

Memorandum of Agreement Intellectual Property and Scholarly Works

Preamble

The creation of Intellectual Property and Scholarly Works is one of the primary ways the University fulfills its mission of contributing to the body of knowledge for the public good. The University encourages the creation of original works of authorship and the free expression and exchange of ideas.

This Agreement is intended to embody the spirit of academic tradition, which provides for ownership by employees of Scholarly Works and to set forth the terms and conditions for the ownership of Intellectual Property.

I. Definitions

- A. "Author" means a member of the University Community who authors or co-authors a copyrightable work.
- B. "Digital Delivery Infrastructure" means the digital material or software platform produced or procured by University staff for offering an online course, including digital course shells, graphical interface, audio and video delivery systems, enhancement of visual content and other delivery components.
- C. "Incidental use" means normal academic use of University Resources commonly available to a member of the University Community, such as the use of an employee's office space, computer, secretarial or administrative services, Internet services, library facilities, and/or office and laboratory equipment.
- D. "Intellectual Property" is defined as all forms of technology and expression whose ownership is subject to legal protection in the United States and/or internationally, including but not limited to patents, copyrights, mask works, trademarks, tangible research property, and rights in data and other proprietary information. It includes any expressed idea which is subject to protection by law from which an economic advantage can be derived. Patentable discoveries and inventions may include any new and useful process, machine, article of manufacture, or composition of matter. Copyrightable works may include written and graphic works, computer software, and photographic, video, and audio works. A mask work is a visual representation of a semiconductor chip. A trade or service mark is a word, name, symbol, or device used by an organization to identify its goods or services. Tangible research property includes matter such as biological materials, prototype devices, and engineering designs. Protectable data includes the recorded factual material as well as supporting materials such as experimental protocols and code written for statistical analyses commonly accepted in the scientific community as necessary to validate research findings. Some types of Intellectual Property, such as computer software, may be subject to protection under both patent and copyright laws. There may be additional types of work that fall under these categories of intellectual property.
- E. "Invention" means any potentially patentable new and useful process, machine, manufacture or composition of matter or any new and useful improvement to the same.
- F. "Inventor" means a member of the University Community who participates in the conception of a patentable invention.
- G. "Member of the Bargaining Unit" means a member of the Stockton Federation of Teachers, Local 2275, who is employed by Stockton University as defined in Article

I of the Full-time/Part-time and in the Adjunct Faculty Collective Negotiated Agreements respectively.

- H. "Scholarly Work" is defined as any copyrightable property not otherwise expressly excluded by this Agreement, including, but not limited to, copyrightable property: (a) embodied in books, textbooks, manuscripts, works of art or design, musical scores and performances, dramatic works and performances, choreographic works, popular fiction and non-fiction, poems, training materials, or other works of the kinds that have historically been deemed in academic communities to be the property of their author, including lectures notes, course outlines, syllabi, handouts, lab manuals, assignments, exercises, tests, and rubrics developed to support teaching activities, in whatever form, that are created or developed in the regular course of teaching duties or student activity; (b) any additional work developed for online and hybrid courses to include produced videos, animations, games, simulations, digital lessons or modules, courseware, and other similar works; (c) embodied in a storage medium such as film, videos, audio recordings, multimedia materials, distance learning materials, courseware; (d) has been released by the University to the Author or Inventor, or (e) is created on sabbatical leave with no more than Incidental Use of University Resources.
- I. "University Community" means all full-time, part-time and adjunct faculty, librarians and professional staff, including Members of the Bargaining Unit, who use University funds, facilities or other resources, or participate in University-administered research.
- J. "University Resources" include, but are not limited to, funds, space, personnel, tools, equipment, machinery, supplies or facilities used to support research and scholarship, including direct funding such as donations, contracts, grants, and University-allocated funds; laboratory space or shared research facilities; and supervision or employment, including student employment, on any such University-funded scholarship or research.

II. Ownership of Intellectual Property and Scholarly Works

- A. Intellectual Property created by a member of the bargaining unit is owned by the University at which the member is employed only if it is created either:
 - 1. Within the scope of University employment, including work under University grants and contracts with third-parties or from work directly related to the member's duties and responsibilities as an employee of the University ("work made for hire"); or
 - 2. with more than Incidental Use of University Resources.
- B. Intellectual property that is created outside the scope of University employment and with no more than Incidental Use of University Resources shall be the sole and exclusive property of and wholly owned by the Member of the Bargaining Unit creating such intellectual property.
- C. The allocation of rights in Intellectual Property arising from research or creative work sponsored by government, industry, or other external organizations will typically be governed by the terms of a written agreement between the University and the sponsor. The University ordinarily will be required by the agreement or by law to grant the sponsor a license, maintain or disseminate data, or grant other rights relating to Intellectual Property arising from the research or work and accordingly will take ownership of such Intellectual Property in order to meet its contractual obligations. Ownership and other provisions of this Policy are subject to such agreements.

- D. The University recognizes and affirms the tradition in higher education that Scholarly Works are owned by the faculty member authoring them rather than the employing educational institution, even if they otherwise come within the scope of sections A.1 above. Faculty ownership of such Scholarly Works may be affected by the terms of agreements with third party sponsors, as set for in section C above.
- E. All Scholarly Works created by Members of the Bargaining Unit within the scope of employment shall be owned by the Author. Scholarly Works are not considered “works made for hire” under this Agreement.
- F. The University shall retain a non-exclusive, perpetual, and royalty-free right to use the Scholarly Works for pedagogical, scholarly, research, or administrative purposes, unless the Author specifically demonstrates that such royalty-free use significantly impairs the Author’s right to commercialize the Scholarly Work.
- G. Where the University holds the right to a patentable invention pursuant to paragraph A.1 or A.2 above, all costs related to obtaining a patent, including but not limited to pre-patent expenses, patent prosecution, licensing, license maintenance, and patent infringement, shall be borne by the University. Such costs shall be reimbursed to the University before any net revenue is disbursed to the inventor.
- H. Members who enter into consulting agreements or other private agreements with parties outside of the University must ensure that such agreements contain no requirement to assign or otherwise transfer rights in any Intellectual Property owned by the University under this MOA. Arrangements with other research institutions that involve dual appointments, visiting scientist agreements, and other arrangements that may implicate ownership or right to Intellectual Property under this MOA require the member to obtain the prior, specific written approval of the Executive Director of the Office of Research and Sponsored Programs after consultation with the Office of General Counsel before they can be entered into by the member.
- I. The allocation of rights in Intellectual Property arising from research or creative work sponsored by government, industry, or other external organizations may be governed by the terms of a written agreement between the University and the sponsor. Ownership of Intellectual Property and any license thereto may be subject to such agreements.
- J. The University and the Union may negotiate specific written agreements on behalf of a Member of the Bargaining Unit for special projects such as University publications or a project that a Member is specifically assigned to create. Such agreements may reallocate rights set forth in this Agreement.
- K. The Inventor shall assign all patentable inventions created pursuant to Section II.A. 1-2 and any applications or patents resulting therefrom to the University. The Inventor shall execute documents of assignment to convey to the University all the Inventor’s interest in the invention and shall cooperate and assist the University in all phases of the patent application process.
- L. University online courses are delivered through or otherwise incorporate Digital Delivery Infrastructure, at times in combination with third-party software or delivery platforms. The Digital Delivery Infrastructure shall be owned by the University. University online courses may include Digital Delivery Infrastructure as well as Scholarly Work. The copyright to Scholarly Work embodied in online courses shall be owned by Members of the Bargaining Unit.

III. Revenue from Intellectual Property

- A. When a Member of the Bargaining Unit owns the Intellectual Property or Scholarly Work, such Member shall have the right to determine the licensing, marketing and/or use of such work and shall retain all royalties or other benefits from any commercialization of said Property or Work. However, the University shall have a right to use said Intellectual Property or Scholarly Work free of royalties and other charges, unless the employee can specifically demonstrate that such royalty-free use significantly impairs the creator's right to commercialize the property, work, or invention, or unless there is a mutual written agreement between the University and the Inventor or Author regarding shared ownership of the Intellectual Property.
- B. When the University owns the Intellectual Property, the University shall have the right to determine the licensing, marking and/or use of such work and shall retain all royalties or other revenue and benefits from the commercialization of such work, unless there is a mutual written agreement between the University and the Inventor or Author regarding shared ownership of the Intellectual Property.
- C. If the Intellectual Property was developed with support sponsored by government, industry or other external organizations to Stockton University and the sponsor regulates the distribution of income, any applicable regulations or agreement of the sponsor will govern the revenues generated from the Intellectual Property.
- D. Compensation for online courses created by Members of the Bargaining Unit shall be governed by Article XXXIV of the Master Agreement and local agreements on Online Courses.
- E. The University shall determine whether and how to license and/or dispose of its Intellectual Property. Revenue from Intellectual Property owned by the University shall be distributed in accordance with this section and negotiated by the University with third parties in a manner to encourage the development of Intellectual Property within the University. Net Revenues may not include funds received from third parties for research.
 - 1. Revenue offered by third parties to fund research must be declined if the receipt would violate the University's Policies, including but not limited to, Policies and Procedures on Financial Conflicts of Interest in Research.
 - 2. Net Revenue shall be distributed between the Inventor, the Inventor's Program, School, and the University in accordance with the schedule shown in Table I below.
 - 3. Net revenue shall be disbursed in accordance with the applicable license agreement. Inventors shall be permitted to review the University's books and records regarding the calculation and distribution of Net Revenue no more than one time per year, upon reasonable notice to the Provost, and at the conclusion of the University's fiscal year. In the event there is a dispute regarding the calculation of Net Revenue, the dispute shall be resolved between the parties with the assistance of the University's Internal Auditor.
- F. If there is more than one Inventor, the Inventors' share shall be divided equally among all Inventors, unless the Inventors agree in writing to a different distribution in a form acceptable to the University.

Table 1:

Annual Net Revenue	Inventors' Share	Inventors' Program Share	School Share	University Share
First \$20,000	100%	0, 0, 0		

\$20,001-\$500,000	50%	10%, 15%, 25%
\$500,001 + Above	30%	15%, 25%, 30%

IV. Appeals – Intellectual Property Ownership Rights Committee

- A. The Intellectual Property Rights Committee is an ad hoc committee, which shall be called into session by the President or designee at such time when an appeal has been made regarding any disputes under this Agreement, or as provided in Article XXXIV in the Master Agreement. The Committee is composed of four members. The Committee is authorized to consider disputes arising from any provision of this Agreement, including disputes arising under Intellectual Property issues related to Online Courses pursuant to Article XXXIV of the Master Agreement and local agreements on Online Courses.
- B. The President shall appoint the four members of the Committee; at least three of the members shall be Members of the Bargaining Unit. Prior to appointing the three Members of the Bargaining Unit, the University shall consult with the Union. The Committee shall review the dispute, keep a record of its proceedings, and make a written recommendation to the Provost, who shall render a decision on behalf of the University.

The Union may appeal the decision of the Provost within twenty (20) days of the decision directly to binding arbitration pursuant to Article XXXIII of the Master Agreement. Article XXXIII of the Master Agreement provides that submission to binding arbitration will take place pursuant to Article VIII, governing the grievance procedure.

Term

This Agreement shall remain in full force and effect from this date until June 30, 2023 unless modified by changes in the Master Agreement or unless a new MOA replaces this one. The Agreement shall automatically be renewed from year to year thereafter, unless either party shall give to the other party written notice of its desire to terminate, modify, or amend this Agreement. Said notice shall be given the other party in writing no later than 30 days prior to June 30, 2023, or 30 days prior to June 30 of any succeeding year for which this Agreement is automatically renewed.

IN WITNESS THEREOF, the University and the Stockton Federation of Teachers have caused this Memorandum of Agreement to be executed this March 9, 2023.

For: Stockton University



Harvey Kesselman, President

Date: 3/8/2023

For: The Stockton Federation of Teachers



Emari DiGiorgio, President

Date: 3/7/2023