



# EL PASO COMMUNITY COLLEGE PROCEDURE

For information, contact Institutional  
Effectiveness: (915) 831-6740

## CT-1 Intellectual Property

**APPROVED:** March 10, 1988      **REVISED:** May 3, 2013

Year of last review: 2021

**AUTHORIZING BOARD POLICY:** CT

Classification: Administrative

Responsible Vice President or Associate Vice President: Vice President of Financial and Administrative Operations, Vice President of Information Technology/Chief Information Officer, Vice President of Student & Enrollment Services

Designated Contact: Vice President of Information Technology/Chief Information Officer

**OBJECTIVE:** To define Intellectual Property and the processes relative to the disclosure, ownership, legal protection, identification, licensing, royalty, participation, equity and management participation, distribution, and commercial development of technology and other intellectual property developed by the El Paso County Community College District (EPCCCD) faculty\*, staff, students, and others participating in EPCC programs.

### PROCEDURE:

#### I. General Provisions

In the spirit of collegiality, El Paso Community College faculty are encouraged to share intellectual property to foster the creation of the best possible courses to be delivered to students in all formats, including online, to foster the dissemination of new knowledge while maintaining high academic standards, to promote the ability to access, acquire and store information and to help students and faculty to use such information in accordance with copyright law.

#### A. Intellectual Property

Intellectual property refers to all forms of patentable or copyrightable works, as defined by applicable federal and state laws, to include but not exclusive of

1. Architecture
2. Works of art
3. Discoveries and inventions
4. Literary works
5. Musical compositions and performances
6. Scholarly works and course materials
7. Technology, software, and other computer programs
8. Trademarks

#### B. Technology

The term "technology" in this document will include, but is not limited to,

1. Electronic/mechanical devices and technological innovations
2. Software
3. Audio/visual materials, podcasts and webpages, and online course shells

The principal rights governing the ownership and disposition of technology are so called "intellectual property" rights, which are derived primarily from legislation granting patent, copyright, and trademark protection.

In some instances, distribution and commercialization of technology may be accomplished by the transfer or licensing of the intellectual property rights, such as patents and copyrights. In other instances, distribution and commercialization of technology may be aided by, or depend upon, access to the physical or tangible embodiment of the technology, as in the case of computer software.

\* Note: The word "faculty" denotes instructors, counselors and librarians.

Therefore, this procedure will define not only the ownership, distribution, and commercialization rights associated with technology in the form of intellectual property, but will also define procedures which govern the use and distribution of the technology in its tangible form.

C. Patents and Patent Rights

A patent is a grant issued by the U.S. Patent and Trademark Office giving an inventor the right to exclude all others from making, using, or selling the invention within the United States, its territories and possessions, for a period of 17 years from the patent grant.

D. Copyrights

As provided in copyright law, a copyright owner has the exclusive right to reproduce the work, prepare derivative works, distribute by sale or otherwise, and display or perform the work publicly.

E. Trade and Service Marks

A trade or service mark is a word, name, symbol, or device (or any combination) adopted by an organization to identify its goods or services and distinguish them from the goods and services of others.

F. Tangible Research Property

The term "tangible research property" refers to those research results that are in a tangible form as distinct from intangible (or intellectual) property. Examples of tangible research property include integrated circuit chips, computer software, biological organisms, engineering prototypes, engineering drawings, and other property which can be physically distributed.

II. Dissemination of the Results of EPCCCD Research and/or Materials Development

A. General Guidelines

The prompt and open dissemination of the results of EPCCCD research and/or materials development and the free exchange of information among scholars are essential to the fulfillment of the EPCCCD's obligations as an institution committed to excellence in education, and community service. Matters of ownership, distribution, and commercial development, nonetheless, arise in the context of the technology transfer, which is an important aspect of the District's commitment to public service. Technology transfer is, however, subordinate to education and community service; and the dissemination of information must, therefore, not be delayed beyond the minimal period necessary to define and protect the rights of the parties.

B. Patent Procedure Guidelines

Rights in inventions made by EPCCCD faculty, students, staff, and others participating in EPCCCD programs are as follows:

1. Inventor Owned

Inventors acquire ownership in inventions which are:

- a. Not subject to the terms of agreements with research sponsors or other third parties under Section II. B. 2. a. below, and
- b. Do not involve the significant use of EPCCCD-administered resources under Section II. B. 2. b. below

2. Other Inventions

The EPCCCD acquires ownership or other rights in inventions as follows:

- a. Inventions subject to the terms of a sponsored research or other agreement are treated in accordance with the terms of the applicable agreement.

- b. Inventions involving the significant use of funds or facilities administered by the EPCCCD are the property of the EPCCCD, subject to any obligations to third parties in connection with such support.

3. Sponsored Research and Other Agreements

Grants and contracts applicable to research and/or materials development sponsored by the federal government are subject to statutes and regulations under which the EPCCCD acquires title in inventions conceived or first reduced to practice in the performance of the research. The EPCCCD's ownership is subject to a non-exclusive license to the government and the requirement that the EPCCCD retain title and take effective steps to develop the practical applications of the invention by licensing and other means.

With rare exception, contracts with industrial sponsors provide that the EPCCCD retain ownership of patents while the sponsor is granted an option to acquire license rights.

The terms of such agreements apply not only to inventions made by faculty and staff, but also to those made by students and visitors, whether or not paid by EPCCCD, who participate in performing research supported by such agreements. It is essential, therefore, that all individuals participating in the research be made aware of their obligation to assign rights to EPCCCD and sign Invention and Copyright Agreements.

4. Significant Use of EPCCCD Administered Resources

The EPCCCD does not construe the payment of salary, the provision of library or other campus facilities, use of an office, or College-provided software or technology as constituting significant use of EPCCCD funds or facilities, except when there is prior written agreement by the District and the faculty member to the contrary. Determination of significant use will be made by prior written agreement or contract with the faculty member, staff member, or student, and documented using the form *Agreement to Assign Use of Online Course or Intellectual Property*, attached to this College procedure.

When intellectual property involving the significant use of EPCCCD administered resources is made by a faculty member, staff member, or student, the EPCCCD, with the approval of the Board of Trustees, may elect to waive its rights except where the intellectual property is subject to sponsored research or other agreement. At the discretion of the Board of Trustees, the EPCCCD may retain a right to use such intellectual property for purposes of education and research. In addition, a student's rights to such invention may be subject to the terms of any financial aid received, including scholarships, fellowships, internships, or other assistance, whether or not administered by the EPCCCD. Individuals who are both staff members and students shall be considered to be staff members with respect to intellectual property.

Disputes arising under this section with respect to significant use shall be finally arbitrated by the President of the EPCCCD.

- C. Copyright Procedures Guidelines

Copyright ownership of material (including software) created by EPCCCD faculty, students, staff, and others participating in EPCCCD programs, is as follows:

1. Author Owned

The author acquires ownership of intellectual property, including all course-related materials developed for teaching in any form, regardless of delivery method or method of storage which is/are:

- a. Not developed in the course of a sponsored research or other agreement under Section II. C. 2. of this college procedure.
- b. Not created as a "work-for-hire" by operation of copyright law or created pursuant to an agreement in writing with the EPCCCD under Section II. C. 2. b, below, which provides for a transfer of copyright to the EPCCCD.

- c. Not developed with the significant use of EPCCCD administered resources under Section II. C. 2. c of this College procedure.
- d. Student created materials as provided under Section II. C. 5 of this College procedure.

2. EPCCCD Owned

The EPCCCD acquires ownership or other rights in copyrightable material (including computer software) as follows:

- a. Copyright ownership in material developed in the course of, or pursuant to, a sponsored research or other agreement is determined according to the terms of such agreement.
- b. Copyright ownership in material created as a "work-for-hire" by operation of copyright law or created pursuant to an agreement in writing provided for transfer of copyright to the EPCCCD.
- c. Copyright ownership in material developed by faculty and staff with the significant use of funds or facilities administered by the EPCCCD.

3. Sponsored Research and Other Agreements

Normally, research contracts sponsored by the federal government provide the government with specified rights in copyrightable material developed in the performance of the research. These rights may consist of the title to such material resting solely in the government, but more often consist of a royalty-free license to the government with the title vesting in the EPCCCD.

When a work is created under the terms of a sponsored agreement, authors of copyrightable works would be aware that there may be contractual terms relating to the form of the report, advance notice to the sponsor before publication, and the like. The Vice President of Financial and Administrative Operations should be contacted for information or assistance regarding the interpretation of contract terms.

4. Works for Hire

Employees - A "work-for-hire," as defined by law, is a work product created in the course of the author's employment. Copyright of the work product in these situations belongs to the employer. For example, results of work assigned to staff programmers or writers of District publications are considered to have been created in the course of the author's employment and are the property of the EPCCCD. It is the policy of the EPCCCD that it shall own all works for hire.

Non-Employees - Under the Copyright Act, copyright of commissioned works of non-employees is owned by the author and not by the commissioning party unless there is a written agreement to the contrary. All EPCCCD personnel are cautioned to ensure that independent contractors agree in writing that ownership of the commissioned work is assigned to the EPCCCD, except where special circumstances apply and it is mutually agreed that the author will retain ownership. The Vice President of Financial and Administrative Operations in conjunction with the Vice President of Student and Enrollment Services will ensure that all independent contractors agree in writing by contract and said contract has been approved by the Board of Trustees before any commissioned work is begun.

5. Independent Works

The EPCCCD does not claim ownership of books, articles and other scholarly publications, popular novels, poems, musical compositions, or other works of artistic imagination created by the personal effort of faculty, staff and students independent of employment tasks and which do not make significant use of EPCCCD administered facilities.

Furthermore, in those situations where copyright to such scholarly or artistic work resides with the EPCCCD under the terms of a sponsored research or other agreement, or by operation of the copyright law or otherwise as a result of this procedure, the EPCCCD may, upon the author's

request and to the extent consistent with the intent of the sponsor, convey copyright to the author of such work as further provided under this procedure. Where necessary, the approval of the President will be required.

6. Significant Use of EPCCCD Administered Resources

EPCCCD does not construe the payment of salary, the provision of library or other campus facilities, use of an office, or College-provided software or technology as constituting significant use of EPCCCD funds or facilities, except when there is prior written agreement by the District and the faculty member to the contrary. Determination of significant use will be made by prior written agreement or contract with the faculty member, staff member, or student, and documented using the form *Agreement to Assign Use of Online Course or Intellectual Property*, attached to this College procedure. The payment of salary from unrestricted accounts does not constitute significant use of EPCCCD funds, except in those situations where the funds were paid specifically to support the development of material.

Textbooks developed in conjunction with class teaching are also excluded from the "significant use" category, unless such textbooks were developed using EPCCCD-administered funds paid specifically to support the textbook development.

The EPCCCD does not acquire rights to independently created software which has been developed using conventional EPCCCD resources such as personal computers.

7. Student Created Materials

Copyright ownership of student created materials is retained by the student; however, the student must grant to the EPCCCD a royalty-free permission to reproduce and publicly distribute copies of these materials. In circumstances where the research for these materials has been done in conjunction with other procedures discussed in this document, those procedures will apply with regard to the students.

Student authors who make significant use of EPCCCD resources to develop software will retain ownership of such software subject to a royalty-free, non-exclusive license granted to the EPCCCD to use the software for purposes of education and research.

D. Trade and Service Marks Guidelines

Trade and service marks relating to goods and services developed at the EPCCCD shall be owned by the EPCCCD.

E. Tangible Research Property Guidelines

The EPCCCD owns tangible research property, except when it becomes the property of a third party under the terms of a sponsored research or other agreement.

III. Technology Evaluation, Protection, and Dissemination

The office of the Vice President of Information Technology/Chief Information Officer is responsible for facilitating the transfer of EPCCCD technology to the public use and benefit. The Vice President of Information Technology/Chief Information Officer evaluates the commercial potential of EPCCCD technology and decides whether to proceed with commercial development of the technology.

A. Royalty Distribution - General

Royalty income received during the preceding EPCCCD fiscal year for a technology license shall be distributed once annually as follows:

STEP:

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|--|--|
| 1. Deduct 15 percent from Gross Royalty Income | This deduction is directed toward covering the expenses of the District as indirect costs. |
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2. Then, deduct out-of-pocket costs and, income cases, a reserve, to arrive at Adjusted Royalty Income

Out-of-pocket costs are direct assignable expenses to a specific case such as patent filing, prosecution and maintenance fees and specific marketing costs.

When out-of-pocket costs in the next EPCCCD fiscal year are forecast and future income unlikely, a reserve may be deducted. Any excess reserve shall be promptly distributed after forecast costs are paid.

3. Distribute 50 percent of the Adjusted Royalty Income to the inventors/authors.
4. Distribute 50 percent of the Adjusted Royalty Income to the EPCCCD for the support of research and other intellectual pursuits.

B. Technology Royalties - Special Cases

In some cases, distribution of royalties to individuals will be impractical or inappropriate; for example, where the material was developed as a laboratory project or where the authors/inventors are not easily identifiable. The office of the Vice President of Information Technology/Chief Information Officer will review the circumstances of development when such situations have been identified. If not allocated to individuals, the authors'/inventors' share may be allocated to a research or educational account in the District.

C. Equity and Management Participation in Business Entities

If the EPCCCD forms or becomes an equity owner in a company or other separate business entity that utilizes the technology created at the EPCCCD, the EPCCCD and the inventor/author each will hold 50 percent of the voting rights in stock or other evidence of ownership received, or owned, as a result of the EPCCCD and inventor/author technology interest. The EPCCCD and the inventor/author each will have a 50 percent right to management participation in the entity equity interest, subject to the restriction that neither party may sell, lease, or assign such equity interest in a separate business or management participation right without the prior written consent of the other party.



# AGREEMENT TO ASSIGN USE OF ONLINE COURSE OR INTELLECTUAL PROPERTY

For College Procedure CT-1:  
*Intellectual Property*

**NOTE: A copy of this form is available on the College *District Forms* web page, available at the following link:**

<http://www.epcc.edu/DistrictForms/Pages/default.aspx> .

**Please complete this form and submit it to the office or department that provided development support. The office or department to which this form is submitted will retain a copy of the form.**

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In the spirit of collegiality, El Paso Community College County District (EPCCCD) faculty are encouraged to share Intellectual Property to foster the creation of the best possible courses to be delivered to students online, to foster the dissemination of new knowledge while maintaining high academic standards, to promote the ability to access, acquire and store information and to help students and faculty to use such information in accordance with copyright law.

It is agreed by me, \_\_\_\_\_, that in accordance with the provisions of College Procedure CT-1 *Intellectual Property* , this agreement is being entered into with respect to **[list and describe, as applicable, the course title and/or description of the subject matter developed]**:

Under the terms of this agreement, I grant all rights, title and interest in the copyrightable work referred to above and any derivative work to the EPCCCD. The term of this agreement is perpetual from the date of this agreement, unless otherwise specified in a previous agreement.

Please check (✓) the statements below that apply to your assignment to the EPCCCD of rights, title and interest in the copyrightable work referred to above and any derivative work:

Significant use of College resources were used in the creation of these Intellectual Properties.

\_\_\_\_\_ Yes      \_\_\_\_\_ No

\_\_\_\_\_ In consideration of my efforts in developing online course or materials, I will receive payment per curriculum development contract or other agreement.

\_\_\_\_\_ In consideration of my efforts in developing online course or materials, I will not receive payment under this agreement.

\_\_\_\_\_ During an EPCCCD sponsored Sabbatical, I will receive payment as follows: [amount paid for course development and timing of payments].

\_\_\_\_\_ During an EPCCCD sponsored Sabbatical; I will not receive payment to any online course or materials created during the term of the Sabbatical.

To the extent of my knowledge, I certify that the materials covered by this agreement are my own independent, creative effort and do not infringe on the copyright of others and may include publisher materials used under a current textbook adoption.

Dated: \_\_\_\_\_

Print Name \_\_\_\_\_

Signature \_\_\_\_\_