



INTELLECTUAL PROPERTY POLICY

History:

Approved by the Academic Senate 07-08 BEC 4 revised

Amended by 14-15 FAC 11; Senate approved 6/2/15; President approved 7/2/15

California State University, East Bay faculty, students, and staff shall observe all laws pertaining to intellectual property, including patents, copyrights, trademarks, and software.

OWNERSHIP

Those who engage in scholarship and creative endeavors have specific privileges and responsibilities associated with the products of their work. Unless extraordinary university resources were used to develop the work, CSUEB shall observe the general principle that the results of their creations are their property and that the creators have the right of ownership or final disposition of their work.

The University facilitates creative activities among its faculty and students and makes its facilities available for such purposes.

Ownership, while governed by intellectual property laws, may also be governed by contracts, which take precedence over intellectual property laws.

CSUEB and its faculty, students and staff shall comply with intellectual property clauses in employment contracts established with bargaining units and observe CSU documents on intellectual property developed in consultation with faculty.

It is the policy of California State University, East Bay that all rights in copyright shall remain with the creator, unless:

the material is prepared by specific contractual agreement in writing with the university.

If the copyrightable material is prepared as a result of a specific contract/agreement between the creator and the university or its auxiliaries, the contract will specify the product expected, the terms of copyright ownership, and advance distribution of royalties. The university and faculty will establish ownership terms as part of the contract.

the university makes the enterprise possible through extra or special support directly for that purpose

If the copyrightable material is prepared with extra or special support by the university, the product is considered “substantially supported” by the institution because there is additional cost to the institution. That support includes costs which would not have been

In those cases, the university and faculty will

establish ownership terms as part of the arrangements for additional or special support at the time the support is requested.

the effort leading to copyrightable material is sponsored in whole or in part by a third party, but only as may be required by the third party

If obligations to third-party sponsors are incurred as part of the activity that generates copyrightable material, prior agreement regarding copyright ownership is essential and must be negotiated before that sponsorship is accepted by the university or its auxiliaries.

An employee's obligations regarding teaching, scholarship, or creative work, or obligations related to sabbaticals, difference-in-pay, or RSCA leave proposals shall not be interpreted as a specific contract nor as additional university support, unless specified in advance and in writing by all parties. In addition, materials customarily created within and for teaching assignments are not subject to university claim of copyright unless all parties agree in advance and in writing.

Contracts and agreements must be reviewed by appropriate parties prior to closure or signature. Reviewers must include designated university personnel, particularly those responsible for research and sponsored programs, to ensure compatibility with other contracts and relevant federal regulations. The contract will specify the expected outcome, ownership terms, and arrangements regarding distribution of royalties.

In cases where the university retains ownership, the university name will be specified as follows:

Copyright [year], California State University, East Bay. All rights reserved.

In cases of joint ownership, the specification will be as follows:

Copyright [year], California State University, East Bay and [name(s) of other owner(s)].

As a general principle, CSUEB advises individuals and organizations to clarify conditions and clauses prior to beginning work.

USER RIGHTS

Where appropriate and for educational purposes, as such purposes are defined by law, CSUEB and its faculty, students, and staff shall exercise fair use rights in regard to copyright.

Where particular laws require formal compliance structures, CSUEB will ensure that those structures are in place to enable faculty, students, and staff to exercise the rights included in those laws.

Copyright information will be provided on an appropriate web site and access to legal advice for copyright issues related to CSUEB matters will be provided by the campus or through the California State University system.

ADMINISTRATION AND EDUCATION

The Office of the Provost and Vice President for Academic Affairs will administer the policy and will respond to queries regarding intellectual property issues, particularly as regards negotiations and income rights.

Procedures and ap

There are many other rights – world rights, rights for the publisher to create other types of media (audio, visual, electronic, etc.). Unless you have created a multimedia work, you will likely encounter these conditions more in the commercial publishing world than in the scholarly one (there are exceptions, however).

The worlds of music and multimedia are different from text (see below). Owner rights are much more “locked down” and the copyright conditions for use are more complicated and, generally, more stringent. Music guidelines for creators are more developed than multimedia guidelines for creators. Further, with multimedia, slightly different guidelines are

There are four factors to consider individually and then as a whole. They are *purpose*, *nature*, *amount*, and *effect*. To quote from the 1976 law:

1. the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

Here are the steps to implement a fair use evaluation:

1. Determine your *purpose*. In the academic world, this is relatively easy. It's non-profit and educational, which works in favor of fair use.
2. Determine the *nature* of the work. This is a little more complicated. If you are using *factual* material, you have more rights than if you are using *fictional* material.
3. Determine the *amount* you will use. This is obvious in one way and not so obvious in another. The classroom guidelines, for example, are the oldest guidelines for the 1976 law and what people tend to remember from them is the 10% "rule"; however, this is a *guideline*, not the law. You are asked to determine, in each case, a *reasonable* amount. Sometimes that can be more than 10%, sometimes less. There are guidelines for poetry and other types of textual creations in print form.
4. Determine the *effect* on th

What is the DMCA and how does it affect me?

Much of the Digital Millennium Copyright Act helps Cal State East Bay in its role as an online service provider, offering immunity from liability under certain circumstances. There is also an anti-circumvention provision designed to stop piracy of digital works, but which increases restrictions on access to copyrighted works and erodes fair use rights. If the material is behind a technological “key” and it’s illegal to go around it to exercise your fair use rights, you no longer have any. Basically, you have to negotiate a contract to use that information. Every three years, the United States Copyright Office must review exemption possibilities and one exemption, instituted in 2006, was to allow an “educational library of a college or university’s film or media studies department” to circumvent technology to make “compilations of portions of [audiovisual] works for educational use in the classroom by media studies or film professors (United States Copyright Office, Statement, 2006). It’s a small and limited step, but it’s a step even though it’s only in place until the next review in 2009.

See: <http://www.copyright.gov/legislation/dmca.pdf>
(DMCA summary, U.S. Copyright Office)

See: <http://www.copyright.gov/1201/>
(Rulemaking on Exemptions, Nov 2006, U.S. Copyright Office)

What is the public domain? What is the length of copyright?

Some things are never under copyright. You can’t copyright ideas, only their *expression*. You can’t copyright facts, titles, names, short phrases, or slogans, although some are protected through patents or trademarks. There is not copyright on work created by United States federal government employees if that work is created as a direct result of their jobs.

The public domain includes all of the above plus older works where the copyright has expired; and anything that’s not “*in a tangible medium of expression,*” such as an extemporaneous speech that *remains unrecorded*.

Figuring out the length of copyright can be tricky and the length of copyright keeps extending. At the moment, it is the life of the author plus 70 years, but there are other conditions, e.g., corporate creations, works for hire, or anonymous or pseudonymous works. In those cases, the length of copyright is 95 years from the date of first publication or 120 years from the date of creation, whichever expires first. Of course, there is always copyright renewal as well, thereby lengthening things further. In the United States, if it’s published before 1923, you can safely consider it in the public domain.

See:

See: <http://www.pdinfo.com>