

ARTICLE 19: COPYRIGHT AND INTELLECTUAL PROPERTY

19.01 **Intellectual Property**

A. Definitions

1. Copyright

Copyright is a form of [intellectual property](#) which gives the creator of an original work [exclusive rights](#) for a certain time period in relation to that work, including its publication, distribution and adaptation; after which time the work is said to enter the [public domain](#). Copyright applies to any expressible form of an idea or information that is substantive and discrete. In order for a work to be copyrightable, it must be in a fixed, tangible format. Such formats may include, but are not limited to, electronic data files, paper copies and other “fixed” means.

- 2. Extraordinary institutional support** is defined by situations wherein the college incurs actual resource costs associated with the creation or delivery of a course that go above and beyond the normal cost of mounting traditional courses delivered without distance learning. Extraordinary support includes, but is not limited to, release time for the development of the course, time invested by PJC employees outside of the faculty member, and any equipment, hardware or software purchased exclusively to support the course in question.

3. Institutional Works

Institutional works include works that are supported by a specific allocation of College funds and/or that are created at the direction of the College for a specific College purpose by a faculty member granted release time for development of the work. A “work for hire” done by a faculty member for the College is also considered an institutional work. A district syllabus is an institutional work. Scholarly works and encoded works are not included within the definition of institutional works.

4. Intellectual Property

Intellectual property is any work of authorship, invention, discovery, or other original creation that may be protected by copyright, patent, trademark, or other category of law.

5. Intellectual property development agreement

An intellectual property development agreement is a written agreement between the college and a faculty member that outlines the nature of intellectual property to be developed, terms of delivery and ownership, as well as nature of compensation to be granted to a faculty member for development of the work.

6. Intellectual Property Rights

Intellectual Property Rights means all the protections afforded the owner or owners of an original work under law, including all rights associated with patent, copyright, and trademark registration.

7. Personal Works

Personal works are defined as personal, private, or scholarly enterprises created by a faculty member without the use of facilities, equipment, or staff of the College except those that are typically available to the public (ie: public computer labs, LRC, etc.). Such personal works are the result of the creative initiative of the faculty member. Examples of personal works may include, but shall not necessarily be limited to, lectures, lecture notes, course materials, course syllabi, distance learning works, journal articles, research bulletins, instructional text and manuscripts, works of art (whether pictorial, graphic, sculptural, or other artistic creation), plays, poems, literary works, computer software/programs, electronic works, sound recordings, audio visual creations, musical compositions, and similar creations.

8. Professional Staff

Professional Staff includes, but is not limited to, administrative staff such as provosts, deans, vice-presidents, and department heads and technical staff, and others not covered by the collective bargaining agreement.

9. Scholarly Works

Scholarly works are creations that reflect research, creativity, and/or academic effort on the part of a faculty member without more than normal and customary cost or expense to, or use of facilities, equipment or staff of, the College. Scholarly works include course section syllabi, instructional materials (such as textbooks), distance learning works, journal articles, lectures, monographs, plays, poems, literary works, works of art (whether pictorial, graphic, sculptural, or other artistic creation), computer software/programs, electronic works, sound recordings, musical compositions, and similar creations.

10. Sponsor

A sponsor is a person, organization, or governmental entity, other than PJC, that provides funding, equipment, or other support for the college, to carry out a specified project in research, training, or public service.

11. Sponsorship Agreement

A sponsorship agreement is a written agreement between the sponsor and the college, and may include other parties, including the creator of the work.

12. Substantial Use of Resources

Substantial use exists when resources are provided beyond the normal professional and technical support supplied by the college and extended to an individual or individuals for development of a project or program. At PJC, Angel and other eCollege supported course delivery systems, as well as IT staff who work on course development, are not deemed to constitute substantial resources as these are routinely provided by the college for the intent of distance learning course development and delivery.

13. Works for Hire

Within the scope of academics at PJC the College, a work made for hire is a work specially ordered or commissioned by the college. This work will be college funded, and ownership of the work will lie with the college. Works made for hire may include, but are not limited to, contributions to collective works, a part of a motion picture or other audiovisual work, a translation, a supplementary work, a compilation, development of an on-line or a traditional course, creation of an instructional text, a test, answer material for a test, or an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. Works for hire done by faculty at PJC the College will be compensated by (1) the granting of release time specifically for the purpose of developing the work and/or (2) a stipend for the purpose of specifically developing the work, and/or (3) depending on the scope of the work, a faculty member may utilize OPA to meet a request, provided the time investment is not substantial.

19.02. Intellectual property and copyright ownership

A. Ownership of intellectual property and copyright is dependent upon three things:

1. Creative Initiative: Was the work conceived and created by the same person? Even if a department head or other college administrator suggests that a work be created, the faculty member actually doing the work is seen as the copyright holder.

2. Control: Who had control over the content scope and final expression? If the faculty member controls the work from start to finish, with little or no content or design specifications from the institution, the work shall belong to the faculty member. If there is collaboration with content creation and control, the work may be jointly owned or owned by the college depending on the nature of the work. See section 19.02 C (1) (c).

3. Investment: If the institutional investment is considered substantial, and the creator is an employee of the institution, the institution is favored as the owner.

B. Faculty as intellectual property owner

1. The faculty member is sole owner of personal works produced through ~~their~~ his or her own creative initiative.

2. The faculty member is sole owner of scholarly works produced without substantial use of college resources, extraordinary institutional support, investment or control by the college.

C. College as intellectual property owner

1. The college shall retain rights to all intellectual property produced by a faculty member provided the following:

a. the work is produced as a “work for hire” and/or the faculty member is compensated for the specific purpose of developing the work; and/or

b. the work is done within the confines of a grant or other sponsored college project and the faculty member is compensated specifically for ~~their~~ his or her role in the work; and/or

c. the work is produced as part of a collective work, grant, sponsored or other college project and a faculty member has chosen to contribute to the collective work. Examples of collective works may include, but are not limited to, committee reports, departmental exemption exams, grant or sponsorship activities and projects, accreditation reports, and other forms of collegial scholarly works.

2. The ~~e~~College shall retain intellectual property rights to faculty member's personal or scholarly work if a faculty member has voluntarily transferred his/her ownership and copyrights, in whole or in part, to the college. Such

transfer shall be in the form of a written document signed by the faculty author and the appropriate college official.

D. Joint ownership of copyright and intellectual property

1. The ~~e~~College and a faculty member may enter into a joint intellectual property and copyright ownership agreement when:
 - a. the faculty member submits a request to develop scholarly works that will demand the use of substantial college resources or will use extraordinary institutional support beyond what is available on an ordinary ongoing basis; and/or
 - b. the faculty member does not receive specific compensation or release time for the development of intellectual property and the college would like to attain or retain the right to use the faculty member's personal work; and/or
 - c. the college is the owner of an institutional work and a faculty member would like to purchase or negotiate rights to the work.
2. Any joint intellectual property agreement must be in written contractual form. Any and all such agreements must specify the following:
 - a. ~~specify~~ the work to be jointly owned,
 - b. the duration and terms of joint ownership,
 - c. ~~specify the~~ distribution of revenue for the jointly owned intellectual property, if any ; and/or
 - d. ~~outline~~ the terms of payment to be made for the purchase of the faculty and/or college owned work.
3. The absence of a joint ownership contract shall result in
 - a. faculty ownership of all faculty personal and scholarly work, even if such work was produced with the use of substantial college resources or the use of extraordinary institutional support, unless the faculty member produced the work for hire as enunciated herein.
 - b. college ownership of an institutional work, even if the faculty member participated in the development of the body of the work.

E. Transfer of intellectual property ownership

1. At the discretion of the faculty member, the college may enter into an intellectual property ownership agreement with a faculty member that transfers some or all rights to a faculty member's personal intellectual property to the college. This agreement will be negotiated between the college and the individual faculty member. The negotiated agreement will specify the following:
 - a. ~~outline~~ the nature and amount of the work to be owned by the college,
 - b. the terms of compensation to be made to the faculty member,
 - c. the duration of ownership and
 - d. other terms as appropriate and acceptable to both parties.

2. At the discretion of the college, ownership of an institutional work may be transferred, in whole or in part, to a faculty member. Terms of ownership transfer will be negotiated between the college and the individual faculty member. The negotiated agreement will specify the following:
 - a. ~~outline~~ the amount and nature of the work to be owned by the faculty member,
 - b. the terms of compensation to be made to the college member,
 - c. the duration of ownership and
 - d. other terms as appropriate and acceptable to both parties.

19.03 **Faculty compensation and remediation for work for hire**

Faculty who develop intellectual property to be owned by the college must be compensated for the development of the institutional work. Compensation can be in the form of release time and/or contractual stipend. The faculty member may choose not to enter such a compensation agreement and to retain intellectual property rights to the works.

A. Methods of Compensation

If the college wants a faculty member to produce works over which the college wishes to retain the intellectual property rights ~~to~~, the college may compensate the faculty by granting release time or entering into a work for hire contract for the specific purpose of developing the institutional work.

1. Release Time Agreement.

The college and faculty member must enter into a release time agreement Appendix F (see **Appendix B herein**) prior to development of the institutional work. This release time agreement will delineate the following:

- a. ~~outline~~ the work to be produced,
- b. ~~specify~~ the date and terms of final delivery of the work, and
- c. ~~outline the~~ terms related to what product constitutes successful completion and/or dissemination of the work.
- d. ~~specifically outline the~~ remediation procedures to be taken in the event work product is not delivered as specified.
- e. ~~specify~~ the number of release time hours to be granted to the project and
- f. ~~outline the~~ intellectual property ownership rights within an "intellectual property agreement", and
- g. ~~outline the~~ institutional support to be granted to faculty member for project development.

2. Contracted work for hire

The college and faculty member must enter into a "work for hire" contract or "intellectual property development agreement" -prior to development of the institutional work. This contract will delineate the following:

- a. ~~outline~~ the work to be produced,
- b. ~~specify~~ the date and terms of final delivery of the work,
- c. ~~outline the~~ terms related to what product constitutes successful completion and/or dissemination of the work,
- d. ~~specifically outline the~~ remediation procedures to be taken in the event work product is not delivered as specified,
- e. ~~outline the~~ intellectual property ownership rights within an "intellectual property agreement",
- f. ~~specify~~ the amount of money to be paid to the faculty member and the terms of payment, and
- g. ~~outline the~~ institutional support to be granted to faculty member for project development.

B. Remediation

A faculty member's failure to complete the release time task and/or product delivery as specified in the release time agreement or work for hire contract in 19.03.A above will result in a renegotiation of release time or compensatory terms to include, but not be limited to:

1. Completion of the project the following semester on a non-paid basis if failure to complete is the fault of the faculty, and/or

2. A renegotiation of the release time agreement or work for hire contract, provided the inability of the faculty member to complete the release time agreement was of no fault of ~~their- his or her~~ own (ie: problems with computer software and hardware changes for course delivery made by the college, failure of the college to provide promised institutional support, etc.). Renegotiation of agreements in this case may result in ~~either or both of the following:~~
 - a. ~~a faculty member being granted~~ additional release time for the faculty member to complete the project. If this option is chosen by the faculty and the college, a new release time agreement must be entered into per the specifications outlined in 19.03.A.1 above and/or
 - b. ~~a faculty member may be paid~~ additional development funds paid to the faculty member for the incomplete project. If this option is chosen by the faculty and the college, a new work for hire contract must be entered into per the specifications outlines in 19.03.A.2 above
3. The faculty member's being required to carry an additional course without compensation the following semester and/or
4. The faculty member's repaying the college the amount of dollars paid to the faculty member for release time or a work for hire if the faculty member chooses not to complete ~~their- his or her~~ contracted duties as specified within the release time agreement or work for hire contract, and/or
5. Other terms as negotiated by the College and the faculty member.

19.04 **Intellectual property ownership rights when there is failure to enter into release time or work for hire contract.**

When a faculty member is provided extra pay in the form of release time or a work for hire contract for course development, the release time agreement and/or work for hire contracts must be signed prior to development. In addition, an Intellectual Property Agreement (IPA) specifying the intellectual property owner shall be entered into prior to the development of intellectual property. The IPA will enunciate rights of ownership and use of produced materials. It is the college administration's responsibility to ensure such an agreement is entered into. Failure of the college to enter into such an agreement with a faculty member will result in the faculty member's ~~possessing-possession of~~ all legal rights to the intellectual property.

19.05 **Repurposing or revision of compensated institutional work**

If, after successful development, completion and compensation for an institutional work by a faculty member, the college chooses to repurpose or revise the work to meet new institutional demands or standards, (ie: such as changing distance learning platforms, etc.) the faculty member shall be compensated for the new, revised or repurposed work according to section 19.03.A above. Under no circumstances shall the college require a faculty member who has met the terms of ~~their- his or her~~ release time or work for hire contracts to complete additional work on an institutional work without entering into a new release time or work for hire contract.

19.06 **Use of institutional owned work by faculty**

1. Works made for hire, while belonging to the college, may be claimed by the faculty member for promotion purposes.
2. Works made for hire, while belonging to the college, may be claimed by a faculty member in his/her vitae and samples of the work may be utilized by the faculty member as an exhibit within ~~their~~ his or her vitae provided college ownership is acknowledged.

19.07 **Dispute Resolution Process**

1. Disputes

Disputes between the author(s) of intellectual property and the College will be heard by an ad hoc committee convened for the direct purpose of determining ownership of intellectual property rights or the application of policies governing intellectual property rights. The committee will be comprised of two voting members chosen by the faculty and two voting members chosen by the College. The fifth person will be the seated chair chosen by members of the committee. The chair is ineligible to vote. Legal counsel shall not be allowed to attend the hearing. The majority decision of the ad hoc committee will take the findings of fact, conclusions and a recommended resolution. The findings of fact, conclusions and recommendations must be based solely on the taped hearing record, pertinent College policies and procedures, and the Collective Bargaining Agreement. The resolution shall be provided to the President of the College within five (5) working days and both parties within ten (10) working days of the hearing.

2. Appeals

Appeals will be addressed per the College's grievance procedures.

19.08 Nothing in this article shall be construed as a requirement that the faculty member enter into a "work for hire" contract or "intellectual property development agreement" if he or she chooses to retain sole custody of the work produced.

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**APPENDIX F
RELEASE TIME FORM**

NAME _____ **IDENTIFICATION NUMBER** _____

Applies for/is assigned to release time for Term: _____

Load Points Credit Hours Contact Hours # of weeks Class Code

For the purpose of (select one)

- A) Program coordinator of _____ Program
- B) Program director of _____ Program
- C) Development of a traditional course per the attached terms
- D) Development of an online/distance course per the attached terms
- E) Special project per the attached terms
- F) Other as specified per the attached terms

Upon the following conditions:

- 1) Collective Bargaining Agreement clause _____
- 2) Other as specified in attached terms.

Department Name _____ Cost Center _____

Faculty member's signature _____ Date _____

Department Head Signature _____ Date _____

Provost/Vice President for Instructional Affairs Signature _____ Date _____

President's Signature _____ Date _____

Note: According to Florida statutes, the release time request is not complete until approved by the President.

INTELLECTUAL PROPERTY DEVELOPMENT AGREEMENT

THIS INTELLECTUAL PROPERTY AGREEMENT ("Agreement") is entered into by and between THE DISTRICT BOARD OF TRUSTEES OF PENSACOLA JUNIOR COLLEGE, FLORIDA ("College"), with its principal place of business located at 1000 College Boulevard, Pensacola, Florida 32504, and _____, whose principal address is _____.

WITNESSETH

WHEREAS, College is a public community college which provides postsecondary instruction to students; and

WHEREAS, College desires to _____ for delivery of educational opportunities; and

WHEREAS, _____ desires to deliver, _____ for the College, **NOW THEREFORE**,

FOR AND IN CONSIDERATION of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, College and _____ hereby agree as follows:

1. Deliverable. _____ shall develop the following _____ for the college:

Course No.	Course Name
_____	_____

Other _____

2. Format.
 - a) The Course shall be a distance learning course capable of being delivered via the internet or other electronic medium to students in off-campus locations, and shall be designed in a manner that allows students to complete all Course requirements from such off-campus locations. Unless otherwise specified by the College, the Course must be developed for, and be deliverable through, the learning management system currently used by the College. The Course must fully comply with the ADA guidelines.
 - b) Other Course format.
 - c) Other property/deliverable.
3. Delivery Date.
 - a) The content creation for the Course shall be completed, and the source code for the Course shall be delivered to College in electronic form, on or before _____, 20____.
 - b) Other _____.
 - c) in the case of extenuating circumstances, including but not limited to

- Incapacitation of _____ due to health or injury.
- decision of publisher of textbook to change content/format
- decision of college to change/alter delivery platform
- other situations outside control of the developer.

this agreement shall be modified as to delivery date/compensation as agreed by both parties.

4. Content of Course.

- a) The Course shall include a course syllabus, course objectives, student assignments (especially those fostering student interactivity), assessments, course content (i.e. the subject matter required to enable students to meet course objectives), a list of any required and supplementary course materials (both print and multimedia), and any other content deemed necessary or appropriate by College.
- b) Other.

5. Course Approval.

- a) Development of the Course shall not be complete until the Course has received full and final approval for implementation through the procedure set forth in *The Online Course Development Process* or other development processes established by the College Curriculum Council. A copy of *The Online Course Development Process* can be obtained from the College Director of Distributed Learning, or online at:

http://www.itech.pjc.edu/html/course_dev/CourseDevelopmentProcess-Outline.pdf

6. Compensation.

- a) College shall pay _____ the appropriate dollar amount added to base pay as specified in Compensation Schedule A, attached hereto and made a part of this Agreement by reference. Payment shall be made following full and final completion of the Online Course Development Process specified in paragraph 5 above.
- b) _____.

7. Warranty of Copyrights: Indemnification.

The course Developer warrants that all content incorporated into the Course shall be the original creation of the Course Developer. In the event that the Course Developer desires to incorporate material into the Course that was created by anyone other than the Course Developer, including without limitations, written, musical, pictorial, photographic or video graphic works, then the Course Developer shall first obtain written permission from the Director of Distributed Learning to pursue permission from the author or copyright owner of such work. The Course Developer shall then be responsible for obtaining written permission from the author or copyright owner of such non-original work to incorporate that work into the Course. A copy of such written permission from the author or copyright owner shall be provided to the Director of Distributed Learning prior to completion of the Course. The Course Developer agrees to indemnify, defend and hold the College harmless from and against all manner of suits, actions, claims, causes of action, judgments, costs and damages arising from any suit or claim of infringement of any intellectual property right related to the Course.

8. Ownership of the Course.

_____ acknowledges and agrees that the Course and all related content included therein shall constitute a “work made for hire” and that the College shall be the sole and exclusive owner of all copyrights thereto.

9. Modification. Paragraph 3 c notwithstanding.

This Agreement may not be modified, except in writing and signed by both parties hereto.

10. Governing Law.

This contract shall be governed by Florida law without regard to any choice of law provisions therein, and venue for any legal action between the parties shall be in the State and Federal courts located in Escambia County, Florida.

IN WITNESS WHERE OF, the parties have executed this Agreement on the ____ day of _____, 20 _____.

**THE DISTRICT BOARD OF TRUSTEES OF PENSACOLA JUNIOR COLLEGE,
FLORIDA**

By: _____
Edward Meadows, President

COURSE DEVELOPER

Printed Name: _____

Date: _____

Approved as to Form:

By: _____
Thomas J. Gilliam, Jr., Attorney
for Pensacola Junior College

Compensation Schedule A Compensation for Course Development

- \$100/credit hour
The adoption of an existing course (commercial or public) requiring integration with the PJC learning management system only.
- \$200/credit hour
The adoption of ~~an~~ existing course content (commercial or public) or the ~~majority- minority~~ (but not all) of instructional material for the course.
- \$300/credit hour
The adoption of existing content (commercial or public) for the ~~minority- majority~~ of instructional material for the course.
- \$350/credit hour
The development of a completely original course (i.e., authored by the course developer)- with ~~No~~ resources drawn from existing course content.

Notes:

- In some cases it may be difficult to determine a precise distinction between the categories outline above. There are simply too many variables. Consequently, the appropriate category will be determined via thoughtful discussion between the department head and course developer, with input from the Distributed Learning Department as needed.
- Existing course content is most often made available by commercial publishers as “value-added” incentive for faculty to adopt a given textbook. Existing course content is also available from other sources. In either case, appropriate licensing issues must be addressed and followed at all times as specified in Section 7 of the Agreement.

Eleven Step Online Course Development Process

Goal of the Online Course Development Process: To support faculty in their efforts to ensure student success and retention in distance learning and hybrid/blended courses at PJC by incorporating sound instructional design with academic excellence.

Step 1: ~~The course developer (e.g. faculty) completes a~~ Request to Develop form ~~is completed by the course developer (e.g., faculty) and submitted-submits it~~ to the appropriate department head. The course developer and department head estimate the budget to both develop the course and to offer it on-line.

The department head and course developer review the form and submit it to the appropriate Provost.

Step 2: The Provost reviews the Request to Develop form, signs it, and forwards it to the Director of Distributed Learning.

Step 3: The Director of Distributed Learning submits the Request to Develop form to the Curriculum Council where it is reviewed. (The course developer and appropriate department head should attend this meeting to answer any questions that may arise.)

Step 4: Upon approval by the Curriculum Council, the course developer ~~will-signs an~~ Intellectual Property Agreement or release time request.

Renumbered Step 5: The course developer makes an appointment to meet with an Instructional Technologist (ITech).

Renumbered Step 6: The course developer and ITech work together to accomplish the following objectives:

- Explore sound instructional design principles
- Establish a timeline for course development
- Study successful online course models
- Evaluate and edit course content
- Complete the “PJC Online Course Development Support Checklist”
- Acquire technological and online pedagogical training needed
- Determine readiness for beta version review

Renumbered Step 7: The ITech staff ~~will-invites~~ interdisciplinary faculty with online teaching experience to serve on a Peer Review Team (PRT) to evaluate a beta version of the course.

Renumbered Step 8: The PRT conducts a course evaluation and presents its recommendations to the appropriate ITech.

Peer Review Team Objectives

- ~~To-e~~Examine course via student-level access
- Evaluate course orientation and navigation components

- Compare course elements to the “PJC Quality Assurance in Online Learning” rubric
- Make suggestions or recommendations for improvement
- Invite students to participate (optional)

Renumbered Step 9: The course developer and ITech revise the course to incorporate any recommendations made by the PRT. The ITech then sends an Approved to Offer recommendation to the Director of Distributed Learning.

Renumbered Step 10: The Director of Distributed Learning informs the Curriculum Council (as an information item) that all requirements of the course development process have been met and a date to offer the course is set.

Renumbered Step 11: The course is offered and a student evaluation is administered around mid-term. Additional revision may be necessary per student input.

Deadlines and Time Frame:

Developing an online or hybrid course takes time. Planning is important and the following items should be factored into the process:

- 1) The development process itself (i.e., generation of content, working with the ITech staff, and completion of the peer review process) will take time. Of course the amount of time for each component will vary depending on the nature of the course. Consequently it is a good idea to discuss any project in advance with the ITech staff.
- 2) The Curriculum Council meets every month of the year except June and August, and must approve all requests for online course development.
- 3) Early in the process indicate a specific completion date (for everything). This will ensure your course makes it into the schedule booklet for the target semester.

Questions? Please contact the Distributed Learning Office at (850) 484-1751 or bwaters@pjc.edu.
This initiative supports PJC Strategic Goals, 1, 4, 5, 6

PJCFA 11/18/09

