

**17/AS/07/FAC--Intellectual Property Rights Policy
California State University, Stanislaus**

I. Preamble

In Article I of the United States Constitution, the Congress vows to "promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Rights to their respective Writings and Discoveries." In Article 39.1, the CSU Collective Bargaining Agreement notes that "The CSU and the CFA recognize both that mutual benefits derive from the ongoing development and dissemination of intellectual properties in the CSU, and that to maximize these mutual benefits this Memorandum of Understanding encourages the allocation of intellectual property rights so as to optimally support the mutual interests of the university, faculty, staff and students." Article 39.6 adds that the CBA "does not apply to those materials created with extraordinary University support, which may be addressed by separate individual agreements at the campus. CSU Stanislaus recognizes the necessity of an intellectual property rights policy to effect an understanding of the intersection of interests among faculty, staff, students, and the university regarding works created. The explosion of electronic and visual methods for disseminating information necessitates a reexamination of policies and laws regarding fair use, copyright, and intellectual property rights, to name a few. Most recent publications regarding intellectual property rights within universities include a caution that ownership is not an "all-or-nothing" proposition.

This policy will not contravene existing law or collective bargaining provisions and will be reexamined periodically and revised as necessary by the appropriate university faculty committee as determined by the Senate Executive Committee.

II. Elements for Intellectual Property Rights Consideration and Negotiation

Three factors identified by the Consortium for Educational Technology for University Systems (C.E.T.U.S.) are important for determining ownership: creation, control, and compensation. Using these three factors as a starting point, this policy provides a framework for unbundling and licensing the rights of ownership in situations where intellectual property rights would not reside solely with the creator. These rights include but are not limited to:

- A. the right to distribute the work
- B. the right to make reproductions of the work
- C. the right to make derivative works such as updates, alterations, composites, compilations, translations, and versions in new media or genres
- D. the right of portability; that is, an irrevocable license to take the work to, and use the work with, a new employer or for commercial purposes
- E. moral rights that include the right to be identified as the author of the work, including the right to decide whether to allow the author's name to be displayed in association with the work and the right to be informed in advance of any uses, reproductions, distributions, and dispositions of the copyrighted work;
- F. the right to retain for one's university the right of duplication of the work for teaching, scholarship, and research, and on a limited basis, the right to make derivative works even if the author assigns copyright ownership to a third party; and
- G. the right to exclusive control of all decisions related to the publishing of unpublished works.
- H. the right to exclude others from using the work

III. General Policy on Intellectual Property Rights

Our first principle is that creative works by faculty at CSU Stanislaus in the course of normal faculty bargaining unit work will not be considered work-for-hire. This includes, but is not limited to: scholarly papers, works of art, syllabi, course contents and materials.

Thus, during normal faculty bargaining unit work intellectual property rights will reside solely with the creator of the work except in specific circumstances where:

- A. the university has given a **specific assignment** and university support to the faculty member to develop work beyond normal workplace expectations. *Specific assignment* refers to creative works produced from administrative work (i.e., in the course of being an administrator or manager) or when a faculty member is **recruited by** the university to produce a particular work or
- B. the university has provided **extraordinary support**. *Extraordinary support* exists when the university provides for an assignment facilities, compensation, or other resources beyond those provided to other members of the university community in a similar employment classification in the course of their normal duties and not restricted by a separate, individual, prior work-for-hire agreement. For example, Research, Scholarship, and Creative Activities awards or other grants available generally to faculty, staff, or students; sabbatical leaves; and difference-in-pay leaves are not considered extraordinary support.

In these cases the intellectual property copyright may be owned by the creator or by the university with licensing of rights and revenue sharing negotiated and specified in an Intellectual Property Rights Agreement form (Attachment B) before work commences.¹ In instances of a patent protection/commercialization process, in no case will the University's share be greater than 50%.

This policy also applies to works created by administrators, staff, and students when done under the conditions described above in this policy. The University owns the copyright to all works made by staff (i.e., all non-faculty employees, including administrators) in the course and scope of their employment and/or with the use of significant university resources. Staff works produced outside the course and scope of employment and without the use of significant university resources are owned exclusively by the creator. Any work produced by an independent contractor belongs exclusively to the creator.

In the case of student research, either undergraduate or graduate, the copyright to completed works resides with the creator, the student. In the case of faculty-student research projects the faculty member is responsible for initiating a discussion of shared rights and completing an Intellectual Property Rights Agreement Form with the student(s) before work commences.

In the case of work done by students for the university using university data or equipment, the university is responsible for initiating a discussion of shared rights and completing an Intellectual Property Rights Agreement Form before work commences.

IV. Obligation to Disclose Intellectual Property

In the case of extraordinary support as outlined above faculty are obligated to disclose to the Provost, in writing, the intellectual property invented or created to which the university may have an interest. Such works must be disclosed when it is determined that they have the possibility of being patentable, assigned a trademark, or have trade secret protection. In no way will disclosure or lack of disclosure abrogate the rights of the creator.

V. Dispute Resolution

The Faculty, through an ad hoc faculty committee appointed by the Committee on Committees, will play a primary role in recommending to the President means of resolution for any disputes arising under this policy.

VI. Education

CSU Stanislaus recognizes the necessity of providing education to students, faculty, and staff regarding intellectual property rights. At a minimum, the university will make available materials and workshops to current and incoming faculty and staff which will provide information on legal and practical elements of copyright, fair use, trademark, technology transfer, and patent. Additionally, the university should provide education related to externally sponsored research/program agreements and for consultancy agreements with external agencies when those agreements entail use of university resources. The university will also incorporate catalog language on student intellectual property rights consistent with this policy.

¹ "In general, joint copyright ownership is problematic and should be avoided. Joint owners have a legal obligation to each other throughout the many years that copyright endures. It is a huge and potentially complex and troublesome long-term partnership. Partnerships often suffer when circumstances change for one or more of the partners. Career goals change, institutions dissolve, enmity erodes positive attitudes, and people die. Copyright lasts at least as long as seventy years. This is recipe for copyright management stress!" *Intellectual Property, Fair Use, and the Unbundling of Ownership Rights*, p. 70

Attachment A: Definitions

Creation: "a finished work owes its existence both to the person who conceived of the idea and to the author(s) who created and fixed the protectable expressions . . . [the] primary focus here is on the person who initiates the *creative content* of the finished work. For example, a university administrator may encourage faculty members in general terms to create publications or to create patentable inventions. Or a dean of continuing education may even suggest a specific project such as the creation of an on-line course or a contract course. While such occurrences are "initiative" of a sort, they alone would not ordinarily move this factor in favor of university ownership." [emphasis added.]²

Control: the primary question is who specifies, directs, and oversees in detail "the time, place, and manner of creation and the timeline and final authority over the acceptance of the finished work."

Compensation: may include money, assigned or released time, office space, equipment, staff support, etc.

Copyright: as defined in the previously cited C.E.T.U.S. document (and used with permission), copyright "protects the highly personal, literary, expository, and creative expressions which often grow from an instructor's overall program of teaching and research, and each work can become the foundation for a future agenda of scholarly inquiry" (p.3). In general, copyright protects a work of authorship, fixed in any tangible medium of expression, from unauthorized reproduction. Copyright is applicable to computer software, art work, music articles, books, and other literary works. Publishers normally carry copyright. Some intellectual property, such as software, may be both copyrightable and patentable. Copyright protects the expression of the idea, but not the idea itself.

Creator: The person with whom the intellectual property originates.

Extraordinary support: exists when the university provides for an assignment facilities, compensation, or other resources beyond those provided to other members of the university community in a similar employment classification in the course of their normal duties and not restricted by a separate, individual, prior work-for-hire agreement.

Intellectual Property: in general refers to copyrights, patents, trademarks, and trade secrets.

Licensing: assignment by the owner of some or all copyright privileges. A license may be *exclusive*, where the copyright owner assigns certain rights to only one party, or *non-exclusive*, where the copyright owner may assign certain rights to multiple parties.

Patents: The United States patent system grants exclusive rights to inventors to encourage the public gain of information and to prevent duplicate research effort. A patent provides twenty years of excluding others from making, using or selling the invention. It does not give the patent holder the authority to make, use or sell, simply to prevent others from doing so. Thus it is that one party can hold the patent on an improvement to an invention, while another holds the patent on the invention itself. (See specific government publications for information on the patent process.) Information regarding legal patent or invention protection is located at the U.S. Patent and Trademark Office web site.

Trademark: Trademark is the mark used which distinguishes an organization or a product. Symbols and logos of CSUS are trademarks and they may not be used by third parties without proper license and specific approval from the university.

Trade Secret: Trade Secret is a legal property protection device under state law. Knowledge formalized as a trade secret cannot be disclosed in any open scientific forum. Trade secret commonly occurs with profit-making companies. A trade secret is protected information not generally known among, or readily accessible to, persons that normally deal with that kind of information, has commercial value because it is a secret, and has been subject to reasonable steps to keep it a secret by the person lawfully in control of the information.

Technology Transfer: Technology transfer is the movement of knowledge and discoveries to the general public and may sometimes occur through licensing.

² Quoted sections under "Creation," "Control," "Licensing," and "Unbundling," from *Intellectual Property, Fair Use, and the Unbundling of Ownership Rights*, pp. 69-70, 79-80.

Unbundling: "using licensing to allocate among the interested parties the set of rights provided by the copyright and patent law."

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