

INTERIM INTELLECTUAL PROPERTY POLICY

I. GENERAL

- A. Purpose. The University is committed to providing an intellectual environment in which all members of the academic community – whether they are faculty engaged in life-long professional development, students pursuing educational objectives, or staff dedicated to their own career goals – learn to the fullest extent possible. The University also recognizes and values creativity and innovation as part of this learning process. Similarly, the University recognizes the importance of, and wishes to encourage, the transfer of new knowledge, generated in the University, to the private sector for the public good. At the same time, as a publicly funded institution, the University must be a good steward of the public resources provided to it, and must safeguard against the use of public funds for private gain.
- B. Scope. This policy addresses the rights to, interest in, and protection and transfer of intellectual property (including patents) created by University faculty, staff and students. Issues not directly considered in this policy, including disagreements concerning its application or interpretation, will be addressed and resolved consistent with applicable law and collective bargaining agreements. In the event of a conflict between this policy and the collective bargaining agreements, the bargaining agreements shall prevail. Policies affecting the use of the University's names or symbols are covered elsewhere.
- C. Governing Principles. The following principles underlie this policy and should guide its application and interpretation:
1. Academic Freedom and Preeminence of Scholarly Activities. The missions of teaching and scholarship have preeminence over that of the transfer and commercialization of research results. The University's commitment to its educational mission is primary, and this policy does not diminish the right and obligation of faculty members to disseminate the results of research and creative activity for scholarly purposes.
 2. Equity and Fair Play. This policy sets forth general principles and procedures, and it has not been designed to address every conceivable circumstance. Under principles of fair play, the inventor(s)/creator(s) and the University mutually operate so that no one will unfairly exploit inadvertent errors or omissions in the written policy. If the need for corrections or exceptions to this policy is identified, appropriate recommendations shall be made to the President.
 3. Mutual Trust and Goodwill. Throughout all phases of the creation and implementation of this policy, it is assumed that all members of the University community will be guided by a sense of mutual trust and goodwill. It shall be the responsibility of any individual covered by this

Policy, to promptly notify the Provost in writing when such individual believes he or she has made an invention. In the event of future controversies regarding the rights to intellectual property (including patents), the commercialization of particular property, or in the interpretation of this policy, all parties should recognize that mutual trust and goodwill were fundamental tenets in the forging of this policy.

4. Faculty Governance and Review. University faculty, through the Patent Board for potentially patentable intellectual property, and the Intellectual Property Review Committee for all other intellectual property, shall play a primary role in the establishment and periodic revision of this policy, and in the review and recommendation of resolutions to disputes arising under it.
 5. Transparency. The principle of transparency promotes both the disclosure and avoidance of actual and apparent conflicts of interest associated with external commercial activities.
 6. Reasonableness in Licensing. When the University owns intellectual property (including patents) under this policy, the inventor or creator shall normally play an active role in the entire licensing process, including consultation and/or approval of licensing decisions, particularly where the inventor/creator has no financial interest in the licensee. Otherwise, such participation shall be consistent with conflict of interest regulations or University policy.
 7. Confidentiality. With respect to the intellectual property that is the subject of this policy, confidentiality shall be maintained to the extent required to protect its value and to the extent allowed by law.
 8. Written Agreements. The University and inventor/creator of intellectual property shall enter into a written agreement to commemorate the understandings between them relative to any University involvement in the development of intellectual property, shared equity interests, and related matters referenced in this Policy. All such agreements shall be in compliance with any applicable Collective Bargaining Agreement then in effect."
 9. Sponsored Grant Contracts. The provisions of this Policy shall not supersede or supplant ownership agreements and provisions related thereto that are specified in sponsored grant contracts.
- D. Policy Application. This policy takes effect immediately and supersedes all prior intellectual property (including patent) policies.
- E. Key Terms. For purposes of this policy, the following key terms are defined as follows:
1. Unless otherwise specified, "intellectual property" means inventions, discoveries, innovations, and copyrightable works. Cases regarding

potentially patentable intellectual property are reviewed by the Patent Board as needed in order to make recommendations with respect to the issue of the determination of the respective interests of the University and inventor/creator, as well as the dedication of financial support to the process required to protect the intellectual property. Cases regarding all other intellectual property are reviewed by the Intellectual Property Committee in order to make similar recommendations.

2. "Inventions", "discoveries", or "innovations" include tangible or intangible inventions, whether or not reduced to practice and tangible research products whether or not patentable or copyrightable. Such research products include, for example: computer programs, integrated circuit designs, industrial designs, databases, technical drawings, biological materials, and other technical creations.
3. "Copyrightable works" mean original works of authorship fixed in tangible media of expression.
 - a. "Works of authorship" include literary, musical, dramatic, audiovisual, architectural, pictorial, graphic and sculptural works and sound recordings. Computer programs are works of authorship to the extent they are protected by the federal copyright laws.
 - b. "Tangible media of expression" include physical, digital and other formats now known or later developed from which copyrightable works may be stored, reproduced, perceived or otherwise communicated, either directly or with the aid of a machine or device.
4. "Software" means computer instructions (algorithms and code), data and accompanying documentation.
 - a. "Algorithm" means a logical arithmetical or computational procedure that if correctly applied ensures the solution of a problem.
 - b. "Source code" means an original computer program written by a programmer in human-understandable form. It is converted into the equivalent object code (written in machine language) by the compiler or assembler in order to run on a computer.
 - c. "Object code" means the form of a program that is executable by a machine, or usable by an assembler that translates it directly to machine-understandable language. This form of software is not readable or modifiable by human beings other than through extraordinary effort.
5. "Net proceeds" means the net amount received in each fiscal year from the transfer or licensing of intellectual property after deduction of all accrued costs reasonably attributable to such intellectual property, including

without limitation any reasonable expense of prosecution, protection and litigation, and commercialization. Such direct costs typically include: legal filing fees; patent application, issuance and maintenance charges; transfer or licensing costs; and product development costs. All expenditures, special advances and repayment terms shall be identified and detailed in writing at the time they are made. The time of regular University and Foundation personnel will not be included in the determination of costs attributable to intellectual property protection and commercialization.

6. "Equity interest" refers to beneficial rights (such as royalties) derived from intellectual property owned by another.
7. "Disclosure statement" means a written general description of a creation by the creator used to help assess the nature, extent and likely intellectual property interests in and development potential of the creation.
8. "Faculty" means members of Collective Bargaining Unit 3, as well as visiting professors and volunteer professors.
9. "Staff" means all employees of the University, other than faculty and students..
10. "Student" means any individual enrolled in the University, or working in a student capacity under the auspices of the University or Foundation even if not enrolled at the time, excepting those who fall under the definition of faculty or staff.
11. "Sponsor" means any external individual or entity, whether public or private, that enters into a formal agreement with the University or Foundation, whereby the Sponsor provides support for a project to be carried out by University faculty, staff and/or students.
12. "Extraordinary resources" means University and/or Foundation resources that are essential to the development of the intellectual properties, and/or that in the reasonable consideration of the committee (see below), appear to be substantial in terms of the volume, value, or unusual nature of the resources provided to the inventor. These resources include time, facilities or materials regardless of whether they emanate from federal or state appropriations, student fees, donations, grants, contracts or other sources. Extraordinary resources do not include the ordinary use of resources typically available to the developer of the intellectual property within his or her scope of employment. The Patent Board will be responsible for evaluating the University's contribution of extraordinary resources to a specific patentable intellectual property in cases of disagreement between the inventor/creator and the University concerning this contribution. The Intellectual Property Review Committee (Section III.A.2) will be responsible for evaluating the University's contribution of extraordinary resources to all other specific intellectual property in cases of

disagreement between the inventor/creator and the University concerning this contribution.

II. OWNERSHIP AND OTHER INTEREST

A. Copyright.

1. Framework. This section deals with the ownership of copyrightable intellectual property created by faculty, staff and students (in separate sections). Faculty creations are governed by section II. A. 2; staff creations are governed by section II. A. 3; and student creations are governed by section II. A. 4.

2. Faculty Creations.

- a. Faculty own the copyright resulting from scholarly and creative publications they develop. The University's equity interest is determined by the circumstances listed below.

- b. If the University provides extraordinary resources toward the creation of copyrightable property, the faculty will own the copyright but the University will be entitled to an equity interest in the profits derived from the commercialization of the intellectual property, according to the provisions in section II.D.

- c. Notwithstanding provision II.A.2.a, if the University initiates a creative project, solicits voluntary faculty participation in the project, and provides funding for the project, possibly including compensation or release time for the faculty member, the University will own the intellectual property rights developed through the project unless the University expressly agrees to share ownership. If ownership rights are to be shared, the University and the faculty member shall execute an agreement memorializing the sharing arrangement, acknowledging the faculty member's commitment to cooperate with the University in protecting and commercializing the intellectual property at University expense if the University elects to commercialize it, and describing the details of any profit-sharing arrangement. The written agreement shall be executed prior to commencement of the project and, to the extent that the provisions of this policy may conflict with the written agreement, the terms of the written agreement shall prevail. In the absence of a written agreement to the contrary, the University is hereby deemed to be the sole owner of the intellectual property produced as a result of the type of project described in this paragraph.

- d. If the University or Foundation and an outside sponsor enter into an agreement to carry out research or other creative activity involving faculty, the faculty who participate in the project shall

comply with the conditions of the agreement regarding ownership, protection and licensing of intellectual property developed under the agreement, and shall be required to agree in writing that they will so comply. Copyright terms of such agreements, even when they deviate from the provisions of this policy, will be negotiated with the sponsor by the Associate Vice President for Research and Sponsored Programs, with the consent of the faculty involved and the appropriate Dean(s).

3. Staff Creations.

- a. Staff creations would be treated the same as faculty creations, except that in all cases, the University would enjoy and retain a permanent, non-exclusive, worldwide, royalty-free license to use all intellectual property produced in the course of the staff member's employment.
- b. The University or Foundation may employ or engage individuals under specific contractual terms that allocate copyright ownership rights between the parties in a different manner than specified above. Such agreement(s) shall supersede this policy to the extent that any provisions conflict.
- c. There may be occasions when University staff also serve as faculty for the University. Under these circumstances, written agreements should be entered into in advance of undertaking any research or creative activity to clarify whether the individual is acting in their staff or faculty capacity in carrying out the activity. Unresolved questions on ownership related to potentially patentable intellectual property may be directed to the Patent Board and a recommendation regarding ownership rights will be made to the President, who will make a final determination on this issue. Such agreement(s) shall supersede this policy to the extent that any provisions conflict. Unresolved questions on ownership related to all other intellectual property may be directed to the Intellectual Property Review Committee and a recommendation regarding ownership rights will be made to the President, who will make a final determination on this issue.

4. Student Creations.

- a. Students will normally own the copyright to the scholarly and creative publications they develop, including works fulfilling course requirements (term papers and projects), Senior Projects, Masters Theses/Projects, and Doctoral Dissertations/Projects. Students retain copyright ownership as long as they are not paid for the work that results in the creation and do not receive extraordinary resources in support of the work. Nonetheless, by enrolling at the University, the student grants the University a

nonexclusive, royalty-free license to mark on, modify, publicize, retain, and use in the advancement of the University's educational mission. The University is not entitled to an equity share in any ownership profits, except in the circumstances covered below.

- b. When the student is employed by the University or Foundation and the creation falls within the scope of that employment, either the University or Foundation or the faculty member (when the student is hired specifically to work on a faculty project), or student employee owns the copyright according to the same standards that apply to staff creations, under sections II.A.3 above, or faculty creations under Section II.A.2.
- c. If the student receives extraordinary resources that further the creation or development of the creative work, then the student owns the copyright, but the University retains an equity interest in the creation, using the same standards that govern faculty creations under section II.A.2.b.
- d. If the student works on a sponsored project or a special intellectual property agreement and the creation falls within the scope of that work, then the student is bound by the written agreements governing the allocation of copyright ownership.
- e. When the student is employed by an outside entity (not the University or Foundation) and the creation falls within the scope of that employment, then the student normally will be bound by a contract with the outside entity, including any provisions for copyright ownership, and the University will have no rights to the intellectual property developed.

B. Patents.

- 1. Framework. This section deals with the ownership of potentially patentable intellectual property created by faculty, staff and students (in separate sections). Faculty inventions are governed by section II.B. 2.; staff inventions are governed by section II.B. 3; and student inventions are governed by section II.B. 4.
- 2. Faculty Inventions.
 - a. Faculty own the intellectual property resulting from their scholarly activity. The University's equity interest is determined by the circumstances listed below.
 - b. If the University provides extraordinary resources 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, according to the provisions in section II.D.

- c. If the University initiates a creative project, solicits voluntary faculty participation in the project, and provides funding for the project, possibly including compensation/release time for the faculty member, the University will own the intellectual property rights developed through the project unless the University agrees to share ownership. Upon the development of potentially patentable intellectual property, those involved with creating the intellectual property assign all ownership rights to the University and shall sign a written acknowledgment to that effect. A written document, signed by the faculty member prior to initiation of the project, will be executed to acknowledge the University's ownership, or sharing arrangement, and the faculty member's commitment to cooperate with the University, at University expense, to protect and commercialize the intellectual property. Should the parties agree, the University may opt to share with the faculty involved any profits that result from the intellectual property created on the project. Such agreement, and the details of profit-sharing arrangements, shall be recorded in a written document, signed by both parties, which shall supersede this policy to the extent that any provisions conflict.
 - d. If the University or Foundation and an outside sponsor enter into an agreement to carry out research or other creative activities involving faculty, the faculty who participate in the project shall comply with the conditions of the agreement pertaining to the ownership, protection and licensing of intellectual property developed, and may be required to agree in writing that they will so comply. The intellectual property terms of such agreements, even when they deviate from the provisions of this policy, will be negotiated with the sponsor by the Associate Vice President of Research and Sponsored Programs, with the consent of the faculty involved and the appropriate Dean(s). Such agreement(s) shall supersede this policy to the extent that any provisions conflict.
3. Staff Inventions. Staff inventions should be treated the same as faculty inventions, except that in all cases, the University would enjoy a permanent, worldwide, non-exclusive, royalty-free license to use all intellectual property produced in the course of staff's employment.
- a. The University or Foundation may employ or engage individuals under specific contractual terms that allocate copyright ownership rights between the parties in a different manner than specified above. Such agreement(s) shall supersede this policy to the extent that any provisions conflict.
 - b. There may be occasions when University staff also serve as faculty for the University. Under these circumstances, written agreements should be entered into in advance of undertaking any research or

creative activity to clarify whether the individual is acting in their staff or faculty capacity in carrying out the activity. Unresolved questions on ownership related to potentially patentable intellectual property may be directed to the Patent Board and a recommendation regarding ownership rights will be made to the President, who will make a final determination on this issue. Such agreement(s) shall supersede this policy to the extent that any provisions conflict. Unresolved questions on ownership related to all other intellectual property may be directed to Patent Board and a recommendation regarding ownership rights will be made to the President, who will make a final determination on this issue.

4. Student Inventions. 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. In particular, students must be careful to differentiate their own creative contributions from those of their faculty instructors and mentors. The following parameters apply:
 - a. The student is not paid for the work that results in the creation and does not receive significant University resources in support of the work. In these circumstances, the student owns the intellectual property interests in the creation. This is true even if the intellectual property is created to fulfill course requirements or other academic requirements. Nonetheless, by enrolling at the University, the student grants the University a nonexclusive, royalty-free license to mark on, modify, publicize, retain, or otherwise use in the advancement of the University's educational mission. The University is not entitled to an equity share in any ownership profits, except in the circumstances covered below.
 - b. The student is employed by the University or Foundation and the creation falls within the scope of employment. In these circumstances, either the University, Foundation or the supervising faculty (when the student is hired specifically to work on a faculty project), or student employee owns the intellectual property, according to the same standards that apply to staff creations under sections II.B.3, or faculty creations under Section II.B.2.
 - c. The student receives extraordinary resources that further the creation or development of the intellectual property. In these circumstances, the student owns the intellectual property, but the University retains an equity interest, using the same standards that govern faculty creations under section II.B.2.b.

- d. If the student works on a sponsored project or under a special intellectual property agreement and the creation falls within the scope of that work, then the student is bound by the written agreements governing the allocation of intellectual property rights.
- e. The student is employed by an outside entity (not the University or Foundation) and the creation falls within the scope of that employment. Under these circumstances, the student normally will be bound by a contract with the outside entity, including provisions intended to protect and allocate intellectual property rights, and the University will have no rights to the intellectual property developed. University resources may not be used unless a prior special intellectual property agreement is in place (see d. above).

C. Software.

- 1. The proprietary protection available for software is unique in that both copyright and patent are available. Copyright protection may cover the expression of the software ideas in a tangible medium, while patent protection may cover algorithmic inventions. Due to this dual approach, software should first be considered under the patent provisions of this policy at II. B., and is therefore subject to disclosure of any underlying algorithms that appear to have commercial value. After consideration of patent protection for valuable software algorithms, copyright, at II.A, should be considered as additional or alternative protection.
- 2. In accordance with section I.C.1, and absent a specific agreement to the contrary, the University favors the copyright and publication of source code as well as its underlying object code. This is in contrast with the common commercial practice that utilizes trade secrecy for source code in order to prevent the dissemination and discussion of any innovative ideas it reveals. As with the underlying algorithms that, if patented, 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.

- D. University Equity Interests. Even when the University does not own intellectual property under this policy, if the University provides extraordinary resources to the creation of intellectual properties, it is entitled to recover all extraordinary expenses it provided toward the creation of intellectual properties. The University's equity interest is determined by the extent of use and the value of these extraordinary resources and is entitled to recover all extraordinary resources. The amount of the University's equity interest in a particular intellectual property will be agreed upon before pursuing protection/commercialization, and in the absence of such agreement, will be presumed to be 50%. Normally the University's share will not be greater than

50%. The amount that an individual creator/inventor must render to the University, in recognition of its equity interests, is determined as follows:

1. When the amount of net proceeds above and beyond extraordinary resources received from an intellectual property subject to University equity interest is equal to or less than \$10,000 in a fiscal year (July 1 to June 30), then the University is not entitled to any portion of the net income derived from that intellectual property.
2. When the amount of net proceeds received from an intellectual property subject to University equity interest is greater than \$10,000 in a fiscal year, the net proceeds in excess of \$10,000 will be allocated as 50% to the University to be distributed by the Provost as 25% to the appropriate college/school dean and 25% to be used in the interest of the university as determined by the Grants and Contracts Advisory Board (GRAB); and 50% to the creator(s)/inventor(s).

III. ADMINISTRATIVE PROCEDURES

A. The University.

1. University Administration. The University President is responsible for policy matters relating to intellectual property and affecting the University's relations with inventors and creators, public agencies, private research sponsors, industry, and the public. The Office of the Provost in cooperation with the Associate Vice President for Research and Sponsored Programs and the Foundation shall implement and administer this policy, including negotiation of intellectual property terms in agreements with sponsors, evaluation of patentability or other forms of intellectual property protection, filing for patents, negotiation of use rights, and the pursuit of infringement actions.
2. Composition and Charge of the Patent Board.
 - a. The Patent Board shall consist of the following members:
 - i. The Provost and Vice President for Academic Affairs
 - ii. The Vice President for Administration
 - iii. The Associate Vice President for Research and Sponsored Programs
 - iv. The Dean of Graduate Studies
 - v. A representative of the California State University, Fresno Foundation Auxiliary Corporations

vi. Three members of the faculty appointed by the President

- b. The Patent Board as defined above shall be the deliberative body of the University with respect to all policies and procedures related to patentable intellectual property.
- c. Upon submission to the Provost of the Invention Disclosure form indicating that an invention has been made or a strong potential exist, the Provost shall convene the Patent Board to allow the Patent Board to review the disclosure of the invention for its merit as being potentially patentable, and otherwise satisfy its responsibilities under this policy. It is understood that the Patent Board will make every effort to respond in a timely manner.
- d. The Patent Board shall recommend to the Provost whether or not the University should undertake the timely prosecution of a patent application for the invention. This recommendation will include the Board's determination of equity and rights of all parties concerned, and the means for prosecuting the patent application.
- e. In extenuating circumstances where time is critical and the Patent Board may not be readily convened, the Provost is authorized to act without the recommendation of the Patent Board with the understanding that the Patent Board will be convened as soon as possible and apprised of the status of the project, and will then proceed with the normal process.

3. Composition and Charge of the Intellectual Property Review Committee.

- a. The Committee shall be composed of
 - i. Four members appointed by the President,
 - ii. Four members appointed by the Academic Senate
 - iii. One graduate student appointed by the Associated Students, California State University, Fresno
- b. The committee shall be chaired by a faculty member.
- c. The Committee's charge is as follows:
 - i. To review and monitor University activities on matters relating to the administration of this policy and to make recommendations to the Academic Senate regarding policy revisions as needed.

ii. To serve as a committee of the whole, or through ad hoc committees or subcommittees, to hear disputes regarding the implementation of the terms of signed separate individual agreements and make recommendations to the Provost.

4. In many cases the inventor/creator will reach an agreement with the University concerning ownership rights without the need for review by the Committee. In making its assessment, the Committee will rely on information provided by both the inventor/creator and the University. Committee deliberations will be in closed session to protect proprietary information, and may at the discretion of the Patent Board, be held outside the presence of the inventor/creator. Similarly, to maintain confidentiality to the extent reasonably and legally practicable¹, committee records will be kept confidential and committee members will be bound to maintain confidentiality. The Patent Board may invite any experts to attend its meetings, if in the discretion of the Patent Board Chair, the presence of such expert will assist the Patent Board in its deliberations, provided that any such expert shall agree to sign a non-disclosure statement prior to attending such meeting. The purpose of the review will be to help the parties reach agreement within the framework of this policy.

In the event of any disagreement among interested parties concerning interpretation or application of this policy, the Committee will serve as the appellate body advisory to the Provost. In cases where the Committee is unable to resolve such disagreements to the satisfaction of the interested parties, then it shall submit a written recommendation for resolution of the dispute to the Provost for a final administrative decision. The final resolution of any disagreement concerning the application or interpretation of this policy will be governed by applicable law and collective bargaining agreements.

At the beginning of each academic year, the Corporation will provide to the Associate Vice President for Research and Sponsored Programs a summary statement of income and expenses from intellectual property in which the University has an interest, if any, and an accounting of income and disbursements of the Commercialization Fund and the Research Fund (see IV-B). The Dean will submit this information to the Intellectual Property Review Committee, in a written report of all the activities in which that Office has been involved in the preceding year.

5. University Assistance. The protection and commercialization of intellectual property requires close attention to relevant laws. For example, for a patentable invention, one must carefully and properly document all activities involved in developing the invention from

¹ Individual rights to privacy and confidentiality as addressed by this policy may be limited by provisions of federal and state law, including but not limited to the California Public Records Act.

conception to reduction to practice. In addition, there are reasons to preserve secrecy for certain time periods so that the value of the invention can be adequately protected. These considerations often run counter to the typical academic approach of quickly sharing knowledge in the form of presentations at professional meetings and publications in scholarly journals.

Even when the University does not own intellectual property under this policy, or enjoy an equity interest in it, the Office of Research and Sponsored Programs can provide guidance to faculty and students about the basic process for and issues regarding protection of intellectual property. Further, under certain circumstances in which the University holds an equity interest, legal, financial and business assistance may be provided to faculty who wish to protect or commercialize their intellectual property. The University's decision to provide such assistance would be made on a case-by-case basis.

At the very least, inventors/creators should file a disclosure statement (see Section III.C.1) with California State University, Fresno Foundation. The disclosure serves as an important element in the protection process since it is dated and includes a description of the invention, including when it was conceived and reduced to practice. The Foundation maintains this disclosure as documentation to support potential patent claims. When the University or Foundation provides legal, financial, business and/or other extraordinary resources to support intellectual property interests, they are entitled to recoup expenditures from gross proceeds derived from those intellectual property interests that are successfully commercialized before any distributions are made to the inventor/creator.

6. Inactivity. If a determination has been made that the University owns or has an equity interest under this policy in a particular intellectual property, a decision to pursue protection and commercialization of that property will normally be made within six months of a request by the inventor/creator for such a decision. If the University decides to pursue protection and commercialization it must then act diligently in this regard. If the University fails to act diligently the inventor/creator may request reconsideration of the decision to pursue. Alternatively, if the University determines not to pursue protection/development of the intellectual property, it will renegotiate its ownership and/or equity rights with the creator/inventor.

B. California State University, Fresno Foundation

The California State University, Fresno Foundation is a non-profit, public benefit corporation serving as a qualified auxiliary organization in support of the University. The Foundation functions in several roles relating to the perfection,

protection, transfer and development of intellectual property held by the faculty, students, staff, or the University. Among these are:

1. Perfection of Rights. The perfection of legal and equity interest in intellectual property generally involves exacting documentation and compliance with statutory and regulatory procedures. The Foundation typically acts as the contracting agency for externally sponsored research and development projects on behalf of the University and the principal investigator. Sponsored agreements may have specific invention or creation disclosure requirements, and patent/copyright and licensing provisions requiring compliance through the Foundation.
2. Protection. At the request of the Associate Vice President for Research and Sponsored Programs, or in satisfaction of sponsored agreement requirements, the Foundation shall initiate action to further evaluate the need for and practicality of securing appropriate statutory protection over any intellectual property subject to this policy. Results of any such evaluations shall be reported to the Associate Vice President of Research and Sponsored Programs and the inventor or creator.
3. Transfer and Development. At the request of the University the Foundation may serve as the transfer and development agent for those with legal and/or equity rights to intellectual property under this policy. Actions to evaluate protection typically also involve the assessment of commercial viability, and may require the Foundation to negotiate among the interested parties appropriate assignment and collateral agreements to settle those interests and obligations, and to assure property protection and development opportunities. In its role as agent, the Foundation will involve both the inventor/creator and the University (through the Dean of Research and Graduate Programs) in all negotiations with potential buyers or licensors.
4. Fiscal Agent. The Foundation also serves as the designated fiscal agent of the University in the administration of transactions involving University interests in such intellectual property.

In providing the above services the Foundation shall be entitled to recover its direct costs.

C. The Creator/Inventor.

1. Required Disclosures. This policy addresses circumstances in which the University owns intellectual property created by faculty, staff and students, or enjoys an equity interest in it. When these circumstances exist, the faculty, staff or students who create the intellectual property shall file a disclosure statement with the Foundation. At the appropriate time, the Associate Vice President for Research and Sponsored Programs may refer the disclosure, as appropriate, to the intellectual property Rights

Committee or the Patent Board, which will assess rights of all interested parties consistent with other sections of this policy.

2. Protection and Commercialization. When the University owns, or enjoys an equity interest in, intellectual property under this policy, and has elected to pursue protection and commercialization of that intellectual property, the inventor/creator is expected to cooperate with the University and Foundation at the University/Foundation's expense, in the protection and development of the intellectual property, including executing appropriate written instruments to perfect legal and equity rights. It is anticipated that the inventor/creator, if he/she so chooses, will be an active participant in decisions regarding the further development, commercialization and/or licensing the intellectual property

D. Assignments of Interest.

1. Any transfers of ownership between those with any interest in specific intellectual property shall be documented through appropriate legal instruments, such as assignment agreements, in a form consistent with applicable law and regulations.

IV. INCOME ALLOCATIONS

- A. General Objectives. In the transfer of intellectual property and allocation of net proceeds derived from intellectual property, the general objectives are to direct funds toward the inventor(s)/creator(s), assure the transfer and development of those discoveries for the public benefit, and provide for the funding of future creative effort by University faculty, students and staff.
- B. Intellectual Property Funds. When the University owns intellectual property or enjoys an equity interest in it, the University's share of net proceeds derived from that intellectual property generally will be allocated to support the mission of the university as described previously in Section II. D.
- C. Departing Inventors/Authors. Any income allocations to which a faculty, staff member or student is entitled hereunder, shall continue to be made to such faculty, staff member or student even after he or she has left the University.

V. IMPLEMENTATION

The Associate Vice President for Research and Sponsored Programs, in cooperation with the appropriate Foundation and University officials, shall develop, document, implement and maintain on a current basis, appropriate procedures and practices to carry out this policy statement including the process for evaluating and determining the allocation of net proceeds derived from intellectual property, subject to Section IV of this policy. The intellectual property Review Committee shall be consulted on any significant proposed practices involving the application or interpretation of this policy as it relates to non-patentable intellectual property. The Patent Board shall be consulted on any significant

proposed practices involving the application or interpretation of this policy as it relates to patentable intellectual property.

VI. PERIODIC POLICY REVIEW

Both The Patent Board and the Intellectual Property Review Committee shall review this policy as needed, and make recommendations for changes as deemed appropriate.

VII. GRANDFATHER PROVISIONS

- A. Any invention which has a patent date or any intellectual property which has a copyright date prior to the effective date of this Intellectual Property Policy is subject to the prior policy APM 540 Patent Policy (Interim) or APM 541 Guidelines on Intellectual Property Agreements Resulting From Extraordinary Support by the University.
- B. Any individual covered in this policy who has created an invention which has a patent date or intellectual property which has a copyright date prior to the effective date of this policy may elect to submit to the provisions of this Intellectual Property Policy by notifying the President.

DRAFT revised 5/12/08

Further revisions 9/16/08