

Senators,

I received the President's response to the "Sense of the Senate" resolution approved on 6 September 2016 (02-16/17-Abell/Thobaben, *Resolution Demanding President Rossbacher Approve the University Senate Recommended Intellectual Property Policy for HSU*). Please see that letter attached.

SenEx discussed the IP issue and the President's letter at our 13 September meeting. We've charged Faculty Affairs with figuring out how to move forward on campus with the issue. The President will be attending FAC's October 12th meeting to discuss.

In the meantime, the issue was a major concern at last week's ASCSU meeting (See Mary Ann and Erick's written report), and my query to the other Senate Chairs regarding IP issues on their campuses has inspired a movement to discuss and possibly send forward a resolution on the issue from that body at our October 20th meeting. (See attached, my email and the responses I have received thus far.)

HUMBOLDT STATE UNIVERSITY

Lisa A. Rossbacher, Ph.D. President

13 September 2016

To: Julie Alderson
Chair, University Senate and Professor, Department of Art

Cc: Alex Enyedi, Provost and Vice President for Academic Affairs

From: Lisa A. Rossbacher **LAR**
President

Re: Sense of the Senate resolution

I am responding to the “Sense of the Senate” resolution that was approved by the University Senate on 6 September 2016.

Since that meeting, I have consulted with the California State University’s Office of General Counsel, and I have two follow-up items.

One is to reiterate that I cannot sign the proposed policy that was recommended by the University Senate last spring. All campuses have been asked to refrain from revising or enacting new policies regarding intellectual property while a system-wide policy on this topic is developed. The system-wide policy has been drafted and is undergoing the standard review process.

The other item is to note that, despite what last week’s resolution states, HSU does have an intellectual policy at the moment. The 2009 policy that is posted on the HSU website remains in effect until it is superseded.

I share the Senate’s concern about protecting the rights of all involved parties regarding intellectual property, and I join you in looking forward to the system-wide resolution of this question.

Dear Senate Chair colleagues,

Greetings from Humboldt! I've been tasked by our Senate to reach out and gather information re: the status of intellectual property policies at the other CSU campuses. Our body passed a new IP policy at the final Senate meeting of last year. It was sent along to our President, but she did not sign it - she was instructed not to by the CO, as she was told that a system-wide IP policy is apparently being crafted as we speak.

Members of our Senate are concerned that our IP policy is woefully out of date - in fact many argue that it's actually expired and that we're currently operating without an IP policy in place. In our conversation on the Senate floor, the President indicated that it might help her make a case to the CO that she should be allowed to OK our new policy as at least "interim" if we are an outlier in this regard - if other campuses have their IP rights protected and that we are unusual in having, at best, a terribly ineffective policy, and at worst, no policy at all.

I would love to hear from you all about the status of IP policies on your respective campuses. Do your faculty feel as if their IP is protected? Any information would be greatly appreciated.

Thanks!

Julie

Julia Alderson
Chair, University Senate
Associate Professor of Art History
Humboldt State University
1 Harpst St
Arcata, CA 95521
(707) 826-3421
julia.alderson@humboldt.edu

Hi Julia — Ours was updated in 2011. I'm no expert in the area, but our senate committees were pretty careful with drafting this, so I hope it's in good shape. https://www.sonoma.edu/UAffairs/policies/intellectual_property.htm

Ben

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Ben Ford
Mathematics and Statistics
Sonoma State University
Chair of the Faculty 2016-17

Hi Julia,

Our current IP policy, from 2007 (ugh), is online here: <https://www.csustan.edu/sites/default/files/FacultyHandbook/Publications/Polices/Fac/17-AS-07-FAC--Intell.%20Prop.%20Rights%20Policy-final.rtf.pdf>

While it's a decent policy, the issue we will soon be addressing is in Section III—specifically that, with the new four-year graduation rate initiative(s), there is likely going to be a fair amount of extra pay to compensate faculty for development of additional online courses to alleviate schedule stress (etc.). As that pay is outside of normal compensation and work duties, the faculty member does not retain full ownership of that IP, and must negotiate rights with the university. It is also unclear what happens to those IP rights if no agreement between the content creator and the university is signed before work commences. So we have some revision to do here, too.

Hope this helps.

all best,
Stuart

Dr. Stuart Sims

Chair, Department of Music
Speaker of the Faculty & Chair, Academic Senate

CALIFORNIA STATE UNIVERSITY, STANISLAUS
ssims@csustan.edu - www.csustan.edu/music

Hi Julia,

Here's the link to the SJSU policy on the books since 1998. Didn't know the the CO was working on a system-wide document.

<http://www.sjsu.edu/senate/docs/F98-3.pdf>

Michael

Michael L. Kimbarow, Ph.D., BC-ANCDS F-ASHA
Chair, Academic Senate
Professor, Dept. of Communicative Disorders and Sciences
Lurie College of Education
San Jose State University
One Washington Square
San Jose, CA 95192-0079
michael.kimbarow@sjsu.edu
408-924-2442 Senate Office
408-924-3691 Dept.
408-924-3706 Fax

At SDSU, we cover IP issues in several areas of our policy file:

[https://newscenter.sdsu.edu/universitysenate/files/06941-FNL2policy_file_accessible_8_11_16_\(1\).pdf](https://newscenter.sdsu.edu/universitysenate/files/06941-FNL2policy_file_accessible_8_11_16_(1).pdf)

- Intellectual Property / University Policies: Academics -- p. 57 (very brief)
- Copyrights, Trademarks, and Trade Secrets / University Policies: Codes -- p. 79 (quite lengthy)
- Patents / University Policies: Codes -- p. 95 (3 or 4 pages)
- Copyrights and Patents Committee / University Policies: Committees and Councils -- p. 112 (very brief)

Hope this helps!

Marcie Bober-Michel, PhD

Hi Julia,

Here is Pomona's IP policy, last revised 2008:

http://www.cpp.edu/~policies/university/administrative/intellectual_property.shtml . I am not aware of any concerns with our policy, but we just hired a new Associate Vice President for Research, Innovation, and Economic Development, so it might be time to reexamine it.

Best regards,

Julie

Julie Shen
Acting Chair, Academic Senate
Head of Reference, University Library
Business & Computer Science Librarian
Cal Poly Pomona University
jshen@cpp.edu
(909) 869-4330
<http://www.cpp.edu/~jshen>

Hi Julia,

Fresno's policy is at

<http://www.fresnostate.edu/academics/facultyaffairs/documents/apm/540.pdf>

It is a relatively newly revised policy, and to date I have not heard any concerns or complaints about it.

Kevin

Kevin J. Macy-Ayotte, Ph.D.
Chair, Academic Senate
Professor, Department of Communication
California State University, Fresno
5201 N. Maple Avenue, M/S SA 46
Fresno, CA 93740-8027
Phone: 559-278-4086
Fax: 559-278-4113

Here is East Bay's policy, approved in 2015:

<http://www.csueastbay.edu/faculty/senate/files/docs/policies/12-13-new-policy-page/intellectual-prop-policy-14-15-fac-11.pdf>

Mark Karplus

Hi All,

At SFSU, we have two policies regarding IP.

<http://senate.sfsu.edu/content/intellectual-property-policy-and-procedures>

<http://senate.sfsu.edu/content/scope>

Hope this is of use.

Best, Troi
Troi Carleton, SF State University Academic Senate Chair
Professor of Linguistics and Linguistics Program Coordinator
Department of English
San Francisco State University
San Francisco, CA 94132

G'day,

Sacramento State has a rather old policy on copyright and patent, which you can find here:

<http://www.csus.edu/umannual/acad/umc02750.htm>

Section 11 of our e-learning policy, which is more recent, refers to this policy, as well as E.O. 999:

<http://www.csus.edu/umannual/acadaff/fsd00010.htm>

Regards

Julian

Julian Heather
Chair, Faculty Senate
Professor, English Department
CSU Sacramento
(916) 278-5394

Hi Julie,

Here is a link to our 2012 IP
policy: http://www.csusm.edu/policies/active/documents/Intellectual_Policy.html

Generally speaking, as far as I can tell, our faculty seem content with the policy, and we do feel that our IP is protected under it. I hope your campus discussion is fruitful.

Best,

Michael McDuffie, Ph.D.
Associate Professor of Philosophy
Chair, Academic Senate
California State University San Marcos

Hi Julia et al.,

Here is the IP policy at San Bernardino:

[http://senate.csusb.edu/fam/Policy/\(FSD00-11.R1\)Intellectual_Property.pdf](http://senate.csusb.edu/fam/Policy/(FSD00-11.R1)Intellectual_Property.pdf)

It was last revised in 2013. I haven't heard of any faculty complaints about the policy, but one faculty member here did file a statutory grievance about an IP issue a couple of years ago. The faculty hearing committee found in the faculty member's favor, but then the President rejected the committee's recommendation.

Karen

Karen Kolehmainen
Professor of Physics
Faculty Senate Chair
California State University, San Bernardino
5500 University Parkway
San Bernardino, CA 92404
(909)-537-5401
karen@csusb.edu

Julia,

Great to hear from you! I hope your year is off to a good start.

We started discussing a new IP policy last year, but tabled the topic when we were told that the CO was already working on it. Many questions have arisen, and there is an immediate need for clarity. We have not had a clear answer on how long the CO might take to handle its work.

Our campus has an "Intellectual Property Review Committee" listed in our handbook, but I can find no evidence that they have met. Our handbook mentions intellectual property in passing, but does not contain an appropriate policy. When we developed our distributed learning policy in 2013, it was addressed by the following statement:

Ownership of all intellectual property shall be governed by the Collective Bargaining Agreement (Article 39) and the "Academic Senate of the CSU Policy on Intellectual Property, Fair Use, and the Unbundling of Ownership Rights". It is assumed that faculty members have ownership of their work products unless a prior written agreement exists.

Here is the link to the 2003 ASCSU policy that our statement refers to:

http://www.calstate.edu/AcadSen/Records/reports/Intellectual_Prop_Final.pdf

The following passage is from a 2012 white paper on online education (ASCSU subcommittee)

(https://www.calstate.edu/AcadSen/Records/Reports/documents/Online_Education_White_Paper.pdf):

Ten campus policies (BA, EB, FU, HU, SA, SB, SD, SJ, SLO, and ST) reference intellectual property issues. Representative statements are contained in the policies of EB and SA. EB's policy states "Faculty shall have the same control and ownership of the substantive and intellectual content of their online instruction course-related materials that faculty have with respect to classes offered in classroom format, at the time of production, at any time during their use, and thereafter, in accordance with the provisions of the CSU/CFA Collective Bargaining Agreement and CSU and CSUEB policies." SA's policy states "Ownership of materials, faculty compensation, copyright issues, and the utilization of revenue derived from the creation and production of software, telecourses, or other media products shall be agreed upon by the faculty and the University in accordance with the University's Copyright and Patent Policy and guidelines." HU's policy gives details as to how revenues will be allocated. It states "The University will not sell, rent, or otherwise knowingly permit another organization to use a distance learning class without a written agreement with the originator to that effect. In the case of an agreement to exploit the course through outside sales, the proceeds of a course created at HSU without extraordinary support will belong solely to the originator. For courses that received

extraordinary support the net profits will be distributed as follows until such time as the institution is fully compensated for its investment. After that, the proceeds will be the property of the originator.

i. 50% to the originator of the course

ii. 25% to the originator's college, department, or University division

iii. 25% to the university."

Additional faculty rights are delineated in several policies. The DH policy states that each instructor is free to choose any approved mode of instruction for a course and "no institution or person shall sell, retransmit, modify, or otherwise reuse course related materials produced by a member of the faculty for any purpose without the written consent of the faculty member." The right to teach the class is spelled out in the HU policy, which states "The originator of the distance learning course material will have a 'right of first refusal' to teach the DL course provided that the instructor is still employed by the University in the department where the course was developed. If the instructor chooses not to teach the course, the department will be free to choose another instructor to teach the course. This condition exists as long as the course remains substantially the intellectual work of the originator as it is delivered."

Deborah Boschini, EdD, MSN, RN

Associate Professor, Department of Nursing

Chair, Academic Senate

California State University, Bakersfield

Dear colleagues-

We do not have an IP policy currently in place. We have a patent policy passed in 1976 so more than out of date. We have drafted an IP policy but confronted the same stone wall that you have because the CO insists there will be a system-wide policy. So far as I know we have been told this for the last four years. I would very much favor a resolution by the system chairs on this issue at our October meeting and would be happy to draft one and send it out in advance.

Best

Emily

Emily Miller Bonney

Professor Liberal Studies
Chair CSUF Academic Senate
PLN 120
(657)278-7421

Dear colleagues,

Greetings from Long Beach! It seems we're in the same position as Julia at Humboldt. We passed the attached IP policy back in March, but our President has not signed it. She didn't specifically say that the Chancellor had instructed her either way, but she said she was taking the policy under advisement as the Chancellor's office works on their policy. We were disappointed, if not particularly surprised, since our policy is friendly to faculty. Some of the issues we dealt with were:

- How do we balance the right for faculty to teach hybrid/online classes they have developed with the university's interest to offer classes regularly?
- How do we give faculty an incentive to develop hybrid/online classes but also give the university and students a way to benefit from those classes?
- What are "traditional academic copyrightable works"—specifically, how do lecture notes fit in, as what do online assignments count, are Standard Course Outlines and/or syllabi the intellectual property of faculty or of the university?
- Where are the distinctions between "university resources customarily provided," "extraordinary support," and "work for hire/commissioned work"? At CSULB, we had massive discussions around art (is the intellectual property in a work of art produced in the context of a class belong to the university or to the artist?) and around our College of Continuing and

Professional Education (i.e., open university), which has been pushing conversion to hybrid and online classes with \$5,000 stipends—which include (usually) giving CCPE the intellectual property for the class.

We spent something like two years working on the policy—with various task forces, working groups, expert consultations, and discussions on the floor—and ultimately (I think) produced a good policy. Too bad it's not in effect (yet)!

BTW, has anybody seen the draft supposedly produced by the Chancellor's office and circulated among University presidents in the system???

Cheers,

Norbert.

Norbert Schürer
English Department, CSULB
1250 Bellflower Blvd.
Long Beach, CA 90814

INTELLECTUAL PROPERTY

(This policy supersedes PS 07-05, and PS 03-11)

This policy was recommended by the Academic Senate on _____ and approved by the president on _____.

1.0 OBJECTIVES

- 1.1 This policy articulates the allocation of intellectual property rights and usage rights at the California State University, Long Beach (University) so as to optimally support the mutual interests of the University, faculty, staff and students.
- 1.2 This policy, as applied to University faculty is intended to be consistent with the provisions of Article 39 *Intellectual Property Rights* in the collective bargaining agreement between the California Faculty Association and the California State University effective September 18, 2012-June 30, 2014 and subsequent mutually agreed revisions thereto (CBA). Any provisions that are found to be inconsistent shall be superseded by CBA Article 39 *Intellectual Property Rights*.
- 1.3 This policy recognizes the intellectual property interests of creators, the University, and external sponsors that support instruction, research, scholarly and creative activity.
- 1.4 The University makes no claim of ownership or use rights, or obligation between the university and creator(s), regarding any intellectual property except:
 - Course catalog descriptions and standard course outlines submitted and approved via the university curriculum process;
 - Intellectual property created with “extraordinary support” as defined in section 2.5, and only when, in advance of the creation of the materials, the creator(s) and the university have entered into a written contractual agreement detailing the specifics of the materials under contract, the terms of ownership and use, and the scope of extraordinary support;
 - Intellectual property created in a “work for hire” or “commissioned work” situation as defined in section 2.6, and only when, in advance of the creation of the materials, the creator(s) and the university have entered into a written contractual agreement detailing the specifics of the materials under contract, the terms of ownership and use, and the terms of the commission;
 - Intellectual property created under the terms of other contractual agreements only when, in advance of the creation of the materials, the creator(s) and the university have entered into a written contractual agreement detailing the specifics of the materials under contract, the terms of ownership and use, and the terms of the commission;

- Intellectual property created as a specific requirement of employment or as an assigned University duty that may be specified, for example, in a written job description or an employment agreement;

2.0 DEFINITIONS

2.1 Creator: "Creator" means an individual, or group of individuals, who makes, conceives, reduces to practice, authors, or otherwise makes a substantive intellectual contribution to the creation of intellectual property. "Creator" includes the definition of "inventor" used in U.S. patent law for patentable inventions and the definition of "author" used in the U.S. Copyright Act for copy written works of authorship.

2.2 Intellectual Property: "Intellectual Property" means intangible rights protecting the products of human intelligence and creation, such as copyrightable works, patented inventions, trademarks, and trade secrets. It includes Traditional Academic Copyrightable Works (see Section 2.3 below), inventions, discoveries, registered or unregistered copyrighted works, registered or unregistered trademarks, service marks, trade secrets, mask works, and plant variety protection certificates.

Intellectual Property also includes the physical embodiments of intellectual effort (for example: models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, other compositions of matter, plants, and records of research and experimental results).

Intellectual Property is not restricted to inventions that are first conceived, but can also apply to existing inventions or concepts that are first actually reduced to practice, and other creative or artistic works that have value.

Intellectual Property includes both tangible work and work created in the electronic and internet environment.

2.3 Traditional Academic Copyrightable Works: "Traditional Academic Copyrightable Works" means a subset of copyrightable works created independently and at the Creator's initiative for academic purposes. Examples include, but are not limited to, lecture notes and materials, course syllabi, instructional texts and manuscripts, software, or plans, patterns, and works of art or design or educational software (also known as courseware or lesson ware) that the Creators may design for courses taught in the CSU, and specifically for students who matriculate at CSULB.

2.4 University Resources Customarily Provided: When determining ownership and license rights in copyrightable works, the term "University Resources Customarily Provided" includes office space, library facilities, student and staff support, ordinary access to laboratories, media studios, computers and networks, and salary. Additional forms shall include subventions provided by the University to some faculty members, such as sabbatical and reassigned time. Customarily provided resources also includes facilities and resources used in the creation of works of art or design such as studios, performance spaces and equipment.

- 2.5 Extraordinary Support: No support shall be considered extraordinary a priori. Extraordinary support must be established through the contractual process outlined in section 1.4.
- 2.6 Work for Hire or Commissioned Work: “Work for Hire” or “Commissioned Work” means work performed outside the normal scope of the Creator's University employment or for which there is additional remuneration, including without limitation stipends, incentives, and other remuneration to create course materials and other Intellectual Property outside the normal scope of work.

3.0 OWNERSHIP OF INTELLECTUAL PROPERTY IN COPYRIGHTABLE WORKS

3.1 Creator Ownership

3.1.1 Traditional Academic Copyrightable Works

All intellectual property rights and usage rights in Traditional Academic Copyrightable Works are owned by the Creator(s) unless otherwise specified in an agreement with the University.

The University shall be entitled to a royalty-free, perpetual, non-exclusive, and non-transferable license to use Creator-owned Traditional Academic Copyrightable Works, limited only to course catalog descriptions and standard course outlines submitted and approved via the university curriculum process, for the purpose of continuing to teach the course of instruction for which the works were prepared, with the non-exclusive right to revise and update them as required for this purpose.

The university shall make no claim of ownership or financial interest in course materials prepared under the direction of a faculty member unless the university and faculty member have so agreed in a separate, voluntary agreement. Payment of a financial stipend, use of university resources, or reassigned time to develop course materials shall not be construed by the university as creating a basis for a claim of institutional ownership of such materials, nor shall it be assumed that a work-for-hire relationship exists between the university and the faculty member with regard to the preparation of any such materials.

In the event that the Creator or the University wishes to commercialize Traditional Academic Copyrightable Works, revenue distribution shall be determined by a negotiated written agreement and subject to review by the University Intellectual Property Committee (See Section 4.2 below).

Faculty members who are no longer employed as such by the University retain their intellectual property and usage rights.

3.1.2 Copyrightable Works Created with Extraordinary Support

Creators of copyrightable works created with use of University Extraordinary Support shall own intellectual property and use rights for that work. The University shall be entitled to no rights to Copyrightable Works Created with Extraordinary Support beyond

those agreed upon in a separate voluntary agreement between the Creator(s) and the university. This includes any creative and/or scholarly work created during assigned-time and sabbaticals.

3.2 University Ownership

The University shall own the Intellectual Property rights to copyrightable works as follows:

- 3.2.1 Works created pursuant to the terms of a written agreement between the University and the Creator(s) only when the agreement specifically grants ownership to the University.
- 3.2.2 Work for Hire created as a specific requirement of employment or as an assigned University duty that may be specified, for example, in a written job description or an employment agreement. Such specification may define the full scope or content of the Creator's University employment duties comprehensively or may be limited to terms applicable to a single copyrightable work. Any future creative work or course content that the University may claim as its own must be negotiated and specified in the employment contract.
- 3.2.3 Commissioned Work prepared under an agreement between the University and the Creator when:
 - 3.2.3.1 The creator is not a University employee, or
 - 3.2.3.2 The creator is a University employee but the work to be performed falls outside the normal scope of the Creator's University employment or for which there is additional remuneration (see Section 2.6. above), or
 - 3.2.3.3 The creator has specified in an agreement that the attendant Intellectual Property rights be assigned to the University.
 - 3.2.3.4 In all cases of paragraph 3.2, such Commissioned Work shall be negotiated between the University and the Creator(s), and documented in a written agreement.
- 3.2.4 The University reserve the right to pursue multiple forms of legal protection of its Intellectual Property concomitantly if available. (e.g. computer software may be protected by copyright and patent).
- 3.2.5 University-owned copyrightable work shall be protected by copyright notice in the name of the Board of Trustees of the California State University. Such copyright notice shall be composed and affixed in accordance with the United States Copyright Law. Registration of the copyright for University-owned works shall be in accordance with the operational guidelines and procedures established by the Provost or designee. The University may also decide to release a work to the public domain and if so, should so indicate.

3.2.6 Creators of Intellectual Property, regardless of whether patented or not, which produce a taxable income, must repay the State of California for any expenses incurred by the University, including but not limited to expenses incurred in support of the research leading to the creation of the Intellectual Property, to obtain patent or similar protection, or in furtherance of production, marketing, or sales of products incorporating the Intellectual Property.

3.3 Student Copyrightable Works

Unless subject to the provisions of Section 2.4 above or provided otherwise by written agreement, copyrightable works created by a student as part of the requirements for a University degree program are the property of the student. Unless otherwise agreed upon, research records for graduate theses or dissertations are the property of the University, but the student Creator may retain a copy of the work.

3.4 Intellectual Property subject to legal protection other than by Copyright

Except as otherwise specified in this policy or by the University in a written agreement, Intellectual property subject to legal protection other than by copyright (ex: patents, trademarks) shall belong to the University if made: (1) by a University employee as a result of the employee's duties, or (2) through the use of University resources such as facilities, equipment, or funds under the control of or administered by the University or its research foundation. The extent of University ownership in the property shall be in proportion to the value of the resources used consistent with applicable law.

4.0 **PROCEDURE**

4.1 Administrative Responsibility

The President has ultimate authority for the stewardship of Intellectual Property developed at the University. The Provost or designee, in consultation with the University Intellectual Property Committee, shall administer this policy. This includes, but is not limited to, determination of ownership, assignment, protection, licensing, marketing, maintenance of records, oversight of allocation of any net revenue, approval of exceptions, and resolution of disputes.

Detailed operational procedures for the administration of this policy shall be prepared by the Associate Vice President for Office of Research and Sponsored Programs.

4.2 University Intellectual Property Committee

The University Intellectual Property Committee shall make recommendations to the Provost regarding procedures for the administration of this policy and such other matters as the Provost shall determine.

4.2.1 The charge of this committee may include but is not limited to recommendations to the Provost as to:

- Interpretation, implementation and proposal of changes to this policy;
- Review and evaluation of disclosures submitted under section 4.4 of this policy; and, for each disclosure, make a recommendation to the Provost regarding the University's ownership interest in the Intellectual Property based on the Creator's use of University resources;
- Where appropriate, regarding waiver of University ownership;
- Where appropriate, regarding whether patent or copyright protection should be sought by the University;
- The allocation of net revenue, if any, from Intellectual Property;
- Upon request by the Provost, review and comment on material transfer agreements;
- Upon request by the Provost, investigate alleged conflicts of interest and disputes between Creators and submit findings to the Provost; and
- requests for exceptions to this policy.

4.2.2 Committee Membership shall consist of the following:

- Associate Vice President, Office of Research and Sponsored Programs, or designee
- Dean of the Library or designee (ex officio, non-voting);
- Director of Instructional Technology or designee (ex officio, non-voting); and,
- Six tenured faculty members elected by the Academic Senate, serving staggered two-year terms.
- One lecturer representative
- One student representative

4.3 Questions Related to University Ownership

In the event there is a question as to whether the University has a valid ownership interest in Intellectual Property, the Creator(s) shall disclose such Intellectual Property in writing to the University in accordance with Section 4.4 below. Such disclosure is without prejudice to the Creator's ownership claim. The University will provide the Creator with a statement as to the University's ownership interest.

4.4 Disclosure

The Creator of Intellectual Property shall promptly disclose to the Provost and the University Intellectual Property Committee the existence and nature of Intellectual Property when:

- 4.4.1 The Intellectual Property was developed using University resources or funded or developed wholly, or in part, by the Creator during the course of normal University duties and activities;
- 4.4.2 The University has an ownership interest under the provisions of this policy;
- 4.4.3 The disclosure is required by law; or
- 4.4.4 The Intellectual Property was created as a result of federal government or external sponsor funded research.

The disclosure shall consist of a full and complete description of the discovery or creation and identify all persons participating in the creation of the property. The Creator(s) shall furnish such additional information and execute such documents from time to time as may be reasonably requested.

4.5 Statement by Creators

The Creators of University-owned Intellectual Property may be required to state that, to the best of their knowledge, the Intellectual Property does not infringe on any existing patent, copyright or other legal rights of third parties; that, if the work is not the original expression or creation of the Creators, the necessary permission for use has been obtained from the owner; and that the work contains no libelous material nor material that invades the privacy of others.

4.6 University Review

Upon receipt of a disclosure and statement by Creator(s), the Provost, in consultation with the Associate Vice President for Research and Sponsored Programs and with due consideration of the recommendations provided by the University Intellectual Property Committee, will make a determination as to the Creator(s)' and the University's interest in the Intellectual Property.

The Provost will inform principal Creators of material decisions regarding Intellectual Property which they have disclosed.

4.7 University Rights

The University may enter into agreements to license rights to use its Intellectual Property on an exclusive or non-exclusive basis, may release its rights to the sponsor of the research under which it was created (if contractually obligated to do so), may release it to the Creator(s) if permitted by law and current University policy, or may take such other actions considered to be in the University's best interest. The licensee must demonstrate technical and business capability to commercialize the Intellectual Property. The license may include clear performance milestones with a provision for recapture of Intellectual Property if milestones are not achieved. The licensee may be required to assume the cost of statutory protection of the Intellectual Property.

The University is not obligated to protect the Intellectual Property rights through acts such as filing for patent protection, registering the copyright, or securing plant variety certification, but may do so at its discretion. All agreements regarding Intellectual Property in which the University owns an interest must be executed by the Provost or designee

4.8 University's Acceptance of Intellectual Property

The University may accept assignment of Intellectual Property from other parties provided that such action is determined to be in the best interest of CSU. Intellectual Property so accepted shall be administered in a manner consistent with the administration of other University-owned Intellectual Property.

4.9 University Abandonment of Intellectual Property

Should the University decide to abandon development or protection of University-owned Intellectual Property, the University may assign its rights to the Creator(s), subject to the rights of sponsors and to the retention by the University of the right to use the Intellectual Property for University and educational purposes on a perpetual, royalty-free, non-exclusive basis. The University may retain more than the minimum license rights, and the assignment or license may be subject to additional terms and conditions, such as revenue sharing with the University or reimbursement of the costs of statutory protection, when justified by the circumstances of development.

5.0 **EXTERNAL SPONSOR FUNDING AGENCIES**

5.1 U.S. Government Funded Grants and Contracts

All Federal grants and contracts require disclosure of inventions and discoveries to the funding agency and convey a restricted right to use the invention or discovery to the U.S. government. The University must have written agreements with persons performing the research, requiring prompt disclosure of inventions and assignment of rights to any disclosed invention conceived or first actually reduced to practice in the performance of work funded in whole or in part by the federal government. To assure the University's ability to comply with obligations arising under federal laws or in other external sponsor agreements imposed by state, and other public grant and contract funding sponsors, University employees must, as a condition of funding, agree to assign inventions to the University or to the funding sponsor in conformance with the sponsor's policy and execute documents necessary to establish the federal government's or other sponsor's rights.

5.2 Sponsored Research Agreement

5.2.1 Unless otherwise specified in the written sponsored research grant or agreement, the sponsored research agreement shall provide that all Intellectual Property developed as a result of the sponsored research shall belong to the University. The University may determine, on a case-by-case basis and only if allowed by law that it is in the University's best interest to assign ownership of resulting Intellectual Property to the sponsor when circumstances warrant such action.

5.2.2 In the event that the sponsor agrees to University ownership of Intellectual Property resulting from the sponsored research, the University may grant to sponsor an option to license the resulting Intellectual Property on terms to be negotiated, with the option to be exercised by the sponsor within a specified period following the disclosure to sponsor of the Intellectual Property. The specific terms of licenses and rights to commercial development shall be negotiated between the sponsor and the University at the time the option is executed by the sponsor and shall depend on the nature of the Intellectual Property and its application, the relative contributions of the University and the sponsor to the work, and the conditions deemed most likely to advance the commercial development and acceptance of the Intellectual Property.

5.2.3 In all cases where exclusive licensing is appropriate, such license agreements shall be executed apart from the sponsored research agreement and shall require diligent commercial development of the Intellectual Property by the licensee.

5.3 Agreements by Sponsored Research Program Participants

University employees participating in a sponsored research project administered by the University or its research foundation and making significant use of University resources are governed by this policy unless an exception is approved in writing by the University. University employees who create intellectual property shall execute appropriate assignment or other documents required to determine ownership rights in accord with this policy.

5.4 Other External Sponsor Funded Grants and Contracts

Funding from external sponsors for research shall be used to conduct research that serves the educational mission of the University or extends the boundaries of knowledge.

In agreements between sponsors and the University covering work not of a predominately research nature in which the sponsoring firm bears a major portion of the cost, the Intellectual Property policy of the University shall apply.

6.0 **EXCEPTIONS TO POLICY**

Requests for exceptions to this policy may be made to the University Intellectual Property Committee. Recommendations for exceptions to the provisions of this policy shall be made by the University Intellectual Property Committee to the Provost or designee for final approval.

7.0 **COMPLIANCE**

Compliance with this policy is expected and works in conjunction with Senate Policy 00-07 (Policy on Faculty Professional Responsibility).