

HUMBOLDT STATE UNIVERSITY
University Senate

Sense of the Senate Resolution Endorsing the San Jose State White Paper: Faculty Intellectual Property at SJSU

27-16/17-Thobaben/Abell - April 25, 2017

RESOLVED: That the HSU Senate expresses its deep concerns with both the process used to create the proposed March 3, 2017, CSU Intellectual Property Policy and with a number of the features present in its content; and be it further

RESOLVED: That the HSU Senate stands with the Academic Senate of San Jose State University and endorses the attached April 10, 2017, White Paper: *Faculty Intellectual Property at SJSU and the CSU Proposed IP Policy*; and be it further

RESOLVED: That the HSU Senate encourage the CSU administration and the ASCSU to review the attached draft HSU Intellectual Property Policy for guidance on how to improve the proposed CSU system-wide policy. This HSU IP policy was generated through the shared governance process on our campus and approved without dissent for recommendation to our President in May 2016; and be it further

RESOLVED: That this resolution be distributed to the CSU Chancellor, the CSU Executive Vice Chancellor and General Counsel, the CSU Executive Vice Chancellor for Academic and Student Affairs, the ASCSU, all campus Academic Senates, the CSU-CFA President, the CSU ERFA President, and the HSU ERFA Chair.

RATIONALE: *As stated in the San Jose State White Paper: Faculty Intellectual Property at SJSU and the CSU Proposed System IP Policy: "The CSU draft proposal on intellectual property weakens existing protections of faculty rights and does not measure up in quality to the standards enumerated by the AAUP or even UC system policy or existing campus policies".*

The University Senate of Humboldt State University has already proposed and recommended a campus Intellectual Policy that was fashioned through a lengthy shared governance process that involved administrators, faculty, staff and students. We are proud of the work we achieved and direct the CSU administration and the ASCSU to that document for guidance on how to improve the CSU proposed system wide policy.

Attachments:

April 10, 2017 White Paper: Faculty Intellectual Property at SJSU and the CSU Proposed IP Policy.

May 10, 2016 HSU Senate Resolution on Intellectual Property Policy (Resolution 24-15/16/-FAC)

1 **SAN JOSE STATE UNIVERSITY**
2 **Academic Senate**
3 **Professional Standards Committee**
4 **April 10, 2017**
5 **Final Reading**

AS 1530

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7 **Sense of the Senate Resolution**
8 **Requesting Changes in the**
9 **System wide Proposed Intellectual Property Policy**

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11 **Whereas,** The CSU central administration has drafted a proposed intellectual
12 property policy to be implemented system wide, and have requested “input
13 and feedback no later than 60 days from” March 14, 2017; and
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15 **Whereas,** The Academic Senate of SJSU has reviewed the draft policy; now
16 therefore, be it
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18 **Resolved,** That the ASCSU and the CSU should be apprised of our deep concerns
19 with both the process used to create the proposed system policy and with
20 a number of features present in its content; we have explained these
21 concerns and our conclusions in the attached white paper; be it further
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23 **Resolved,** That this resolution be distributed to the Chancellor, to the Executive Vice
24 Chancellor and General Counsel, the Executive Vice Chancellor for
25 Academic and Student Affairs, to the ASCSU, and to all campus
26 Academic Senates.
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30 **Approved:** *April 5, 2017 by email after a 7-0-1 in-person committee vote on an earlier*
31 *draft*

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33 **Vote:** *8-0-2*

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35 **Present:** *Peter, Green, White, Lee, Kauppila, Hamedi-Hagh, Hwang, Reade,*
36 *Marachi, Caesar*

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38 **Absent:** *None*
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White Paper: Faculty Intellectual Property at SJSU and the CSU Proposed System IP Policy

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Concern with Process

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- 1) **An abrogation of collegiality.** The report acknowledges that 16 campuses have intellectual property policies of their own. The replacement of these 16 policies with a system wide policy may seem rational from the perspective of Long Beach, but we see it as an assault on collegial governance. Each campus policy, including our own, was written, debated, and amended through a collegial governance process featuring faculty, prior to being signed by our campus Presidents.

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The proposed system policy that would replace these collegial documents, however, was not created in a collegial fashion. It was written by 16 administrators who have excluded faculty input prior to this 60 day window (p. 5). Furthermore, no effort was made to involve each of the 16 campuses that have their own policies. ***SJSU, in the heart of the most important region in the world for the creation of intellectual property, was completely unrepresented on the IP Committee by faculty or administration.***

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The proposed system policy on intellectual property will abrogate collegial agreements between faculty and administration that have been carefully debated and negotiated over a period of years. For an entire issue-area, it replaces previous traditions of collegial governance with administrative authority. This is especially disturbing given that the American Association of University Professors (AAUP), notes that the “keys to proper intellectual property management are consultation, collaboration, and consent.”¹

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- 2) **The false restriction based on collective bargaining.** From time to time we have received intimations that the reasons the collegial process was so badly abrogated had to do with collective bargaining. We hesitate to explain the CSU’s position on this since our campus has not been offered a detailed rationale from the CSU for its actions. The theory—or rumor—that we have heard is that the CSU believes that items that are possibly subject to collective bargaining cannot be discussed through the collegial governance system. Furthermore, the current CBA does possess an article—39—which discusses some (but far from all) aspects of Intellectual Property.

¹ AAUP Report from June 2014, “Defending the Freedom to Innovate: Faculty Intellectual Property Rights after *Stanford v. Roche*, p.4.
https://www.aaup.org/sites/default/files/files/aaupBulletin_IntellectualPropJune5.pdf

78 If this is in fact the CSU's position, it should rethink it. HEERA does set up a
79 division of labor between collective bargaining and collegial governance, but that
80 division of labor can in no way be thought to restrict the role of academic senates
81 on this issue. The 16 campus policies on Intellectual Property have all existed
82 for many years under the collective bargaining agreement, including during the
83 time that article 39 has been in effect, and this provides *prima facie* evidence that
84 article 39 and policies crafted by Academic Senates can indeed coexist. If in fact
85 some of the policies are not in conformity with article 39, then CFA can be relied
86 upon to point out the non-conforming policies so that the affected campuses can
87 take corrective action.

88
89 The report of the CSU Intellectual Property Committee itself points out the fallacy
90 in the argument that collective bargaining somehow rules out full senate
91 consultation. As it describes article 39 in its section on "Need for Labor
92 Negotiations" (p. 9) it points out that the article only concerns certain narrow and
93 specific provisions related to intellectual property. The draft policy (and we might
94 add our campus policies) address a vast range of issues unrelated to article 39.
95 To rule out collegial governance on an entire issue area merely because a
96 narrow part of that area has been bargained is unreasonable.

97
98 Furthermore, the CBA and collegial governance already work in an integrated
99 fashion on a wide range of topics including (most especially) appointment,
100 retention, tenure, and promotion. The fact that the CBA sets a few parameters
101 on ARTP issues has never been taken as an excuse to suppress collegial
102 governance on those vital policies. Why then would similar parameters be used
103 to suppress full collegial participation on intellectual property? If every topic area
104 mentioned in the CBA were off limits to collegiality, then there would be very little
105 collegiality left indeed.

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107 Fortunately, we suspect that this unreasonable argument that the CSU is alleged
108 to have made is in fact little more than rumor. The CSU, after all, has decided to
109 allow the ASCSU to comment on the proposed policy, which seems to be an
110 admission that collective bargaining does not in fact rule out the full operations of
111 the collegial governance system. We choose to accept this interpretation of the
112 actions of the CSU, and proffer this paper as our own collegial response to the
113 proposed policy.

114 **Concern with Content**

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117 We have spent some time comparing the proposed policy with our own policy and with
118 the UC policy. Given the short time frame for providing feedback, we cannot claim to
119 have done a careful analysis. However, we have noticed several provisions that we
120 believe will weaken the protection of intellectual property for faculty compared with
121 some campus and UC policies.

123 1) **Definition of Extraordinary Support excessively broad.** With all of these
124 policies, the absolute crux of the matter comes down to how “extraordinary
125 support” is defined. The reason for this is that all IP policies give ownership of IP
126 rights to the author (usually faculty) unless the CSU provides “extraordinary
127 support,” in which case the CSU will claim some level of ownership.

128
129 The proposed policy’s definition of “Extraordinary Support,” however, is overly
130 broad. It

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132 may include, but not be limited to, funding for additional
133 employment, assigned time and other forms of payment, additional
134 operating expenses or additional equipment or facilities costs.” (p.
135 14.)

136
137 This is an expansive definition that does not establish limits on the term. We are
138 particularly concerned that the inclusion of “assigned time” would result in
139 classifying a preponderance of faculty intellectual property as subject to the
140 “extraordinary support” provision. IP developed on sabbaticals, for example, or
141 nearly any IP produced at campuses that have achieved a 3/3 load (such as
142 SDSU), or by junior faculty who have been given a course release(s) to get
143 started, or by anyone else who has earned a release from a 12 WTU load—could
144 be subjected to this overly broad definition of extraordinary support. This
145 definition needs to be rewritten to exclude all these routine uses of assigned
146 time.

147
148 Compare this excessively broad definition with the UC definition:

149
150 **Exceptional University Resources** University Resources
151 (including but not limited to University Facilities and University
152 Funds, as described below) significantly in excess of the usual
153 support generally available to similarly situated faculty members.
154 Customary secretarial support, library facilities, office space,
155 personal computers, access to computers and networks, and
156 academic year salary are not considered exceptional university
157 resources.²

158
159 This definition is narrow, and it takes pains to explain what exceptional resources
160 are NOT. The definition “significantly in excess of the usual support generally
161 available to similarly situated faculty members” is a far more reasonable
162 definition than “assigned time or other forms of payment” that takes no account of
163 whether such time is routine or truly exceptional.

164
165 2) **University’s license to course materials created without extraordinary**
166 **support is too broad.** In both the UC policy and in the CSU proposed policy,
167 the faculty member retains copyright to Course Approval Documents and Course

² <http://copyright.universityofcalifornia.edu/resources/ownership-course-materials.html>

168 Instructional Materials. In the UC policy, the UC gets license to use the approval
169 docs for educational purposes; the CSU version extends this license to the actual
170 course materials. This is a huge difference and a very troubling one. We believe
171 that the UC policy makes the proper distinction and the CSU proposed policy is
172 too broad in its claim to a permanent free license to faculty instructional
173 materials.
174

175 The AAUP statement on intellectual property makes this distinction clear, and
176 while the UC IP policy conforms to the AAUP statement, the CSU proposed
177 policy does not:

178
179 Course syllabi at many institutions are considered public
180 documents; indeed, they may be posted on universally accessible
181 websites. It is thus to be expected that teachers everywhere will
182 learn from one another's syllabi and that syllabi will be
183 disseminated as part of the free exchange of academic knowledge
184 Faculty lectures or original audiovisual materials, however, unless
185 specifically and voluntarily created as works made for hire,
186 constitute faculty intellectual property.³
187

188 The CSU, however, asserts a very broad claim that "CSU Course Instructional
189 Materials include documents, digital products, or other materials developed for
190 instruction of CSU courses," and while copyright resides with the Author, the
191 CSU

192
193 retains a free-of-cost, perpetual and nonexclusive worldwide
194 license to use the Course Instructional Materials for research and
195 educational purposes, including without limitation the right to
196 reproduce, prepare derivative works, distribute, perform and display
197 the Course Instructional Materials (p.12.)
198

199 The CSU assertion means, in our view, that lectures, lecture notes, lecture
200 presentations (e.g., PowerPoint, Keynote), recordings of our lectures, online
201 courses as a whole, and other materials prepared by a CSU Professor to teach
202 his or her section, could permanently be used by the CSU free of charge, long
203 after a faculty member departed, retired, or died—or could be taken involuntarily
204 from one faculty member and shared with others at other campuses. The CSU
205 should return to the more limited language of the UC policy and the AAUP
206 statement on intellectual property.
207
208

- 209 3) ***Written agreements should cover the ownership of intellectual property***
210 ***(including course materials) created with extraordinary support.*** In the UC
211 policy, faculty get to reach agreement with the university about how ownership

³ American Association of University Professors, "Statement on Intellectual Property," 2013.
<https://www.aaup.org/report/statement-intellectual-property>

212 will be handled when there is Extraordinary Support. In the CSU policy, rights
213 are automatically transferred to the CSU and the faculty member MAY be
214 granted license for educational use. According to the CSU proposed policy,
215

216 Ownership of CSU course materials (including Course Approval
217 Documents and Course Instructional Materials) created with CSU
218 Extraordinary Support, including copyright, resides with the
219 University” (p. 12).
220

221 Now compare with the UC Statement:
222

223 Ownership of the rights to Course Materials created, in whole or in
224 part, by Designated Instructional Appointees with the use of
225 Exceptional University Resources shall be governed by a written
226 agreement entered into between the Originator(s) and the
227 University. The agreement shall specify how rights will be owned
228 and controlled and how any revenues will be divided if the materials
229 are commercialized.⁴
230

231 We were particularly chagrined to learn that the AAUP cited a CSU Long Beach
232 administrative memo protecting faculty ownership of materials developed for
233 online instruction as an exemplar of resistance to the “emerging pattern of
234 coopting the faculty’s instructional intellectual property.”⁵ Presumably that model
235 campus policy at CSULB will be swept away by the system policy.
236

237 We believe that an IP policy should make it clear that any surrender of faculty IP
238 rights to the University—even when extraordinary support is given—should be
239 made in writing and in advance to avoid misunderstanding, confusion, and
240 litigation down the road. UC policy gives this right, but the proposed CSU policy
241 does not.
242

- 243 4) **Response to Bayh-Dole Act is excessive.** The CSU draft proposal notes that
244 the requirements of the Bayh-Dole Act allow universities to patent federally-
245 funded inventions and to retain those royalties. However, the draft CSU policy
246 goes further:
247

248 we recommend the adoption of the obligations required under the Bayh-
249 Dole Act as a reasonable set of objectives for the CSU to apply to all
250 inventions whether or not they are federally funded (p. 7).
251

252 Although the expansion to include inventions that are made with university
253 resources may be considered reasonable by some, it is not clear how faculty will

⁴ <http://copyright.universityofcalifornia.edu/resources/ownership-course-materials.html>

⁵ American Association of University Professors, “Defending the Freedom to Innovate: Faculty Intellectual Property Rights after *Stanford v. Roche*, June 2014, p. 8. <https://www.aaup.org/report/defending-freedom-innovate-faculty-intellectual-property-rights-after-stanford-v-roche>

254 be involved with the determination of ownership of their own inventions. In
255 contrast, the AAUP clearly states

256
257 Universities...have tried to claim that the only way they can
258 guarantee that faculty members will honor these responsibilities
259 [under Bayh-Dole] is by taking ownership of all faculty inventions,
260 but obviously there are contractual alternatives to what amounts to
261 a wholesale institutional grab of significant developments of faculty
262 scholarship. Indeed, faculty members have long been able to
263 honor these requirements without assigning their intellectual
264 property rights to the University.⁶

265
266 Furthermore, the landscape for faculty intellectual property rights changed as a
267 result of the 2011 *Stanford v. Roche* decision.

268
269 The US Supreme Court...in its landmark 2011 decision in *Stanford*
270 *v Roche*...firmly rejected the claims by Stanford and other
271 institutions favoring federally sanctioned, compulsory university
272 ownership of faculty research inventions.⁷

273
274 Indeed, AAUP drives home that the US Constitution, Federal Patent Law, and
275 the above-referenced Supreme Court ruling all hold that “inventions are owned
276 initially by their inventors,” and moreover, Bayh-Dole “does not alter the basic
277 ownership rights granted to inventors by law.”⁸ We believe that this aspect of the
278 IP policy should make clear that inventions can be created by faculty in many
279 ways (without university facilities, in conjunction with a non-federal sponsor) and
280 that faculty ownership as determined by campus policies should be retained or
281 negotiated in instances when inventions are created without federal support or
282 with university resources. The decision to craft a CSU system policy that
283 extends a claim of ownership beyond federally funded research is not required by
284 law and stands on shaky legal ground since Roche.

285
286 5) ***Scrutinize the proposed policy with an eye to incorporate the AAUP***
287 ***“Intellectual Property Principles Designed for Incorporation into Faculty***
288 ***Handbooks and Collective Bargaining Agreements.”*** The AAUP has spent
289 years perfecting 11 principles that should govern intellectual property at
290 universities. Any policy on IP could benefit from a careful and thoughtful edit to
291 incorporate these 11 principles. The principles can be read in full at the
292 conclusion of the cited AAUP article.⁹ A few highlights of these principles
293 include:

294 11. Faculty assignment of an invention to...the university...will be
295 voluntary and negotiated, rather than mandatory.

⁶ AAUP, “Defending...” p. 6.

⁷ AAUP, “Defending...” p. 6

⁸ AAUP “Statement on Intellectual Property”; AAUP, “Defending...” p. 7.

⁹ AAUP, “Defending...” pp. 17-19.

- 296 12. The faculty senate or an equivalent body will play a primary role in
297 defining the policies...that will guide university-wide management of
298 inventions...
299 13. Just as the right to control research and instruction is integral to
300 academic freedom, so too are faculty members' rights to control the
301 disposition of their research inventions.
302 15. When lifesaving drugs and other critical public-health technologies
303 are developed in academic laboratories...the university...will
304 ensure broad public access in both the developing and the
305 industrialized world.
306 16. ...The freedom to share and practice academic
307 discoveries...whether legally protected or not, is vitally important for
308 the advancement of research and scientific inquiry.
309 17. The university...and faculty will always work to avoid exclusive
310 licensing of patentable inventions....
311

312 A group of faculty experts in intellectual property should be given sufficient time
313 to scrutinize the proposed CSU policy to determine any changes that are needed
314 to bring it up to the AAUP standards.
315

316 **Conclusions**

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318 The CSU draft proposal on intellectual property weakens existing protections of faculty
319 IP rights and does not measure up in quality to the standards enumerated by the AAUP
320 or even UC system policy or existing campus policies. The proposal is not a policy that
321 faculty would have written or assented to, had they been permitted to be a part of the
322 drafting process.
323

324 The CSU, however, should be concerned about this proposal not only because faculty
325 are incensed. The CSU is attempting to improve its stature in research, but the
326 promulgation of a policy that is hostile to faculty IP rights will likely drive our most
327 successful researchers out of the academy altogether or to other institutions that have
328 more flexible policies regarding intellectual property. In order to generate more
329 research dollars, the CSU needs to make itself more attractive to research faculty, not
330 less attractive. Tightening the rules to pinch every penny will drive the dollars away.
331

332 In an effort to be as constructive as possible under the circumstances, we suggest:
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- 334 1) A modified version of the proposed system IP policy should be distributed as a
335 model to the campuses. Each campus that lacks an appropriate IP policy should
336 be required to create or amend a one to bring it up to standards by the end of AY
337 2017-18. Failure to do so could result in the issuance of the draft system policy
338 as a Presidential Directive on that campus. This would allow the collegial
339 governance system to function, allow for substantive faculty input, protect local
340 differences in the research enterprise, and also secure most of the stated
341 objectives of the reform.

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- 2) If a system wide policy must be adopted, then the SJSU Academic Senate recommends that the draft policy not be immediately adopted. Instead, it should be rewritten with the participation of faculty from throughout the CSU system, and then not adopted until endorsed by the ASCSU.

**HUMBOLDT STATE UNIVERSITY
University Senate**

Resolution on University Intellectual Property Policy

24-15/16-FAC – May 10, 2016 - Second Reading

RESOLVED: That the University Senate of Humboldt State University recommends adoption of the attached University Intellectual Property Policy in place of current policy P09-03.

RATIONALE: The current University Intellectual Property Policy, P09-03, passed by the Academic Senate in April 2009, is outdated and contains several ambiguities regarding the University's ownership interest in faculty creations such as course material and inventions. The 08/09 Senate resolution indicates that P09-03 was supposed to be an *interim* policy predicated on the idea that the CFA and CSU in bargaining the CBA would resolve differences in definitions of what constitutes faculty, staff, and student use of "extraordinary resources," which allows the University to claim a stake in faculty and staff creations. The CFA and the CSU agreed in Article 39 of the current CBA that each campus was tasked with creating policy for what constitutes extraordinary resources (called "extraordinary support" in the CBA). The HSU Senate never revisited what constituted "extraordinary support," so HSU has no current definition, which affects faculty, staff and students whose intellectual property activities are covered by P09-03.

Given the expansion of HSU's on-line educational offerings since 2009, HSU faculty object to Section 2.A.2.d of P09-03, which states, "In distance education courses the faculty owns the copyright but the University will receive a royalty free license to use the material". This clause could be interpreted as meaning when a faculty member creates an on-line course, she no longer owns the course, and if she cannot teach the course, the University can simply assign the course and all its materials to another instructor. This is not clear to faculty when they develop their on-line course materials, and discussion within Faculty Affairs Committee and the Senate indicate that faculty would like a separate agreement for each on-line course they develop specifying the rights they retain and the conditions under which the University is granted a royalty-free license to use the course and its materials. Further, any royalty-free license should be contingent on acknowledgement by faculty of receipt of "extraordinary support" for the development of the on-line course or materials. The College of eLearning and Extended Education (CEEE) Advisory Council is currently crafting a revision to the University e-Learning policy and it is important that the intellectual property rights groundwork be established in an up-to-date intellectual property policy before the University Senate considers the revised e-Learning policy.

Some of the key patent provisions pertaining to faculty in P09-03 are problematic. For example, section II.A.2.c of P09-03 states, "In the case of a patent, the title to an invention shall be assigned to the University. The University will share royalties from inventions assigned to the University with the inventor". This automatic assignment of patent to the University based on the employment status of the faculty member contradicts current patent law regarding faculty inventions, Article 39.2 of CBA, and Section II.B.2.b of P09-03, which states, "Patents will be assigned to the University regardless of the source of funding when there is extraordinary use of University resources".

Section III.A.2 of P09-03 establishes an Advisory Board for Research and Creative Projects, but this Board is no longer operational because it was suspended in 09/10 and no longer appears in Section 800 of the Faculty Handbook. Further, the composition of the Board established in P09-03 includes titles of positions that do not currently exist; for example, the Dean of Research, Graduate Studies & International Programs and Faculty Development Coordinator. The Faculty Affairs Committee recommends the re-instatement of a re-configured Board so that a dedicated committee is responsible for keeping the University's Intellectual Property Policy current and fair and that disagreements that are not grievable under current collective bargaining agreements can be heard in a process for resolution that involves faculty input. We also recommend that where applicable in P09-03, the position of "Dean of Research, Graduate Studies & International Programs" be replaced with the current "Dean of Research, Economic and Community Development".

In Spring and Fall semesters 2016, Faculty Affairs Committee researched and reviewed several CSU campus intellectual property policies, looking specifically for those that had been most recently updated. The Academic Senate of CSU-Chico passed a revised intellectual property policy in April 2014 that contained text and substance that FAC used to guide revisions of HSU policy. The Faculty Affairs Committee also consulted with relevant administrators such as Provost Enyedi, Dean of Research, Economic and Community Development, Rhea Williamson, and Associate Vice-President for eLearning and Extended Education, Alex Hwu in drafting the policy to replace P09-03.

EXECUTIVE MEMORANDUM

May 2016

P16-

Supersedes P09-03

SUBJECT: INTELLECTUAL PROPERTY POLICY

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I. GENERAL PURPOSE AND SCOPE

A. Purpose.

The University is committed to providing an intellectual environment in which all members of the academic community – whether they are faculty engaged in life-long professional development, students pursuing educational objectives, or staff dedicated to their own career goals – learn to the fullest extent possible. The University also recognizes and values creativity and innovation as part of the learning process. Similarly, the University recognizes the importance of, and wishes to encourage, the transfer of new knowledge, generated in the University, to the private sector for the public good. At the same time, as a publicly funded institution, the University must be a good steward of the public resources provided to it, and must safeguard against the use of public funds for private gain.

B. Scope.

This policy addresses the rights to, interest in, and protection and transfer of intellectual property created by University faculty, staff and students. Issues not directly considered in this policy, including disagreements concerning its application or interpretation, will be addressed and resolved through the University Intellectual Property Committee consistent with applicable law and collective bargaining agreements. In the event of a conflict between this policy and the collective bargaining agreements, the bargaining agreements shall prevail. Policies affecting the use of the University's names or symbols are not addressed in this document.

C. 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 that 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 the results of research and creative activity for scholarly purposes.
- 2. Equity and Fair Play.** This policy sets forth general principles and procedures, and it has not been designed to address every conceivable circumstance. Under principles of fair play, the inventor(s)/creator(s) and the University mutually operate so that no one will unfairly exploit inadvertent errors or omissions in this written policy. If the need for a correction and/or exception to this policy is identified, appropriate recommendations shall be made to the President through the University Intellectual Property Committee.
- 3. Mutual Trust and Goodwill.** Throughout all phases of the creation and implementation of this policy, it is assumed that all members of the University community will be guided by a sense of mutual trust and goodwill. In the event of future controversies regarding the rights to intellectual property, the commercialization of particular property, or in the interpretation of this policy, all parties should recognize that mutual trust and goodwill were fundamental tenets in the forging of this policy.

4. Faculty Governance and Review. University faculty, through the University Intellectual Property Committee (see III.A.2), shall play a primary role in the establishment and periodic revision of this policy, and in the review and recommendation of resolutions to disputes arising under it. This committee shall have a majority of members who are faculty.

5. Transparency. The principle of openness promotes both the disclosure and avoidance of actual and apparent conflicts of interest associated with external commercial activities.

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

7. Extraordinary University Support. It will be presumed that extraordinary support has not occurred in the absence of a written agreement between the University and the particular creator(s) or inventor(s) that acknowledges the provision of extraordinary support.

D. Policy Application.

This policy takes effect immediately and supersedes all prior intellectual property policies.

E. Key Terms.

For purposes of this policy, the following key terms are defined as follows:

1. **“Auxiliary Organization”** means any nonprofit organization affiliated with the University and recognized in good standing by the CSU Chancellor. This includes the Sponsored Programs Foundation, University Advancement, and Associated Students.
2. **“Copyright”** is a bundle of property rights that legally protect the owner(s) from others copying, distributing, otherwise communicating or making substantive derivative works from copyrighted works which are “original works of authorship fixed in a tangible medium of expression” (from U.S. copyright law) without the permission of the owner(s). “Tangible media” include, but are not limited to, books, periodicals, manuscripts, phono-records, electronic recordings, web based materials, films, tapes, and works of art. The doctrine of “fair use” does allow for some use of an unsubstantial portion of the copyrighted material without the creator(s)’ permission. Copyrighted work may include literary works; musical works, including any accompanying words; pantomimes and choreographic works; pictorial, graphic, and sculptural works (photographs, prints, diagrams, models and technical drawings); motion pictures and other audiovisual works; sound recordings; computer software (may be patented as well) and architectural works.
3. **“Disclosure Statement” aka “Disclosure”** means a written general description of an invention, discovery or innovation by the creator used to help assess the nature, extent and likely intellectual property interests in and development potential of the invention, discovery or innovation.

4. **“Equity interest”** refers to beneficial rights (such as royalties) derived from intellectual property owned by another.

5. **“Extraordinary University Support”** generally means resources not usually available to all members of the University community in a similar employment or other classification or otherwise obvious by the individual’s job description and duties. Extraordinary support is demonstrated through a separate, individual work for hire agreement between the University and the member of the University Community.

a. For faculty, extraordinary support does not include such resources as academic year salary, office space and office furniture and equipment, including a personal computer, usual services of University support staff including technology support from ITS, common library resources, usual laboratory space and equipment and its common usage unless the intent of providing such resources is specifically to support the development of intellectual property for acquisition by the University. Consistent with section I.C.7. of this policy, all cases in which the University claims it is providing or has provided extraordinary support must be acknowledged in a written agreement signed by the appropriate University administrator and the faculty member in which receipt of extraordinary support is acknowledged.

In addition to the foregoing, absent a written agreement acknowledging receipt of University extraordinary support, the following resources do not, in and of themselves, constitute forms of extraordinary support:

- Mini-grants such as CSU Research, Scholarly, and Creative Activities, Faculty Development awards, Diversity Development awards, and Incentives Funding.
- eLearning instructional support and eLearning Course Development Grants. It is understood that online teaching has become a part of a faculty member’s expected workload and that use of any equipment such as laptops or tablets, or acceptance of any stipends or assigned time to prepare a face-to-face course or new course for on-line delivery do not automatically constitute provision of extraordinary support.
- Sabbatical or difference-in-pay leaves.
- Startup funds or startup assigned time
- Advising/academic program Chair assigned time.

b. For staff, most work resulting in intellectual property is considered within the scope of the job duties of the individual unless there is a written agreement to the contrary. Therefore, the usual situation for staff employees is that creations or inventions that may result from an individual’s work does not result from extraordinary university support and, thus, is work for hire. Some exceptions to this general situation may result which the staff employee should bring to the attention of appropriate individuals to insure agreement about intellectual property rights and ownership.

c. For students, extraordinary university support means the use of resources that are not available to the majority of University students in the course of their academic programs.

6. **“Faculty”** means members of Collective Bargaining Unit 3.

7. **“Intellectual Property”** is unique, tangible products brought about through the creative endeavors of human beings. These products can be protected by a variety of legal means

including those embodied in such mechanisms as copyrights, patents, trade secrets, know-how and other proprietary concepts. In most cases, to use intellectual property one must be the owner of the property or have permission from the owner by obtaining a license or a legitimately procured original or copy of the property.

8. **“Inventions, discoveries, or innovations”** include tangible or intangible inventions, whether or not reduced to practice and tangible research products whether or not copyrightable or patentable. Such research products include, for example, computer software/programs, integrated circuit designs, industrial designs, databases, technical drawings, biological materials and other technical creations.

9. **“License”** is an agreement by one party, usually the owner of intellectual property, to another party to use the intellectual property for some purpose, commercial or otherwise, with terms and conditions as to the use. Compensation often is part of the licensing agreement.

10. **“Materials Transfer Agreement”** is a contract that grants the limited use of one party’s material to another for research and educational purposes but not for commercial purposes. No ownership rights are transferred nor any right to commercial use.

11. **“Members of the University Community”**, as used in this policy, means faculty, staff, students, auxiliary organization employees and contractors.

12. **“Net proceeds or income”** means the net amount received in the form of royalties or other fees related to licensing or selling intellectual property in any fiscal year after deduction of all accrued costs reasonably attributable to such intellectual property. Although this list is not exhaustive, such costs may include patent or other intellectual property prosecution, protection or litigation, and commercialization. Specific items of costs may include legal filing fees, patent application costs, insurance and maintenance charges, transfer and licensing costs and product development costs.

13. **“Non-Disclosure Agreement”** is a contract to maintain the confidentiality of specified information. Such an agreement limits the receiving party’s rights to disclose the information to others for any purpose.

14. **“Owner”** is a person(s) or organization(s) that has a property title to intellectual property. An owner of intellectual property may be a creator, author or inventor of the intellectual property, an organization employing the creator, author or inventor, or a person or organization that has obtained title from the owner(s). Intellectual property owners have the right to restrict others from using the intellectual property, may license its use to others or may outright sell or assign all or part of the rights to others. Full or partial ownership can be transferred or shared among various individuals and/or organizations.

15. **“Patent”** is a bundle of property rights giving the owner(s) the right to exclude others from making, using or selling an invention for a specific period of time. Patents can be granted by the U.S. Patent and Trademark Office for 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 for the asexual reproduction of any new and distinct variety of plant.

16. **“Royalties”** mean payments made, based usually on a license agreement, for the use of intellectual property.

17. **“Software”** means computer instructions (algorithms, source, and object codes), data and accompanying documentation.

18. **“Sponsor”** means any external individual or entity, whether public or private, that enters into a formal agreement or awards a grant with or to the University or an auxiliary organization of the University (such as the Sponsored Programs Foundation), whereby the sponsor provides support for a project to be carried out by faculty, staff and/or students of the University community.

19. **“Staff”** means all non-faculty employees of the University or one of its auxiliary organizations.

20. **“Student”** means any individual enrolled in the University, or working in a student capacity under the auspices of the University or an auxiliary organization.

21. **“Trade Secret”** and/or **“Proprietary Information”** involve confidential information that may give someone or some entity a competitive advantage. Such information can include an unpatented invention, a formula, a method, a process, a customer list, plans, financial data, etc. Generally, as long as such information is kept secret, it can be licensed to others. Once it is disclosed or discovered, the secret is considered destroyed and, therefore, no longer protected intellectual property.

22. **“University”** means Humboldt State University and associated self-support organizations, such as Extended Education.

23. **“Work for Hire”** is a legal concept whereby work created by an employee, absent any other agreements to the contrary, becomes the intellectual property of the employer at the time of the work’s creation or invention.¹

24. **“Written Agreement”** is a document, either electronic or paper, which the parties concerned with intellectual property rights sign to indicate their consent to the stipulations described in the text of the document. An electronic written agreement may be transmitted by email, but an email exchange, by itself, is not a written agreement. A written agreement is considered to be executed when all parties have submitted official signatures. These signatures

¹ In the academic context, federal case law indicates that much of the work faculty do, such as write scholarly articles or create new course materials, can be excluded from “work for hire”, whereas work done by staff in their regular capacity as an employee, is typically included as “work for hire”. (See American Association of University Professors, “Defending the Freedom to Innovate: Faculty Intellectual Property Rights after Stanford v. Roche” (2015). Access at: <http://www.aaup.org/report/defending-freedom-innovate-faculty-intellectual-property-rights-after-stanford-v-roche>). Article 39 of the collective bargaining agreement between the California Faculty Association and the CSU, concerns intellectual property that is the result of what is determined by the CFA and the CSU to be faculty “work for hire”. When faculty seek to clarify or contest University claims to intellectual property created as the result of what may be considered to be work for hire, they should contact the California Faculty Association.

can be demonstrated through original written ('wet') signature, a scanned signature (an electronic copy of an original written signature), or an electronic signature that is in a format recognized as official by the University's electronic signature policy.

II. OWNERSHIP AND OTHER INTEREST

A. General

1. Intellectual property created without University resources

The University recognizes the right of members of the University community to create intellectual property on their own time and with non-University/auxiliary organization resources. In such cases, the employee shall have sole ownership of such property and any proceeds derived from it.

2. Sponsored funding

When the University or one of its auxiliary organizations receives funding from a sponsor, the funding agreement typically contains terms and conditions that grant some or all of the intellectual property rights that may result from the project to the awarding entity, a third party, and/or the University/auxiliary organization. The terms and conditions of any funding agreement (e.g., grant or contract), from an external sponsor will be paramount in determining intellectual property ownership, obligations, and other rights (including sharing net proceeds) that may accrue as a result. The Dean of the Office of Research, Economic and Community Development has the final authority to negotiate and accept all sponsor agreements, including materials transfer agreements. The Dean of the Office of Research, Economic and Community Development has the final authority to negotiate and agree to terms and conditions concerning intellectual property, including materials transfer agreements, in the form of sub-agreements to individuals and entities external to the University that may conduct a portion of the project or work under a special intellectual property agreement. The Dean of the Office of Research, Economic and Community Development will work directly and collaboratively with the inventor/creator, the dean of the inventor/creator's college, attorneys, the grant agency, grant partners, and/or subcontractors to negotiate and accept sponsor and/or license agreements.

Following the requirements of CSU Chancellor's Office Executive Order 890, the University and its auxiliary organizations will endeavor to do the following: Any sponsor agreement that provides for ownership or license of resulting project work products such as intellectual property to any person or entity other than the University or one of its auxiliary organizations shall provide the University with a free-of-cost, nonexclusive license to use the work product and any resulting intellectual property and the right to access and use the results (data, material(s), knowledge, etc.) for purposes consistent with the educational mission of the University at the originating campus only and not at other CSU campuses without consent and compensation consistent with normal licensing at non-CSU institutions. Where such limited rights cannot be obtained, the Dean of the Office of Research, Economic and Community Development, in consultation with the project director, will determine if the campus should proceed with accepting the award due to other benefits outweigh obtaining the limited rights set forth in E.O. 890.

3. Written agreements

Written agreements about intellectual property ownership, other rights and royalty sharing (net proceeds) shall be made prior to accepting a sponsored award or contract or beginning work on a project in which the University or member of the University Community in addition to the creator/inventor seeks to claim an equity interest. This includes all contracts in which the University or member of the University Community claims to be providing extraordinary support to a member of the University Community for purposes of establishing an intellectual property right. If it is not possible to establish terms in writing before the contract or award is accepted by, or extraordinary support is provided to, the faculty, staff or student, such agreement must be made before beginning the work expected to lead to the creation of intellectual property. When such written agreements have not been made prior to the creation of the intellectual property, such a written agreement should be prepared immediately following the creation and disclosure as required by other provisions of this policy and any sponsor agreements.

Collaboration on creations/inventions between members of the University Community promotes innovation and student success. Co-creation of a scholarly paper establishes joint copyright of the work presented in that paper, absent University or sponsor agreements that alter those rights. Publication of work co-authored between members of the University Community, including attribution of work contributed to the project, is governed by the ethical guidelines of authorship adopted by their professional societies and the scholarly publishers in their field. Typically, absent a University or sponsor agreement, a single collaboration between members of the University community, for example between faculty and students, will not require establishing terms of co-creation and co-publication in a written agreement. If the project is ongoing and/or has the potential for development of copyrightable or patentable intellectual property, the terms of relative contribution of each creator/inventor should be established early in the project through a written agreement.

B. Copyright

1. Faculty Creations.

a. Faculty own the intellectual property and any resulting copyrights that originate from normal faculty bargaining unit work and work through extended degree programs (those University entities governed by EO 1099), namely instructional, scholarly and creative works each individual creates. These include such works as syllabi, learning modules, tests and quizzes, course content (assignment materials in any medium, lectures, websites, etc.), online instructional materials, scholarly publications and presentations, works of art (including musical scores and recordings, video works, various mediums of visual arts like paintings, prints, sculpture, pottery, photography, dance choreography and the like). Faculty retain the right to use these learning materials for profit through other institutions both while employed by the CSU and after separation.

Faculty may voluntarily share their copyrighted intellectual property with other instructors or the University (including their home departments). A faculty member may withdraw his/her voluntarily shared intellectual property from circulation at the conclusion of each semester by providing written notice to their department chair or immediate supervising administrator (typically the Dean of the College). If a faculty member agrees to share materials with another instructor or with the University, that faculty member cannot revoke the

permission to use those materials within a semester if the materials are currently being used by another instructor or by the University.

When a faculty member officially indicates to Academic Personnel Services that the faculty member intends to separate from the University, Academic Personnel Services (APS) shall inform the faculty member of their rights under this policy. Specifically, in the official documents that accompany separation APS must notify the faculty member that once the faculty member separates from the University, the faculty member will retain intellectual property rights as outlined in this policy, but, as they are no longer Unit 3 employees, will not be able to withdraw previously granted access to intellectual property or utilize the appeals process as outlined in Appendix A.

b. If the University provides extraordinary support to a faculty member toward the creation of copyrightable property, the faculty will own the copyright but the University will be entitled to a license to use the property and an equity interest in the profits derived from any commercialization of the intellectual property, according to the provisions in section II. E. A written agreement, signed by the faculty member and the University, preferably prior to initiation of the project, will be executed to acknowledge the University's license and equity interest and the faculty member's commitment to cooperate with the University. This written agreement must specify the term (length of time) during which the University's interest extends and whether or not its interest extends to only original materials or future (new or revised) materials as well.

c. If the University initiates a creative project for purposes of developing intellectual property that the University plans to copyright, the University will own the intellectual property rights developed through the project unless the University agrees to share ownership. These projects may include faculty participation remunerated through faculty compensation/assigned time, but faculty may be restricted from a claim property rights over the product. A written agreement, signed by the faculty member and the University prior to initiation of the project, will be executed to acknowledge the University's ownership, or sharing arrangement, and the faculty member's commitment to cooperate with the University, at University expense, on the project and to help commercialize the intellectual property. In this agreement, the University may opt to share with the faculty any net proceeds that result from the intellectual property created from the project.

Issues that arise with faculty-created copyrightable intellectual property that are not resolved through written agreement shall be referred to the Dean of the Office of Research, Economic and Community Development and the University Intellectual Property Committee for further review.

d. If the University/Sponsored Programs Foundation and an outside sponsor enter into an agreement to carry out research or other creative activity involving faculty, the faculty who participate in the project shall comply with the conditions of the agreement regarding ownership, protection and licensing of intellectual property developed under the agreement, and may be required to agree in writing that they will so comply. Copyright terms of such agreements will be negotiated with the sponsor by the Dean of Research, Economic and Community Development, with the consent of the faculty involved and the appropriate College Dean(s). In such circumstances copyright terms may deviate from the provisions of this policy.

2. Staff Creations.

a. The University owns the copyright to works created by University staff in the course and scope of their employment.

b. Staff persons own the copyright to all works created by them without the use of University resources and developed outside the course and scope of their employment, and the University has no equity interest in any proceeds derived from them. If staff utilize University or auxiliary resources to develop works outside of the scope of their employment, the University or auxiliary organization will be entitled to an equity interest in the royalties or sale proceeds derived from the commercialization of the intellectual property. Staff persons are advised to notify their union representatives and/or Human Resources staff about their external activities if they have concerns that the University might claim ownership interests in any intellectual property resulting from those activities.

c. The University or Sponsored Programs Foundation (SPF) may employ or engage individuals under specific contractual terms that allocate copyright ownership rights between the parties in a different manner than specified above. Such agreement(s) shall supersede this policy to the extent that any provisions are in conflict.

d. There may be occasions when University staff also serve as faculty for the University. Under these circumstances, written agreements should be entered into in advance of undertaking any research or creative activity to clarify whether the individual is acting in their staff or faculty capacity in carrying out the activity. Unresolved questions on ownership may be directed to the University Intellectual Property Committee and a recommendation regarding ownership rights will be made to the President. Such agreement(s) shall supersede this policy to the extent that any provisions are in conflict.

3. Student Creations.

a. Students will normally own the copyright to the scholarly and creative publications they develop, including works fulfilling course requirements (term papers and projects), Senior or Capstone Projects, and Masters Theses/Projects. Students retain copyright ownership except in the conditions outlined in sections 3.b., 3.c., and 3.d. below. By enrolling at the University, the student grants the University a nonexclusive, royalty-free license to modify, publicize and retain the work as may be agreed upon by the faculty, department, or the University. The University is not entitled to an equity interest in any proceeds (net or otherwise), except in the circumstances covered below.

b. When the student is employed by the University and the creation falls within the scope of that employment either the University or the faculty member (when the student is hired specifically to work on a faculty project) owns the copyright.

c. When the student receives extraordinary University support that furthers the creation and development of their creative work, then the student owns the copyright, but the University retains an equity interest in the work and any royalties earned from commercialization of the work according to the provisions of Section II.E. of this policy. Graduate Teaching Assistantships and Tuition Waivers shall not be considered extraordinary support. Use of specialized University facilities shall not be considered extraordinary support unless identified as such by a written agreement enacted prior to student's involvement in work.

d. If the student works on a project subject to the terms of a sponsor's agreement (usually a grant or contract) or a special intellectual property agreement, and the creation falls within the scope of that work, then the student is bound by the written agreements governing the allocation of copyright ownership. Generally, absent an agreement to the contrary, any student paid work or internship on a project governed by a sponsor's agreement and/or special intellectual property agreement, student creations will be considered work for hire and ownership will be with the University or auxiliary organization that is employing the student.

C. Patents.

1. Patentable intellectual property

This section addresses the ownership of patentable intellectual property, including potentially patentable inventions, trade secrets or proprietary information, created by faculty, staff, and students. The University shall share royalties from inventions assigned to the University with the inventor(s). If the University cannot or decides not to proceed in a timely manner to patent and/or license an invention, it will reassign ownership to the inventors upon request to the extent possible under the terms of any agreements that support or are related to the work.

2. Disclosure

A potentially patentable invention conceived or first reduced to practice in whole or in part by members of the faculty, staff and student employees of the University in the course of their University responsibilities or with extraordinary use of University support shall be disclosed on a timely basis to the University. Faculty who are working under a sponsored project, who have agreed to act in a work for hire situation, or who have used extraordinary University support that creates or leads to the development of non-copyrightable intellectual property, must disclose such intellectual property to the Dean of Research, Economic and Community Development. Staff and student employees of the University, or one of its auxiliary organizations, who conceive of or first reduce to practice a potentially patentable invention or discovery, or develop other intellectual property that may be considered a trade secret or proprietary information in the course of their job duties or as part of an externally funded project secured through a campus contract or grant, will disclose the discovering in a timely manner to the Dean of Research, Economic and Community Development. Ownership of such inventions shall be assigned to the University or appropriate auxiliary organizations except as noted in the following sections.

3. Faculty Inventions.

a. Faculty own the intellectual property and any resulting patents that originate from normal faculty bargaining unit work, namely instructional, scholarly, and creative works each individual creates. Such works may also include inventions, discoveries, trade secrets or proprietary information, computer software programs and their underlying algorithms and codes, and such other intellectual property that does not fall clearly under what might be legally protected by copyright.

b. If the University provides extraordinary support to the creation of intellectual property, then the faculty will own the intellectual property rights, but the University will be entitled to an equity interest in the profits derived from the commercialization of the intellectual property, according to the provisions in section II.E.

c. If the University initiates a creative project, solicits voluntary faculty participation in the project, and provides funding for the project, including compensation/release time for the faculty member, the University will own the intellectual property rights developed through the project unless the University agrees to share ownership. A written document created through the Office of Research, Economic and Community Development signed by the faculty member prior to initiation of the project, will be executed to acknowledge the University's ownership, or sharing arrangement, and the faculty member's commitment to cooperate with the University, at University expense, to protect and commercialize the intellectual property. Should the parties agree, the University may opt to share with the faculty involved any profits that result from the intellectual property created on the project. Such agreement, and the details of profit-sharing arrangements, shall be recorded in a written agreement, signed by the faculty involved and the University's designee. If the agreement conflicts with portions of this policy, the parties must explicitly agree to supersede this policy.

d. If the University/Sponsored Programs Foundation and an outside sponsor enter into an agreement to carry out research or other creative activities involving faculty, the faculty who participate in the project shall comply with the conditions of the agreement pertaining to the ownership, protection and licensing of intellectual property developed, and may be required to agree in writing that they will so comply. The intellectual property terms of such agreements, will be negotiated with the sponsor by the Dean of Research, Economic and Community Development, with the consent of the faculty involved and the appropriate College Dean(s). Any agreements about ownership of intellectual property, and the details of profit-sharing arrangements, shall be recorded in a written document, signed by the faculty involved, the outside sponsor and the University's designee. If the agreement conflicts with portions of this policy, the parties must explicitly agree to supersede this policy.

4. Staff Inventions.

a. The University shall own all intellectual property rights in works created by University staff in the course and scope of their employment.

b. The University has no equity interest in any proceeds derived from intellectual property that is created by staff without the use of University resources and that is developed outside the course and scope of employment. If staff utilize University or auxiliary resources to develop intellectual property outside the scope of their employment, the University or auxiliary organization will be entitled to an equity interest in the royalties or sale proceeds derived from the commercialization of the intellectual property. Staff persons are advised to notify their union representatives and/or Human Resources staff about their external activities if they have concerns that the University might claim ownership interests in any intellectual property that results from those activities.

c. The University or Sponsored Programs Foundation may employ or engage individuals under specific contractual terms that allocate intellectual property rights between the parties in a different manner than specified above.

d. There may be occasions when University staff also serve as faculty for the University. Under these circumstances, written agreements should be entered into in advance of undertaking any research or creative activity to clarify whether the individual is acting in their staff or faculty capacity in carrying out the activity. Unresolved questions on ownership may be

directed to the University Intellectual Property Committee and a recommendation regarding ownership rights will be made to the President. Such agreement(s) shall supersede this policy to the extent that any provisions conflict.

5. Student Inventions.

Students enrolled at the University may create valuable intellectual property while fulfilling course requirements, in conjunction with University employment, and/or through the use of University resources. The ownership interests in such intellectual property depend on the particular circumstances surrounding the creation. In particular, students must be careful to differentiate their own creative contributions from those of their faculty instructors and mentors. The following parameters apply:

a. Students in most instances will own the intellectual property developed from their individual scholarly and creative works, including works fulfilling course and academic program requirements (term papers, projects, masters theses/projects). Students retain ownership except in the conditions outlined in sections 5.b., 5.c., 5.d. and 5.e. below. By enrolling in the University, the student grants the University a nonexclusive, royalty-free license to mark on, modify, publicize and retain the work as may be required by the faculty, academic department or University. The University is not entitled to an equity interest in any ownership proceeds (net or otherwise), except in the circumstances described below.

b. When the student is employed by the University and the creation falls within the scope of that employment, either the University or the faculty member (when the student is hired specifically to work on a faculty-conducted project) owns the intellectual property according to the same standards that apply to staff creations under section II.C.4.

c. When the student receives extraordinary University support that further the creation or development of the intellectual property, the student owns the intellectual property, but the University retains an equity interest. Graduate Teaching Assistantships and Tuition Waivers shall not be considered extraordinary support. Use of specialized University facilities shall not be considered extraordinary support unless identified as such by a written agreement enacted prior to student's involvement in work.

d. When the student works on a sponsored project or under a special intellectual property agreement and the creation falls within the scope of that work, then the student is bound by the written agreements governing the allocation of intellectual property rights.

e. When the student is employed by an outside entity (not the University or Sponsored Programs Foundation) and the creation falls within the scope of that employment, the student normally will be bound by a contract with the outside entity, including provisions intended to protect and allocate intellectual property rights, and the University will have no rights to the intellectual property developed.

f. Unresolved issues of ownership and other intellectual property rights may be directed to the University Intellectual Property Committee. The Dean of Students should be consulted on a case-by-case basis about appropriateness of using established student grievance procedures.

D. Software.

1. The proprietary protection available for software is unique in that both copyright and patent are available. Copyright protection may cover the expression of the software ideas in a tangible medium, while patent protection may cover algorithmic inventions. Due to this dual approach, software should first be considered under the patent provisions of this policy at II. C., and is therefore subject to disclosure of any underlying algorithms that appear to have commercial value. After consideration of patent protection for valuable software algorithms, copyright (see II.B.) should be considered as additional or alternative protection.

2. In accordance with section I.C.1, and absent a specific agreement to the contrary, the University favors the copyright and publication of source code as well as its underlying object code. (This is in contrast with the common commercial practice that utilizes trade secrecy for source code in order to prevent the dissemination and discussion of any innovative ideas it reveals.) As with the underlying algorithms that, if patented, must be published so that they may be studied and discussed by other researchers, the University believes that source code should be published in a form that is amenable to research and will promote scientific progress. The object code is similarly subject to copyright.

E. University Equity Interests.

If the University provides extraordinary support to the creation of intellectual properties, it enjoys an equity interest in the net proceeds derived from those properties. The University's equity interest is determined by the extent of use and the value of these extraordinary support. The amount of the University's equity interest in a particular intellectual property will be agreed upon in a written agreement before pursuing protection/commercialization. In no case will the University's share be greater than 50 percent. (The distribution of any monies garnered is detailed in Section IV.B.) When the amount of net proceeds received from an intellectual property subject to University equity interest is equal to or less than \$25,000 in a fiscal year, then the University is not entitled to any portion of the net income derived from that intellectual property. When the amount of net proceeds received from an intellectual property subject to University equity interest is greater than \$25,000 in a fiscal year, the net proceeds (in excess of \$25,000) will be allocated as described in Section IV.B., or based on a previously determined equity interest agreement.

The University/Sponsored Programs Foundation is entitled to recoup expenditures from gross proceeds derived from those intellectual property interests that are successfully commercialized.

III. ADMINISTRATIVE PROCEDURES

A. The University.

1. 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 Dean of Research, Economic and Community Development, in cooperation with the Sponsored Programs Foundation and University officials, shall implement and administer this policy, including the negotiation of intellectual property terms in agreements with sponsors, evaluation of patentability and other forms of intellectual

property protection, negotiation of use rights (licenses) and royalties and pursuit of infringement actions.. The Dean of Research, Economic and Community Development in cooperation with the Sponsored Programs Foundation and University officials shall develop, document, implement and maintain on a current basis, appropriate procedures and practices to carry out this policy, including the process for evaluating and determining the allocation of net proceeds derived from intellectual property, subject to Section IV. of this policy. The Dean of Research, Economic and Community Development shall consult with the University Intellectual Property Committee (see III.A.2) on any significant procedural or policy changes associated with this policy. **All changes to this policy must be approved by the University Senate.**

2. University Intellectual Property Committee.

The University President shall confirm through appointment by the University Senate, a University Intellectual Property Committee. The Committee shall be composed of seven members, four of whom are faculty. One faculty member shall represent each college and the Chair of the Faculty Affairs Committee shall also serve. The other members shall include the Vice President for Academic Affairs (Provost) or his/her designee, the Associate Vice President for College of eLearning and Extended Education and the Dean of Office of Research, Economic and Community Development, who shall chair the committee. Faculty appointees will serve three-year terms.

The duties of the Committee shall be:

- To review implementation of current university intellectual property policy and develop changes to the policy as needed. All proposed changes must be approved by the University Senate.
- To make recommendations for the allocation of the University's net proceeds from intellectual property.
- To act as an appellate body, advisory to the President, to help determine the relative contribution of the University, sponsors, and members of the University community to the development of particular intellectual properties for purposes of helping parties reach an agreement within the framework of this policy (when the issues concerned are not covered by relevant collective bargaining agreements). The scope and procedure of the UIPC appeals process is described in Appendix A of this policy.

The Committee shall meet at least once a year, preferably in Fall semester. At the meeting, the Dean of Office of Research, Economic and Community Development will provide a written report of the intellectual property activities in which the University has been involved in the prior academic year, including a summary statement of income and expenses from intellectual property in which the University has an interest and an accounting of income and disbursements of a dedicated fund (see Section IV.B).

3. University Assistance.

The protection and commercialization of intellectual property requires close attention to relevant laws. For example, for a patentable invention, one must carefully and properly document all activities involved in developing the invention from conception to reduction to practice. In addition, there are reasons to preserve secrecy for certain time periods so that the invention can be adequately protected. These considerations often run counter to the typical academic approach of quickly sharing knowledge in the form of presentations at professional meetings and publications in scholarly journals.

Even when the University does not own intellectual property under this policy, or enjoy an equity interest in it, the Office of Research, Economic and Community Development can provide guidance to members of the University community about the basic process for, and issues regarding, protection of intellectual property. Further, under certain circumstances in which the University holds an equity interest, legal, financial and business assistance may be provided to faculty who wish to protect or commercialize their intellectual property. The University's decision to provide such assistance would be made on a case-by-case basis. When the University/Sponsored Programs Foundation provides legal, financial, business and/or other extraordinary services to support intellectual property interests, they are entitled to recoup expenditures from-gross proceeds derived from those intellectual property interests that are successfully commercialized.

4. Inactivity.

If a determination has been made that the University owns or has an equity interest under this policy in a particular intellectual property, a decision to pursue protection and commercialization of that property normally will be made within six months of a request by the inventor/creator for such a decision. If the University decides to pursue protection and commercialization, it must then act diligently in this regard. If the University fails to act diligently, the inventor/creator may request reconsideration of the decision to pursue. Alternatively, if the University determines not to pursue protection/development of the intellectual property, it will renegotiate its ownership and/or equity rights with the creator/inventor.

B. The Sponsored Programs Foundation (SPF).

The Humboldt State University Sponsored Programs Foundation (SPF) is a non-profit, public benefit corporation serving as a qualified auxiliary organization in support of the University. The SPF functions in several roles relating to the perfection, protection, transfer and development of intellectual property held by the faculty, students, staff, or the University. Among these are:

1. Perfection of Rights.

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

2. Protection.

At the request of the Dean of Research, Economic and Community Development, or in satisfaction of sponsored agreement requirements, the Sponsored Programs 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 that Dean and the inventor or creator.

3. Transfer and Development.

At the request of the University, the Sponsored Programs Foundation may serve as the transfer and development agent for those with legal and/or equity rights to intellectual property under this policy. Actions to evaluate protection typically also involve the assessment of commercial viability, and may require the SPF 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. In its role as agent, the SPF will involve both the inventor/creator and the University (through the Dean of Research, Economic and Community Development) in all negotiations with potential buyers or licensors.

4. Fiscal Agent.

The Sponsored Programs Foundation also serves as the designated fiscal agent of the University in the administration of transactions involving University interests in such intellectual property. In providing the above services the SPF shall be entitled to recover its direct costs.

C. The Creator/Inventor.

1. Required Disclosures.

This policy addresses circumstances in which the University owns intellectual property created by faculty, staff and students, or enjoys an equity interest in it. When these circumstances exist, the faculty, staff or students who create the intellectual property shall file a disclosure statement with the Dean of Research, Economic and Community Development (see Section II.C.2). At the appropriate time, that Dean may refer the disclosure to the University Intellectual Property Committee, which will assess rights of all interested parties consistent with other sections of this policy. Disclosures of intellectual property having real or potential as inventions, discoveries, innovations or proprietary information shall be treated by all parties as confidential to the extent legally possible.

2. Protection and Commercialization.

When the University owns, or enjoys an equity interest in, intellectual property under this policy, and has elected to pursue protection and commercialization of that intellectual property, the inventor/creator is expected to cooperate with the University and Sponsored Programs Foundation (at the University/ SPF's expense) in the protection and development of the intellectual property including executing appropriate written instruments to perfect legal and equity rights. It is anticipated that the inventor/creator, if he/she so chooses, will be an active participant in decisions regarding the further development, commercialization and/or licensing of the intellectual property

D. Assignments of Interest.

Any transfers of ownership between those with any interest in specific intellectual property shall be documented through appropriate legal instruments, such as assignment agreements, in a form consistent with applicable law and regulations.

IV. INCOME ALLOCATIONS

A. General Objectives.

In the transfer of intellectual property and allocation of net proceeds derived from intellectual property, the general objectives are to direct funds toward the inventor(s)/creator(s), assure the transfer and development of these discoveries for the public benefit, and provide for the funding of future creative effort by University faculty, students and staff.

B. Intellectual Property Funds.

When the University owns intellectual property or enjoys an equity interest in it, the University's share of net proceeds derived from that intellectual property generally will be allocated among the inventor's college (25 percent), department (25 percent), and University division (25 percent) (Office for Academic Affairs or other University division) and the Sponsored Programs Foundation (25 percent). Consistent with the definition of "net proceeds" in section I.E.12., the net proceeds shall be determined after costs related to establishing the intellectual property claim incurred by the Principal Investigator, University and/or Sponsored Programs Foundation have been deducted from the gross proceeds. The net proceeds funds are to be used to support research or scholarly activity, technology transfer, and administrative activities and overhead expenses associated with research, development and protection of intellectual property, and technology transfer.

University Intellectual Property Policy Appendix A University Intellectual Property Committee Appeals Process

I. PURPOSE

One of the duties of the University Intellectual Property Committee (UIPC) is to provide a recommendation to the President when there are disagreements between the University and a member or members of the University Community, or between members of the University Community, regarding the ownership and distribution of rights that result from the creation of copyrightable or patentable intellectual property. The purpose of the University Intellectual Property Committee Appeals Process is to provide a means by which a member of the University Community may pursue a complaint against the University and/or another member of the University Community for an alleged violation of the University Intellectual Property Policy (UIPP). The recommendation of the University Intellectual Property Committee to the President is advisory and does not preclude the parties from subsequent legal action. The University is provided legal advice on intellectual property issues by CSU counsel. Members of the University community involved in intellectual property creation and assignment of rights can consult with their own legal counsel at any stage. Any recommendation made by the UIPC or the President must be consistent with current intellectual property law and collective bargaining agreements.

A. Matters Covered by the Appeals Process.

Matters covered by this process pertain only to University actions or actions by member(s) of the University Community under the UIPP, such as cases in which there are differences in parties' interpretation of written agreements covered by the UIPP, and cases in which no written agreement was executed before the start of work on patentable or copyrightable property, resulting in competing interpretations of rights and equity interest. This process also covers cases in which a party claims the University violated the UIPP or did not apply the UIPP properly.

B. Matters Not Covered by Appeals Process.

1. Faculty "work for hire" that is covered by Article 39 of the collective bargaining agreement with the California Faculty Association or staff "work for hire" that is covered by the relevant staff collective bargaining agreement.
2. Agreements between members of the University Community and sponsors and/or faculty and staff not employed by the University not negotiated through the Office of Research, Economic and Community Development or Sponsored Programs Foundation.
3. Agreements made by a member or members of the University Community with a third party for purposes of commercialization of intellectual property.
4. Agreements made by a member or members of the University Community with a third party for external consulting work or business development.

C. Confidentiality.

The evidence presented in the appeals process shall remain confidential. When the University Intellectual Property Committee issues its recommendation in writing to the President, the parties shall receive a copy with references to proprietary materials redacted. At the resolution of the appeals process, the parties can share information in the recommendation with third parties, unless the parties named in the appeal have agreed in writing to maintain confidentiality.

D. Questions or Concerns about the University Intellectual Property Policy.

The appeals process applies to existing UIPP, and is not a vehicle to change existing or create new University policy. Any member of the University Community at any time may contact the University Intellectual Property Committee regarding questions and concerns about, and/or suggestions for, the University Intellectual Property Policy. These communications should be made in writing to the Chair of the committee (the Dean of Research) who shall forward the communication to the members of the UIPC at the next scheduled meeting (if not before).

II. TIMELINESS AND PROCEDURE

A. Written Appeals.

Appeals must be directed to the Chair of UIPC in writing within **one calendar year of the unresolved disagreement that the party is asking the committee to review** (Note that because the appeals

process was suspended for six years under P09-03, members of the University community whose intellectual property disagreements have not been resolved under P09-03 may bring an appeal within one year of the formation of the UIPC under this policy) .The appeal should explain the issues at stake in the case, list the parties in disagreement, and specify the disagreement(s) that the party is asking the UIPC to review in the appeal. In cases in which a party claims the University violated the UIPP or did not apply the UIPP properly, the party must cite the section(s) of the UIPP that were violated and describe the activity that constitutes the violation.

Upon receipt of the written appeal, the Chair of the UIPC will forward it electronically to the other UIPC Committee members **within seven working days** (working days are defined as Monday through Friday excluding all official holidays and campus closures). ² The UIPC members will independently review the written appeal and communicate to the Chair whether they think the disagreement(s) described in the appeal falls under the purview of the UIPP, and whether they think the appeal has been submitted within the **one-year** time limit. Note that if any member of the UIPC is an interested party in a disagreement within an appeal they must recuse themselves from all decision making (see II.B. below).

If a majority of the UIPC agrees that the appeal qualifies for review, the appeal will move forward to the full review stage. The party who submitted the appeal and any party to the disagreement named in the appeal will be notified of the UIPC's decision regarding full review of the appeal within **twenty working days** of filing the appeal with the UIPC Chair.

B. Recusal and Substitutions of Committee Members.

For purposes of decision-making regarding the qualification of an appeal for full review, or for contributing to the UIPC's full review of an appeal, if any member of the UIPC, including the Chair, is named as a party to a disagreement in an appeal s/he must recuse her/himself. Recusal means that the member shall play no role in the decision-making process, including discussion of the appeal. When a member recuses her/himself the University Senate Chair is charged with recruiting a replacement member to serve on the UIPC, and the Senate Executive Committee must approve by a majority vote the appointment of the replacement member. The Senate Chair may take up to fourteen working days beyond the initial notification of appeal to fully constitute the Committee. A full review cannot proceed until the UIPC is fully constituted with seven members, a majority of whom must be faculty.

C. Full Review of Appeals.

After the parties bringing the appeal and the parties named in the appeal (respondent(s)) have been notified that there will be a full review of the appeal by the UIPC, they have **thirty working days** to provide any evidence that they would like to be considered in the appeal. As part of this evidence, the party bringing the appeal and the respondent(s) must provide a written narrative regarding the evolution of the dispute that includes a timeline of events from their perspective. Additional evidence can include executed written agreements (including relevant legal documents), representation of intellectual property (via electronic files, such as recordings, films, pictures, scanned blueprints) and correspondence between parties involved in the dispute.

² For purposes of the entire appeals process timeline, 'working days' are defined as Monday through Friday, excluding official holidays and campus closures.

Within forty-five working days of the end of evidence period, the UIPC will review the evidence and make its recommendation in writing to the President.

D. Report.

Following the full review, the UIPC shall submit a report to the President and the interested parties in the appeal that includes the UIPC's findings of fact and a recommendation regarding an outcome. The UIPC should try to come to a unanimous recommendation; however, if only a majority of the UIPC's members agree on a recommendation, they can submit that recommendation in their report to the President provided that the report contains a section for dissenting members' views.

E. Appeal of Appeals Process.

If a party to an appeal has evidence that the appeals process described herein was not followed properly, s/he may appeal in writing to the President. This appeal may concern the appeals process only and not the UIPC's recommendation to the President. If the President finds that the appeals process was not followed properly, then a new appeal may be heard by the UIPC. In all other cases, the party is not entitled to an appeal of the appeals process or a UIPC review of the same case.