
California State University, Dominguez Hills
INTELLECTUAL PROPERTY POLICY

ARTICLE 1

1.01 PURPOSE

It has been the traditional practice of higher education in this country that books and other copyrightable materials created entirely through the individual initiative of an employee belong to the employee and that the employee has the right to copyright the material and to receive any subsequent royalties. On the other hand, where the employee either has been hired to create a specific product or has been assigned the duty to create a specific product, it has been the practice for colleges and universities to claim the copyright in the exclusive ownership of the final product. One purpose of this policy is to affirm these traditional practices.

Nevertheless, there are many possible variations between the two examples noted. These variations occur when an educational institution or system supports, in one form or another, employee research and creative effort. In such instances, the traditional practice of higher education fails to offer clear conclusions as to copyright ownership of the products produced, at least in part, through the support of the educational institutional system.

A second purpose of this policy is to provide a clear and equitable means to determine the respective rights of California State University, Dominguez Hills (CSUDH) and the employee in products supported by CSUDH.

A third purpose of this policy is to encourage, support, and reward scientific research and

scholarship and to recognize the rights and interests of the inventor or creator, the public, the external sponsor, and the University.

California State University, Dominguez Hills is an academic, not commercial, institution that fosters the development and dissemination of knowledge, innovation, and intellectual productivity. Academic freedom of individuals takes precedence over potential monetary rewards. Therefore, this policy statement shall be implemented in keeping with: (a) the University's primary mission of teaching, research, and service, (b) those principles expressed in Sections *2.01 and 3.01.C* below, and (c) other policy statements relating to sponsored research. The principles followed in this policy statement are independent of particular technologies. That is, the focus is on the intellectual process of creating the product, not on the nature of the product itself.

1.02 GENERAL

A. Scope. This policy addresses the rights to, and protection and transfer of, intellectual property created by University faculty, staff, or students. Issues not directly addressed in this policy, including disagreements concerning its application or interpretation, will be addressed and resolved consistent with applicable law or agreements and the principles and provisions of this policy.

B. Governing Principles. The following principles underlie this policy and should guide its application and interpretation:

1. Academic Freedom and Preeminence of Scholarly Activities. The missions of teaching and scholarship have preeminence over those of the transfer and commercialization of research results. The University's commitment to its educational mission is primary, and this policy does not diminish the right and obligation of faculty members to disseminate research results for scholarly purposes.

2. Equity and Fair Play. This policy applies to all faculty, staff, administrators, and students, whether or not particular research results are patentable, and regardless of the specific characteristics of a given discipline or the level of funding, facilities, and technical support available for the creative effort.

This is not a detailed policy, and it has not been designed to address every conceivable circumstance. Under the Principle of Fair Play, the creators and the University mutually operate so that no one will be allowed either to deliberately create or exploit inadvertent exceptions to this policy to his or her own advantage. If policy corrections or exceptions are nonetheless identified, appropriate recommendations shall be made to the President.

3. Mutual Trust, Collegiality, and Goodwill. Throughout all phases of the creation and in the implementation of this policy, it is assumed that all members of the University community will be guided by a sense of mutual trust, collegiality, and goodwill. In the event of future controversies regarding the rights to intellectual property or the commercialization of particular property, or in the interpretation of this policy, all parties should recognize that mutual trust, collegiality, and goodwill were fundamental tenets in the forging of this policy.

4. Faculty Governance and Review. University faculty, through the *Faculty Policy Committee (FPC)*, shall play a preeminent role in the establishment and periodic revision of this policy and in the review and recommendation of dispute resolutions arising under it. The committee designated under this policy shall have a majority of voting members who are faculty without administrative appointments, and a faculty member shall chair the committee.

5. Transparency. The Principle of Transparency promotes both the disclosure and the avoidance of actual and apparent conflicts of interest

associated with external commercial activities by requiring that such activities be disclosed in advance. If the activities are consistent with this policy and its principles, the faculty, staff member, or student should have no reason not to disclose them. If the activity includes proposals for external research or project funding, the relevant CSUDH disclosure policy applies.

6. Reasonableness in Licensing. The inventor or creator shall normally play an active role in the entire licensing process, including consultation and/or approval of licensing decisions, particularly where the inventor or creator has no financial interest in the licensee. Otherwise, such participation shall be consistent with conflict of interest regulations or University policy.

ARTICLE 2

2.01 OWNERSHIP AND OTHER INTERESTS

A. Faculty and Student Ownership. The results of scholarship and creative work are the property of the individuals who originate them and who, therefore, have the right to decide the final disposition of those results, e.g., copyright. However, the definition of these property rights must take into account the contributions by other persons, by institutions and by agencies. Intellectual property developed with substantial use of University financial support shall be the joint property of the developer and the University (or its auxiliary organization), unless such ownership is precluded by grant or contract agreements or by State or Federal law, or the University is the owner (as more fully explained below.). The University shall protect the rights of faculty and students to intellectual property and shall involve discoverers and creators in the process to determine how such intellectual property shall be made public. Any income generated by the

intellectual property shall be distributed in accordance with Article 5.

1. Basis of University Interest. The University's interest in faculty or student intellectual property shall be limited to those cases in which the property was created as the result of the substantial use of financial support or other University resources in the development of that intellectual property and such intention of the University to solely or jointly own the property is either customary or explicitly bargained for, in writing, by the University and the employee, independent contractor, or student. In keeping with traditional academic policy, the University does not assert ownership of copyrightable material due to provision of office space, computers or like equipment, or library facilities, unless the resources are provided specifically to support the development of the material. The University does not claim ownership of books, articles, course materials, and similar works that disseminate research and scholarly results or from preparation for classroom teaching, nor does the University claim ownership of popular nonfiction, fiction, poetry, musical compositions or other works of artistic imagination, which are not institutional works. Nor does a faculty member's general obligation to produce scholarly works constitute a basis for University interest.

The normal and routine use of University personnel, resources, or facilities consistent with one's assigned duties and responsibilities (including property created, modified, updated, etc., during the school year or while on assigned time, sabbatical, difference in pay leave, and similar University support unless specifically agreed to in advance) does not constitute "substantial use."

Substantial use of financial support and University resources is evidenced as follows:

a. Substantial Financial Support. Substantial financial support is evidenced

by the acceptance by the faculty member or student of CSUDH financial support specifically initiating the development of intellectual property. For example, acceptance of a grant, contract, stipend, or of academic release time developed by the University specifically for its stated and specific purposes which are then carried out by the faculty member or student and which lead directly to the development of intellectual property constitute substantial financial support. General (open to all or a subgroup of faculty or students) University research awards and leaves do not constitute such support.

In cases where copyright or patented materials are the major responsibility of the University employee, then the presumption shall be that the University shall own the property rights. For example, if the individual is hired, as an employee, student, or independent contractor specifically to create custom software (such as for registration or alumni relations), that software and all rights thereto shall belong to the University, unless there is an explicit agreement granting rights to the employee, student, or independent contractor.

b. University Resources. Substantial use of University resources is evidenced by the use of those resources outside the context of normal academic duties that directly contribute to the development of intellectual property(s); for example, the use of University laboratories which contribute directly to the development of the intellectual property. The use of the library, faculty offices, campus computers or related equipment, CSU Research and Creative Activity awards, faculty development awards, and sabbatical and differential pay leaves, however, do not constitute the substantial use of University resources.

In the case where copyrightable material is prepared because the University supplies extra or special support directly for that purpose and there is additional resource cost to the institution, the product is considered substantially supported by

the institution. "Extra" or special institutional support includes those support costs, which would not have been incurred by the institution in the absence of the development of the product. For example, concurrent use of University facilities does not, in general, generate additional out-of-pocket costs to the University. If extra or special University support is provided, the University will specify that extra or special support in writing and will normally retain copyright.

B. Staff and Works-for-Hire. The University may employ or engage individuals under terms that include the specific determination or allocation of intellectual property rights between the parties. Open and full disclosure in advance of such creative activity, or as soon thereafter as is practicable, is a prerequisite to a fair determination or allocation of ownership to staff creations or inventions. Inventions or creations by staff (non-faculty) directly incident to their employment or engagement—such as a specific job requirement or assigned duty—belong to the University. The University shall have an equity interest in works and inventions by staff employees, not incident to their employment, where substantial University resources have been used in the development of the work or invention (refer to Article 2.A.1. "Basis of University Interest").

Staff creations or inventions not involving significant University resources (including the creator/inventor's work-time) are owned exclusively by the creator/inventor.

C. Externally Sponsored Work. Intellectual property conducted under the auspices of an external sponsor and the university (CSUDH or CSU) shall be owned as specified in said agreement. It is the responsibility of the Office of the Associate Vice President for Academic Programs or designee to inform each person whose intellectual rights are limited by an externally sponsored contract of the intellectual property provisions of that contract in advance of the beginning of work thereon. Such

notice is to be in writing and the University may require written acknowledgment of such provisions by any person working on externally sponsored projects. A summary of external sponsorship agreements made by either CSUDH or the CSU shall be maintained by the Office of Research and Funded Projects and shall be available to the general university community.

If the university fails to notify a creator, effectively and in advance, of limitations imposed on his or her intellectual property rights by external sponsorship agreements, the creator is entitled to receive from the university 50% (fifty percent) of the net proceeds to CSUDH or the CSU resulting from his or her intellectual property.

ARTICLE 3

3.01 ADMINISTRATIVE PROCEDURES

A. University Administration. The University President is responsible for policy matters relating to intellectual property and affecting the University's relations with inventors and creators, public agencies, private research sponsors, industry, and the public. The Office of Vice President for Academic Affairs, through the Dean of Graduate Studies and Research, and in coordination with the CSUDH Foundation, shall implement and administer this policy, including administrative decisions regarding the evaluation of patentability or other forms of intellectual property protection, filing for patents, use rights, and the pursuit of infringement actions.

B. Intellectual Property Review: The Faculty Policy Committee (FPC) of the Academic Senate shall be charged with reviewing this policy and any other issues raised concerning intellectual property. FPC shall be consulted in advance concerning any material changes to the policy. There shall also be an Intellectual Property Administrative Procedures Committee (IPAPC). A member of FPC

will chair the committee. This Committee consists of the Associate Vice President for Academic Programs, a student representative appointed annually by Associated Students, Inc., the Vice President for Academic Affairs, the Vice President for Administration and the Director of Research and Funded Projects. The Executive Director of the CSUDH Foundation shall be a non-voting *ex officio* member of the Committee. The IPAPC shall review and monitor University activities on matters relating to the administration of this policy. and shall advise the President on policy matters related to the distribution of Intellectual Property development and Intellectual Property research funds.

At the beginning of each academic year, the CSUDH Foundation will provide to the Associate Vice President for Academic Programs a summary statement of income and expenses from intellectual property in which the University has an interest. The Associate Vice President will submit this information to the committee that oversees Intellectual Property in a written report of all relevant activities during the preceding year.

C. Disclosures. In order to preserve the rights of all concerned, a CSUDH employee shall disclose to the University the existence of patentable discoveries or inventions made by him/her while under hire or contract with the University. This should be accomplished as quickly as possible so that the University might act to preserve the rights of employees. Patentable discoveries or inventions conceived or reduced to practice by the University faculty, staff or students using University resources or resources administered by the University or within the inventor's or creator's scope of employment, shall be disclosed in writing using a signed and dated "disclosure form: submitted to the Associate Vice President for Academic Programs. The Associate Vice President will refer the disclosure to the Intellectual Property Rights Administrative Procedures Committee for a recommendation as to the rights assigned to parties. To the degree possible within this

practice, disclosure statements shall be kept in confidence. The guiding principle in the determination of ownership and rights shall be the circumstances of its creation, not the nature of the product itself and the presumption is that the creator reserves all rights to patentable discoveries or inventions.

As part of disclosure preparatory to filing a patent application, where that is appropriate, discoverers and inventors should be prepared to provide suitable notebook entries, sketches, descriptions, and other evidence of development of the concepts through successive stages.

D. Use Rights. Inventors or creators having identified a potential licensee may request that the potential licensee be given the right of first negotiation, consistent with University policy on conflicts of interest or other applicable University policies.

E. Confidentiality. It is customary and prudent for those involved within the University and external to the University to enter into appropriate confidentiality agreements if they have access to any proprietary information on specific patentable discoveries or inventions (i.e., Disclosure Statement and other supporting information). The Associate Vice President and Dean of Graduate Studies and Research or designee will be responsible for securing and maintaining such agreements in the chain of use-rights processing.

G. Assignments of Interest. All transfers of ownership between those with any interest in patentable discoveries or inventions shall be documented through appropriate legal instruments, such as assignment agreements, in a form consistent with applicable law and regulations.

ARTICLE 4

4.01 Production and Use Involving Non-University Agencies or Involving Other Education Institutions or Systems

The University may administer funds provided by non-University agencies (such as the Federal Government, corporations, or foundations) or in conjunction with other government entities or a consortium thereof under contract or grant to pay for staff time, services, or material incident to the creation or reduction to practice of intellectual property. In such cases, the University may enter into agreements with such agencies recognizing their rights, in whole or in part, to the ownership of the intellectual property produced from its use and to the net income from its use, and to reasonable participation in determining the conditions of use. The University President or designee will inform members receiving payments from funds provided by non-University agencies as to the rights reserved to such agencies under the agreement between those agencies and the University.

ARTICLE 5

5.01 INCOME ALLOCATIONS

A. General Objectives. In the transfer of intellectual property and allocation of funds derived from income-producing intellectual property, the general objectives are to assure the transfer and development of those discoveries for the public benefit, direct funds toward the inventors or creators, and, where appropriate, provide for the funding of future creative effort by University faculty, students, and staff.

It shall be the policy of the University that intellectual property pursuant to this policy shall, in those cases specified by 2.01.A.1.b be available for use without fee of any kind for any educational or non-commercial purpose by any campus or any entity of the California State University.

B. Allocation of Income from Intellectual Property. Net income will be allocated to the inventors or creators and the University. Annually, or upon request, the CSUDH Foundation will provide an inventor or creator with a current expense statement relating to his or her specific intellectual property.

1. Income derived from property produced outside the conditions specified in 2.01.A.1.b shall belong to the creators or inventors.
2. The President of CSUDH in consultation with the Committee that reviews intellectual property issues will determine the distribution of net income derived from intellectual property owned by the University.
3. In the case of intellectual property being developed by an employee who has been commissioned by the University to create the product, the University will own the copyright and the final product and will be entitled to 100 percent of all royalties derived from the intellectual property.
4. The University shall have no vested interest in inventions clearly resulting from personal or private research and developed by a person on her or his own time, without cost or expense to the University. The faculty member may voluntarily offer such invention to the University for the possible securing of a patent and for subsequent developing, processing, and exploitation under University aegis. If the University accepts such an offer, the terms of the agreement shall be determined jointly by the faculty member and the University.

ARTICLE 6

6.01 CSUDH FOUNDATION

The CSUDH Foundation is a non-profit, public benefit corporation serving as a qualified auxiliary organization in support of the University. The CSUDH Foundation functions in several roles relating to the perfection, protection, transfer, and development of

intellectual property discovered or having interests therein held by the faculty, students, campus staff, or the University.

A. Perfection. The perfection of legal and equitable rights in intellectual property generally involves rather exacting documentation and compliance with statutory and regulatory procedures. The CSUDH Foundation typically acts as the contracting agency for externally sponsored research projects on behalf of the University and the principal investigator. Sponsored research agreements may have specific conflict of interest requirements, invention or creation disclosure requirements, and/or patent/copyright and licensing provisions requiring compliance through the CSUDH Foundation.

The CSUDH Foundation, in cooperation with the Associate Vice President for Academic Programs or designee, will develop and document a standardized confidential invention disclosure and reporting process for the protection of the rights and interests of the inventor or creator, consistent with this policy statement and sponsored project requirements.

B. Protection. At the request of the Associate Vice President for Academic Programs or designee, or in satisfaction of sponsored research requirements, the CSUDH Foundation shall initiate action to further evaluate the need for and practicality of securing appropriate statutory protection over any intellectual property subject to this policy. Results of any such evaluations shall be reported to the Associate Vice President for Academic Programs and the inventor or creator.

C. Transfer and Development. The CSUDH Foundation often serves as the transfer and development agent for those with legal and/or equitable rights to intellectual property subject to this policy statement. Actions to evaluate protection typically also involve the assessment of commercial viability, and may, in most circumstances, require

the CSUDH Foundation to negotiate among the interested parties appropriate assignment and collateral agreements to settle those interests and obligations, and to assure property protection and development opportunities.

D. Fiscal Agent. The CSUDH Foundation also serves as the designated fiscal agent of the University in the administration of transactions involving University interests in such intellectual property, and may also serve in a similar capacity for other interest holders at their request.

E. CSUDH Foundation Services. In providing the above services, the CSUDH Foundation may be entitled to recover its costs in accord with established University and CSUDH Foundation cost recovery policy.

ARTICLE 7

7.01 IMPLEMENTATION PRACTICES

The Associate Vice President for Academic Programs or designee, in cooperation with the CSUDH Foundation's Executive Director, shall develop and document, implement, and maintain on a current basis appropriate procedures and practices to carry out this policy statement. The Intellectual Property Administrative Procedures Committee (IPAPC) shall be consulted on any significant proposed practices involving the application or interpretation of this policy.

ARTICLE 8

8.01 PERIODIC POLICY REVIEW

The Intellectual Property Administrative Procedures Committee (IPAPC) shall review this policy as needed and at least every four years to make recommendations for any changes.

Glossary of Key Terms

Definitions of key terms used in this policy are given below.

1. “Disclosure Statement” means a confidential, written record of an invention or creation by the invention creator used to help assess the nature, extent, and likely intellectual property interests in and development potential of the invention/creation.

2. “Literary and Artistic Works” mean original works of authorship fixed in tangible media of expression.

The following definitions are, for the most part, taken from pertinent federal statutes:

3. “Intellectual property” *Although* the law provides for several different types of Intellectual Property, faculty concerns center on two: copyrights and patents.

a. “Copyright” shall be understood to mean that bundle of rights that protect original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

b. “Patent” shall be understood to mean that bundle of rights that protect inventions or discoveries which constitute any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof; new and ornamental designs for any useful article and plant patents being for the asexual reproduction of a distinct variety of plant, including cultivated sprouts, mutants, hybrids, and new found seedlings, other

than a tuber propagated plant or plant found in an uncultivated state.

4. "Works of Authorship" (including computer programs) comprise, but are not limited to the following: literary works, musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works (photographs, prints, diagrams, models, and technical drawings); motion pictures and other audiovisual works; sound recordings; and architectural works.

[Note on computer software: Computer programs fall into a gray area between the two types of intellectual *property*. Programs that are a part of a "new and useful process" may be eligible for patent protection, while programs embodying minimally original expression may be eligible for copyright protection.]

5. "Scholarly Works" means books, articles, and other literary and artistic works developed without commercial objectives for the primary purpose of disseminating knowledge or beauty.

6. "Income and Net Income." The term "income" means royalties and related or similar funds received from the transfer or licensing of intellectual property. "Net income" means the balance of income remaining after direct expenses related to generating and securing income from specific intellectual property and any direct costs or special advances of the University or CSUDH Foundation. Such direct costs typically include legal filing fees, patent applications, issuance and maintenance charges, transfer or licensing costs, travel, and product development costs. General administrative costs or special advances and repayment terms shall be identified and detailed in writing at the time they are made.

7. The terms **“Inventions,” “Discoveries,” or “Other Inventions”** include tangible or intangible inventions, whether or not reduced to practice, and tangible research results whether or not patentable or copyrightable. Such research results include, for example, computer programs, integrated circuit designs, industrial designs, databases, technical drawings, biogenic materials, and other technical creations.

8. “University” means California State University, Dominguez Hills, and includes the Extended Education Division.

9. “Product” includes, but is not limited to, writings, musical or dramatic compositions, sound recordings, films, lecture notes, videotapes and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, software, web pages, multimedia presentations and products, (e.g. CD-ROMs) and other copyrightable works.

10. “Property Development and Intellectual Property Research Revenue”

includes, but is not limited to, income received by the University as a result of writings, musical or dramatic compositions, sound recordings, films, lecture notes, videotapes and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, software, and other copyrightable works.

11. “Works for Hire” refers to intellectual property developed under terms that include the specific determination or allocation of intellectual property rights between the parties.

12. “Externally Sponsored Work” refers to intellectual property created as a result of work conducted under an agreement between an external sponsor and the University or The California State Universities that specifies the ownership of such

intellectual property.

CSUDH gratefully acknowledges the CSU Bakersfield Intellectual Property Policy as the basic model for the CSUDH policy as well as the American Association of University Professors (AAUP), University of California, Carnegie Mellon University, and the authors Gorman (1998), Scott (1998), and Thompson (1999) for delineating salient issues and principles.