I. Purpose and Scope

A. **Purpose**: The purpose of this policy is to encourage, support, and reward research, scholarship, and creativity, and to recognize the rights and interests of the inventor or creator, the public, any external sponsor, and the California State University.

B. **Scope**: This policy addresses the rights to, and protection and transfer of, intellectual property created by university faculty, staff, or students. Issues not directly addressed in this policy, including disagreements concerning its application or interpretation, shall be addressed and resolved consistent with applicable law or agreements and the principles and provisions of this policy, on a case-by-case basis.

C. **Relationship to the CSUMB Vision Statement and Core Academic Values**: A university-wide climate that encourages the creation and sharing of intellectual property by faculty, staff, and students, and respects the intellectual property of others, is at the very foundation of the CSUMB Vision Statement and Core Academic Values. This policy is intended to reflect the University’s and the University Corporation’s commitment to the principles, goals, and ideals reflected in the CSUMB Vision and its core values.

II. Terms and Definitions

The following terms and definitions were obtained from the United States Copyright Office website (Library of Congress. (2003). United States Copyright Office, (202) 707-9100, Online: http://www.copyright.gov

A. **Intellectual Property**: Intellectual property refers to creations of the mind: inventions, literary and artistic works, software, symbols, names, images, and designs used in commerce, among others. Intellectual property may be divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.
B. **Copyright:** Copyright is a form of protection provided to the authors of “original works of authorship” including literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished. The 1976 Copyright Act generally gives the owner of copyright the exclusive right to reproduce the copyrighted work, to prepare derivative works, to distribute copies of the copyrighted work, to perform the copyrighted work publicly, and to display the copyrighted work publicly.

The copyright protects the form of expression rather than the subject matter of the writing. For example, a description of a machine could be copyrighted, but this would only prevent others from copying the description; it would not prevent others from writing a description of their own or from making and using the machine. The Copyright Office of the Library of Congress registers copyrights.

C. **Patents:** A patent for an invention is the grant of a property right to the inventor, issued by the Patent and Trademark Office. The term of a new patent is 20 years from the date on which the application for the patent was filed in the United States or, in special cases, from the date an earlier related application was filed, subject to the payment of maintenance fees. U.S. patent grants are effective only within the U.S., U.S. territories, and U.S. possessions.

The right conferred by the patent grant is, in the language of the statute and of the grant itself, “the right to exclude others from making, using, offering for sale, or selling” the invention in the United States or “importing” the invention into the United States. What is granted is not the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention.


D. **Trademarks:** A trademark is a word, name, symbol or device that is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others. A service mark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product. The terms “trademark” and “mark”
Trademark rights may be asserted to prevent others from a confusingly similar mark, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark. Trademarks that are used in interstate or foreign commerce may be registered with the Patent and Trademark Office.

University Corporation and CSUMB trade and service marks may only be used in accordance with the Trademark Handbook prepared by the Office of General Counsel of the California State University. Online: http://www.calstate.edu/GC/Docs/TrademarkManual.pdf

E. **Fair Use of Copyrighted Material**: Fair use is embodied in Section 107 of the U.S. Copyright Act and it exempts limited uses of materials from infringement liabilities. The full text of the fair-use statute makes clear that the right of fair use is specifically applicable to teaching, research, and scholarship, and that its scope depends on four statutory factors. These four factors are open to diverse interpretations; the law offers virtually no details for determining which activities may be safely allowed:

- The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
- The nature of the copyrighted work.
- The amount and substantiability of the portion used in relation to the copyrighted work as a whole.
- The effect of the use upon the potential market for or value of the copyrighted work.

F. **Copyright and Work for Hire**: Copyright law defines two types of work for hire: (1) work prepared by an employee within the scope of his or her employment; and (2) work that has been specifically ordered or commissioned by contract.

1. **Copyright and Work for Hire and Faculty**: Article 39 of the CFA/CSU Collective Bargaining Agreement states that works created by bargaining unit employees in the course of normal faculty bargaining unit work (as defined in Article 20 of the CBA) without “extraordinary university support” (see below), shall not constitute “works made for hire”, and the faculty creator shall retain sole ownership.

G. **Extraordinary Support**: Any extraordinary University Corporation support provided for a faculty member, a staff member, or a student does not include such things as external funding, reassigned time, paid or unpaid leaves, and the normal and ordinary University Corporation support or facilities that are accessible in connection with normal duties or academic instructional programs.
1. **Extraordinary Support and Faculty:** “Extraordinary support” is defined as “...any funds, personnel, facilities, equipment and materials that are specifically identified as such in advance of their commitment by the CSU...which normally are not accessible to all faculty unit employees as defined in Article 2 of the CBA, and which are provided for the use of a specific faculty unit employee expressly in support of his or her accomplishing a specific, detailed, and closely supervised and controlled assignment or his or her creating a specifically commissioned work or invention.”

H. **Joint Ownership:** The collaborative nature of the works that are the subject of this policy shall result, at times, in their being jointly authored and owned. Joint owners are each entitled to exercise all the rights granted by the Copyright Act, but owe each other a pro-rata share of any profits realized from commercial exploitation of the work. Joint owners wishing to commercialize a work or to modify their respective rights under the Copyright Act shall document their agreement on the appropriate Standard Agreement Form.

III. **Default Access to Intellectual Property Created at the University Corporation**

A. **Access to Works Created and Owned by Students:** All works created by students without extraordinary support are owned by them in accordance with copyright law. In the event that the University Corporation or a member of the faculty wishes to use student-produced work for any purpose outside the scope for which it was created, specific permission from the student(s) must be obtained prior to use. If the student-created work is being used for the purpose of conducting research, that use must be in accordance with the CSUMB Human Subjects in Research Policy.

Online: http://policy.csumb.edu/human-subjects-research

B. **Access by the University Corporation to Works Created and Owned by Faculty:** In the normal course of their professional activities, faculty shall create intellectual property that is covered by copyright law. To the extent that those works are the property of the faculty, the University Corporation expects that its contribution to the creation of those works shall be recognized in the form of access to works created by faculty for a specific period of time without additional permissions or compensation. Specifically, the University Corporation shall have the following:

1. Permission to use, with attribution, course-related works created by faculty members for the purpose of curriculum continuity. This permission shall be in effect for a period not to exceed three years from the date of employment termination.
2. Permission to modify, with attribution, course-related materials by subsequent faculty for the purpose of maintaining up-to-date and relevant course content. If the content is so modified that ownership of the work is changed (creation of derivative work), access to the new material shall be covered as if it were a new creation. This permission shall be in effect for a period not to exceed three years from the date of employment termination.

3. Permission to reproduce works as needed for curriculum continuity so long as that reproduction does not violate this policy, copyright law, or fair-use. This permission shall be in effect for a period not to exceed three years from the date of employment termination.

The University Corporation and a particular faculty creator or creators who wish to modify the default rights that apply to a particular work owned by the faculty creator or creators or to commercialize such a work shall document their agreement on the Standard Agreement Form for Ordinary University Support.

C. Access to Works Created and Owned by the University Corporation: In addition to works created and owned by individuals there shall be copyrighted materials created that are owned by the University Corporation. It is expected that the creators of these works may need to have permission to use these works in the event that they are no longer an employee of the University Corporation. With the exception of works created specifically for the purpose of marketing, promotion, or other University Corporation specific materials (logos, photographs, etc.) individuals shall have the following:

1. Permission to use, with attribution, works created by them for the university for a period not to exceed three years from the date of employment termination.

2. Permission to use works created by the individual for the purpose of creating derivative works for a period not to exceed three years from the date of employment termination.

3. Permission to reproduce works as needed for curriculum continuity so long as that reproduction does not violate this policy, copyright law, or fair-use. This permission shall be in effect for a period not to exceed three years from the date of employment termination.

The University Corporation and a particular faculty creator or creators who wish to modify the default rights that apply to a particular work owned by the university or to commercialize such a work shall document their agreement on the Standard Agreement Form for Ordinary University Support, attached hereto.
IV. **Intellectual Property of Others at the University Corporation**

It is the policy of the University Corporation to protect and not infringe upon the copyrights of others within or outside of the university community. Pursuant to the requirements in the Digital Millennium Copyright Act (1998), the campus has designated the Chief Information Officer as its agent to receive statutory notices from copyright owners about infringements and to send statutory notices to affected subscribers. Online: http://www.copyright.gov/legislation/dmca.pdf

Use of non-University Corporation intellectual property in the creation of intellectual property on this campus shall fall under existing guidelines for fair use or shall be licensed, as appropriate, or otherwise used with the written permission of the copyright owner. Permissions and license fees, where applicable, shall be the responsibility of the creator or the creator’s cost center, as negotiated, unless the university maintains site licenses for the materials desired.

V. **Administration of Intellectual Property**

This policy shall be administered through the Office of the Provost. An Intellectual Property Committee shall be charged by the Provost to implement and administer the policy. Faculty creators who wish to commercialize course-related works while an employee of the University Corporation shall disclose their plans to the Intellectual Property Committee and enter into an agreement with the University Corporation using the proper forms.

VI. **Intellectual Property Committee**

The Intellectual Property Committee considers intellectual property issues and provides guidance and direction to faculty, students, staff, and administrators. The Committee may resolve disputes, educate the university community about intellectual property, make recommendations on intellectual property ownership rights between the university, its colleges and departments, etc.

The standing Intellectual Property Committee shall be chaired by the Provost’s designee. Membership shall consist of:

- Faculty representation from each college and the library, as well as at-large. All faculty representatives shall be selected by the Academic Senate;
- Student representation from each college, as well as at-large. All student representatives shall be selected by the Associated Students;
- The library Director;
- Representation from Risk Management; and
- Representation from the University Corporation at Monterey Bay.

VII. **Grievances**

Grievances may occasionally occur concerning issues of intellectual property. Grievances related to intellectual property use or alleged misuse may be filed by any member of the CSUMB community, including students. Students wishing to file a grievance shall follow the grievance process described in the Student Grievance Policy. Online: http://policy.csumb.edu/student-grievance-policy
Faculty and staff members wishing to file a grievance shall contact the University Corporation Human Resources Manager.

VIII. Adoption and Review

A. The University Corporation’s Board of Directors has adopted this Intellectual Property Policy on 27 September 2012.

B. This policy shall be evaluated ten years from its adoption date to determine its effectiveness and appropriateness. The policy may be evaluated before that time as necessary to reflect substantial organizational, financial, or physical change(s) at the University Corporation or any change required by law or by other governing policy.

Any proposed amendments or variations of this policy would require a majority approval by the University Corporation Board of Directors.

IX. Related Documents


B. Trademark Handbook prepared by the Office of General Counsel of the California State University

C. CFA/CSU Collective Bargaining Agreement

D. CSUMB Human Subjects in Research Policy

E. 571-001-A Standard Agreement Form for Ordinary University Support

F. 571-002-A Standard Agreement Form for Extraordinary University Support

G. Digital Millennium Copyright Act

H. Student Grievance Policy