus. Interactive communication, such as telephone, chat, and/or two-way video, is preferred. Email or an equivalent form of communication is a must. As a general rule, distance education should be undertaken when a campus-based alternative is impractical. Where possible, these courses should also be offered in the traditional classroom manner. The stated objectives and course content should be the same. The same standards of course quality must be applied, pursuant to Title 5, Section 55002. (See APPENDIX A) **Please note: not all courses are appropriate for distance learning.** Quality of instruction should be the major factor in deciding to offer distance learning courses, and the quality of education must be maintained regardless of the method of delivery. The institution may decide to offer distance education courses when a particular group of students is unable to reach the campus, because the college cannot offer an equivalent course, or because the distance-based instruction is recognized by the faculty as being equal or superior to what the institution can provide on campus. Students taking distance education courses must have reasonable and adequate access to the range of student services appropriate to support their learning.

The traditional concept of faculty office hours may not be appropriate to the needs of students enrolled in distance learning courses. Agreement should be reached on how the faculty member teaching a distance education course will hold office hours for the distance education students.

In short, interactive distance education classes have their place for some types of courses and certain types of students, supplemented by e-mail and online research services to help students study and communicate. We believe that a college education must include regular and frequent opportunities, formal and informal, for students to talk with faculty and one another about the content of their classes, their educational and career goals, and their research. Our experience as educators tells us that teaching and learning in the shared human spaces of a campus is an important part of the educational experience and cannot be diminished too greatly without reducing the education to training or some subset of measured competencies. Therefore only a limited number of credits should be awarded for distance education. Programs, whether degree or certificate, taught entirely at a distance, are generally undesirable because of the lack of personal interaction between student and teacher.

B. Model Contract Language

Purpose:

The purpose of this section is to provide for an environment where the rights of the student to a quality academic experience, as well as the responsibility of the faculty and the college to provide that experience, are in no way diminished by the use of technology. The parties to this contract agree that all decisions regarding distance learning courses will consider primarily what enhances student learning. The parties recognize that learner-centered education provides for interactivity between student and teacher and among the students themselves.

Definitions:

Distance Learning--All educational methods wherein a faculty member is at a different location than a student, and whose interaction is through the use of computer and/or telecommunications technology.

Asynchronous Online Course--A course with assignment materials and supplements housed on a computer and presented primarily online. The primary mode of contact between instructor and students will be online with a time lapse between initial communication and the related response. These courses are essentially a technologically enhanced form of self-study by correspondence.

Synchronous Electronic Course--A course taught at different sites that are connected by some form of electronic medium through which students and instructor can interact without a significant lapse of time. Two-way video and audio, one-way video with two-way audio, or two-way video with two-way text (chat) are examples of technology currently available for interactive, synchronous education.

Quality Control and Ownership of the Curriculum and Instructional Materials:

The faculty assigned to develop and/or teach the course shall select the methods of presentation and course materials to be used. Teaching faculty should maintain control over the recording, broadcast or re-transmission of the course, following the provisions regarding intellectual property rights contractually agreed to (see Section 2 of this document, pp. 8-15).

Training and Compensation for Developing Distance Learning Courses:

Teaching distance education courses requires special skills and should be voluntary. Faculty who desire to participate in distance education courses or programs should be provided with adequate preparation and training. Faculty selected to teach distance learning courses should be additionally compensated for the extra time required for preparation as well as for the first semester of delivery of their courses. This compensation could be in the form of credit toward load assignment or it can be financial. The institution will provide the faculty member with the necessary technological equipment and support to prepare for the distance education course. Training and compensation agreements should be specific, in writing, and completed prior to developing distance learning courses.

Workload Issues for Distance Learning Courses:

Determination of *class size* for a distance learning class should be based primarily on academic quality. Asynchronous online courses require more faculty time per student to administer, and the class size should be limited a fraction of the size of a traditional course to accommodate the increased workload. Class size for synchronous electronic courses, however, should generally be the same as for traditional courses. Additional credit in load assignment for oversized classes should be determined in the same manner as for traditional classes.

The institution will provide adequate *instructional support services* at both the sending and receiving site for all distance education classes.

Required *“office hours”* should reflect the mode(s) in which classes are taught.

Assessment of Distance Learning Courses and Review of Faculty Teaching Them:

In each of the four semesters following the first time the class is delivered in distance learning mode, faculty who teach in that program should carefully assess the class. Comparison to courses offered in the traditional mode should form the basis of assessment. Faculty assigned to teach these courses should have their performance review suspended for those courses during the assessment period.

C. Bibliography of Resources

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Section 2: Intellectual Property Rights

A. Rationale for Policy Statements

The community college exists for the benefit of students and the community. They are best served when the employee the college have incentives to be productive and creative. This policy is intended to provide and protect such incentives.

The mission of public institutions is public service, not generation of commercial profits. Public institutions derive many benefits from their non-profit status and should take care not to jeopardize that status. Any revenues that a public institution realizes from intellectual property should be incidental to the creation of that property--*never a primary purpose* for creating that property. Any revenues that are retained by the college should go into its general fund to support the overall mission of the college. They should never be dedicated to the cost of creating additional revenue-producing properties.

Intellectual property is the result of creative activities, including teaching and research. Examples of intellectual property include works of art or design, poetry, musical scores, films, video or audio recordings, instructional materials (e.g., textbooks, syllabi, student exercises, multimedia programs), computer software, fictional or non-fictional narratives, analyses (e.g., scientific, logical, opinion or criticism), inventions, devices, processes, and other enduring representations of creative activities.

Intellectual property may be instructional, professional, dramatic or commercial in nature. The medium in which intellectual property exists is irrelevant to the question of ownership; however, an incentive toward creativity exists when the creator of a work retains full ownership rights.

Intellectual property as it relates to the educational environment can be broadly divided into four categories: works specifically made for the employer (works for hire), works created with substantial resources supplied by the employer, works made with nominal resources supplied by the employer, and works made in the normal course of employment.

The Educational Technology Committee of the California Federation of Teachers advocates for **full faculty ownership of intellectual property**. It is important to note that copyright law allows employees to own their intellectual property if this is specifically negotiated in a labor agreement. Robert Bezemek, Esq., labor attorney located in Oakland, California, has cited as a basis for a higher level of academic freedom and ownership of intellectual property the decision in Hays v. Sony Corp (7th Cir. 1988) 847 F.2d 412. Bezemek suggests that “locals not accept the view that works are not owner by faculty, or that the parties recognize differing views on the point.” In either case the district can agree that intellectual property is owned by the faculty, and Bezemek goes on to say that

academic works created by faculty are personal works...[and] although college faculty routinely do writing and other intellectual work as part of their employment responsibilities, a college does not ordinarily supervise the faculty in preparing academic article or books or other projects, and ordinarily does not determine the nature and scope of their creative inquiries. Such activities are often done using only their own tools and equipment, or on their own time, or at their homes or studios, or to implement their own creative ideas or designs. Under this analytical approach, one looks at the traditional agency factors when considering if a particular work was “for hire.” One case explained that the “crucial element is whether the work was created at the employer’s insistence and expense or...whether the motivating factor in producing the work was the employer who induced its creation. Another factor is whether the employer had the right to direct and supervise the manner in which the work was being performed...and in addition, the nature and amount of compensation or the absence of any [specific] payment for the work...” Murray v. Gelderman, 566 F. 2d 1037 (5th Cir. 1978).

1. Works created in the normal course of employment:

Under federal copyright law, intellectual property created by employees in the course of their employment usually is owned by the employer. But institutions of higher education in the United States have a long tradition of attributing ownership rights to the faculty members who create the property. This tradition recognizes:

- * the unique intellectual abilities and contributions of faculty members;
- * the benefit to students and society that results from the creative efforts of faculty members;
- * the inadequacy of compensation which faculty members receive for teaching;
- * the scarcity of additional compensation for those faculty who create intellectual property that is not required by their regular assignments;
- * the risk that faculty members might not create intellectual property if the college were to claim ownership;
- * the risk that faculty members might leave the college

Enlightened institutions of higher education have recognized that students, society and the institution all benefit when faculty members hold the copyright or patent for intellectual property that they create. For this reason, and the several listed above, faculty members should own all rights to the lectures, syllabi, tests, articles, exercises, and other materials they create for use in the normal course of their employment. When the faculty member’s instruction (e.g., lecture, demonstration, class discussion, lab exercise, etc.) is recorded in any medium, the faculty member should also retain the rights to that medium.

2. Works created with nominal support from the employer:

The copyright for works created using nominal support provided by the employer should also remain with the faculty member. Nominal support is resources that are customarily available or provided in the course of the faculty member's usual appointment or assignment, such as support services provided by other employees, the use of computers, photocopy machines, office supplies and the use of an assigned office and telephone. Nominal resources include utilities, maintenance, janitorial services, use of furniture and so on. Text, data or images created or stored on the employee's office computer remain the property of the employee.

3. Works created with substantial support from the employer:

Providing secretarial, technical or creative services for the creation of a specific work or invention may be considered a substantial resource. Providing reassigned time, a budget beyond the budget customarily provided the faculty member or the use of exceptionally expensive district equipment, such as recording or film studios, is also considered substantial resources. Grant funds obtained by the faculty member should not be considered substantial support. Agreements should specify at what point (amount/level of support) "substantial support" is defined and how shared ownership is determined. However, the best approach to ownership rights to works which fall into this category is to grant the district a non-exclusive license to use to work(s), while the faculty member retains all rights of ownership. (Shared ownership rights can cause further potential disputes and liabilities.)

4. Works for hire:

An intellectual property for which the employee is specifically hired and compensated may belong to the employer. Such property is known as a "work for hire." Examples might include a musical piece commissioned for a celebration, the district's web site and marketing brochures. Such works may be subject to separate agreements between the faculty member and the district when they are not part of the regular or primary assignment of the faculty member. Agreements between the employee and the employer that determine ownership and/or copyright should be in writing (i.e., a job description or a contract) and subject to approval by the union. Compensation must not be less than is required by the collective bargaining agreement. As an incentive to the employee, the college may agree to share future revenues with the employee; however, such revenue sharing should be in addition to the compensation provided by the collective bargaining agreement.

5. Collaborative Works:

Intellectual property, with or without substantial employer support, often results from the creative efforts of more than one person. Ideally, the creative persons will agree in advance upon their respective ownership rights in the project. However, since expectations, good intentions, and eventual reality are not always consistent, there must be a process for resolving differences about ownership rights. The key factors in determining ownership should be:

- * the creative initiative for the work;
- * the creative control over the content of the work.
- * the variety of creative talents contributed to the work; and,
- * the time and energy each participant has contributed to the work.

The collective bargaining agreement should provide a formula--or in lieu of that, a process--for determining the respective ownership shares of employees who have collaborated in the creation of the intellectual property.

6. Ownership Rights:

Whoever does, finally, own the copyright possesses a number of exclusive rights:

- * the right to reproduce the intellectual property;
- * the right to distribute copies of the intellectual property;
- * the right to create derivative works which borrow substantially from the intellectual property;
- * the right to license others to use, distribute or reproduce the intellectual property; and,
- * the right to sell or assign to another the copyright or patent right to the intellectual property.

With the exception of works for hire, the college should not market, distribute, license or sell intellectual property without the written consent of the employee(s) creating that property. An employee may revoke such consent when the employee believes the property has become obsolete or requires substantial revision.

When intellectual property is distributed, licensed or sold, the employee(s) who created that property should receive some form of royalty or residual compensation. The collective bargaining agreement should establish that compensation or an impartial and efficient process to determine it.

When faculty members leave their employment with the college district, they should have the right to use all intellectual property that they created while employed there in their future academic employment in the same manner as they would have been entitled to use that property had they continued as district employees. In the case of works created with substantial support from the employer, the collective bargaining agreement may allow the district a negotiated non-exclusive license to continue to use a work (e.g., rights to use an online course for a designated period of time should a faculty member depart).

7. Ownership liabilities:

Remember, the owner of the copyright is the party who is most likely to be sued for copyright infringement or any other perceived damages. (NOTE: This is an important point in contract negotiations).

8. Access to Substantial Resources:

All employees should have equal access to any substantial resources that the college provides in support of the creation of intellectual property. To ensure equal access, the district and the union should establish criteria and procedures that are objective and fair. Any priorities established should be determined by the student and community needs, not by the opportunity to generate revenues through license or sale of the property.

9. District Rights:

The college may use for its own educational programs, without royalty, works for hire and works for which it contributed substantial resources. The faculty member(s) who created the property and/or who owns the property rights should have the right of first refusal to use that property in teaching the particular course(s) for which the work was created. The intellectual property must not be used to displace a faculty member who otherwise would be needed to teach a course.

10. Intellectual Property Rights Panel:

The complexity of ownership rights in intellectual property makes it likely that differences and disputes will arise. The collective bargaining agreement should provide an impartial process for resolution of disputes. A panel of three persons (perhaps two members appointed by the respective disputing parties and a neutral third person with expertise in the type of intellectual property at issue) might serve as arbiter. However, when all intellectual property is owned by faculty (except “works for hire”), the complexity of potential disputes is greatly reduced, and an IP Rights Panel may not be necessary.

B. Model Contract Language

1. Purpose. The district and its faculty members, students and community have a mutual interest in establishing an environment that fosters and encourages the creativity of individual faculty members. In accordance with that mutual interest, the union and the district have agreed to these terms, establishing the respective ownership rights to the intellectual property that faculty members create.

2. Definitions. The following definitions shall apply:

- a. **“Intellectual property”** includes works and inventions.
- b. A **“work”** is any material that is eligible for copyright protection, including (but not limited to) books, articles, dramatic or musical compositions, poetry, instructional materials (e.g., syllabi, lectures, student exercises, multimedia programs, tests, etc.), fictional or non-fictional narratives,

analyses (e.g., scientific, logical, opinion or criticism), works of art or design, including pictorial, graphic and sculptural works, photographs or films, video or audio recordings, computer based programs and media (e.g., software or computer code or their representation in formats such as CD-ROM, video disk, compressed video, web-based material, etc), architectural and engineering drawings, and choreography. A work may be recorded in any enduring medium (e.g., print, electromagnetic, optical, photosensitive film, etc.) or may exist in any tangible form (e.g., a sculpture, painting, structure or building).

c. An **“invention”** is any idea or discovery that is eligible for patent protection, including (but not limited to) a device, process, design, model, strain or variety of any organism, or composition of matter.

d. **“Instructional materials”** are those materials a faculty member creates to perform his/her assignment more effectively for the benefit of students, including (but not limited to) textbooks, monographs, syllabi, lectures, student exercises, illustrations, recordings, multimedia programs, and tests. Instructional materials may be used by the faculty member in a traditional classroom or in any form of distance education. Instructional materials may be created using the personal resources of the faculty member and/or nominal resources provided by the district.

e. **“License”** means permission to use a work or invention. A **“non-exclusive license”** is one that gives permission to use a work while that same work may also be used by the copyright or patent owner, and possibly by others to whom a non-exclusive license is also given.

f. For the purposes of this article, a **“faculty member”** is an academic employee and member of this bargaining unit who creates intellectual property.

3. Works and inventions covered by this article. This article identifies the ownership of works and inventions created by faculty members in direct connection with, and in support of, the courses they teach or the duties they perform as faculty members while they are employed by the district. This article does not apply to other works or inventions created by faculty members, even if those works or inventions might, in some sense, be related to their teaching or other duties as faculty members. For this article to apply to a work or invention, its creation must be substantially occasioned by the faculty member’s teaching or other duties as a district employee. Also, this article does not apply to works or inventions (e.g., lecture notes) created by faculty members for their own personal use and not intended to be distributed to others, even if created in direct connection with their teaching or other duties.

4. Patent or copyright registration. It shall be the responsibility of the owner of intellectual property covered by this article to register that ownership right with the U.S. Copyright Office or U.S. Trademark and Patent Office, as appropriate. Institutional support shall be provided to the faculty members who request assistance in the filing of copyright and patent applications.

5. Acquiring rights from third parties. If the creation of a work or invention requires rights (e.g., re-publication 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 is to hold ownership rights in that work or invention.

6. Faculty right of ownership. Provisions of the Copyright Act (Title 17, United States Code) and the Patent Act (Title 35, United States Code) notwithstanding, the faculty member shall have (subject to the provisions of this article) the exclusive property right to all intellectual property that is the product of his or her mind, time, talent and effort, including the right to all royalties from the distribution, lease or sale thereof. Except as otherwise provided in this article, the district waives any right it might have to such intellectual property. The faculty member shall retain this exclusive property right throughout his or her lifetime; upon the faculty member’s death all such property rights shall devolve upon his or her estate.

7. Recorded instruction. A faculty member’s instructional activities (e.g., lecture, class discussion, demonstration, lab exercise, testing, etc.) shall not be recorded in any manner, broadcast, or televised without that faculty member’s informed and express consent. The faculty member owns all rights to recorded instruction, and the district shall not use the recording without the faculty’s express consent.

8. Instructional materials. Instructional materials are the sole property of the faculty member who creates them, and the district waives any claim to ownership of them.

9. Individual contracts and compensation. The district and the faculty member may enter into a separate agreement for the creation of intellectual property using substantial district resources, or for a work or invention for hire. Such agreements shall be in writing and shall not become effective until reviewed and approved by the union. The union shall not unreasonably withhold or delay its approval of such agreements. The faculty member(s) may be compensated for creating a work or invention for hire by either released time or an hourly wage. The hourly wage shall be no less than \$xxx per hour. The provisions of this article shall govern any issue not determined by agreement between the faculty member and the district.

10. Statement of district ownership. If the district is to be the owner of the patent or copyright to property created by a faculty member, the district and the faculty member shall sign an agreement that contains one of the following clauses:

- a. "The faculty member and the district agree that the work or invention identified below shall be a work or invention for hire, and the faculty member hereby assigns to the district any and all ownership interest in that work or invention."
- b. "The faculty member and the district agree that the district shall contribute substantial resources toward the creation of the work or invention identified below, and the faculty member hereby exercises the following option as provided in article ___, section ___ of the collective bargaining agreement between the district and the union."

In the absence of a signed agreement as required or authorized by this article, the faculty member shall hold exclusive ownership rights to the work or invention.

11. Using personal resources only. Intellectual property that the faculty member creates, using personal resources and equipment, shall in all cases be the sole property of the faculty member. Services, materials and equipment for which the faculty member pays with personal funds shall be considered personal resources. The fact that the intellectual property relates to the faculty member's assignment or that the faculty member uses that property in performing his/her assignment shall not create any ownership interest whatsoever for the district.

12. Permitted uses of intellectual property. The district shall have a non-exclusive license to use works or inventions covered by this article that are owned by faculty members. Such use may include reproducing such works or inventions (e.g., by photocopying, duplication of computer disks, or installing on computer networks), distributing them to currently enrolled students, or performing them (e.g., live performance or delayed broadcast) in classrooms or by distance education. *The District shall provide specific attribution of authorship to the owning faculty member(s) each time the work or invention is utilized, thus helping protect against unauthorized use by others.*

The faculty members shall have a non-exclusive license to use (in substantially similar manner) the works or inventions of their own creation that are owned by the district. These respective uses by the district and the faculty member must occur within the normal course of the instruction and student services being provided to currently enrolled students.

13. Collaborative creative ventures. When two or more district employees collaborate in the creation of intellectual property, it shall be the responsibility of those district employees to determine the manner in which they shall share ownership of that property. It shall be their responsibility to prepare (or have prepared at their own expense) a written agreement between them documenting their determination. If they are unable to agree, they may submit the matter to binding arbitration by the Intellectual Property Panel. In reaching its decision the Panel shall consider the following factors, among others:

- a) the creative initiative for the project;
- b) the creative control over the procedures and content of the project;
- c) the variety of creative talents contributing to the project; and,
- d) the time, energy and effort contributed by each participant.

With the exception of binding arbitration by the Intellectual Property Panel as provided in this section, neither the district nor the union shall have any obligation or responsibility to determine the respective ownership interests of collaborating faculty members. No grievance against the district may be asserted by faculty members arising out of any consequences of their failure to make or document an agreement regarding their mutual ownership interests in intellectual property that they create.

14. Ownership Rights When Working Under Federal Research Grants.

Federal law, specifically the Bayh-Dole Act, sets forth ownership and use rights which attach to federally-funded research grants. While this statute does guarantee that the federal government will have a license to any inventions which result from the grant, the law also contains certain mandates regarding the distribution of royalties from these inventions that provide rights and protections to faculty who own patents and/or copyrights on their inventions/works. For example, royalties are paid first to the inventors, and any that are not paid to the inventors must be used toward scientific research and education. (See clickable text of the Bayh-Dole Act in the Bibliography for this section).

15. Access to district resources. (See Sections 3 and 4 of this Framework.)

16. Institutional license. The district shall retain in perpetuity a license for internal use, in its own educational programs, of any intellectual property created with substantial district resources, as defined in the agreement in effect at the time of the creation of the work.. The faculty member(s) shall not receive any fee or royalty for such use. The faculty member(s) who created the intellectual property shall have the right of first refusal to use that property in teaching the particular course(s) for which it was created. Such intellectual property shall not be used to displace a faculty member (e.g., by increasing class size) who otherwise would be needed to teach the course.

17. Rights of departing faculty members. If faculty members leave their academic employment in the district for any reason, they shall retain the non-exclusive license established herein to use works or inventions of their own creation in their future academic employment.

18. Consideration for adoption as required materials. A faculty member who has created a work or invention shall have the right to have that work or invention considered for adoption as required material for students in a class that that faculty member teaches. If students are required to purchase the work or invention, it shall be adopted and sold through the regular procedures for the adoption and sale of required student materials.

19. Dispute resolution. An Intellectual Property Panel shall be established to resolve disputes.

a. **Jurisdiction.** The Panel shall be limited to resolving disputes between faculty members and the district regarding claims by the district for the direct costs of substantial resources, and disputes among faculty members regarding their respective ownership shares in a collaborative project. The latter disputes shall not be decided unless the disputing faculty members jointly submit the matter to binding arbitration by the Panel. All other disputes between faculty members and the district arising under this article shall be subject to the regular grievance procedures.

b. **Panel members.** The Panel shall be composed of three members: one member designated by the union; one member designated by the academic senate; and, one member designated by the district.

c. **Testimony and argument.** The disputing parties may present such testimony and evidence as the Panel deems relevant. At the discretion of the Panel, arguments shall be presented orally or in writing.

d. **Consultation with professional experts.** The Panel may obtain the advice of experts (e.g., accountants, attorneys who practice intellectual property law, recognized authors, musicians, engineers, scientists, inventors, etc.). A consulting accountant shall have complete access to all district financial

records relating to any direct costs claimed by the district for substantial resources. No current or former employee of the district shall serve as a consulting expert. The district shall pay all reasonable fees for such consultations.

e. **Punitive damages.** If the Panel finds that the district has acted in bad faith, it may award to the complainant faculty members punitive damages not to exceed one thousand dollars (\$1,000.00).

f. **Decision final and binding.** The decision of the Panel shall be final and binding upon all parties, including the union and the district.

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Section 3: Access to Technology (training, hardware, software, and support)

A. Rationale for Policy Statements

Teaching a course delivered through technology requires, depending on the degree of reliance on technology, additional faculty time to prepare materials to interact with students and to revise for the next offering. Local bargaining units need to reach agreement over issues such as ownership of intellectual property, class size limitations, workload credit adjustments for course preparation and student communication time, travel to remote locations, control over examination and grading responsibilities, and support staff levels.

Equipment: When equipment is required for classes, it is imperative that there be sufficient equipment to accommodate the students assigned thereto. The board and the district must commit to seeking funding to provide for the replacement of obsolete equipment, recognizing the necessity for maintaining an adequate inventory of technologically current equipment.

Support: Faculty who use educational technology shall be provided logistical, instructional, and technical support. In the event of system failure, the instructor shall not be obligated for additional instructional hours beyond the regular schedule. Prior to implementation of distance education or other technologically-mediated instructional programs, logistical procedures shall be addressed and mutually agreed upon.

Training: Faculty who agree to use educational technology shall receive appropriate training paid for by the district. Additional training shall be offered where feasible as determined by the district at the request of the bargaining unit member.

Quality Control: In order to protect against the use of obsolete material, the faculty developer shall have the right to review and/or update material of which the district has internal free use. The district shall agree to use the updated material.

Facilities and Finance: The district possesses the equipment and technical expertise required for distance education, and the district's long range planning, budgeting, and policy development processes shall provide the facilities, staffing, equipment and other resources essential to the viability and effectiveness of the distance education program. In addition to classroom use, faculty shall be provided hardware and software equivalent to that used in the instructional setting for curriculum development and lesson planning.

B. Model Contract Language

1. Access to technology and training by faculty

a. Educational technology material includes video and audio recordings, motion pictures, film strips, photographic and other similar visual materials, live video and audio transmissions, computer programs, computer assisted instructional coursework, programmed instructional materials, three dimensional materials and exhibits, and combinations of the above materials that are prepared or produced in whole or in part by an employee and are used to assist or enhance instruction.

b. The parties recognize the increasing development and use of technology, such as videotapes, interactive television, and computer software to support teaching and learning and to enhance the fundamental relationship between faculty and student. This technology may be used in the context of distance learning. Furthermore, the parties recognize that this technology should be used to the maximum benefit of the college, the student, and the faculty member.

c. Faculty effort spent in the assigned development of educational technology and/or distance learning materials and in providing instruction assigned in this manner is appreciably greater than that associated with a traditional class and shall be compensated as follows: _____.

d. Training and development resources shall be made available to faculty who have been assigned to provide instruction through the use of educational technology, including distance learning. The level of training and resource commitment shall be determined by the faculty member and the district prior to the development of the projected course material. By request of the faculty, these levels may be reviewed at any time.

e. Appropriate training in and access to emerging technologies shall be made available to all faculty.

2. Support levels for educational technology

a. The district shall insure that sufficient technology is made available to employees for the timely and efficient accomplishment of their assigned duties.

b. The district shall make provisions for clerical, technical, and library support in conjunction with the assigned use of educational technology/distance learning.

c. Compensation, including recognition in an employee's assignment or provisions for extra compensation for the appreciably greater workload associated with the assigned development and use of educational technology/distance learning shall be provided.

d. The employee shall not make use of substantial college support in the creation or revision of instructional technological materials unless the district approves such use in advance and in writing. (See "Work for Hire" in section on Intellectual Property Rights.)

e. The district shall assist the employee in obtaining permissions regarding educational technology materials when the district has asserted an interest in such materials or the district has assigned the employee to develop such materials

C. Bibliography of Resources

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University of Massachusetts Faculty Federation (AFT Local 1895). University of Massachusetts-Dartmouth Collective Bargaining Agreement. 1998.

Section 4: Process for Making Decisions Related to Educational Technology

A. Rationale for Policy Statements

Better education, not cost cutting or revenue enhancement, must be the primary consideration in deciding to offer technologically mediated instruction. The decision should be made voluntarily by the faculty member, and such courses should be taught only by faculty chosen and evaluated in a special consultative process involving faculty and the department. Instructional jurisdiction for courses transmitted between colleges and districts should be negotiated by the faculty organizations in those institutions.

Establishing a joint management/labor committee on educational technology issues ensures that faculty retain their role in the decisions made as to the benefits and costs of technology needed for instruction, the library, and academic counseling prior to program and purchase decisions. The committee's charge should specify that:

- * the institution's faculty assume responsibility for and exercise oversight over educational, library and counseling technology, ensuring the rigor of the programs and the quality of instruction;
- * the institution ensures adequate funding of the technology, the use of which faculty have determined is appropriate to the nature and objectives of the programs;
- * the academic, library, and counseling departments ensure the currency of materials, programs and courses.

When a proposed course utilizes technology as a significant part of delivering education, it shall further be the committee's duty to investigate the proposal and make a recommendation to the bargaining agent about implementation, after determining whether or not the proposed use of voice, image, or text reproduction to teach a significant part of a course

- * would reduce the number of teaching positions existing at the college,
- * would deprive any bargaining unit member of his/her faculty position,
- * would in any way modify or alter the terms and conditions of the bargaining agreement.

B. Model Contract Language

Joint Committee on the Impact of Technology (or Joint Committee on Technology Working Conditions)

The parties recognize that technological change may affect the terms and conditions of employment and professional duties and responsibilities of faculty in all disciplines. With this in mind, the parties agree to establish a Joint Committee on the Impact of Technology. The Committee shall, within the principles of academic freedom, address itself to any issue concerning or related to information technology and technological change in the district where there may be an impact on the terms and conditions of employment and professional responsibilities of members of the bargaining unit. The Committee shall

consider issues of technological change and, in that context, the future well-being of the district and the members of the bargaining unit.

2. In keeping with this mandate, the Committee shall consider and make recommendations to the parties respecting the following:

1. college computing/information technology goals and long range planning policies and their relationship to and impact on professional responsibilities and terms and conditions of employment; enrollment trends and conflicting claims of new academic, library, and counseling program development, and the security of current employees;
2. issues regarding district resources allotted to computing/information technology;
3. how support services and training opportunities for faculty in all disciplines can be developed and enhanced;
4. how communications respecting such matters as changes in available technology, support services and training opportunities can be improved;
5. issues respecting pre-packaged courses and distance learning courses; their development and delivery and issues respecting the purchasing from outside of such work;
6. issues that are directly related to workload;
7. policies respecting security and surveillance of electronic work activities such as e-mail and Internet access, and usage, ensuring that distance learning offerings provide for timely and appropriate interaction between students and faculty;
8. issues respecting ownership of materials, copyright issues, and the utilization of revenue derived from the creation and production of software, telecourses, or other media products.

Within sixty days of the signing of this agreement, the administration and the bargaining agent shall form the Joint Committee on the Impact of Technology (JCIT). The JCIT shall consist of equal members chosen by the administration, by the bargaining agent, and one "liaison" member chosen by the academic senate. This Committee shall meet regularly throughout the year. Any member may call a meeting with at least seven (7) days notice.

Before any change is made with respect to the present approaches or methods of teaching a significant part of a course utilizing voice or image reproduction, including the utilization of large lecture sessions using voice or image reproduction, the proposal shall be reviewed and accepted by the division proposing the course change.

Before any change is made with respect to the present approach or methods of providing academic counseling to students by the use of technology, this change shall be reviewed and accepted by the division in which academic counseling resides.

Before any change is made with respect to the present approach or methods of providing library service to the institution by the use of technology, this change shall be reviewed and accepted by the division in which library services resides.

At the request of the bargaining agent, the relevant representatives of the district shall meet with the Committee to outline relevant policies and actions and discuss their impact on the terms and conditions of employment. The recommendations of the Joint Committee shall be non-binding, but shall be seriously considered in the decision-making process.

C. Bibliography of Resources

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California State University, Chico. Collective Bargaining Agreement. Chico, California. July 1997

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Section 5: Technology, Privacy, and Security in the Educational Work Environment

A. Rationale for Policy Statements

Technology is here to stay in the educational environment. As such, technology will affect the work environment. Educational institutions must acknowledge these effects and plan accordingly. Work environment issues related to technology include but are not limited to

- * privacy and security
- * faculty rights
- * health and safety, including ergonomic concerns

Faculty should be able to expect confidentiality between faculty and faculty, and between students and faculty, including counselors. Federal court interpretations of The National Labor Relations Act have specified that union members should be protected in their communication with each other regarding union or employment issues.

E-mail messages constitute both solicitation and distribution. E-mail messages have been characterized as a “substitute for telephonic and printed communications, as well as a substitute for direct oral communications. E-mail is often informal and individually targeted. Even where it is neither informal nor personalized, it is still not the same as a flyer because the recipient can respond to e-mail.” “This ability to exchange ideas and discuss what action to take collectively is the key to effective preservation of labor rights Electronic communication promotes responsive interchanges and . . . resembles speech more than distribution of literature” (York University Faculty Association Collective Bargaining Agreement, 1997).

Faculty also have privacy interests in their communications with students. Furthermore, California accords all its citizens the protection of Article I of its Constitution, which includes the right of privacy. Faculty have historically been permitted to communicate with each other without being subject to having their communications being overheard by district administration. Any proposal to retrieve faculty e-mail involves privacy interests protected by the California Constitution.

Academic freedom is the freedom of faculty to inquire, debate, and give opinions. Such activities occur throughout the campus, and faculty expect privacy in many of these communications. Some communications involve highly controversial and delicate subjects, with faculty and students sharing personal opinions, sometimes in confidence. In these circumstances, faculty have a reasonable expectation that the computer e-mails they receive and generate will not be searched indiscriminately.

The use or non-use of technology should not drive the teaching environment, and faculty should be free to determine the appropriate use of technology in the curriculum for which they are responsible. Faculty positions should not be displaced or replaced by the use of technology, but rather technology should be used as a tool to enhance the educational experience. Faculty using technology should be properly supported so that the use of educational technology does not compromise the educational experience.

Educational entities should adopt policies that do a better job of defining the privacy rights of all of their computer users. A model policy would, at a minimum, contain the same kind of information that

e-commerce sites routinely include in the privacy policy's disclosure of the categories of personally identifiable information that are collected and stored in the college's computers, a description of the uses that the institution plans to make of that information, and a procedure for users to restrict the information conveyed to third parties without prior consent. Such a policy would also establish standards for sharing or selling data from the college's system.

The standard might be as simple as the single sentence found in Rensselaer Polytechnic Institute's "Policy on Electronic Citizenship": (www.rpi.edu/web/comec): "Rensselaer extends to its students, faculty, and staff a reasonable expectation of privacy in the communication that they conduct via Rensselaer's computer system and networks." Or it might be as complex as the more than 1,500 words devoted to institutional obligations in the University of Illinois at Urbana-Champaign's "Computing and Network Policies" (www.uiuc.edu/ccso/pubs/cnp/cnp.html). As in the realm of e-commerce, the object is to arm users with needed information so they may determine for themselves whether their right to privacy is adequately protected when, dozens of times each day, they supply information that will be stored indefinitely in their institution's computers.

B. Model Contract Language

1. Privacy and Security

There is a presumption of reasonable privacy from district surveillance in the employee's use of technology-based work activities such as e-mail accounts, Internet usage, and other electronic tools. Access to restricted bulletin board postings, Internet postings and e-mail correspondence must be safeguarded by the institution to the greatest extent possible against piracy or unwarranted intrusion. Faculty have an expectation of privacy in communicating with each other regarding employment or union issues; the union may use the campus email system to communicate with its members.

2. Faculty Rights

Courses taught with the use of technology may be included in a faculty member's workload only with his/her consent. No faculty member shall be required to teach a course using distance learning technology. No faculty member shall be sanctioned for declining a course taught primarily using various educational technologies.

Enrollment in courses taught with the use of technology shall be limited for reasons of sound pedagogical principle.

No lectures or classes shall be taped, recorded or televised without the written permission of the faculty member responsible for the class who shall be advised of the intended use thereof. Permission for disabled students to record classes/lecture shall not be unreasonably withheld.

Faculty members who have developed a course with the use of technology shall have first right of refusal to teach said course for the first three years following course development.

Faculty members teaching a course using technology shall be evaluated in accordance with the same procedures as other faculty members.

3. Health and Safety, including Ergonomics

Faculty using computer equipment to carry out their duties shall be provided with ergonomically suitable furniture, to accommodate the necessary equipment.

C. Bibliography of Resources

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Section 6: Contracting Out of Educational Technology

A. Rationale for Policy Statements

The introduction of sophisticated information technology into the community colleges and the corresponding need to instruct students using that technology is forcing faculty to examine the traditional methods of developing courses and the methods of delivering what is developed. When administrators determine that the skills and knowledge to provide instruction by means of that technology does not exist in their districts, the issue of "contracting out" or "outsourcing" arises. Responsibilities normally performed by members of a CFT bargaining unit are often circumvented without the knowledge, either express or implied, of the bargaining agent. For example, some community colleges in California formed a consortium to share responsibility for providing course work to the California Virtual University. Contract language should address all possible methods that might be used, whether intentionally or not, to undermine the integrity of the bargaining unit by having its work performed outside of the district.

Contracting out bargaining unit work can take the form of a district contracting with an independent contractor to produce course software. A district could contract with a company to produce certain course offerings or could offer courses over the Internet that have not been developed in-house. In each case, someone else is doing the bargaining unit's work.

A. Model Contract Language

(Each local union should choose from among the following paragraphs for language in various areas which are deemed appropriate locally):

No employee shall be displaced because of distance learning or other educational technology. The use of distance education technology shall not be used to reduce, eliminate, or consolidate faculty positions within the district.

No work normally performed by any member of the faculty bargaining unit shall be contracted out without the express agreement of the Federation.

No distance education sections shall be instructed or conducted by persons not employed within the faculty bargaining unit.

No distance education or technology-related work shall be performed by other than members of this bargaining unit.

No member of the bargaining unit will be displaced because of distance learning or computer-aided courses as long as workload in credit courses is available in traditional modes.

Courses traditionally taught by bargaining unit members, or courses for which they meet the minimum qualifications that lie within the curricular purviews of district course offerings, will not be awarded to other institutions for transmission into the campus by electronic means.

Courses outside the capabilities of bargaining unit members, such as prepackaged courses or courses available through membership in educational consortia, must be approved by the appropriate department and the appropriate academic committees before they can be included in a college catalog or incorporated into a program of study.

No class shall be scheduled or received via distance learning from another institution if that course, or its equivalent, is scheduled to be offered at the college in the same semester as the proposed receipt of the distance learning course.

C. Bibliography of Resources

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APPENDICES

I. California Code of Regulations, Title 5, Section 55002. Standards and Criteria for Courses and Classes.

(a) Associate Degree Credit Course. An associate degree credit course is a course which has been designated as appropriate to the associate degree in accordance with the requirements of Section 55805.5, and which has been recommended by the college and/or district curriculum committee and approved by the district governing board as a collegiate course meeting the needs of the students eligible for admission.

(1) Curriculum Committee. The college and/or district curriculum committee recommending the course shall be established by the mutual agreement of the college and/or district administration and the academic senate. The committee shall be either a committee of the academic senate or a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college and/or district administration and the academic senate.

(2) Standards for approval. The college and/or district curriculum committee shall recommend approval of the course for associate degree if it meets the following standards: **(A) Grading Policy.** The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this Division. The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of essays, or, in courses where the curriculum committee deems them to be appropriate, by problem-solving exercises or skills demonstrations by students. **(B) Units.** The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline. The course also requires a minimum of three hours of work per week, including class time for each unit of credit, prorated for short-term, laboratory and activity courses. **(C) Intensity.** The course treats subject matter with a scope and intensity that requires students to study independently outside of class time. **(D) Prerequisites and Corequisites.** When the college and/or district curriculum committee determines, based on a review of the course outline of record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course, then the course shall require prerequisites or corequisites that are established, reviewed, and applied in accordance with the requirements of Article 2.5 (commencing with Section 55200) of this Subchapter. **(E) Basic Skills Requirements.** If success in the course is dependent upon communication or computation skills, then the course shall require, consistent with the provisions of Article 2.5 (commencing with Section 55200) of this Subchapter, as prerequisites or corequisites eligibility for enrollment in associate degree credit courses in English and/or mathematics, respectively. **(F) Difficulty.** The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level. **(G) Level.** The course requires learning skills and a vocabulary that the curriculum committee deems appropriate for a college course.

(3) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples or required reading and writing assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Conduct of Course. Each section of the course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of Chapter 2 (commencing with Section 51000), sections 55761-55763 and 58161 of this Division.

(b) Nondegree Credit Course. A credit course designated by the governing board as not applicable to the associate degree is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under Subdivision (a)(1) of the Section) and is approved by the district governing board and falls within one of the categories described in Subdivision (1) of the Subsection.

(1) Types of Courses. Nondegree applicable credit course are:

(A) precollegiate basic skills courses as defined in Section 55502(d) of this Division;

(B) courses designed to enable students to succeed in college-level work (including, but not limited to, college orientation and guidance courses, and discipline-specific preparatory course such as biology, history, or electronics) that integrate basic skills instruction throughout and assign grades partly upon the demonstrated mastery of those skills;

(C) precollegiate occupational preparation course designed to provide foundation skills for students preparing for entry into college-level occupational courses or programs;

(D) essential occupational instruction for which meeting the standards of Section 55002(a) is neither necessary nor required.

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course on the basis of the standards which follow. In order to be eligible for state apportionment, such courses must be approved (as courses not part of programs) by the Chancellor's Office) as provided by Section 55100 of this Division.

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this Division. The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of written expression that may include essays, or, in courses where the curriculum committee deems them to be

appropriate, by problem-solving exercises or skills demonstrations by students. **(B) Units.** The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline. The course also requires a minimum of three hours of work per week, including class time for each unit of credit, prorated for short-term, laboratory and activity courses. **(C) Intensity.** The course provides instruction in critical thinking and generally treats subject matter with a scope and intensity that prepares students to study independently outside of class time and includes reading and writing assignments and homework. In particular, the assignments will be sufficiently rigorous that students completing each such course successfully will have acquired skills necessary to successfully complete college-level work upon completion of the required sequence of courses. **(D) Prerequisites and Corequisites.** When the college and/or district curriculum committee determines, the course may require prerequisites or corequisites that are established, reviewed, and applied in accordance with the requirements of Article 2.5 (commencing with Section 55200) of this Subchapter.

(3) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples or required reading and writing assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students. Taken together, these course specifications shall be such as to typically enable any student who successfully completes all of the assigned work prescribed in the outline of record to successfully meet the course objectives.

(4) Conduct of Course. All sections of the course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of Chapter 2(commencing with Section 51000), sections 55761-55763 and 58161 of this Division.

(c) Noncredit Course. A noncredit course is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under Subdivision (a)(1) of the Section) and is approved by the district governing board as a course meeting the needs of enrolled students.

(1) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course if the course treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement that the committee deems appropriate. In order to be eligible for state apportionment, such courses are limited to the categories of instruction listed in Education Code Section 84711 and must be approved by the Chancellor's Office) as noted in Title, Section 55150.

(2) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the scope, objectives, contents, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met.

(3) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with the set of objectives and other specifications defined in the course outline of record.

(d) Community Services Class. A community services class is a class that meets the following minimum requirements:

(1) is approved by the local district governing board; (2) is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein; (3) provides subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students; (4) is conducted in accordance with a predetermined strategy or plan; (5) is open to all members of the community; and (6) may not be claimed for apportionment purposes.

II. Agreement between AFT Local 1388 and El Camino Community College District (Torrance, CA) -- Negotiated Language Excerpts

ARTICLE XXIV

INSTRUCTIONAL TECHNOLOGY

Section 1. Definitions

(a) **Distance Education** means instruction in which the instructor and student are separated by distance and interact through the assistance of communication technology.

(b) **A Work** is any material which is eligible for copyright protection, including (but not limited to): books, articles, dramatic or musical compositions, poetry, instructional materials (e.g., scientific, logical, opinion or criticism), works of art or design, photographs or films, video or audio recordings, computer software, architectural and engineering drawings, choreography. A Work may be recorded in any enduring medium (e.g., print, manuscript, electronic storage formats, optical, photosensitive film, etc.) or may exist in any tangible form (e.g., a sculpture, painting, structure or building).

(c) **An Invention** is any idea or discovery which is eligible for patent protection, including (but not limited to) a device, process, design, model, strain or variety of any organism or composition of matter.

(d) **District Support** includes the use of district funds, personnel, facilities, equipment, materials, or technology.

Substantial District Support is defined as support involving either (1) direct costs to the District in excess of \$2000 over and above any budget customarily provided for the Faculty Member's usual appointment or assignment, (2) indirect costs to the District (including but not limited to salaries and wages) in excess of \$5000 for District employees providing secretarial, technical or creative services specifically for the project, or (3) the use of exceptionally expensive District equipment or facilities (e.g., professional recording and filming studio, professional television cameras and the like). A grant obtained through the initiative and efforts of a Faculty member shall not be considered to have resulted from Substantial District Support so long as the Faculty Member's contributions exceed the District's contributions.

(e) **A Work for Hire or Invention for Hire** is one for which the Faculty Member is specifically compensated to create. Works or Inventions for Hire include products resulting from grants where the Faculty Member's contributions were less than contributions from the District.

(f) **Proprietary Instructional Materials** are those materials a Faculty Member creates to perform his assignment more effectively for the benefit of the students, including (but not limited to): syllabi, lectures, student exercises, illustrations, recordings, multimedia programs and tests. The Faculty member may use Instructional Materials in a traditional classroom or in any form of Distance Education. These Proprietary Instructional Materials may be created using the personal resources of the Faculty Member and/or resources provided by the District.

Section 2. Instructional Technology Decisions

The El Camino College Academic Senate has the primary responsibility for the recommendations to the Board of Trustees regarding curriculum and matriculation issues. As such, only those courses and programs approved through the agreed upon curriculum and matriculation decision process will be delivered by Distance Education.

The Faculty of the District is primarily responsible for the decisions related to the use of instruction technology in the courses and programs offered by the District.

The decision to offer any period of a course in distance mode shall be determined according to Section V, "Faculty Selection and Course Scheduling" of the Distance Education Guidelines.

Section 3. Access to Technology, Training and Support

The District has provided funds for Faculty training in the use of technology, and will continue its support of continuing education for Faculty at no less than the level of funding provided in Article XVI, Section 2.

Section 4. Privacy, Staffing Levels, and General Health and Safety Issues

Faculty members are bound by the District's E-mail, Internet and Network Use Policy 3610, a copy of which is attached hereto as Appendix E. The Board of Trustees may change this Policy from time to time. If the Board changes the Policy in a manner which significantly changes the rights of Faculty Members under this Agreement, the District and the Federation will bargain the effects of such change.

There shall be no taping, televising, or recording of instruction without the knowledge and written consent of the Faculty Member(s) involved, who also shall be advised of the intended uses thereof.

Section 5. Distance Education

Compensation and workload (e.g., class size, class maximums) of Distance Education courses will be equivalent to the corresponding traditional classes with the exception of those stated in this Article. The normal class size for an instructional television class is 125.

Section 6. Intellectual Property

Faculty who develop intellectual property with District support (as defined in Section 1(d) above, including but not limited to electronically posted notes, lectures, audio or videotaped presentations, broadcasts, or multi-media or inter-active software, shall retain all ownership rights to and control of such material, except that the District shall retain the right to use property created with Substantial District

Support (as defined in Section 1(d) above) for its own purposes without payment of royalties or other consideration, and the Faculty Member shall provide appropriate access to District personnel for faculty evaluation, program review and accreditation purposes. "Works or Inventions for Hire," as defined in Section 1(e) above shall remain the property of the district for all purposes.

Section 7. Joint Subcommittee on Technology - Working Conditions (JSTWC)

(a) Within sixty days of the signing of the Agreement, the District and the Federation will form a subcommittee to the ECC Technology Committee which shall be known as the Joint Subcommittee on Technology - Working Conditions. The JSTWC shall consist of two members chosen by the District and two members chosen by the Federation. It shall meet regularly throughout the year. Either the Federation or the District may call a meeting within at least seven working days notice.

(b). The purpose of the JSTWC will be to assure the working conditions within the scope of negotiations remaining in place. In this regard, the Subcommittee will monitor changes in the District's use of technology in the academic program for the purpose of identifying any significant impact of such changes on Faculty working conditions. The JSTWC shall report any changes or potential changes in working conditions to the Federation and District with a copy of such report to the ECC Technology Committee. Changes in working conditions will require the parties, upon the request of either, to bargain the effects of such changes.

ECC E-MAIL, INTERNET AND NETWORK USE POLICY (Board Policy 3610)

1. Introduction

El Camino Community College (ECC) owns and operates a variety of computer systems for use by its faculty, students and staff. ECC encourages the use of its computer systems for education, academic development, public service and other educational purposes. When using ECC's computer systems, all users are required to abide by the rules of this Policy and use the system in an ethical and lawful manner. Misuse may constitute a misdemeanor or felony under state or local law and may result in the deprivation of network privileges and/or disciplinary actions.

2. Policy Requisite

All users of El Camino's computing systems should read, understand and comply with the terms outlined in this Policy, as well as any additional guidelines as approved by College Council. By using any of these systems, users agree that they will comply with these policies. Users understand and agree that the ECC's role in managing these systems is only as an information carrier and does not endorse any transmissions by the user.

3. Rights

These computer systems, facilities and accounts are owned and operated by ECC. These procedures shall not be construed as a waiver of any rights of ECC, nor shall they conflict with applicable law. The District is not responsible for the loss and/or corruption of information that may be stored on ECC's computing systems.

4. Authorized Use

Access and privileges on ECC's computing systems are assigned and managed by the administrator of the specific system. Eligible individuals may become authorized users of the system and be granted appropriate access and privileges by following the approval steps prescribed for that system.

An authorized ECC agent must approve all access to ECC's computer resources, including issuing of passwords. Users may not, under any circumstances, transfer or confer these privileges to other individuals. The authorized user is responsible for the proper use of the system, including any password protection.

5. Conditions of Use

The user agrees to maintain an environment in which access to all of ECC's computing resources is equitably shared between users. The administrator will set minimum guidelines within which users are required to conduct their activities:

(a) The user agrees to maintain an environment conducive to learning. Many of the ECC computing systems provide access to outside networks, both public and private, which furnish electronic mail, information services, bulletin boards and conferences, etc.

(b) Users are advised that they may encounter material, which may be considered offensive or objectionable in nature or content. Users are further advised that ECC does not assume responsibility for the contents of any of these outside networks

(c) The user agrees to comply with the acceptable use guidelines for whichever outside networks or services they may access through ECC's systems.

(d) The user agrees to follow proper etiquette on outside networks. Documents regarding etiquette are available through specified individual networks.

(e) The user agrees that in the unlikely event that someone does transmit, or cause to be transmitted, a message that is inconsistent with an environment conducive to learning or with a misleading origin, the person who performed the transmission will be solely accountable for the message, not ECC, which is acting solely as the information carrier.

(f) The user agrees to report any possible security lapse on any system to the system administrator. The system must not be used until the system administrator has investigated the problem.

(g) The user agrees not to use their knowledge of passwords or loopholes in computer security systems to damage computing resources, obtain extra resources, take resources from another user, gain unauthorized access to resources or otherwise make use of computing resources for which proper authorization has not been given.

6. Prohibited Uses

Use of any ECC computer system for any of the following purposes is strictly prohibited. An individual's computer use privileges may be suspended immediately upon the discovery of a violation of these privileges. Violations of these policies will be dealt with in the same manner as violations of other college policies.

The user agrees never to use the system to perform an illegal or malicious act.

Any attempt to increase the level of access to which the user is authorized, or to deprive other authorized users access to any ECC computer system shall be regarded as a violation of this policy.

(a) Copyright Infringement

Computer software, text, audio, image or video files, as well as computer programs protected by copyright, cannot be copied from, into or by using campus-computing facilities except as permitted by law or by the contract with the owner of the copyright. This means that such computer and microcomputer software may only be copied in order to make back-up copies, if permitted by the copyright owner. The number of copies and distribution of copies may not be done in such a way that the number of simultaneous users in a department exceed the number of original copies purchased by the department.

(b) Defamation – Libel/Slander

Creation or transmission of any false statement, which tends to cause injury to one's reputation is strictly prohibited. Any user creating or transmitting defamatory statements shall have sole liability for any damages resulting from such defamatory statement.

The user agrees never to attempt to transmit, or cause to be transmitted, any message in which the origination is deliberately misleading (except for those outside services which may conceal identities as part of the service).

(c) Obscene Material

Creating, transmitting, uploading or downloading obscene material is strictly prohibited when using ECC computer systems. "Obscene matter" means matter which when taken as a whole, the predominant appeal of which to the average person applying contemporary statewide standards, is to prurient interest, and is matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which taken as a whole lacks significant literary, artistic, political, educational or scientific value. Any user violating this provision may be subject to applicable criminal and civil penalties. Civil liability shall be solely and exclusively with the user.

(d) Commercial Use

Commercial use of ECC computer systems is prohibited.

Additional prohibitions include harassment, solicitations, unauthentic identification (logging on as someone else), unauthorized use of institutional signatures (college letterhead, logos, etc.), network vandalism (introducing a virus to corrupt files), use of workstations specifically reserved for an individual employee or group of employees or monopolizing access.

Liability for violations of prohibited uses shall remain solely and exclusively with the user.

7. **Accounts**

Others should not use an account assigned to an individual without written permission of the system administrator. The individual is responsible for the proper use of the account, including password protection.

8. **Confidentiality**

Programs and files are confidential unless they have been made available, with written permission, to other authorized individuals. When performing maintenance, every effort is made to ensure the privacy of the user's files. Violations of confidentiality should be reported to an administrator.

The system has the ability to read your mail, your own account and the system administrator account. All reasonable attempts have been made to ensure the privacy of your accounts and your electronic mail.

9. **System Performance**

No one should deliberately attempt to degrade the performance of the computer system or to deprive authorized personnel of resources or access to any college computer system.

10. **Unauthorized Access**

Loopholes in computer security systems or knowledge of a special password shall not be used to damage the computer system, obtain extra resources, take resources from another user, gain access to systems or use systems for which proper authorization has not been given.

- * Users shall not provide security codes to other users.
- * Users shall not install executable files on network servers and shall not modify, delete or otherwise alter server files or any data within those files without express authorization to do so.
- * ECC retains the right to revoke, amend or change the provisions of this policy.
- * Users who do not adhere to this policy may be subject to disciplinary action.

III. Agreement between AFT Local 2121 and the San Francisco Community College District – Negotiated Language Excerpts

INTELLECTUAL PROPERTY

I. PURPOSE AND SCOPE

The understandings regarding Intellectual Property that are set forth in this Article are intended to:

- encourage faculty to engage in the production of scholarly works, creative publications, and technology-based materials, including works utilized in distance education;
- promote the right of faculty members to benefit from their scholarly work; and
- avoid copyright disputes by facilitating advance agreement between faculty members and the District regarding the ownership and use of such works.

II. COPYRIGHT DEFINITIONS

- A. Commissioned/Institutional Works are defined and directed by the District for a specific District purpose. Faculty members' contributions to such work are outside their normal duties, and are specified in advance by written agreement.
- B. Derivative Work is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adopted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work."
- C. Good Standing, for purposes of this agreement only, means the faculty member's performance is satisfactory or above in connection with the on-line course(s) he or she is teaching. In the absence of an evaluation, good standing shall be presumed unless the District has documented the deficiency and followed the process set forth in Article 11.C.4 through 11.C.6. Mere unsatisfactory performance in teaching an online course does not constitute an independent basis for discipline but may preclude the faculty member from further assignment to an online course. When the faculty member's deficiency is solely related to the unique nature of on-line teaching, the District shall not rely on such documentation in connection with future discipline.
- D. Intellectual Property means any work that is eligible for copyright protection including (but not limited to) literary works, books, articles, dramatic and musical compositions, poetry, instructional materials (e.g., syllabi, lectures, student exercises, multimedia programs, and tests), analysis (e.g., scientific, logical, opinion or criticism), works of art and design, including pictorial, graphic and sculptural works, photographs, films, video and audio recordings, computer based programs and media (e.g., software or computed code of their representation in forms such as CD-ROM, video disk, compressed video, web-based material and the like), original "mask works" (i.e., original images derived from semi-conductor chip products), architectural and engineering drawings and choreography.
- E. Joint Work is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole
- F. License is contract in which a copyright owner grants to another permission to exercise one or more of the rights under the copyright.
- G. Personal Work is intellectual property that is prepared outside the course and scope of District employment without the use of District resources.
- H. Royalty – is a payment made to an owner of a copyright for the privilege of practicing a right under the copyright
- I. Scholarly/Aesthetic Work is "Intellectual Property" originated by a faculty member resulting from independent academic effort. Such works include faculty prepared textbooks, lecture notes, syllabi, journal articles, reviews, and other course materials such as outlines, workbooks, presentations, and laboratory manuals, as well as literary, musical and artistic works, and periodicals or other serial publications.
- L. Substantial Support means financial support over and above the cost of the faculty member's normal compensation, office space, office computer, local telephone use, minimal office supplies and copy services. Substantial support includes extra compensation or the assignment of reassigned time to create the work, the cost of providing secretarial, technical, legal or creative services specifically for the creation of work, as well as the cost or value of the use of District equipment or facilities. Neither District-sponsored training nor compensation to a faculty member while on sabbatical, standing alone, constitutes substantial support.

III. COPYRIGHT OWNERSHIP

- A. Scholarly/Aesthetic Works are the property of the faculty member and the copyright is owned by the faculty member.
- B. Commissioned/Institutional Works – unless otherwise stipulated in the agreement, ownership will rest with the District if the elements of this definition are substantially present.
- C. Personal Work – ownership of copyrights to personal works shall reside with the faculty member.
- D. Faculty Efforts Supported by District – Where the faculty work(s) as defined in Section II involve(s) substantial support of District resources (as defined in Section II.J), one of the following applies:
 - 1. The faculty member shall retain the right to copyright the material, but shall reimburse the District for the reasonably assessed cost of the substantial support.
 - 2. The District and the faculty member may agree to share the right to copyright materials. This will be accomplished through a separate contract at the time the project is initiated. As provided in § IV, AFT will be a party to the negotiations.
 - 3. The District may seek the right to market the work(s) created by the faculty member. The terms of the license to market the work(s) shall be agreed upon by the faculty member and the District. As provided in § IV, AFT will be a party to the negotiations.
 - 4. Before a faculty member makes substantial use of District facilities, equipment and resources to create a work, he/she shall seek approval from their Department Chair or Dean and the appropriate Vice Chancellor. If the request is approved, the Vice Chancellor and faculty member shall enter into a signed agreement specifying the degree to which District facilities, equipment and resources will be permitted to be used, as well as disposition, including use, of copyrighted works. As provided in § IV, AFT will be a party to the negotiations.
- E. Creation of Intellectual Property During Paid Sabbatical
 - 1. Creation of intellectual property during a paid sabbatical leave is the property of the faculty member and the copyright to the work(s) is owned by the faculty member, except as stated in Section III.D.
 - 2. Where the District has provided to the faculty member substantial support as defined in §II.E above in the creation of work(s) included in the faculty member’s approved sabbatical proposal, issues of approval for the use of District resources, ownership, and copyright of the created work(s) shall be governed by Section III.D.
- F. Joint Work – Rights between joint owners of a copyright shall be determined pursuant to copyright law.
- G. Grant-funded Work – Ownership and use of works stemming from grant-funded projects shall be subject to and determined by the terms of the grant. This provision shall not be deemed to create a beneficial interest for any Grantor.

- H. District License for Use of Copyrighted Materials – In cases where the faculty member retains ownership of a work produced during the faculty member’s employment, with the exception of Personal Work as defined in section III.B, the faculty member and the District may agree upon terms for a license permitting the District’s use of such work for internal instructional, educational and administrative purposes. Under normal circumstances, the license shall be non-exclusive and royalty-free. In the event of a dispute under this section, the Union, faculty member and Chancellor shall meet in an effort to collegially resolve the dispute.

IV. AFT’S ROLE IN INTELLECTUAL PROPERTY RIGHTS NEGOTIATIONS BETWEEN THE DISTRICT AND INDIVIDUAL FACULTY MEMBERS

In negotiations pursuant to this Article between the District and a faculty member over the terms of a written agreement covering matters within the scope of representation (Government Code §3543.2), AFT will be a party to the negotiations. Before initiating any negotiations with any faculty member over a written agreement pursuant to this Article, the District shall notify AFT.

V. COPYRIGHT REGISTRATION

Responsibility for official registration of copyright will lie with the owner of the copyright, Where the District and faculty member(s) share ownership, the District will be responsible for filing for both parties for registration of copyright.

VI. ROYALTIES AND DISTRIBUTION RIGHTS

Unless mutual agreement is made to the contrary, the ownership of copyright determines royalty distribution as follows:

- A. When faculty has full copyright ownership, they retain full royalty distribution rights.
- B. When the District has full copyright ownership, it retains full royalty distribution rights.
- C. If the District and the faculty member(s) share copyright ownership, all royalties or profits will be distributed to reimburse copyright owners for documented expenses related to the creation and production of the materials. Any remaining royalties or profits will be distributed equally among the owners or according to a different percentage under the terms of a separate agreement.

VII. DISTANCE EDUCATION

- A. Distance Education is defined as instruction, education or training where the instructor and the student are separated geographically. Communication between the student and instructor is made through one or more technological devices such as live or recorded visual presentations and materials using direct signal or cable, transmission by telephone line, fiber-optic line, video tape, CD-ROM, computer or internet technology, or email. “Course” as used in this Article refers to any class offered by the District.
- B. Compensation including extra pay or release time for work performed by faculty members who develop Distance Education courses, shall be negotiated by the Union and the District. In each case in which the faculty member develops a Distance Education course, an agreement regarding this compensation and the work to be performed will be executed by the faculty member, the District and AFT.
- C. The faculty member retains ownership of and the right to copyright course materials of Distance Education courses, except for ownership of the courseware shell.

D. Right of First Refusal and License

1. The faculty member who creates a distance education course, whether a new distance education course or an existing course converted to a distance education course, shall maintain the right of first refusal to teach the course for four (4) semesters, provided that (A) there is adequate enrollment to offer the course, and (B) the faculty member remains in good standing, as defined above. Faculty members meeting these conditions are referred to as “such originating faculty members.”
 - a. If such originating faculty members decide not to continue to teach the course, the terms of D.2 apply.
 - b. If the District wishes to reassign the course and provide the course materials of such originating faculty members to another faculty member over the originating faculty members’ objection, the District shall consult with the originating faculty member and Union before determining a final course of action, with review by the Chancellor in the event of continued disagreement. The District, Union and originating faculty member shall agree, prior to reassignment of the course, to the amount to be paid the originating faculty member for a license fee, and shall also agree to the duration of the license.
 - c. If the faculty member does not remain in good standing with adequate enrollment for the entire four semesters, the terms of D.2 apply.
 2. After the initial period defined in D.1, the District shall retain a non-exclusive, non-transferable license to use such course for internal instructional, educational and administrative purposes without compensation for a period of four (4) semesters additional to any semesters in which the course was already taught by the originating faculty member. This license shall not include the right to create derivative works absent the written consent of the originating faculty member.
- E. If the district seeks to assign one or more other faculty member(s) one or more addition section(s) of an online course using the materials from an online course currently taught by a unit member:
1. the decision shall be subject to agreement with the Union and originating faculty member;
 2. the load factor for the additional section(s) shall be the same as provided for the original section; and
 3. the parties will reach a written agreement over an appropriate license fee and duration of use.
- F. Distance education course curriculum shall be developed pursuant to established curriculum policies and procedures.
- G. Teaching of distance education courses shall be on a voluntary basis.
- H. The decision of whether and when to offer education courses shall remain the exclusive prerogative of the District, except as limited by the specific terms of this Section VII. Assignment and scheduling of faculty who volunteer for such courses shall be in accordance with Article 13 of this Agreement and this Section VII.
- I. If the creating faculty member is not going to continue teaching a distance education course, the assignment decision in respect to volunteers shall be made in accordance with Article 13.
- J. Faculty selected to teach a distance education course must participate in District-sponsored training as required, and agree to follow the guidelines and requirements of the Office of Technology-Mediated Instruction.
- K. Existing class size limits for conventional courses shall apply to their on-line versions. Telecourse limits are as set forth in Article 18.A.3.

IV. Walla Walla River Community College District (Walla Walla, Washington) -- Negotiated Language Excerptps

Definitions

“**District Support**” includes the use of District funds, personnel, facilities, equipment, materials, or technology. District Support may be either Nominal or Substantial Resources, or a combination thereof. Grant funds obtained at the initiative of, and through the efforts of, the Faculty Member who creates a Work or Invention shall not be considered to be District Support.

“**Nominal Resources**” include those which are customarily available or provided in the course of the Faculty Member’s usual appointment or assignment, such as (but not limited to) the Faculty Member’s normal compensation, routine support services provided by other employees, the use of computers, photocopy machines, office supplies, and the use of an assigned office and telephone. A budget that is customarily provided for the Faculty Member’s usual appointment or assignment shall be considered a Nominal Resource.

“**Substantial Resources**” shall be only those direct costs to the District in excess of \$xxxxx, over and above any Nominal Resources. The assignment by the District of other employees to provide secretarial, technical or creative services specifically for the creation of the Work or Invention shall be included in the calculation of any qualifying Substantial Resources only if the salary costs for these services exceed \$xxxxx for a given Work or Invention. The use of exceptionally expensive District equipment or facilities (e.g., professional recording and filming studios, and professional television cameras) shall be included in the calculation of any qualifying Substantial Resources. Indirect costs (e.g., utilities, janitorial services, routine maintenance and repair, etc.) shall not be included in the calculation of Substantial Resources.

A “**Work for Hire**” or “**Invention for Hire**” is one for which the Faculty Member is employed and compensated to create as the primary purpose of that employment. An Invention or Work for Hire may be the product of the Faculty Member’s regular appointment or assignment (if that is the primary purpose of that appointment or assignment), or may be the product of a separate employment agreement between the District and the Faculty Member.

Property created with District Support.

Using Nominal Resources. Intellectual Property created with the support of Nominal District Resources only shall be the sole property of the Faculty Member(s), and the District waives any right it might have to such property.

Using Substantial Resources. Intellectual Property created with the support of Substantial District Resources shall be owned jointly by the District and the Faculty Member(s), subject to the other provisions of this Article. Faculty Members shall notify their immediate supervisor when they use, or anticipate using, Substantial Resources to create Intellectual Property.

Estimated costs. Before entering into an agreement for the creation of Intellectual Property, the District shall provide its best, good faith estimate of the cost of all Substantial Resources that the Faculty Member requests, or the District proposes, that the District provide. The Faculty Member shall then select an option from subsection “Options of the Faculty Member.”

Accounting by the District. The District shall keep an accounting of all direct costs that qualify as Substantial Resources provided for the creation of the Intellectual Property. A current accounting of such

costs shall be provided to the Faculty Member(s) every three months during the project. The District shall not later claim direct costs of Substantial Resources that it did not timely include in its periodic accountings to the Faculty Member(s). Faculty Members may use the dispute resolution procedures in this Article to contest the accuracy and validity of the direct costs claimed by the District.

Faculty consent to distribute or sell. The District shall not market, distribute, license or sell Intellectual Property (other than Works or Inventions for Hire) without the written consent of the Faculty Member(s) who created that property. After a period of X years has elapsed, a Faculty Member may revoke that consent if the Faculty Member believes the property has become obsolete or requires substantial revision.

Options of the Faculty Member(s). Ownership and royalty rights shall be determined (as provided in this subsection) by the Faculty Member(s) who has/have created the Intellectual Property. At each Faculty Member's sole option:

1. Faculty reimbursement of District costs. The Faculty Member(s) shall reimburse the District for all Substantial Resources provided for creation of the Intellectual Property. The Faculty Member(s) may make installment payments to the District over a period not to exceed X years. Upon full reimbursement, all ownership rights vest in the Faculty Member(s) who created the property. The District shall not sell the Intellectual Property to a third party during the reimbursement period.

2. District recovery of costs through royalties. The District shall own the copyright, and shall apply $xx\%$ of all royalties received toward recovery of the direct cost of all Substantial Resources provided for the creation of the Intellectual Property. The remainder of the royalties ($xx\%$) shall be paid to the Faculty Member(s). When sufficient royalties have been received for the District to recover the direct cost of the Substantial Resources, the District shall assign the copyright to the Faculty Member(s).

3. Sharing of Royalties. The District shall retain the copyright and all royalties received shall be shared equally by the District and the Faculty Member(s). If the District sells the Intellectual Property to a third party, the Faculty Member(s) shall receive fifty percent of the sale proceeds.

Royalties. Royalty payments due under this Article shall be proportional to the ownership interests of the District and the Faculty Member(s). Faculty Members entitled to royalties under this Article shall receive the actual royalties negotiated between the District and any third party, or five percent (5%) of gross revenue to the District, whichever dollar amount is greater. The District shall remit such accrued royalties to the Faculty Member at the close of each fiscal year.

Royalty statements. At the end of each fiscal year, the District shall provide a royalty statement to each Faculty Member with a royalty interest in an Intellectual Property held by the District, even if no royalties have been received.

District initiation of project. When the District initiates a proposal for the development of new Intellectual Property by a Faculty Member, the selection of the Faculty Member to develop the property shall be made without regard to the Faculty Member's preference among the options above. The District shall not inquire into the preference of any potential Faculty Member regarding those options until it has offered the project to the Faculty Member. If the project involves the use of Substantial District Resources, the good faith estimate of those costs shall be provided to the Faculty Member before he or she selects an option provided above.

V. Agreement between AFT 1521 and Los Angeles Community College District -- Negotiated Language Excerpts

(As executed on July 1, 2002 the 2002-2005 Agreement between the Los Angeles Community college District (the "District") and the American Federation of Teachers College Guild Local 1521 (the "AFT") provides for continued negotiations on several topics, including "Distance Learning and Intellectual Property Rights." Some newly-negotiated language in Articles 40 & 41 are included as **selections** below:)

Article 40: DISTIBUTIVE/DISTANCE LEARNING

Section B: Colleges offering D/DL courses shall:

1. Follow agreed upon curricular development, quality standards, and approval processes as developed by the college academic senate in consultation with the administration.
2. Provide technical and instructional support including personnel, services and equipment to secure successful delivery of the course in this learning mode.
3. Encourage faculty who are newly preparing to teach D/DL courses to participate in training sessions in this method of instructional delivery.

Section C: Class size, assignments, load, mileage reimbursement and mentoring

5. The instructor of a D/DL class shall receive mileage reimbursement as provided by district policy if he or she is required to travel to various delivery sites as a part of the class.
6. Experienced D/DL instructors selected to mentor or train others may be compensated at the non-teaching adjunct rate.

Section D: Instructional Television

1. The assignment of faculty to Instructional Television courses shall be considered 0.4 FTE for the semester and 1 FTE in Summer.
2. Courses with fewer than 80 enrollments as of the close of the tenth instructional day of the semester in which the course appears on TV may be cancelled and the teaching assignment terminated. The Instructor shall be reassigned if regular or contract status is held.
3. In the event an ITV course official enrollment exceeds 240 students, a second section shall be created.
4. all ITV assignments shall first be offered to regular faculty.
5. If regular faculty members are not available to accept ITV assignments, temporary assignments may be offered to non-regular employees as ITV instructors in accordance with the District's rules.
6. The ITV evaluation process shall parallel the process for part-time instructors with the Director of ITV acting as the Department Chair.

Article 41: INTELLECTUAL PROPERTY

A. Purpose: The District and the AFT 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 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.

B. Definitions, as used in this Article:

1. "Works" means any material that is eligible for copyright protection including (but not limited to) books, articles, dramatic and musical compositions, poetry, instructional materials (e.g., syllabi,

lectures, student exercises, multimedia programs, and tests), fictional and non-fictional 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.

2. "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.

C. Works covered

1. Types of works whose ownership and use are covered by this Article. This Article identifies the copyright ownership of works created by faculty members in connection with the courses they teach, or other duties they perform as faculty members, while they are employed by the District and in connection with their employment; and it addresses the use of those works by faculty members and the District.

2. Types of works not covered by this Article, and consequences of not being covered. This Article does not cover all works created by faculty members, even if those works are in some sense related to their duties. For example, it does not cover works created primarily for purposes that are separate from a faculty member's teaching or other duties as a faculty member, such as: novels, even if written by faculty members who teach literature; business books, even if written by faculty members who teach business; art works, even if created by faculty members who teach art; or music, even if composed by faculty who teach music.

Also, this Article does not cover works created by faculty members for their own personal use that are not intended to be distributed to others, even if created in connection with their duties, such as a faculty member's personal lecture notes.

The copyrights to works that are not covered by this Article shall not be owned by the District under paragraph D.2.a. below, and the District is not authorized to use such works under paragraph E. I.b. below.

D. Copyright ownership

1. Ownership by faculty members. The copyrights to works created by faculty members will be owned by them, 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 circumstances described in paragraph D.2.a. below.

2. Ownership by District. The District will own the copyright to works under the following circumstances:

a. Circumstances relating to substantial support by the District. The District will own the copyright to any work created with substantial support from the District. As used in this Article, "substantial support" means financial support over and above the cost of the faculty member's normal compensation, office space, office computer, local telephone use, minimal office supplies and copy services. Substantial support would include extra compensation or the provision of reassigned time to create a work, the cost of providing secretarial, technical, legal or creative services specifically for the creation of a work, as well as the cost or value of the use of expensive District equipment or facilities (such as professional film or recording studios). Grant funds obtained by faculty members for the creation of works shall be considered substantial support provided by the District only if the District is involved in the fiscal administration of the grant.

b. Circumstances relating to the nature of the work. The District will also own the copyright to any work, such as a course outline, administrative policy, or information brochure, that is formally reviewed by the District and becomes part of its curriculum, policies, or administrative or promotional literature.

3. Faculty member's Option to Acquire Copyright. If the District is to be the owner of the copyright to a work because it provided substantial support for its creation, the faculty member who created the work shall have an option to acquire the work's copyright by paying the District an amount of money that shall be agreed upon in writing by the faculty member and the District at the time the District provides (or agrees to provide) that support. To exercise this option, the faculty member shall pay the District the agreed upon amount; and the District shall immediately assign the work's copyright to the faculty member.

4. Process for documenting District ownership and faculty member's option.

a. "If the District is to be the owner of the copyright to a work, the faculty member and the District should sign an agreement that contains the following clauses:

"Faculty member and District agree that the work identified below shall be a work made for hire whose copyright shall be owned by the District. If the work is not a 'work made for hire' as a matter of copyright law, then faculty member hereby assigns his or her copyright in the work to the District.

"The work to which this agreement pertains is one that will be created by faculty member with substantial support from the District, or is a work that will be formally reviewed by the District and will become part of its curriculum, policies, or administrative or promotional literature. The work is titled or described as follows: _____"

b. If such an agreement has not been signed, the absence of a signed agreement means the faculty member is the copyright owner rather than the District, unless the District proves in arbitration (as provided in paragraph H below) that it did provide substantial support for the work or that the work became part of its curriculum, policies, or administrative or promotional literature.

c. If the District is to be the owner of the copyright to a work because it contributed substantial support, the agreement signed by the faculty member and District also should contain the following clause:

"To exercise his or her option to acquire the copyright to the work identified above, the faculty member shall pay the District the sum of \$ _____"

d. The amount to be paid by the faculty member to exercise his or her option to acquire a work's copyright may be adjusted from time to time, if for example the amount of the District's support increases (or decreases), but only if the faculty member and District both sign a new clause containing the agreed-upon adjusted amount.

E. Permitted uses

1. Use of work when copyright is owned by faculty member

a. Used by faculty member. The District acknowledges that faculty members may use works whose copyrights they own in any and all ways they may wish, including, for example, authorizing the for-profit publication of such works in return for royalties paid solely to faculty members, subject only to the District's non-exclusive license to use those works (set forth in paragraph E. 1.b. below), without any further authorization from the District.

b. Uses by District and College. The District shall have a non-exclusive license to use works whose copyrights are owned by faculty members 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 such works (for example, in classroom teaching, by web casting, or by broadcasting); (4) to display such works (for example, over the web); and (5) to create derivative works (for example, companion materials or updated versions).

The District and its Colleges may do these things themselves, but neither the District nor its Colleges may authorize others to do them, unless the District first obtains the written consent of the faculty member who owns the work's copyright.

2. Use of work when copyright is owned by District

a. Uses by District. 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 paragraph E.2.b.below), without any further authorization from the faculty members who created those works.

b. Uses by faculty member. Faculty members shall have a non-exclusive license to use works they created, whose copyrights are owned by 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 such works (for example, in classroom teaching, by web casting, or by broadcasting); (4) to display such works (for example, over the web); and (5) to create derivative works (for example, companion materials or updated versions).

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.

3. Use of names of faculty members, District and Colleges

a. District's and College's use of faculty member's name. The District agrees that when it uses a work created by a faculty member (regardless of who owns the work's copyright), the District will identify the faculty member who created the work, for as long as the work continues to be used by the District.

If for any reason the District does not wish to identify the faculty member, the District may ask the faculty member for authorization not to do so; and the faculty member has the option but not the obligation to release the District from this obligation.

If for any reason the faculty member does not wish his or her name to be used in this manner, the faculty member has the right to require the District not to identify him or her; and in such a case, the District agrees not to do so, or to stop doing so as soon as reasonably possible.

If the District fails to identify a faculty member under circumstances when it should have, or identifies a faculty member under circumstances when it should not have, the faculty member shall be entitled only to a reasonable remedy that takes into account the seriousness of the violation, and will not automatically be entitled in all cases to a remedy that requires the District to recall and destroy all existing copies of works that fail to include or omit the faculty member's identification.

b. Faculty member's use of name of district or College. Faculty members agree that when they use works they have created (regardless of who owns the works' copyrights), those works will identify their creators' relationships with the District or College, for as long as they continue to be employed by the District. (For example, if a faculty member creates an online course that identifies the faculty member as its author, the faculty member's name shall be followed by the name of the College at which the faculty member teaches.)

If for any reason a faculty member does not wish to identify his or her relationship with the District or College, the faculty member may ask the District for authorization not to do so; and the District has the option but not the obligation to release the faculty member from this obligation.

If for any reason the District does not wish its name or the College's name to be used in this manner, the District has the right to require the faculty member not to identify his or her relationship with the District; and in such a case, the faculty member agrees not to do so, or to stop doing so as soon as reasonably possible.

If the faculty member fails to identify the District or College under circumstances when he or she should have, or identifies the District or College under circumstances when he or she should not have, the District shall be entitled only to a reasonable remedy that takes into account the seriousness of the violation, and will not automatically be entitled in all cases to a remedy that requires the faculty member to recall and destroy all existing copies of works that fail to include or omit the District's or College's identification.

F. Responsibilities

1. Registration of copyright. It shall be the responsibility of the party who owns the copyright to each work to register that copyright with the United States Copyright Office.

2. Acquiring and paying for necessary rights from third parties. 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. Faculty members acknowledge that in some cases, the cost of acquiring necessary rights from third parties, if paid by the District, may

itself constitute "substantial support" from the District, so the District would become the owner of the copyright to such works simply because it paid to acquire those rights.

3. Determining and documenting copyright ownership when two or more faculty members create and own the copyright to a work. If a work whose copyright would be owned by a faculty member (rather than by the District) is created by two or more faculty members, it is the responsibility of those faculty members to

determine the manner in which they share ownership of the copyright to that work, and it is their responsibility to prepare (or have prepared at their own expense) a written agreement between them documenting their determination. No grievance against the District may be asserted by faculty members arising out of any consequences of their failure to make or document an agreement concerning the manner in which they share ownership of the copyright to such a work.

G. Authorization of individual agreements, the terms of which differ from those described above. Faculty members and the District may, if they wish, enter into individual agreements with one another concerning copyright ownership and usage rights to specific works, the terms of which differ from those set forth above. The terms of any such individual agreement will supercede the terms of this Article, once such an agreement is signed by the faculty member and an authorized representative of the District. Any such agreement will be provided to the AFT.

H. Dispute resolution. Disputes between faculty members and the District concerning this Article shall be resolved pursuant to the grievance procedures contained in Article 28, except that an arbitrator who is expert in copyright law shall be chosen by the parties, or, if the parties are unable to agree on an arbitrator, chosen in accordance with the commercial arbitration rules of the American Arbitration Association.