

**CALIFORNIA STATE UNIVERSITY, SAN BERNARDINO
FACULTY SENATE**

University Copyright/Fair Use Committee

February 1, 2001

INTELLECTUAL PROPERTY POLICY

Historical Background

In November of 1993, the Copyright Compliance Committee (now the University Copyright/Fair Use Committee) was formed when the division Vice Presidents and college Deans named representatives to the committee. This Committee was charged with creating campus policies on the issues of copyright and intellectual property. This document, the second to be produced by this committee, serves as the Intellectual Property Policy of the CSUSB (California State University, San Bernardino) campus community.

I Purpose

The purpose of this document is to state the CSUSB (hereafter referred to as the University) policy regarding ownership of intellectual property as it pertains to the University and its constituents (faculty, staff, administrators, and students). This policy acknowledges that issues of intellectual property are complex and that individual circumstances may affect establishment of ownership. Three factors have been identified by the Consortium for Educational Technology for University Systems (C.E.T.U.S.) as important for determining ownership: creation, control, and compensation. This policy provides a framework for assigning ownership in situations where intellectual property rights would not reside solely with the creator. This policy is consistent with existing law and collective bargaining provisions and will be re-examined periodically and revised by the University as necessary.

II General Policy on Intellectual Property Rights

Our first principle is that works produced by faculty at CSUSB in the course of normal faculty bargaining unit work will not be considered work-for-hire. These works include, but are not limited to, scholarly papers, works of art, syllabi, course contents and material. Thus, intellectual property rights for works produced under normal faculty bargaining unit work assignment will reside solely with the creator of the work except in specific circumstances: (1) where the creator has been given a specific assignment and university support to develop work beyond normal work expectations, and (2) where the university has provided to the creator extraordinary support or compensation. In these cases, intellectual property may be solely owned by the University or jointly owned by both parties as specified in an agreement reached before the project work is begun. Definitions and guidelines for these two circumstances are described below.

III Specific Assignments and University Support

Specific assignment refers to work produced by a faculty member recruited by the University to produce that particular work and for which facilities and compensation are provided beyond those provided to other faculty members in the course of their normal duties. In these cases, copyright may be owned by CSUSB or jointly owned with the faculty member. In cases of specific assignments, ownership of intellectual property rights shall be determined before the work begins. A standard Intellectual Property Rights agreement form, which licenses to the creator the rights to exercise certain rights without permission (as outlined in Section V below), will be developed by the appropriate university committee

and in conjunction with the individual assigned by the university to represent its rights. This agreement will be completed and filed with the Provost before work begins.

IV General Concept of Ownership

Normal faculty bargaining unit work, including copyrightable or patentable works, will not be considered "works for hire." Normal work is defined by the bargaining agreement.

V Extraordinary Support Or Compensation

The words "extraordinary support or compensation" refer to support provided for the creative efforts that represent resources beyond those available to members of the University community in the course of performing their normal work. The following examples are usually not considered products of extraordinary support or compensation:

- Research, scholarship, and creative activities or works resulting from mini grants and/or sabbatical and difference in pay leaves,
- Graduate theses, projects, and student papers.

All affected parties are advised to consider the matter of copyright ownership before work begins or before extraordinary support is provided. All affected parties are encouraged to disclose potential products of the work before the negotiation of a contract. The rationale for this advisement is to avoid disputes over ownership at a later date.

VI University Ownership and Joint Ownership of Copyright

In cases where the university is the sole or joint owner of works created at CSUSB, the individual designated by the university to negotiate intellectual property rights with creators will discuss with the creator(s) of the work the possibility of licensing certain rights to the creator, including, but not limited to, a determination of the distribution of royalties and other compensation. As suggested by C.E.T.U.S., examples may include:

- the right to make reproductions of the work to use in teaching, scholarship, and research;
- the right to make derivative works, such as translations, videotaped versions, film scripts, etc.

VII Administrator, Staff, and Student Rights

This policy also applies to works created by administrators, staff, and students when done so under the conditions described above in this policy. For example, staff works produced without significant university employer resources are owned exclusively by the creator.

In the case of student research, either undergraduate or graduate, the copyright to completed works resides with the creator, the student. In the case of faculty-student research projects it is recommended that the parties discuss shared rights when work is begun, when possible, but before work is completed.

In the case of work done by students for the university using university data or equipment, parties will discuss shared rights when work is begun (or as soon as possible into the project) and an Intellectual Property Rights Agreement form will be completed and filed per Section III above.

DEFINITIONS

VIII Creator

The creator(s) is the author(s), inventor(s) or developer(s) who puts the intellectual property material into a fixed tangible medium of expression. The creator may also have originated the intellectual property material.

IX Intellectual Property

Intellectual property refers to materials that can be copyrighted, patented, or trademarked. These materials include scholarly and literary works, creative and artistic works, software, data and databases, multimedia works, electronic media and communications, and as otherwise defined by federal law. Certain discoveries and inventions, including trade secrets and know-how, may not be patentable but may have material commercial value or potential as revenue producers. These accomplishments are subject to the same policy as any patentable invention.

X Copyright

Copyright is a form of statutory protection granted to the developer of certain types of works fixed in a tangible medium of expression as an incentive for that creator and/or author to disseminate the work to the public. Copyright is applicable to computer software, artwork, music, articles, books, and other literary works. Copyright protects the expression of the idea but not the idea itself. Registration of a copyrightable work creates additional protection and is sometimes advisable. Registration is accomplished by completing the necessary forms and filing them with the U.S. Copyright Office in Washington, D.C.

XI Patents

The Patent Act of 1952 gives inventors the right to exclude others from making, selling or offering for sale, or using their inventions for a specified length of time in exchange for full disclosure of their patented inventions. This bargain serves to promote the progress of science and useful arts specified in the Constitution. Patents must be applied for with the Patent and Trademark Office. Patents may be granted to applicant(s), including faculty, staff, administrator or student, who "invent or discover any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvements thereof." Applications must be filed by or on behalf of the person or entity who is claiming ownership of the potential patent.

XII Trademark

Trade and service marks are distinctive words or graphic symbols. They generally identify the sources, product, producer, or distributor of goods or services. Symbols and logos of CSUSB are trademarks and they may not be used by third parties without proper license and specific approval from the university. Doing so may subject the unlicensed user to civil and/or criminal penalties. Education Code 89005.5.

XIII Trade Secret

Trade secret refers to financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if (A) the owner thereof has taken reasonable measures to keep such information secret; and (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by the public.

IMPLEMENTATION

XIV Procedures

The University will disclose this policy via a posting on the University Policies Web page and paper copies will be distributed to the Provost and Vice President for Academic Affairs for further dissemination to the CSUSB constituents.