

MEMORANDUM OF UNDERSTANDING

The following memorializes the understanding of the Butte-Glenn Community College District (hereinafter referred to as "District") and the Butte College Educational Association (hereinafter referred to as "BCEA") to pilot the Intellectual Property Rights Agreement for the term of the contract, July 1, 2008 to June 30, 2011, at which time it will sunset. The Intellectual Property Rights Agreement will be reviewed during the negotiating process for the following BCEA 3-year contract. Modifications to the IPR Agreement, if any, will be agreed upon by March 2011 prior to ratification of the 2011-14 contract.

A. Mission and Purpose

In the interest of academic freedom, the District values and protects intellectual property rights. In keeping with our vision statement, "Butte College transforms the lives of its students and communities while transforming itself through college-wide collaboration that models sustainability," the District promotes collaboration and the sharing of original works among its faculty.

The District and all employees have a mutual interest in establishing an environment that fosters and encourages the creativity of faculty members. The purpose of this agreement is to establish ownership of creative products of faculty members when District resources are used.

B. Definitions

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. "District Support" includes the use of district funds, personnel, facilities, equipment, materials, or technology. District Support may be either Nominal or Substantial, or a combination thereof.
 - a. "Nominal District Resources" include those that are customarily available or provided in the course of the faculty member's usual appointment or assignment, such as but not limited to the following: support services provided by other employees, standard indirect costs, the use of computers, photocopy machines, office supplies, the use of an assigned office and telephone, library services, software, multi-media equipment, learning management system for delivery of online learning, compensation for any required training, and performance capture equipment available for use by any faculty member. A budget which is customarily provided for the faculty member's usual appointment or assignment shall be considered a Nominal District Resource.
 - b. "Substantial District Resources" shall be direct costs to the District and include the provision of a budget over and above any budget customarily provided for the

faculty member's usual appointment or assignment. The assignment by the District of other employees to provide secretarial, technical, or creative services specifically for the creation of the Work shall be considered Substantial District Resources. Expensive or substantial District equipment, facilities, and/or other resources (professional recording and filming studios, professional television cameras, etc.) are Substantial District Resources. Reassigned time or stipends allocated for the creation of specific Works are Substantial District Resource; such specific Works include the creation and delivery of new online courses.

C. Policy

1. Copyrights for Works created by a faculty member using Nominal District Resources will be owned by the faculty member. This is the case even if those Works are created in connection with courses taught or other duties performed as a faculty member while employed by the District unless an alternative agreement has been specified under the terms of an Intellectual Property Rights Agreement Form between the District and faculty member (see Appendix A). Such Works cannot be used by the District or any District employee other than the faculty member unless the faculty member has specifically consented to this in the Agreement Form.
2. Copyrights for Works by a faculty member created under a contract which specifically identifies such Works as being "for hire" shall be the property of the District unless an alternative agreement has been specified under the terms of an Intellectual Property Rights Agreement Form between the District and faculty member (see Appendix A). Such Works cannot be used by the faculty member unless the District has consented to this in the Agreement Form.
3. Copyrights for Works created by a faculty member using Substantial District Resources shall belong both to the District and faculty member. All royalties or profits are to be divided as provided in the Intellectual Property Rights Agreement Form to be signed before the project is begun (see Appendix A). Any use by either the District or the faculty member of pertinent Works must be permitted by the terms of the Agreement Form.
4. If the Work in question is the creation of a new online course by the faculty member receiving Substantial District Resources, both the District and the faculty member are automatically restricted in their use of such course for an initial two-year period. During this two-year period, the District agrees that no other District employee will use the course. During this same period, the faculty member agrees that he/she will not use the course in any manner other than within his/her District employment. Any exception to this automatic two-year restriction by either party must be documented in an Intellectual Property Rights Agreement Form.

D. Dispute Resolution

Disputes between a faculty member and the District concerning this Agreement shall be resolved pursuant to the grievance procedures contained in the district's agreements with BCEA and PFA but with one exception to those procedures: should an arbitrator be necessary, the arbitrator chosen by the parties should be an expert in copyright law. If the parties are unable to agree on an arbitrator, one should be chosen in accordance with the commercial arbitration rules of the American Arbitration Association. The District and the faculty member's Association shall share equally in the payment for the services and

expenses of the arbitrator. Arbitration is advisory and not binding. (Current grievance procedures are specified in the BCEA agreement under Article X and in the PFA agreement under Article IX.)

Appendix A

Butte-Glenn Community College District

Intellectual Property Rights Agreement Form

1. This work is titled:

2. It is proposed by:

3. The description of this work is as follows:

4. Is this a work created by a faculty member using Nominal District Resources, a work done "for hire," or a work created by a faculty member using Substantial District Resources?

5. If there is an expectation for the contribution of Substantial Resources from the District?
If yes, describe:

6. What is the expected faculty contribution and compensation?

7. Ownership of copyrights and royalties to the product shall be _____ % faculty member and _____ % District.

8. Usage allowed of this work is as indicated in the District/BCEA/PFA Intellectual Property Rights Policy unless different usage or competition policy is specified here:

Ten working days prior to signing by the faculty member and District, this agreement will be shared with the faculty member's representative union. BCEA and PFA also recommend that the faculty member personally review this agreement form with a union representative prior to signing. As stated in the Intellectual Property Rights Agreement between the District and the Associations, if the Work in question is the creation of a new online course by the faculty member, both the District and the faculty member are automatically restricted in their use of such course for an initial two-year period. During this two-year period, the District agrees that no other District employee will use the course. During this same period, the faculty member agrees that he/she will not use the course in any manner other than within his/her District employment. Any exception to this automatic two-year restriction by either party must be documented in this Agreement Form.

Faculty Signature _____ Date _____

District Signature _____ Date _____

Date: _____

Date: _____

By: _____

Nancy Retes, BCEA
President

By: _____

Andrew Suleski,
Butte-Glenn Community College