

## Guidelines on Intellectual Property Agreements Resulting from Extraordinary University Support <sup>1</sup>

These guidelines provide a framework for individual agreements between the University and individual faculty, staff, and students regarding intellectual property rights resulting from Extraordinary University Support.

The Sponsored Programs Foundation has its own intellectual property procedures; the SPF Administrative Manual should be consulted for policies followed by the Foundation.

### Relationship to Faculty Collective Bargaining Agreement <sup>2</sup>

The 2014-17 Collective Bargaining Agreement (CBA) strongly supports faculty intellectual property rights and the principle that alteration of those rights must be acknowledged and demonstrated through written agreement with the University.

The CBA recognizes a distinction between materials created as part of the **ordinary** activity of faculty in their role as teachers, scholars and researchers and materials created with **extraordinary** University support.

The CBA stipulates that faculty do not waive their intellectual property rights to “any materials created without extraordinary University support (...) in the course of normal bargaining unit work (...)” (39.2).

The CBA also stipulates that materials created with extraordinary University support “shall be addressed by separate individual agreements at the campus” (39.6).

Consistent with the CBA, these guidelines provide a framework for written agreements acknowledging extraordinary University support. This framework consists of: 1) guidelines on written agreements, and 2) guidelines for defining extraordinary University support in written agreements.

Article 39.2 of the CBA specifies that: “nothing contained herein shall be interpreted to be a waiver of the right of either party to assert use rights to, or to assert ownership rights of, any materials created without extraordinary University support by faculty unit employees in the course of normal bargaining unit work pursuant to Article 20 of the Agreement, regardless of whether that party has ever asserted a right of use or ownership in the past.”

Faculty seeking to clarify or contest University claims to intellectual property created as the result of what may be considered “work made for hire,” should contact the California Faculty Association. <sup>3</sup>

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<sup>1</sup> These Guidelines are based upon, and adapt language from, CSU Fresno’s *Guidelines on Intellectual Property Agreements Resulting from Extraordinary Support By The University* (APM 541). Access at: [http://www.fresnostate.edu/mapp/documents/apm/541\\_Guidelines\\_intellectual\\_prop\\_agmts.pdf](http://www.fresnostate.edu/mapp/documents/apm/541_Guidelines_intellectual_prop_agmts.pdf)

<sup>2</sup> These guidelines do not supersede or establish an alternative to terms of employment established in the Collective Bargaining Agreement (CBA). Intellectual property produced in the normal course of activity with ordinary University support, or as personal work without any University support, is likewise governed by the CBA.

<sup>3</sup> 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>).

## **Written Agreements**

Written agreements about intellectual property ownership, other rights and royalty sharing (net proceeds) should 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 or license. 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. The absence of an agreement implies that extraordinary support has not been provided.

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 should 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.

Separate individual agreements are public information and are subject to public records requests pursuant to the California Public Records Act.

All separate individual agreements involving the sharing or transfer of intellectual property rights under these guidelines shall be finalized in writing and signed by the President or designee and the staff member(s), student(s) and/or faculty member(s). Faculty agreements shall comply with the review provisions of the Collective Bargaining Agreement.

## **Defining Extraordinary University Support**

Extraordinary University Support means resources not usually available to all members of the University community in a similar employment or classification or otherwise obvious by the individual's job description and duties.

## **Faculty**

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.

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 constitute provision of extraordinary support;
- Sabbatical or difference-in-pay leaves;
- Startup funds or startup assigned time;
- Advising/academic program Chair assigned time.

### **Staff**

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 (see footnote 3 above). 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.

### **Students**

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

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.