

## **Copyrightable Works Guidelines**

### **Under SJSU Intellectual/Creative Property Policy (F98-3)**

#### **Section 1.0 Introduction**

Under the SJSU Policy on Intellectual/Creative Property (IP Policy), in the performance of scholarly studies and research, faculty, staff, and students may create information products, make discoveries, or invent new and useful devices, processes, and compounds of a marketable nature. The University supports these efforts and seeks to create an environment that:

- a) protects the primary educational goals of SJSU;
- b) encourages research efforts and suitable commercialization by equitably allocating ownership rights among inventors, the University, and research sponsors; and
- c) provides appropriate campus agency to assist bringing inventions to the public market place and promote their greatest public benefit.

SJSU recognizes that ownership rights in intellectual property should remain with the creator whenever possible. At the same time, the University also recognizes there are situations where the University has a vested interest in certain intellectual property rights due to the nature of the creation of the work, use and cost of facilities and/or equipment available to someone because of their relationship with SJSU, or specific contractual agreements.

With regard to copyrights and patents, the IP Policy is intended to foster the traditional freedoms of the University's faculty, staff, and students to do research and publish without sacrificing rights justly due the University and its sponsors and supporters through a fair and reasonable balance of the equities among authors or inventors, sponsors, and SJSU. At the same time, the policy is intended to ensure that copyrightable and patentable materials in which the University has a legitimate interest and obligation to protect and disseminate are utilized in a manner consistent with the University's mission.

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## Section 2. Copyright Ownership

**Author Ownership** - Ownership of copyrightable works produced by authors who are SJSU faculty, staff, or students shall remain with the authors as defined by federal copyright law, except as indicated below.

**Exceptions to Author Ownership:** In the following situations, ownership shall be shared or be vested entirely with the University:

- 1) Agreements with External Parties
- 2) Substantial Support Provided by the University
- 3) Works for Hire (e.g., specific requirement of employment, duties of employment, and compensation by contract).

1) **Agreements with External Parties:** The terms of a University agreement with an external party require SJSU to hold or transfer ownership in the copyrightable work. These terms shall be made known to faculty, staff, and students who will be involved with work of this nature.

2) **Substantial University Support:** Intellectual property resulting from works created with "substantial support" from the University (e.g., development of materials for technology-mediated instruction) shall normally be owned jointly by the authors and the University.

"**Substantial support**" provided by the University can take any or all of the following forms:

- financial support from external grants sought by the University,
- faculty released time, and/or assignment of personnel,
- facilities or equipment significantly in excess of the normal and customary
- uses of University resources from any University department to assist the authors in the development of their materials.

(Note: Sabbatical or difference-in-pay leave: An employee's obligation to teach and/or pursue scholarship or creative work, or to carry out obligations accepted in sabbatical or difference-in-pay leave proposals shall not be interpreted as a specific contractual agreement, nor as extra or "substantial support" unless specified in advance and in writing by all parties involved (from policy introduction.)

### 3) Works for Hire:

**Specific Requirement** - Works created as a specific requirement of employment or as an assigned University duty are "works for hire" and are University property. Such requirements or duties may be contained in a job description or an employment agreement which designates the content of the employee's University work.

**Duties of Employment** - If such requirements or duties are not so specified, such works will be those for which the topic or content is determined by the author's employment duties and/or which are prepared at SJSU's instance and expense, that is, when the University is the motivating factor in the creation of the work.

**Compensated by Contract** - However, SJSU may invite faculty, staff or students to produce specific works for which they are directly compensated by contract. These products are also "works for hire."

## **2.1 Copyright Contractual/Licensing Agreements**

**Rights to Authors (not work for hire)** - As provided above, copyrightable works developed by SJSU faculty, staff or students using University resources usually and customarily provided (such as office space, standard office equipment, or library and lab facilities, and such equipment as appropriate to the discipline in question) are owned by the authors.

**License to University (significant resources)** When authors own the copyright for works created with the use of significant University resources beyond those usually and customarily provided, such works will be licensed under separate agreement to the University and shall grant SJSU the right to use the works in all its programs of teaching, research, and public service on a royalty-free, nonexclusive basis.

**Sponsor Rights** - A sponsor's right to use or own a work created under its sponsorship will be determined by the provisions of its contract with SJSU.

**Prior Agreement for Division of Rights** (From Section 2): The division of rights and responsibilities for each shall be specified in writing prior to the start of a collaboration between the authors and any University office or personnel.

**Clarification on Use of Material** - (From Section 2): If this intellectual property (work created with substantial support) becomes a commercial venture, the agreement between the author(s) and the University shall specify the precise limits to the uses of that property beyond SJSU.

## **2.2 Copyright Administration**

**General Administration** - Matters related to copyright at SJSU shall be administered by the Associate Vice President, Graduate Studies and Research (AVP/GS&R) in conjunction the San Jose State University Foundation. Inquiries pertaining to copyright and/or negotiations regarding the sharing of copyright, proper use of the SJSU name in copyright notices, determination of "substantial support," and the right to any income resulting from the sale of copyright products shall be addressed to the AVP/GS&R.

**Copyright Advisory Committee** - As needed, the AVP/GS&R shall convene a Copyright Advisory Committee consisting of at least one college dean, and two members of the faculty with copyright experience, and such outside expertise as needed.

**Revenue Sharing (when not work for hire)** - When copyrighted material created at the University becomes a commercial venture (i.e., sold, licensed, etc.), the minimum royalty to the author(s) whose intellectual property is not "work-for-hire" shall be 50% of the net income.

**Management of Exclusive Rights by Authors** - Authors who hold exclusive copyright under this policy may offer their work through appropriate formats for instructional and other use either at SJSU or elsewhere. The copyright owner(s) may make separate financial arrangements to receive payments. At the copyright owner's request, revenues generated from this effort may also be administered through the Office of Intellectual Property Development. Fees for this service should be negotiated on an individual basis between the copyright owner(s) and the Office of Intellectual Property Development.