

ARTICLE 39

INTELLECTUAL PROPERTY RIGHTS

- 39.1 The CSU and the CFA recognize both that mutual benefits derive from the ongoing development and dissemination of intellectual properties in the CSU, and that to maximize these mutual benefits this Agreement encourages the allocation of intellectual property rights so as to optimally support the mutual interests of the university, faculty, staff and students. In keeping with this principle, the parties agree to the following provisions of this Article.
- 39.2 All understandings contained herein are entered into both (a) notwithstanding the legal designation of ownership rights to such work of faculty bargaining unit employees, and (b) without prejudice to the future position of either the CSU or the CFA on the subject of whether works created by faculty bargaining unit employees in the course of normal faculty bargaining unit work pursuant to Article 20 of the Agreement constitute “works made for hire.” In addition, nothing contained herein shall be interpreted to be a waiver of the right of either party to assert use rights to, or to assert ownership rights of, any materials created without extraordinary University support by faculty unit employees in the course of normal bargaining unit work pursuant to Article 20 of the Agreement, regardless of whether that party has ever asserted a right of use or ownership in the past.
- 39.3 Faculty bargaining unit employees may use for non-CSU purposes materials created by them without extraordinary University support, if in the past the CSU has never disputed the use of such materials by faculty bargaining unit employees for non-CSU purposes. Such works may include, but shall not necessarily be limited to, class/lecture notes and materials; course syllabi; instructional text and manuscripts; theses and dissertations; articles; non-fiction; fiction; poems; musical works; dramatic works including any accompanying music; pantomimes and choreographic works; pictorial, graphic and sculptural works, or other works of artistic imagination; software; educational software; or plans, patterns and works of art or design including works that are used in connection with online or hybrid instruction, transmitted electronically, and/or stored on CSU or third party provided servers. Unless there is a separate individual agreement or past practice at a campus to the contrary, faculty bargaining unit employees shall be entitled to grant licenses or make assignments with respect to such materials to publishers and publishing agents, or any other third party. Unless there is a separate agreement to the contrary, consistent with this Article, neither the CSU nor third party providers are entitled to grant licenses

- or make assignments with respect to such materials to publishers and publishing agents, or any third party.
- 39.4 By acknowledging in provision 39.3 the historical faculty use of certain works and materials, neither the CSU nor the CFA (on behalf of any individual faculty bargaining unit employee) is waiving the right to assert use rights to, or to assert ownership rights of, materials created or used in existing or new and emerging media of expression, regardless of whether either party has ever asserted a right of ownership in the past.
- 39.5 Except as specified in provision 39.6, this Agreement applies only to those materials created by faculty unit employees in the course of normal faculty bargaining unit work pursuant to Article 20 of the Agreement, and which is created without extraordinary University support, and covers both any materials created prior to the date of this Memorandum of Understanding and any new materials created hereafter.
- 39.6 This Agreement does not apply to those materials created with extraordinary University support, which shall be addressed by separate individual agreements at the campus. Such separate individual agreements shall not be subject to Article 10, Grievance Procedure, of the CSU/CFA Collective Bargaining Agreement.
- 39.7 This Agreement does not apply to materials created while employed in any non-faculty bargaining unit capacity, such as in the employ of any CSU auxiliary organization, even if the materials are created by an individual who is additionally employed in a faculty bargaining unit classification.
- 39.8 This Agreement does not apply to, and therefore cannot supersede, ownership agreements defined in the context of any sponsored grants or contracts.
- 39.9 This Agreement is subject to Article 10, Grievance Procedure, of the CSU/CFA Collective Bargaining Agreement.
- 39.10 Once any separate individual agreement between the University and an individual faculty unit employee has been concluded, it may be examined by the appropriate CFA chapter representative on any campus, provided that such agreement is examined in the presence of the appropriate administrator or designee, that no copies of the agreement are made, and that the CFA does not disclose any information contained in the agreement.