

## **INTELLECTUAL PROPERTY POLICY**

*History:*

*Approved by the Academic Senate 07-08 BEC 4 revised*

*A134 e 07-*



extraordinary resources and support that led to the development or discovery of the invention. The latter situations may warrant an alternative ownership, licensing agreement, or shared equity.

When a potentially patentable invention is conceived or first reduced to practice in whole or in part by members of the faculty, staff, or students of the University in the course of their University responsibilities or with extraordinary use of University resources and support, such potentially patentable inventions shall be disclosed on a timely basis to the University. All patents must be disclosed to the University using [the CSU East Bay Invention Disclosure form](#). As described within this policy, the IP Ad Hoc Advisory Committee will review the disclosure to provide a concurrence or recommendation of ownership, equity, or licensing provisions. Determinations and recommendations made by the IP Ad Hoc Advisory Committee shall be collaborative and designed to protect the interests of the inventor as well as the University.

Even when a determination is made that the University does not own intellectual property under this policy, if the University provides extraordinary resources and support toward the creation of intellectual properties, it enjoys an equity interest in the net proceeds derived from those properties. The University's equity interest is determined by the extent of use and the value of extraordinary resources and support. The amount of the University's equity interest in a particular intellectual property will be agreed upon before pursuing protection/commercialization. In no case, unless an agreement has been made that the patent is a work for hire for the university, will the University's share be greater than 50%. The specific percentage of equity interest that an individual creator/inventor will render to the University in such instances may be proposed by the inventor or by the University for review and concurrence by the IP Ad Hoc Advisory Committee.

It is understood that inventors have fundamental rights to direct and control their own research and to make decisions about their intellectual property (IP), including, but not limited to invention management, IP licensing, commercialization, dissemination, and public use. It is also understood, however, that inventors may choose to not retain their rights and instead may wish to transfer partial or whole patent ownership rights to CSUEB if they so choose, or they may wish to enter into agreements with CSUEB to use additional university support and resources in their invention or invention management endeavors. Requests by inventors for alternative ownership will be reviewed by the IP Ad Hoc Advisory Committee.

In reviewing invention disclosures, the ad hoc committee and subsequent appropriate administrators will consider the following guidance, which is separated by categories of faculty, staff, and student inventions.

Faculty have ownership of intellectual property resulting from their scholarly activities, but may share the right to ownership with the University. The University's equity interest is determined in accordance with the circumstances listed below.

The University shall own all intellectual property rights in works created by University staff in the course and scope of their employment.

Students enrolled at the University may create valuable intellectual property while fulfilling course requirements, in conjunction with University employment, and/or through the use of University resources. The ownership interests in such intellectual property depend on the particular circumstances surrounding the creation as shown below.

## **Faculty Inventions**

a. If the University provides extraordinary resources and support to the creation of intellectual property, then the faculty will own the intellectual property rights, but the University will be entitled to an equity interest in the profits derived from the commercialization of the intellectual property.

Students must be careful to differentiate their own creative contributions from those of their faculty instructors and mentors. The following parameters apply.

must be published so that they may be studied and discussed by other researchers, the University believes that source code should be published in a form that is amenable to research and will promote scientific progress. The object code is similarly subject to copyright.

### **ADMINISTRATION OF POLICY**

The Office of the Provost and Vice President for Academic Affairs, or their designee, will administer the policy and will respond to queries regarding intellectual property issues, particularly as regards negotiations and income rights. When an invention disclosure form is received, an IP Ad Hoc Advisory Committee will review the form within three weeks. The committee will be made up of the following individuals or their designees.

- The Provost (chair)
- The Library Dean
- The Information Security Officer
- The Chief Information Officer
- The AVP of the Office of Research and Sponsored Programs
- The Academic Senate Chair and one member of the Executive Committee
- A student representative recommended by ASI

Disputes, including those involving the interpretation of “extraordinary resources,” will be reported to the Provost’s office and referred to the IP Ad Hoc Advisory Committee for review prior to a decision. Advice on legal issues will be sought from university counsel. Agreements between the University and creator(s) of intellectual property will receive final approval from the Office of the Provost and Vice President, Academic Affairs.

This policy shall be reviewed every five (5) years by the Committee on Research, the Academic Senate, and the Office of the Provost.

### **DEFINITIONS**

**Contract** - A legally binding agreement involving two or more people or businesses (called parties) that sets forth what the parties will or will not do. See: <https://www.nolo.com/dictionary/contract-term.html>

**Copyright** - A bundle of exclusive rights granted to the author of a creative work that is fixed in a tangible medium of expression. These rights include the right to make copies, authorize others to

resources that are not available to the majority of CSUEB students in the course of their programs of study.

**Institutional support** - Support provided by either California State University, East Bay and/or California State University, East Bay Foundation, Inc.

**Intellectual property** - Property that is created by the human mind. Intellectual property is typically

## **FAQs TO ACCOMPANY CSUEB POLICY ON INTELLECTUAL PROPERTY**

(to be amended to meet changing conditions)

### **Where can I learn more about intellectual property?**

Intellectual property encompasses copyright, patents, and trademarks. For faculty, students and staff, the primary focus is usually on copyright, but if you are an inventor or working with multimedia, patents may come into play. If you engage in technology transfer or some other commercialization of your creation, both patents and trademarks may be a consideration.

See: [https://www.law.cornell.edu/wex/intellectual\\_property](https://www.law.cornell.edu/wex/intellectual_property)

See: <https://library.csueastbay.edu/copyright>

### **I've created something (e.g. book, article, paper, artwork, .) as part of my responsibilities at Cal State East Bay. Who owns my work?**

In the United States, authors/creators own the work they created unless they agree to a “work for hire” arrangement prior to the creation of the work. The contract or agreement by which they work for hire determines the ownership of the creation. Often, as a condition of employment, works created as part of one’s job duties or assignment are owned by the person, institution, or company that hires the creator. In the case of CSUEB, employees should check their contracts or other written memoranda or agreements of understanding to determine the conditions of their hire. For example, the California Faculty Association contract includes a clause on Intellectual Property Rights. The CSU Employees Union contract contains no equivalent clause.

- See: <https://www.calfac.org/contract/#article-39>

(Collective Bargaining article on “Intellectual Property Rights”)

### **Should I register my copyright?**

Your work is under your copyright the moment you create it. You do not need to register your work to retain copyright. However, your work does need to be registered if you want to take someone to court over a copyright issue. You can register your work on the U.S. Copyright Office’s website: <https://www.copyright.gov/>.

### **I'm thinking about putting my created work on the campus learning management system (LMS) or another university website. What does that do to my rights?**

Posting your material on the campus LMS or any other campus website doesn’t transfer copyright to the institution. However, for scholarly articles in which the publication agreement was signed prior to May 19, 2021 (see Open Access Policy for more detailed information on this



policy), you may need to review your publishing agreement to confirm that you did not transfer your copyright to the publisher and whether you retained the right to publicly post it if you did transfer copyright.

### **What is a reasonable contract / publishing agreement for something that I've created?**

Contracts vary by publisher and are generally negotiable before you sign them. Ultimately, you and the publisher have to agree to something to publish the work and you may need to make compromises. Regardless, make sure you understand the terms to which you are agreeing and make sure that you can live with them. There are few absolutes in the copyright world, but one of them is that *contracts take precedence over copyright*. Note that scholarly articles for which the publication agreement is signed on or after May 19, 2021 are protected by the Open Access Policy.

Additional resources to consult are listed below.

- See: National Writers Union; <http://www.nwu.org/>  
(for freelance writers working in U.S. markets)
- See: American Society of Journalists and Authors; <http://www.asja.org/>  
(for freelance writers writing books and articles)
- See: Text and Academic Authors Association; <http://www.taaonline.net/>  
(check out their news pages)
- See: Music: Copyright law; <https://www.copyright.gov/engage/musicians/> (Music law, contracts and deals)
- See: Poets & Writers; [https://www.pw.org/literary\\_agents](https://www.pw.org/literary_agents)  
(list of agents)

### **What is open access and how does the CSUEB Open Access Policy apply to my publications?**

Open access is the “free, immediate, online availability of research articles coupled with the rights to use these articles fully in the digital environment” ([SPARC](#)). Open access can be attained via two primary paths: publishing in an open access journal or retaining author’s copyright and posting a copy of the article to an institutional repository or subject repository. Some of the benefits of open access include greater visibility and retrievability of research; increased impact of scholarship; increased likelihood that results will be taken up, extended, applied, and cited; and increased readership outside the academy, including policy-makers, journalists, non-profits, the general public, *etc.*

The Academic Senate unanimously passed Cal State East Bay’s Open Access Policy on April 13, 2021 and it was made effective by signature of President Cathy A. Sandeen on May 19, 2021. This policy provides collective coverage for all CSUEB faculty members for scholarly articles for which the publication agreement was signed on or after May 19, 2021. By default, faculty retain their copyright unless they choose to opt-out of the policy on an article-by-article basis. Faculty then make their work open access by depositing it in an open access repository, such as CSU’s [ScholarWorks](#).

