

Summary of Key Issues in Formal Review of proposed Policy on Ownership of Course Materials

1. Designated Academic Appointee
2. Standing Committees
3. Definition of Syllabus
4. Exceptional University Resources
5. Need for an agreement between parties in advance

1. Designated Academic Appointee

UCSF: Clinical Professors and Professors of Clinical X are not explicitly listed in Section B, Part B, Subsection 1. It may be that the “professor” series listed in this paragraph includes Clinical Professors and Professors of Clinical X. If this is the case it should be clarified. If this is not the case then these two series should be listed explicitly.

“Designated Academic Appointees” should include the full spectrum of academic employees. The current listing of “designated academic appointees” is somewhat narrow and should be expanded – perhaps to include all Academic Senate Members and Clinical and Adjunct faculty.

UCD: ... There are important areas that are not covered--those areas are emphasized in the third paragraph of Provost King's letter to the Chancellors, and in the "Designated Academic Appointees" paragraph of the Committee Report.

UCR: Definition of “academic appointee” seems vague. Had a particular problem with the language of “Appointees in other academic titles may also be designated by the appropriate Chancellor or Vice President as having the obligation to produce scholarly/aesthetic works.” Raised a question in relation to Lecturers: “Lecturers can propose courses. What are Lecturers’ legal right with respect to these language?”

UCSB: A second major concern expressed by another unit on our campus was the exclusion of lecturers from the proposed policy. I am attaching the comments from Professor Susan H. McLeod, Director of the Writing Program, in which she details a series of issues regarding the proposed Policy on Ownership of Course Material and Unit 18 lecturers. Her principal concern is that Unit 18 lecturers are not in the list of “Designated University Appointees.”

UCB: Lecturers and Graduate Student Instructors (GSIs) should have rights similar to those of faculty. The policy addresses only the rights of Designated Academic Appointees. Lecturers and GSIs remain covered by the 1992 Policy on Copyright Ownership, under which course materials developed by them is considered Institutional Work owned by the University. Lecturers and GSIs acting as primary instructors should have rights similar to those of Designated Academic Appointees. We recognize that this is a complicated matter likely to involve collective bargaining agreements, but we endorse the principle that if two

individuals are doing the same work, their rights should be similar even if their job titles are not. At UC Berkeley, Lecturers are among the principal innovators and developers of educational technology: For example, they are the engines behind ambitious, visible, and successful instructional technology projects in Chemistry, Computer Science, and Interdisciplinary Studies.

UCI: The term “designated academic employees” raised some comment. Specifically, the definition in the existing copyright policy that includes “Professor series, In-Residence series, and Professional Research series” leaves many UC employees unmentioned. This raises questions about whether several categories of employees (which logically should be covered by the policy) are, or are not included, such as non-Senate academics (lecturers, visitors), students, including graduate students who teach. Of course, non-academic employees also are not covered by this policy which may leave a gap. We recognize that some of these groups are represented by collective bargaining agreements, or employment contracts that would have to be altered, amended, or re-negotiated.

Ac. Council: include in the category of “designated academic appointees,” Lecturers SOE and Clinical X faculty. The Academic Council understands that certain considerations may make this change inadvisable in the present draft, but strongly recommends that such policy be drafted as the Committee on Copyright’s next order of business.

2. Standing Committees

LBNL: We approve of the Policy, but as I mentioned in a recent telephone conversation with you, we have a suggested revision for the National Labs (Lawrence Berkeley National Laboratory, Lawrence Livermore National Lab, and Los Alamos National Lab.)

As you know, the Labs do not create and provide academic courses as a primary activity, and the great preponderance of work performed at the Labs is under contract with the US Department of Energy, with ownership of works covered by the contract and/or the intellectual property acknowledgment signed by employees and guests. Therefore we expect only the most occasional case to arise, and so do not see the usefulness of a standing Course Materials Policy Committee (Section IV). Rather we propose to have a Point of Contact at the Labs who can put together a review committee should a case arise. For Berkeley Lab we would designate Karl Olson, our Conflict of Interest Coordinator, as our Point of Contact for this Policy.

UCR: On the campus level, the advisory committee assigned to assist the EVC with policy interpretation should be regulatory, not ad hoc.

UCSB: One suggestion from one of our reviewing units is that instead of requiring each campus to establish a “Course Materials Policy Committee,” the decision be left up to each individual campus as to whether they need such a committee or not. For example, some campuses do not have a high activity level

with respect to the commercialization of course materials while this may not be true for other UC campuses. Thus from a resource standpoint, the instituting of a Course Materials Policy Committee may not be needed on some campuses.

On the other hand, this reviewing unit points out that “It may be beneficial to one or more campuses with active licensing programs to delegate these decisions to one office or senior administrative position, to allow for efficient administration of the policy and its reporting requirements and to meet the needs of the commercial sector.”

UCSC: Given the potential for each campus’s Course Materials Policy Committee to develop differing interpretations of what constitutes “Exceptional University Resources” and who shall control the use of course materials created using these resources, what result for a faculty member teaching a Distance Education Course online to students registered at multiple campuses – which campus’s policy shall apply?

Ac. Council: the Council does not see the need to establish a standing Committee on Copyright [sic], and advises rather that an existing Senate body conduct reviews of copyright issues.

If the workload associated with the initial implementation of this new policy is expected to be too heavy and the creation of a separate body seems advisable, it should be appointed for a determinate time period and a sunset clause should provide for the reversion of its responsibilities to the appropriate Senate body.

UCFW: UCFW questioned whether the establishment of yet another committee is advisable. Since a majority of the members of this body would in any case be appointed by the divisional Academic Senate, would it not make more sense to add these new responsibilities to the charge of the existing committees charged on each campus with the oversight of curricular matters (variously the Committee on Educational Policy, the Committee on Courses, and/or the Committee on Graduate Education)?

UCPB: The proposed policy is unclear as to whether the Course Materials Policy Committee has the power to arbitrate after-the-fact disputes about whether “extraordinary resources” are involved in a project and thus whether joint ownership has been created. Such disputes would not arise if our suggested revisions are adopted: the University would have no claim to joint ownership unless there were agreement in advance about the conditions under which its “extraordinary” investment was made. The role of the Course Materials Policy Committee would then be to advise the University prospectively about when an extraordinary use of campus resources should be conditioned on acquiring a share of intellectual property. These policies should be published in advance, and a campus administration should be permitted to make such “extraordinary” investments only in accordance with these policies. In the event of a question

about whether “extraordinary resources” are involved in a project or whether the project qualifies for such resources under the guidelines established by the Committee, the Committee should be consulted before the investment is made.

3. Definition of Syllabus

UCR: The definition for syllabi ought to be more explicit—would like to define “syllabus” as “a particular faculty member’s implementation of the course”. Concern was raised about the ownership of the syllabi as proposed by the policy— suggested that the syllabus should be the exclusive intellectual property of the professor.

UCPB: When a Course Syllabus constitutes an original work, the intellectual property belongs, as a matter of federal law, to the faculty member who created it. The interests of the University in continuing to offer an approved course, however, have little relation to whether or not the materials originally submitted for approval were themselves copyright protected. In either case, the University expects to reproduce the approved course description in the course catalogue, and to make limited, non-exclusive use of the Course Syllabus (as defined in connection with a basic course outline) for the purpose of teaching the course on an ongoing basis. We believe, however, that the University’s expectations in this regard derive from its ordinary procedures for course approval, and should not be expressed in the language of copyright law. Nothing is lost by deleting the language of “licensure” from the proposed policy on the future use of the materials submitted as part of the proposal for a course.

At the same time, we believe it is important as a matter of academic integrity to clarify that a faculty member who creates a Course Syllabus has the right to require, upon request, that his or her name be removed from the Course Syllabus and course outline when used by other faculty members. Our proposed modifications in the attached [policy] also address this point.

UCI: There is a continuing concern over the use of the word “syllabus.” While the term is carefully defined in the “definitions” section of the draft policy its use in the first paragraph of the policy raised some comment and confusion. It might be a good idea not to use the term and simply spell out the elements (brief description, learning objectives, and topical outline) or substitute another term (“standard minimum academic approval information”).

4. Exceptional University Resources

UCR: Concern over the language that “course materials created using “extraordinary university resources” may be appropriated by the University”: What constitute “extraordinary university resources?” Do “mini-grants” designated for course development fall under “extraordinary university resources”? If a faculty member includes his/her individual research into the classroom, will he/she cede the rights to the research findings beyond the senate-approved syllabus? What about work jointly authored/researched by graduate

students and professors—will the university claim ownership under the policy since graduate students may be viewed as “extraordinary resources” provided by the university?

UCSC: Some suggest that the definition of Exceptional University Resources is too vague to be functional. Since the default as to ownership rights (of course materials) turns on this definition, it seems imperative that guidance beyond delegating the task to the proposed Course Materials Policy Committee be provided.

UCFW: Our committee continues to feel that some further specification of the category of “exceptional resources” is called for. At the very least the policy should include an explicit statement that summer salary and Instructional Improvement Grants do not fall into this category. Resolving these issues in advance would avoid fruitless conflict and reduce the likelihood that the new policy would be inconsistently applied on the different campuses.

UCPB: Copyright belongs to the originator(s) of a work in the absence of a contract establishing joint ownership with the University. When the University commits “extraordinary resources” to a project, it is, therefore, desirable for it to negotiate joint ownership provisions in advance. Such a requirement is not only consistent with current federal and state laws; it also allows for clarity before a project begins and reduces the potential for later misunderstandings. The September 6th draft, however, eliminates the requirement of a contract by presuming that the University acquires joint ownership by investing “extraordinary resources,” even in the absence of a contract. We reject this reversal of the current legal presumption, and suggest that the proposed policy be rewritten to clarify the existing legal right of the University to condition the investment of “extraordinary resources” on a faculty member’s willingness to share ownership rights. In the event that the University concludes, after the inception of a project, that its investment has been (or is likely to become) “extraordinary,” it may propose joint ownership as a condition for continuing this investment on the understanding that the designated appointee has no obligation to accept the University’s terms, and that the University has no claim of ownership based on resources already invested in the project.

5. Need for an agreement between parties in advance

Ac. Council: require an agreement explicitly assigning ownership rights be drawn up in advance whenever the University makes available to the faculty member resources that it deems exceptional.

UCFW: There was some sentiment that the current language in the second paragraph under III. C... should be strengthened. If the practice were to make such an agreement a condition for the granting of resources deemed exceptional, then both parties would be aware of their rights and obligations from the outset, and the likelihood of subsequent disputes and recriminations would be reduced.

UCD: The Committee on Courses of Instruction strongly endorsed the proposed policy and agreed that course materials developed by the instructor should belong to the instructor unless exceptional university resources were required in their preparation. Some of the committee members, although not opposed to the policy, believed that course materials in addition to syllabi (e.g., lab manuals, video tapes, others) should be freely available to other UC faculty, even if creation of those course materials did not require exceptional university resources. This point was considered moot by others, however, because most faculty prefer to develop their own course materials. All committee members agreed that it would be best if faculty and departments agreed in advance as to how course materials were to be developed.

UCR: Contract between university and faculty when “extraordinary resources” are involved: contract negotiation process is vague and may create a sense of “administration vs. faculty.”