

**THE COMMUNITY COLLEGE COUNCIL  
OF THE CALIFORNIA FEDERATION OF TEACHERS**

**Distance Education and Technology Issues Committee**

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

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# Preamble: Purpose

## **A. Background and 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.

Over the last two years, 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 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 two actual 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: Future**

This *Framework* is a living document, a work-in-progress. The impact of these technological changes is most pronounced in the community colleges and universities, but that is changing as we type. Clearly the impact of technology is becoming the focus of discussion in K-12 as well. Hence, we call for fuller participation by faculty at all levels from all segments to step forward and contribute to the dialog concerning educational technology issues. CFT needs to dedicate financial and human resources to this issue in order 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 broadly defines 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. The technology of today, however, can provide for both interactivity and for effective student/instructor communication.

The new technologies currently use interactive television, computer e-mail, telephones, and web sites. Faculty work done in these new 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 this innovative and new area 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. E-mail 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, Sections 55372 and 55002. Not all courses are compatible for distance learning, particularly those offered online and asynchronously. 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 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 unacceptable.

## **B. Model Contract Language**

### **Purpose:**

The purpose of this section is to provide for an environment where the right of the student to a quality academic experience and 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 be based primarily on 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 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.

### **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.

### **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**

Academic Senate for California Community Colleges. 2000. "Technology in Education: A Summary of Practical Policy and Workload Language."

Accrediting Commission for Community and Junior Colleges. 1999. "1999 Distance Education Handbook."

American Federation of Teachers. 2000. *Distance Education: Guidelines for Good Practice*.

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American Association of University Professors. 1999. "Suggestions and Guidelines: Sample Language for Institutional Policies and Contract Language on Distance Education."

Farber, Jerry. 1998. "THE THIRD CIRCLE: on Education and Distance Learning." *Sociological Perspectives* 41(4): 797-814.

Western Association of Schools and Colleges. 2000. "Guidelines for Distance Education: Principles of Good Practice."

## 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 and 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.

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, works made in the course of employment that remain the property of the faculty member.

#### 1. Works belonging to faculty members:

Under federal copyright law, intellectual property created by employees in the course of their employment normally is the property of 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; and,
- the risk that faculty members might leave the college

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, the 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 usually retains rights to that medium.

#### 2. Works made 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 made with substantial support from the employer:

Works made using substantial district resources may well belong all or partly to the employer. Providing secretarial, technical or creative services for the creation of a specific work or invention is 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 (\$X of support) the employer has an interest in the work and either establish percentages of ownership or a process for reaching such agreement on a case by case basis. Such agreements can grant the employee a share of ownership as a form of partial compensation.

### 4. Works for hire:

An intellectual property for which the employee is specifically hired and compensated belongs 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.

### 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.

### 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.

### 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.

### 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 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.

### 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.

## **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, photographs or films, video or audio recordings, computer software, 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.
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 member'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 X, 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 on his or her own time, 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 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:

- the creative initiative for the project;
- the creative control over the procedures and content of the project;
- the variety of creative talents contributing to the project; and,
- 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. Access to district resources.** [See Sections 3 and 4 of this *Framework*.]

- 15. 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. 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.

- 16. 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.

- 17. 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.

- 18. 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.

### **C. Bibliography of Resources**

Burk, Dan. "Ownership of Electronic Course Materials." *Cause & Effect*, Fall 1997.

Foothill De Anza Community Colleges Faculty Association Collective Bargaining Agreement. California.

Rowe, Jeremy. "Who Owns Multimedia Courseware?" Western Interstate Commission for Higher Education.

*Technology and Higher Education*. Department of Higher Education, American Federation of Teachers. 1996-97.

York University Bargaining Agreement, Toronto, Canada.

# 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**

### **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.

### **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**

Faculty Federation of the Community College of Philadelphia. Pennsylvania. 1998.

Mohawk Valley Community College Professional Association. Collective Bargaining Agreement. New York State. 1996.

United Faculty of Florida. State University System Collective Bargaining Agreement. 1995-1998.

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, 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 committee on educational technology 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:

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.

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.

### **C. Bibliography of Resources**

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

Faculty Federation of the Community College of Philadelphia. Pennsylvania. 1998.

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

York University Faculty Association. Collective Bargaining Agreement. 1997.

# Section 5: Technology and the 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 expect confidentiality between the faculty and their bargaining agent, between faculty and faculty, and between students and faculty, including counselors.

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, 1977).

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.

## **B. Model Contract Language**

### **Privacy and Security**

There is a presumption of 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 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.

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**

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

Faculty Federation of the Community College of Philadelphia. Pennsylvania. 1998.

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

York University Faculty Association. Collective Bargaining Agreement. 1997.

# 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 may also contract with a company to produce certain course offerings. Districts may also offer courses over the Internet that have not been developed in-house. In each case, someone else is doing the bargaining unit’s work.

Because of the experimental nature, temporarily at least, of distance learning technologies, locals may want to include in any collective bargaining agreement the caveat that any language negotiated will not set precedents or establish a past practice.

## **B. Model Contract Language**

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 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**

American Federation of Teachers. 1996. “TEAMING UP WITH TECHNOLOGY: How Unions Can Harness the Technology Revolution on Campus.” *Report of the Task Force on Technology in Higher Education, The Higher Education Program and Policy Council, American Federation of Teachers.*

# **APPENDICES**

# Walla Walla River Community College District

## Negotiated Language on Intellectual Property Rights

### 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.

# Los Angeles Community College District Negotiated Language

As executed on January 5, 2000, the 1999-2002 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." The parties, having now reached agreement on a new article governing intellectual property rights, agree to revise the 1999-2002, Agreement by incorporating the new Article as Article 4x of the agreement renumbering the existing articles to accommodate a new Article 4x, and making other technical changes as follows:

## 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.

## **Web Site Addresses--Language/Information on Educational Technology**

AFT publications: [http://www.aft.org/higher\\_ed/technology/](http://www.aft.org/higher_ed/technology/)  
*Teaming Up with Technology: How Unions Can Harness the Technology  
Revolution on Campus*  
*Distance Education Guidelines for Good Practice*  
*Technology Issues: A Survey of Negotiations*

Article by Dan Burk on *Ownership of Electronic Course Materials*:  
<http://www.educause.edu/ir/library/html/cem9734.html>

Los Rios Federation of Teachers: <http://www.lrcft.org>

San Mateo Site on Online Education: <http://www.smccd.net/accounts/onlineed>  
This site has links to many, many other useful sites.