

SP 2021 Intellectual Property Task Force Recommendations

Faculty Council Intellectual Property (IP) Task Force

Submitted: April 12, 2021

Intellectual Property Task Force Focus: CSU-FC Faculty Teaching Materials

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The SP 2021 Intellectual Property (IP) Task Force was formed early in the spring semester to continue work from the FA 2020 IP Task Force. The FA 2020 IP Task Force identified IP concerns around faculty teaching materials. The final report and recommendations from the FA 2020 Task Force are appended at the end of this report ([Appendix 1](#)).

Based on the FA 2020 report and the charge to the SP 2021 IP Task Force, we identified four topics to focus on for SP 2021. These four topics were: Changes to AFAPM Section J, Online Teaching Contracts, Copyright and Intellectual Property Educational Needs, and Tracking of the FA 2020 IP Task Force recommendations. Our report is structured with those four topics, below. We particularly want to highlight our recommendation to change the Section J definition of “University Resources” and our recommendation for co-development of default language and policy for teaching contracts by a faculty and administrative committee. Redefining University Resources in Section J is important as this definition has historically been used to share intellectual property rights implicitly (e.g., through CANVAS), which led to questions and the forming of the IP Task Forces. Beyond this implicit ambiguity of ownership of intellectual property rights, teaching contracts have been used to explicitly transfer ownership of intellectual property rights causing problems and thus the need for contract language and policy to be co-developed by both faculty and the administration in the spirit of shared governance.

A) Recommended changes to Section J.

1. In AFAPM [Section J.2](#), we strongly recommend changing the category of “University Resources” to “Extraordinary University Resources” with an appropriate change in definition. The CSU definition does not recognize the current work practices of faculty (e.g., often from home, often online), nor is the definition flexible to accommodate future changes. The current definition has been used to implicitly share intellectual property rights (e.g., through CANVAS) and has led to problems. Further, the CSU definition of University Resources in J.2 is antiquated by referring to an office and microprocessor (also see J.4.c).

After examining examples of Intellectual Property policies from other universities (e.g., Cal Poly, Boston University, Fordham University, Penn State), we note that some universities use ‘Extraordinary University Resources’ to indicate the special cases where the University would

retain ownership or rights over the intellectual property of faculty and others. We recommend that CSU make this change as well. We suggest consulting the IP policies of [Cal Poly](#) (we note that Provost Pedersen has previous experience with this university) and [Fordham University](#). The Cal Poly statement focuses on a broad definition of Extraordinary Resources and pragmatically defines what are not Extraordinary Resources. Both Fordham University's and Cal Poly's definitions specify that resources commonly available to faculty on or off campus are not extraordinary.

- a. Suggested definition that combines elements of the CSU, Cal Poly, and Fordham definitions: **Extraordinary University Resources** refer to resources such as financial, technical, personnel, or additional forms of support provided by the University which exceed the type or level of resources typically provided to similarly situated Members. Considering the benefit that accrues to the University from individual scholarly activity, the University has concluded that Extraordinary University Resources shall not include the Member's time, office space, computer, use of the library, courseware, or any commonly available resources available on or off campus.
 - b. Like the use of CANVAS, use of Echo 360, Kaltura, TILT, etc. should not imply a sharing of intellectual property rights. The definition of "Extraordinary University Resources" should address this concern.
 - c. **Implementation suggestion:** Possibly have CoRSAF examine and formally propose a change to this definition in Section J.2.
2. Add to Section J that any claim of Members' use of Extraordinary University Resources needs to be made in advance with a written agreement. We believe that ambiguity exists and has led to many of the recommendations from the FA 2020 Task Force as well as the Provost to clarify that CANVAS is not a University Resource. [Fordham University](#) includes such a statement in their IP Policy that could be used as a model. Suggestions in the Contract and Education sections of our report (below) can also reduce ambiguity and misunderstandings.
 - a. **Implementation suggestion:** Possibly have CoRSAF examine and formally propose this addition. Such a statement might be included in the definition of Extraordinary University Resources in Section J.2.
3. In terms of Intellectual Property, we recommend that the 'expression of a course' be explicitly separated from a course number or syllabus approved by a Curriculum Committee. For clarity, a statement such as 'Faculty and other instructors retain all Intellectual Property rights related to the 'expression of a course' such as recorded and live lecture materials, recorded class content, course design, and other Member-created course materials whether the course is credit-bearing or not (e.g., continuing education or professional development). We believe that some IP confusion and ambiguity exists among administrators that conflates a university course number/syllabus with actual content/expression of a course.
 - a. **Implementation suggestion:** Possibly have CoRSAF examine and formally propose clarification which could include changes to J.1, J.3.1, and J.12.
4. Section J should explicitly state IP policies as they relate to different Members, including graduate students and undergraduate students. For example, implicitly, CSU has no claim to IP produced by non-employed students in J.1 (but see J.12.1 for an explicit statement). Fordham and Cal Poly policies can be consulted for examples that provide clarity.
 - a. **Implementation suggestion:** Possibly have CoRSAF examine this issue with respect to Section J. However, this issue might be larger than it first appears. For example, an

examination of this issue could open a discussion around the use of plagiarism detection services such as TurnItIn and student IP. Section J.12.1 may not allow CSU to submit student work to private companies such as TurnItIn that incorporate such student work into their databases.

5. Policies for dealing with IP disagreements (Section J.11 – Member’s Right to Appeal) need to be updated.
 - a. We recommend that a process similar to Cal Poly’s (i.e., “The Intellectual Property Review Committee will be responsible for assessing the University’s contribution to a specific intellectual property in cases of disagreement between the inventor/creator and the University concerning this contribution.”) be implemented and Section K be updated appropriately. This change to J.11 and Section J.2 (Definitions) would clarify that faculty and other instructors retain all Intellectual Property rights related to the ‘expression of a course’ and that disagreements are handled within a shared-governance committee. Also of note:
 - i. Neither “Intellectual Property” nor “Copyright” occur in Section K.
 - ii. Section J defines Members as Faculty, Administrative Professionals, State Classified, Student employees and other professionals; but Section K is only for Faculty and Administrative Professionals. State Classified and student grievance procedures should also be referenced. Also note our concern in A.4, above, that students and student rights should be better covered in Section J.
 - b. **Implementation suggestion:** Possibly have CoRSAF examine this set of issues and formally propose a change in Section J.11 and/or Section K.
6. Overall, we find Section J to be complicated and recommend that Section J needs revision to become direct and transparent. For example, ambiguity in Section J led to the creation of the IP Task Forces and the need for the Provost to clarify issues around IP and the use of CANVAS to the CSU community. Some antiquated language in Section J also needs to be updated (e.g., revise “handicapped students” to “students with disabilities” or “Members with disabilities”). As our Task Force has read CSU’s Section J, as well as Cal Poly and Fordham’s policies, we see that such policies can be direct, transparent, and contemporary.
 - a. **Implementation suggestion:** Possibly have CoRSAF examine Section J as a whole for directness and clarity and compare to Cal Poly’s and Fordham’s policies as examples for improvements. We also note that such comprehensive changes to Manual Sections can get bogged down and not happen (e.g., Section J has not been revised since 2000), so we make this suggestion last as we think the above suggestions are important enough to be changed in the interim as a larger Section J rewrite is considered. Also see issue B.1.n, below.

B) Online Teaching Contracts

1. In the spirit of shared governance, a committee representing faculty and administrative viewpoints should develop default contract language and policies regarding teaching (especially online) and associated intellectual property rights. Teaching contracts, especially for CSU Online, continue to cause concern and uncertainty. Similarly, online course development contracts for CSU Online have also raised questions and ambiguities. The Provost’s statement to Faculty Council on March 2, 2021 indicated that loading teaching material in CANVAS does not automatically share intellectual

property rights unless signed contractual agreements specify otherwise. This statement, as well as recommended changes to Section J above, suggest an evaluation of teaching course development contracts is needed. Below are issues and questions identified by our Task Force for this committee to consider:

- a. Incorporating best practices from the [AAUP Distance Education Policy and Contract Language](#).
- b. Relinquishing, or sharing, intellectual property should not be the default, especially with respect to CCAF or CSU-Online teaching assignments.
 - i. CCAF may be particularly vulnerable to being forced into a default sharing/taking of IP rights.
- c. CSU-Online includes an appendix in some contracts concerning intellectual property rights of which some signatories may not be aware (also see Education Needs below).
- d. CSU-Online also includes language concerning IP for non-credit, or Continuing Education courses, that may be inappropriate and should not be the default.
- e. Clarify contract language referring to Members who develop online courses as subject matter experts (SMEs) given that, in practice, Members often serve as SMEs while also creating the majority of the “expression of the online course” which appears to differ from broader industry use of “SME” and “instructional designer.”
- f. Are default contracts time-limited (e.g., could course materials be used for lengthy periods without relevant updates)?
- g. Do Members get to choose in their contract whether contracted course materials, including their likeness (voice and images, e.g., pre-recorded video lectures), can continue to be used only within a specified time period?
- h. Are there adequate training/educational materials for Members to engage with to be well-informed about their IP rights and relinquishments related to course development contracts? Also see Section C, below.
- i. Members, not Department Heads, should sign online course development contracts.
- j. IP contracts should also not be signed by Department Heads in lieu of the Member.
- k. Joint work and work for hire also need be explicit in default contracts.
- l. Default contracts should not be in perpetuity and have sunset dates or options, especially for revising course materials and to address evolving teaching practices.
- m. Revenue sharing with Members (e.g., J.8.1) should be explicit in contracts.
- n. Section J.12 probably speaks to many of the above issues, but clarity is needed. For instance, the Division of Continuing Education (DCE) is referenced in Section J, however, many Members may not understand that CSU-Online is part of DCE. CSU-Online is also not specifically mentioned in Section J, even though many issues around teaching IP concern CSU-Online. Also see recommendation A.6 above.
- o. **Implementation suggestion:** Possibly have the Provost’s Office and Faculty Council form a joint committee to address these issues. Note that Lisa Daunhauer from this Task Force could be asked to serve on such a joint committee to provide continuity.

C) Copyright and Intellectual Property Educational Needs

1. Much training and education around intellectual property is critically needed, especially considering recent statements by the Provost, the number of online courses taught in the past year, and reliance on CCA faculty for teaching. Training is needed for faculty, staff, and administrators. Some educational material and strategies are conditional on changes to Section J. Below, we note strategies and concerns that can be built upon.
 - a. CSU has [copyright educational material](#) available to faculty. Such resources can be expanded.
 - i. Creative Commons licenses should be highlighted in educational material.
 - ii. Implications concerning taxes related to contracts, works-for-hire, etc. should be a part of educational materials.
 - iii. Educational materials elucidating author rights and the interplay between signing agreements or contracts which transfer some or all of an author's rights over to a third party. As a start see [Tools for Retaining Copyright](#) on the CSU Library web page
 - iv. Section J and Contract education are needed.
 - b. The need exists for a centralized IP place with:
 - i. User-friendly, lay-person, language
 - ii. One-page summaries
 - iii. FAQs
 - c. Training and educational opportunities
 - i. Every Faculty Member should be pointed to IP material
 - ii. Professional Development Institute sessions on copyright have occurred. Such sessions could be expanded, offered at other times, or offered asynchronously.
 - iii. CSU IP policies should be part of new employee and onboarding training/education
 - iv. Teaching-related administrators and staff should also be aware of intellectual property issues and changes to policy.
 - v. Graduate students should receive education materials about their IP.
2. Administrators and IT personnel need to be careful about violating intellectual property rights. For instance, automatically inserting a "CSU-Online" branding at the beginning of a lecture video is a violation of copyright, unless the author has granted permission (e.g., through a specific Creative Commons license).
3. **Implementation suggestion:** Khaleedah Thomas (on this Task Force) is CSU's Copyright Librarian and could be asked to lead an effort to develop an educational strategy and materials.

D) Status of the FA 2020 Task Force recommendations

1. **Removal of IP legacy statements regarding teaching materials.** New statements should point to Section J in the Academic Faculty & Administrative Professional Manual.
 - a. **Status:** *Such statements have been removed from CSU web sites. If additional statements are found, contact Brandon Bernier.*
2. **Take "stop gap measures" until Section J is revised.** The IP Task Force recommends that Provost Mary Pedersen send a statement prior to beginning of spring 2021 semester that indicates teaching/learning materials uploaded to CANVAS prior to and during pandemic will continue to be the sole ownership of faculty unless differing contractual agreements have been agreed to and/or signed by both parties.

- a. **Status:** *Provost Pederson made such a statement at the March 2, 2021 Faculty Council meeting.*
- 3. Be transparent with faculty about IP issues under discussion. Educate them about rights of their IP teaching materials.
 - a. **Status:** *The continuation of a Faculty Council IP Task Force helps with transparency. Education is still a topic of concern and the need is highlighted in Section B of this (SP2021 IP Task Force) report.*
- 4. Give new charge to Faculty Council Standing Committees and IP Task Force re: Section J revisions and study of IP models at other institutions regarding teaching materials.
 - a. **Status:** *See Section A of this report for recommended revisions to Section J based on other institutions' IP policies. We suggest the IP policies from Cal Poly and Fordham University are especially relevant.*
- 5. Request follow-up meeting with Provost Pedersen, Sue James, Sue Doe, and IP Task Force to discuss next steps for 2021.
 - a. **Status:** *Faculty Council Chair Sue Doe met with Provost Pederson and Sue James and the Spring 2021 IP Task Force continued work from the Fall 2020 Task Force.*
- 6. Work with Sue James, Vice Provost for Faculty Affairs, regarding IP training for department heads.
 - a. **Status:** *Section C of this report makes a similar recommendation concerning education of the CSU community. Some education materials are conditional on Section J changes (Section A) and contract clarifications (Section B).*
- 7. Work with Brandon Bernier, VP of Information Technology to educate college reps on Section J and IP teaching materials.
 - a. **Status:** *Section C of this report makes a similar recommendation concerning education of the CSU community. Some education materials are conditional on Section J changes (Section A) and contract clarifications (Section B).*
- 8. Offer campus-wide learning about IP issues. Educate students, GTAs, faculty, and staff about intellectual property re: teaching materials.
 - a. **Status:** *Section C of this report makes a similar recommendation concerning education of the CSU community. Some education materials are conditional on Section J changes (Section A) and contract clarifications (Section B).*
- 9. Work with CSU System IP experts to determine if common language should be used across the system.
 - a. **Status:** *No progress has been made.*
- 10. Invite and involve faculty in the evaluation of contractual language used at CSU regarding IP of teaching materials.
 - a. **Status:** *Section B of this report starts to address contractual language. More work is needed.*
- 11. Work with CSU Online regarding contractual language re: IP of teaching materials.
 - a. **Status:** *Section B of this report starts to address contractual language. More work is needed.*

Fall 2020 IP Task Force Additional Issues and Comments to be Considered

- 12. Putting material in CANVAS should not result in giving up, or sharing, copyright or intellectual property rights.
 - a. **Status:** *The statement from Provost Pedersen at the March 2, 2021 Faculty Council meeting agreed with this point. Suggested revisions to Section J (in Section A of this report) should codify this stance.*

13. IP rights belong to the faculty member who developed the materials unless express permission is given regarding use.
 - a. **Status:** *The statement from Provost Pedersen at the March 2, 2021 Faculty Council meeting agreed with this point. Suggested revisions to Section J (in Section A of this report) should codify this stance.*
14. If a faculty member is paid for developing course materials, do they retain their IP rights for said materials? It depends on the agreement and/or contract.
 - a. **Status:** *Contracts, language in contracts, and resolving conflicts with contracts needs more attention and education (Sections B and C of this report).*
15. Which CSU IP statement regarding teaching materials should be consistently cited? Section J in the *Academic Faculty & Administrative Professional Manual*.
 - a. **Status:** *The Faculty Manual applies to the entire CSU campus and education around this fact is needed (Section C of this report).*
16. Do IP rights relate to CSU staff teaching courses as well as graduate and undergraduate student work? Yes. Such statements need to be added to Section J.
 - a. **Status:** *Additional language is still needed in Section J around student IP.*
17. Are administrators, faculty, staff and students educated on IP rights regarding teaching materials? Not consistently.
 - a. **Status:** *Education around IP issues is needed for the entire CSU community. Section C of this report helps make progress on this issue.*
18. If faculty members use TILT course developers, are they sharing their IP rights? Typically not.
 - a. **Status:** *The revisions in Section J (Section A of this report) define "Extraordinary University Resources" and such a definition would make clear that TILT resources are not extraordinary.*
19. If faculty use etextbooks, do they know that uploading their teaching materials to the publisher may compromise their IP rights? Not consistently.
 - a. **Status:** *Education around Intellectual Property is an ongoing concern and is highlighted again in Section C of this report.*
20. Does CSU own the course taught by a faculty member? It is perceived that CSU "owns" the course that is approved by the University Curriculum Committee, but not the "expression of the course". Individual faculty members' interpretations of a course remain their own material. If a faculty member puts intellectual effort into the course, those materials belong to the faculty member. They are not co-owned.
 - a. **Status:** *"Expression of the course" might be a key phrase to work into Section J as well as educational material for faculty, supervisors, etc.*
21. In Section J, the faculty member's office is referenced. Where is the faculty "office"? With remote teaching, the faculty office could be anywhere.
 - a. **Status:** *The recommended change to Section J (in Section A of this report) would address this issue and get rid of antiquated references to offices and microprocessors.*

Intellectual Property Task Force Recommendations

Faculty Council Intellectual Property (IP) Task Force

Submitted: December 31, 2020

Intellectual Property Task Force Focus: CSU-FC Faculty Teaching Materials

Tim Gallagher, Past Chair, Faculty Council

Paul Doherty, Previous FC BOG Representative

Stephanie Clemons, FC BOG Representative; Chair, IP Task Force

Meetings

October 19, 2020	Informal IP Discussion with Provost Mary Pedersen and Sue Doe, Chair
December 9, 2020	Meeting with Provost Mary Pedersen, Sue James, Vice Provost for Faculty Affairs, Sue Doe, Chair of Faculty Council, Chris LaBelle, Interim Director, CSU-Online, Brandon Bernier, VP of Information Technology
December 15, 2020	Faculty Council Executive Committee
December 17, 2020	Meeting with University Distinguished Scholars (UDTS)

After task force meetings, study of national issues, and additional meetings with those groups listed above, the IP Task Force offers the following recommendations. Please note that the IP Task Force believes this is a time-sensitive matter that needs immediate attention.

7. **Removal of IP legacy statements regarding teaching materials.** New statements should point to Section J in the Academic Faculty & Administrative Professional Manual. *Action in process.*
8. **Take “stop gap measures” until Section J is revised.**
 - a. The IP Task Force recommends that Provost Mary Pedersen send a statement prior to beginning of spring 2021 semester that indicates teaching/learning materials uploaded to CANVAS prior to and during pandemic will continue to be the sole ownership of faculty unless differing contractual agreements have been agreed to and/or signed by both parties.

Faculty teaching materials (e.g. lectures, PPTs, assignments, projects, exercises) belong to faculty. It is their decision who uses their intellectual materials. Faculty generously responded to the need – without considering loss of IP – to shift teaching materials onto CANVAS for students who 1) needed accommodations, 2) could not attend F2F, 3) were residing in other countries, and 4) who contracted COVID. Faculty also showed great trust in administration by voting to shift all courses remote, which involved CANVAS, due to the pandemic without consideration of their intellectual property re: teaching materials. It seems unwise and not forward-thinking to realize the ramifications to our students if faculty pull their materials off CANVAS post a link to materials located on

another storage device. CSU will get ahead of the “IP teaching materials” issue by taking this stop gap measure.

- b. Be transparent with faculty about IP issues under discussion. Educate them about rights of their IP teaching materials.
9. Give new charge to Faculty Council Standing Committees and IP Task Force re: Section J revisions and study of IP models at other institutions regarding teaching materials.
10. Request follow-up meeting with Provost Pedersen, Sue James, Sue Doe, and IP Task Force to discuss next steps for 2021.
11. Work with Sue James, Vice Provost for Faculty Affairs, regarding IP training for department heads.
12. Work with Brandon Bernier, VP of Information Technology to educate college reps on Section J and IP teaching materials.
13. Offer campus-wide learning about IP issues. Educate students, GTAs, faculty and staff about intellectual property re: teaching materials.
14. Work with CSU System IP experts to determine if common language should be used across the system.
15. Invite and involve faculty in the evaluation of contractual language used at CSU regarding IP of teaching materials.
16. Work with CSU Online regarding contractual language re: IP of teaching materials.

Issues and Comments to be Considered

The IP Task Force identified several issues during their study of CSU IP statements re: teaching materials. Following are a few issues identified with suggested comments. As Section J is revised, these issues and comments may be considered.

Issue: As more faculty move teaching materials onto CANVAS, do they share their IP rights? No. Canvas is a “delivery system”. Assignments, quizzes and other teaching/learning materials are created on faculty computers and then uploaded to CANVAS for use by students. Faculty-developed materials “reside” on Canvas.

Issue: What is the relationship between CANVAS, teaching materials and intellectual property?

- CANVAS is a delivery platform for faculty teaching materials developed elsewhere.
- CANVAS is an organizational platform. Faculty organize their classes on CANVAS.
- CANVAS is a type of virtual classroom similar to ZOOM. Faculty use ZOOM to deliver their classes, but the teaching materials do not belong to ZOOM.
- CANVAS may be compared to an email system. Faculty may use an email to deliver teaching content to their students but faculty do not develop the teaching materials in email.
- Bottom line: Faculty deliver teaching materials via CANVAS; not develop them in CANVAS. Teaching materials uploaded to CANVAS are the intellectual property of the faculty member or members who created them.

Issue: Will faculty IP rights be compromised if Canvas courses are rolled forward by a different faculty member without permission from the original faculty member? Yes. What about after retirement or if a faculty member takes a position at another institution? The IP rights belong to the faculty member who developed the materials unless express permission is given regarding use.

Issue: If a faculty member is paid for developing course materials, do they retain their IP rights for said materials? It depends on the agreement and/or contract.

Issue: Which CSU IP statement regarding teaching materials should be consistently cited? Section J in the *Academic Faculty & Administrative Professional Manual*.

Issue: Do IP rights relate to CSU staff teaching courses as well as graduate and undergraduate student work? Yes. Such statements need to be added to Section J.

Issue: Are administrators, faculty, staff and students educated on IP rights regarding teaching materials? Not consistently.

Issue: If faculty members use TILT course developers, are they sharing their IP rights? Typically not.

Issue: If faculty use etextbooks, do they know that uploading their teaching materials to the publisher may compromise their IP rights? Not consistently.

Issue: Does CSU own the course taught by a faculty member? It is perceived that CSU “owns” the course that is approved by the University Curriculum Committee, but not the “expression of the course”. Individual faculty members’ interpretation of a course remains their own material. If a faculty member puts intellectual effort into the course, those materials belong to the faculty member. They are not co-owned.

Issue: In Section J, the faculty member’s office is referenced. Where is the faculty “office”? With remote teaching, the faculty office could be anywhere.