

This policy disproportionately favors university property rights over faculty property rights in contravention to recent case law which establishes that faculty work done in the regular course of employment, such as the production of syllabi, course materials, artistic works and scientific/computational innovation, is *not* "work for hire". In other words, the policy treats anything that faculty produce in the course of carrying out their duties, including works we produce used as support for retention, tenure and promotion, as "work for hire," thus giving the employer (the CSU) an automatic property right claim in them. The committee convened to create the policy consisted only of CSU administrators who would benefit from a pro-university property rights position. I reiterate to all faculty that in order to negotiate these property rights in a balanced way, faculty need a pro-faculty property rights attorney to represent us. Here are just a few of the issues that should be of concern to faculty:

1. The proposed copyright policy basically takes us back to HSU's 2009 IP policy in which faculty retain original copyright of their work, but the university retains a license to use the work, whether or not the work was created using extraordinary support. For example, see Section IV.b.2 "course materials":

"CSU course materials include Course Approval Documents and Course Instructional Materials.

CSU Course Approval Documents include syllabi, course numbers, catalog descriptions, student learning outcomes and course outlines for CSU courses. Ownership of Course Approval Documents developed without CSU Extraordinary Support, including copyright, resides with the Author. **However, in all cases CSU (and the auxiliary as appropriate) retains a free-of-cost, perpetual and nonexclusive worldwide license to use the Course Approval Documents for research and educational purposes, including without limitation the right to reproduce, prepare derivative works, distribute and display the Course Approval Documents.**"CSU Course Instructional Materials include documents, digital products or other materials developed for instruction of CSU courses. **Ownership of Course Instructional Materials developed without CSU Extraordinary Support, including copyright, resides with the Author. In all cases, however, CSU (and the auxiliary as appropriate) retains a free-of-cost, perpetual and nonexclusive worldwide license to use the Course Instructional Materials for research and educational purposes, including without limitation the right to reproduce, prepare derivative works, distribute, perform and display the Course Instructional Materials.**

2. The definition of extraordinary support is extraordinarily vague, meaning it could encompass support that we explicitly excluded in HSU's revised policy on extraordinary support

**"CSU Extraordinary Support:** Support provided by the CSU, a campus or an auxiliary for work beyond regular CSU assignments may include, but not be limited to, funding for additional employment, assigned time and other forms of payment, additional operating expenses or additional equipment or facilities costs."

3. With their definition of "**CSU Resources**" they are creating a back door to call everything we do "work for hire" and thus potentially giving them an intellectual property right in it:

"CSU Resources: Any combination of the following constitute support in the form of resources by the CSU:

- CSU, campus or auxiliary funds, regardless of source, that are administered under the control, responsibility or authority of the CSU or auxiliary;
- Staff, including student assistants, support staff, administrative support, etc.; or
- Use of facilities, including buildings, equipment or any other facility or asset under the control of the CSU or a campus auxiliary."

4. With their definition of "**scope of employment**" they are adding to the idea that what we produce as part of our work using CSU resources is "work for hire" and therefore at least partially theirs:

"Scope of Employment: Any work the employee is expected to perform as part of the employee's assigned duties, including work that contributes to the employee's tenure, promotion or professional development and/or work performed with the use of CSU Resources or under an externally-sponsored agreement. Excludes work performed outside of the employee's CSU appointment and not performed with the use of CSU Resources"

5. Issues #3 and #4 manifest tremendously in the patent policy (Section IV. C.5)

Inventors assign invention and/or patent rights to the University (or auxiliary where campus policy requires assignment of such rights to the campus auxiliary) for inventions first conceived or reduced to practice under any of the following circumstances:

- within their **Scope of Employment**;
- with the **use of CSU Resources**;
- under an externally funded agreement awarded to the CSU or auxiliary; or
- under an appropriately authorized 3rd party agreement (for non-funded agreements).

6. The impetus to group all faculty inventions under the umbrella of Bayh-Dole is solely for the benefit of the CSU. The requirements of Bayh-Dole are to make sure the federal government is getting what it paid for from federally funded researchers and that grant administrators at higher ed institutions are facilitating disclosures of inventions. It's important from a government accountability standpoint. Research that is not done with federal funds should not fall under Bayh-Dole; instead there should be a separate agreement outlining the patent rights of the creators/inventors.