

AS-2204-056/FA
Policy on Intellectual Property

This statement sets forth the policy and procedures governing the administration of Intellectual Property Matters for California State Polytechnic University, Pomona. This policy replaces the copyright policy dated August 7, 1991, but has no effect on contracts and licenses signed previous to December 31, 2006.

This policy is not a substitute for any part of the collective bargaining agreements of the University employees that affect intellectual property.

1.0 Definitions

For the purposes of this policy, the following definitions shall apply.

- Assignment of rights:** a transfer of rights in and to Intellectual Property by the Owner.
- Creator:** one or more individuals, singly or as a group, who produce Intellectual Property.
- Contract:** an enforceable written agreement signed by the University or its designee and another party or parties.
- Foundation:** The Cal Poly Pomona Foundation, Inc.
- Institution:** California State Polytechnic University, Pomona and the Cal Poly Pomona Foundation, Inc.
- Institutional Support:** support provided by either California State Polytechnic University, Pomona and/or the Cal Poly Pomona Foundation, Inc.
- Intellectual Property:** inventions, discoveries, innovations, and literary and artistic works. The terms "inventions", "discoveries", and "innovations" include tangible or intangible inventions, whether or not reduced to practice and tangible research results; and whether or not patentable or copyrightable. Such research results include, for example, computer programs, integrated circuit designs, industrial designs, databases, technical drawings, biological materials, and other technical creations. The terms "Literary and artistic works" mean original works by a Creator fixed in Tangible Media of Expression.
- License:** a contractual relationship in which the owner of Intellectual Property grants permission for use of the Intellectual Property.
- Material:** Intellectual Property including, but not limited to, writings, lectures, musical or dramatic composition, sound recordings, films, artwork, paintings, construction documents, design drawings, videotapes and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, inventions and software.
- Owner:** The term "owner" refers to the party or parties who own or control rights to Intellectual Property, whether under copyright, patent, or otherwise.

Sponsored

Program: has the meaning set forth in California State University Executive Order 890, as amended from time to time.

University: California State Polytechnic University, Pomona.

Tangible Media

of Expression: Physical, digital, and other formats now known or later developed on or from which literary and artistic works may be stored, reproduced, perceived, or otherwise communicated, either directly or with the aid of a machine or device.

2.0 Ownership of and Rights Related to Intellectual Property

- 2.1 As an institution of higher education, the University is dedicated to the ongoing creation and dissemination of knowledge. Believing that the intellectual enterprise is a fundamental element of our heritage, this University seeks to fulfill its responsibility to society by encouraging the highest order of scholarship and creativity among its faculty and students.

Although all citizens have a basic interest in the results of academic inquiry, those who actually engage in research and creative work have privileges specific to their product. This University subscribes to the principle that the results of research and creative work are the property of those persons conducting the investigation, who have the right to Intellectual Property and/or final disposition of the Materials. Such property rights, however, must be defined in relation to all of the persons, institutions, and agencies involved in the research and creative work.

- 2.2 The broad definition of Institutional Support presented above and referred to throughout this document refers to both University funds and Foundation funds. Foundation funds are disbursed through the Cal Poly Pomona Foundation, Inc. Nothing in this document should be construed as affecting the current relationship between the University and Foundation.
- 2.3 The Institution shall not seek ownership of copyrights or royalties resulting from said copyrights on any intellectual property created by the faculty and/or students that takes the form of traditionally published materials (e.g. books, textbooks, anthologies, monographs, novels, plays, musical scores, etc.) or traditional graphic materials (e.g. photographs, paintings, drawings, murals, etc.). This Intellectual Property policy shall not prevent a faculty member from entering into copyright agreements required for publication in scholarly journals.
- 2.4 The allocation of Intellectual Property rights between the Institution and its employees or students is partially dependent upon the degree of Institutional Support. For the purposes of this policy, Institutional Support for a project yielding Intellectual Property will be classified into one of five categories: (a) commission or work for hire; (b) extraordinary Institutional Support; (c) no Institutional Support; (d) normal or incidental Institutional Support; and (d) Sponsored Programs. These types of support are defined below, and the ownership rights relating to each category are specified. Nothing in the following specifications shall prohibit a decision by the University or the Creator to assign Intellectual

2.41 Commission or Work for Hire

- 2.411** Intellectual Property Material is commissioned when there exists a Contract between the Institution and the Creator to develop a specific Material.
- 2.412** In the case of commission, the Contract will specify the terms applying to ownership of the Intellectual Property and the distribution of royalties, if any, between the Creator and the University.
- 2.413** In the case of commission by the University, the terms will be in accordance with controlling University policy.
- 2.414** Intellectual Property produced by non-academic employees within the scope of normal employment duties shall be 'work for hire' and shall be the property of the University. Intellectual Property produced by academic employees working in University management positions shall be 'work for hire' to the extent that the Intellectual Property is produced within the scope of normal management duties. To the extent that such academic employees in management positions produce Intellectual Property related to teaching or scholarly research, such Intellectual Property shall not be governed by this section 2.414 unless a contract to develop a specific material exists as described in section 2.411.

2.42 Normal/No Institutional Support

- 2.421** Normal Institutional Support is normal and customary University-provided office space, standard office equipment (for example, faculty computer workstations, printers, scanners, fax machines, telephones), and library facilities and equipment purchased exclusively for teaching in the discipline.
- 2.422** Sabbatical and difference-in-pay leaves and research, scholarship and creative activity (RSCA) awards are generally considered to be normal Institutional Support.
- 2.423** If there is Normal or No Institutional Support used in the development of an Intellectual Property, the Creator shall hold all Intellectual Property rights and shall be entitled to any royalties.

2.43 Incidental Institutional Support

- 2.431** Incidental Institutional Support is support provided over and above Normal or No support, which includes, but is not limited to: 1)

research stipend or release time provided by the University to the faculty member for professional development purposes, and 2) grant or stipend funds provided by the University to the faculty member to develop a new course or enhance an existing course.

2.432 Unless otherwise stated in writing (such as in a condition of an award of resources) and signed by the University and the Creator before initiation of funding for the project, the **Creator shall hold all Intellectual Property rights and shall be entitled to any royalties.**

2.433 Stated written conditions specified by the Institution for receipt of Incidental Institutional Support may include, but are not limited to, any of the following: Institutional ownership of the Intellectual Property; Institutional entitlement to a non-exclusive license to use the Intellectual Property and Materials for educational purposes; or sharing of royalties except as otherwise provided in this policy.

2.44 Extraordinary Institutional Support

2.441 Intellectual Property is considered to have received extraordinary Institutional Support if the Creator made use of Institutional resources in the development of the Intellectual Property that are significantly in addition to those normally provided (see 2.42 above) or in addition to Incidental Support (see 2.43 above).

2.442 Intellectual Property created with extraordinary Institutional Support shall be owned by the University.

2.443 The Institution may incur expenses related to obtaining a copyright or patent, development of the commercial potential of Intellectual Property and administrative costs related thereto. If the Institution incurs such expenses, the Institution is entitled to be reimbursed for such expenses from any royalty income arising from the Intellectual Property prior to any distribution to the Creator. Additionally, the institution may agree to pay part of the royalties to a third party as compensation for assistance with the process of evaluating and/or commercializing the Intellectual Property and these payments shall be deducted from the net royalties. If Intellectual Property yields net royalties, after reimbursement of Institutional expenses, the net royalties shall be distributed 50% to the Creator and 50% to the University. It is expected that some part of the University's share shall be used to support research and creative activity in the Creator's unit.

2.444 The provisions of this section (2.44) may be overridden by agreement between the University and the Creator

2.45 Sponsored Programs

Ownership of Intellectual Property and Materials developed in the course of or pursuant to Sponsored Programs shall be determined in accordance with the terms of the applicable sponsored research or other agreement, or in the absence of such terms, ownership of the Intellectual Property shall be determined by this policy. Sponsored Program agreements (including but not limited to those projects sponsored by the federal government, state government, private foundations, and private individuals, industries or public companies) often contain provisions with respect to Intellectual Property. Government sponsors may assign Intellectual Property and Materials resulting from the Sponsored Program to the Institution, but private sponsors may retain the rights to Intellectual Property and Materials conceived with their support. In all cases, Sponsored Program agreement provisions govern over the provisions of this policy.

- 2.5** Students doing research under the direction of a faculty member, or groups of faculty members, should, whenever possible, enter into a written Contract in advance of conducting the research regarding the respective rights of the participating individuals in the publication of research results and any Intellectual Property developed in connection with the research. Disagreements about ownership of Intellectual Property Materials will be referred to the University Intellectual Property Committee for recommendation to the Provost.

3.0 University Intellectual Property Committee

A five-member University Intellectual Property Committee (UIPC) shall be formed according to the following procedure: The Committee must include two persons appointed by the Provost and three faculty members appointed by the Academic Senate. Any member of the committee who has a conflict of interest for a specific matter before the UIPC must recuse him/herself from that matter and the Provost or Academic Senate shall appoint a replacement for the person they appointed. The UIPC shall ascertain the extent of Institutional Support involved in the completion of the specific projects and make a recommendation to the Provost as to the extent of Institutional Support. The UIPC will inform the Executive Committee of the Academic Senate of its recommendations at the same time as it communicates its recommendation to the Provost.

4.0 Disclosure

- 4.1** The Creator of Intellectual Property shall submit to the Associate Vice President for Research and Graduate Studies (AVP/R&GS) an IP Disclosure form describing the Material in clear and complete terms and including other related facts (including but not limited to: the amount of Institutional Support used; identification of all Creator(s), a description of the circumstances leading to the creation of the Material, and facts concerning subsequent activities, such as publication). All contributions by faculty, staff and students shall be stated in the IP Disclosure form. The IP Disclosure form can be obtained from the Office of the

AVP/R&GS or from the Foundation.

- 4.2 The AVP/R&GS shall promptly review the information provided in the IP Disclosure form and make a preliminary determination of the University's ownership interest in the Intellectual Property. The results of this review shall be made known to the Creator within twenty (20) working days of receipt of an IP Disclosure form including all necessary information. If the Creator disagrees with the preliminary determination, the AVP/R&GS shall convene the UIPC which shall operate in accordance with section 3.0 and must make its recommendation to the Provost within twenty (20) working days. Within twenty (20) working days of receipt of the recommendation from the UIPC, the Provost shall either accept or reject the recommendation of the UIPC and shall inform the UIPC and the Academic Senate of his/her decision.
- 4.3 If it is determined that the University has the right to ownership of the IP, an application for patent or copyright protection of the IP must be filed within a reasonable period of time. Throughout this process, time is of the essence and both the Institution and the Creator are obligated to act expeditiously and to cooperate fully.
- 4.4 If at any time the University decides to permanently terminate its pursuit of the legal protection or the commercial potential of the Intellectual Property, then it must formally relinquish ownership of the Intellectual Property to the Creator.

5.0 Use of the Name of the University

Use of the name of the University in connection with Intellectual Property shall be governed by California Education Code Section 89005.5

6.0 Authorization of a Contracting Officer

The University Provost is designated as the authorizing officer of the University for matters involving Intellectual Property. He or she may designate other managers or directors of units of the University to act on his or her behalf. After consultation with the UIPC, the Provost or designee may authorize agreements with respect to ownership and other rights related to Intellectual Properties, obtain copyrights or patents, and grant Licenses in the name of the University for Intellectual Property under its jurisdiction. The University may designate the Foundation as its agent with respect to Intellectual Property. The University may request that the Foundation establish and maintain a central file for all patents and copyrights secured in the name of the University and Licenses granted by the University.

7.0 Grant for Permission for Use of University Intellectual Property

Prior to granting a License for the use of Institution Intellectual Property and Material, the Provost shall determine that the form, use, and distribution of the Material does not constitute adverse competition with a program of the University. The UIPC shall recommend to the Foundation or the University the monetary consideration to be asked in

8.0 Usage of Funds Received from Intellectual Properties

Any funds that are acquired by the University through royalties or Licenses for Intellectual Properties shall be used for support of scholarly activities at the University, except that funds generated by a unit of the University in the performance of a specific ongoing function may be used to defray the actual expenses of that function. Specific letters of agreement may be entered into between the University and units involved in such functions.