

Policy on Ownership and Use of Course Materials

Numbers in bold correspond to the Table of Contents for the packet of draft comments.	
A. Definitions:	
<p><u>Course Materials:</u> Materials prepared for use in teaching, fixed or unfixed, in any form, including, but not limited to digital, print, audio, visual, or any combination thereof. Course materials include, but are not limited to, lectures, lecture notes, and materials, syllabi, study guides, bibliographies, visual aids, images, diagrams, multimedia presentations, web-ready content, and educational software.</p>	<p><u>Irvine Council on Faculty Welfare, Rights, Responsibilities, and Diversity (plus campus administrators) (Allan Hubbell, Chair) (23)</u> A body of knowledge is defined by a faculty and that body of knowledge is then parsed into various courses. When Committee on Courses reviews a proposal for a new course, the committee decides whether the course logically fits into that defined mastery of a body of knowledge. The University has a stake in protecting that body of knowledge. The faculty would not have the right to stop another faculty from teaching a course. Question: What level of detail should the University or faculty control?</p>
	<p><u>Coordinating Committee on Graduate Affairs (Charles Perrin, Chair) (Add'l Material)</u> On behalf of CCGA, I would ask that coursework explicitly include exams and either exercises or problem sets.</p>
<p><u>Exceptional University Resources:</u> University funds, facilities, equipment or other resources significantly in excess of the usual support generally available to similarly</p>	<p><u>Berkeley Committee on Courses of Instruction (Ronelle Alexander, Chair) (11)</u> The proposal is still somewhat vague on what constitutes exceptional University resources. Do these, for example, include grants received from the Academic Senate Committee on Teaching? It would be helpful for this point to be clarified, with the inclusion of specific examples.</p>

	<p><u>UCSD Committee on Faculty Welfare (Ross M. Starr, Chair) (29)</u> When a course of lectures has been recorded on tape or in other electronic form can the lectures be rerun as a recorded medium of instruction at the University’s discretion? Does this require faculty member agreement? Is the faculty member entitled to compensation? Does electronic recording constitute “extraordinary University resources”? What are examples of “extraordinary University resources”? [This comment is copied into the Policy on Recordings comments, below.]</p>
	<p><u>UCSD Committee on Research (32)</u> The decisions about ownership course materials under the draft policy statement hinge on the definition of the phrase “Exceptional University Resources.” In the draft, these are defined as, “University funds, facilities, equipment or other resources significantly in excess of the usual support available to similarly situated faculty.” This phrasing is vague enough that, in the absence of an a priori agreement between a faculty member and the University that specifically defines what constitutes exceptional resources in a particular situation, reasonable disputes may well arise. We recommend greater specification of the definition of Exceptional Resource.</p>
	<p><u>University Committee on Research Policy (37)</u> The terms "exceptional university resources" and "similarly situated faculty members" are very vague. As stated, we do not believe that they provide faculty or university scholars and researchers sufficient guidance as to when they need to consider themselves to be recipients of exceptional support or even how "similar" they might be in comparison to other similarly situated individuals.</p>
	<p><u>University Committee on Faculty Welfare (Renee Binder, Chair) (38)</u> "Exceptional" University Resources (Policy on Ownership and Use of Course Materials) need to be more clearly defined.</p>

Report of the UCPB Subcommittee on Copyright Policy (Prepared by Bob Meister & Ted Groves) (40)

The definition of "Exceptional University Resources" is vague and unworkable. Are resources provided faculty selectively through competitive application to be considered "exceptional"? An example is the Instructional Improvement Program. The resources available through this program may be "generally available" to faculty, but they are not given to everyone.

Rather than trying to come up with a better definition of "exceptional" resources, we recommend substantially reworking the sections on either "Sponsored Works" or "Jointly Originated Works" in Section B. The term "sponsored works" could easily be extended, for example, to encompass course materials funded by Instructional Improvement Grants. The new policy might then recommend that these awards be made contingent upon all parties signing off on a contract delineating the ownership rights of the various contributors -- including ILIC as the funding sponsor. The policy might also note that ownership of "sponsored works" funded by an external agency would be governed by the contractual terms agreed upon by the creator(s) and the funding agency. The 1992 UC Copyright Policy already recognizes this practice.

Alternatively, the term "Jointly Originated Works" could describe virtually everything that might be created using "exceptional university resources." Joint ownership is a clearly recognized element of federal copyright law, and is generally expressed in the form of written understanding of the distribution of intellectual property rights among contributors to a project. Such written understandings should be the norm in projects of substantial scope. If this were the practice, there would be no need for a separate definition of "Exceptional University Resources." The University should not normally be free to assert after the fact that such resources were used without having claimed its share of intellectual property at the outset.

We further note, however, that the proposed policy (B.1) states one exception to the foregoing that is in our view inconsistent with federal copyright law and Civ. Code § 980. The University shall have the right to use any course syllabi, and make derivative works from them, on a perpetual, royalty free, non-exclusive basis."

Because the word "syllabi" is not defined, we are unclear about the extent of shared ownership that University would claim were this language to be approved. There is, as a practical matter, no generally accepted definition of the term "syllabus." Some faculty members view the syllabus as a one or two page statement of the topics to be covered in the course, the assigned pages in a text, and/or the schedule for exams and other graded exercises. Others see it as an elaborate bibliography, perhaps including a compendium of addenda to the assigned texts with study questions and comments.

The proposed policy's implicit distinction between syllabi (in which the University has intellectual property rights) and all other course materials (in which the University claims no such rights) is, therefore, untenable. The University's claim to an unrestricted license to the commercial exploitation of "course syllabi" did not directly appear in earlier versions of this policy, and because it is inconsistent with established law, it should be dropped from the final version.

In making this recommendation, however, we wish to be very clear that the University has legitimate interests in maintaining access to the syllabi of courses that it offers. The question is whether it must claim an intellectual property right in order to assert those interests. We believe that the University's legitimate interest in faculty syllabi are adequately protected by other policies. Educational policy, for example, requires faculty to produce syllabi, and to distribute them to students. It may also require faculty to submit syllabi for review by departments and other University bodies responsible for the quality of courses, and may permit the University to keep copies of old syllabi on file. In personnel policy, submission of syllabi is typically required for reappointment, tenure, and promotion review.

No right to "make derivative works" is necessary for the University to assert these legitimate interests. The novel intellectual property claim that is now before us, however, would entitle the University to publish the syllabi of faculty members for commercial purposes without their explicit consent. In so doing, it might also entitle the University to alter the syllabus without permission of the faculty member who is identified as the author. There is, we believe, no justification in law or reason for claims to intellectual property that go beyond the University's legitimate uses of syllabi for purposes of educational and personnel policy. We recommend that all such claims be dropped with respect to syllabi that meet the requirements for "original expression" under federal Copyright law, and that syllabi be treated for the purpose of the present policy in the same manner as all other course materials.

	<p><u>UCSD Committee on Planning & Budget – Further Observations (Michael Parrish, Chair) (35)</u> The concept of "exceptional university resources" remains vague and needs clarification. Does it include course materials developed through special instructional improvement funds? The term "sponsored work" or "jointly originated works" might be extended to cover this problem, with the understanding that the faculty member and the university would enter into a contract delineating ownership rights at the time of the grant.</p> <p><u>UCSD Graduate Council (Anne Hoger, Chair) (36)</u> The term "exceptional resources" must be clearly defined and then widely communicated to faculty</p> <p><u>Academic Council of the Academic Senate (Chand Viswanathan, Chair) (Add'l Material)</u> More clearly define what "exceptional resources" are in connection with works created by academic employees.</p>
<p>B. Ownership of Course Materials</p>	<p><u>Report of the UCPB Subcommittee on Copyright Policy (Prepared by Bob Meister & Ted Groves) (40)</u> It is unclear in what sense "the University" could make "derivative works" from an existing course syllabus. According to APM 005 "courses are integral parts of curricula." Curricula must be authorized and supervised by Schools and Colleges, and a standing committee of the divisional Senate must formally authorize courses that fall within an approved curriculum. This is the operational meaning of "the University," as described according to its own rules for authorizing and disseminating course syllabi. Would the production of "derivative works" from syllabi be governed by the same rules? If not, in what sense would a "derivative work" be produced by "the University?" The University's good name rests largely on effective oversight of courses and curricula by responsible individuals and bodies. This is no less true of "derivative works."</p> <p><u>UCSD Committee on Planning & Budget (Michael Parrish, Chair) (35)</u> Congress has preempted the field of copyright regulation, but states may still regulate original works of authorship not fixed in a tangible form of expression. With respect to live lectures and presentations (which lie outside federal copyright protection) faculty ownership has long been recognized under California state law, specifically in Section 980 of the Civil Code, described as creating a common law of copyright. In a published appellate case decided in 1969, a faculty member's presumptive ownership of his live lectures and his right to protect the lectures and prohibit commercial note-taking based on Section 980 were affirmed. In this case counsel for UC filed an amicus brief supporting the faculty member. In short, faculty ownership of both course materials fixed in tangible form and those not fixed in a tangible form is a matter of settled federal and state law. Any redraft of the policy should make this clear and not give the impression that the policy itself establishes these rights.</p>

<p><u>– Not Sponsored Works or Contracted Facilities Works or Works Made with Exceptional University Resources.</u></p>	<p>“Syllabi” is too broad and undefined (Berkeley: Divisional Council (9), University Welfare Committee (15)) (Davis: Committee on Research (17)) (Irvine: Council on Educational Policy (21) Academic Council of the Academic Senate (Add'l Material))</p>
<p>Ownership of the rights to course materials, including copyright, shall reside with the designated academic employee¹ who creates them, unless these materials constitute Sponsored Works or Contracted Facilities Works, as defined in the University of California Copyright Policy, or have been created with the use of Exceptional University Resources. The University shall have the right to use any course syllabi, and make derivative works from them, on a perpetual, royalty-free, non-exclusive basis.</p>	<p><u>UCSF Committee on Educational Policy (25)</u> It was not clear to the Committee whether a faculty member retains rights to his or her material if (s)he leaves the University.</p>
	<p><u>University Committee on Faculty Welfare (Renee Binder, Chair) (38)</u> "Course syllabi" should be defined, or assigned for definition to the Course Materials Policy Committee, or rearticulated in some other way. In some departments syllabi are detailed course descriptions and represent the personal contribution of the instructor; in others syllabi are only 1-2 pp. outlines.</p>
	<p><u>Berkeley Divisional Council (9)</u> The term “syllabi” is open to broad interpretation. It is essential to define “syllabi” in narrow terms, as in the dictionary, for the purpose of this policy. The last sentence of this section poses challenges in practice. The council recommends deleting the phrase “...and make derivative works from them...”</p>
	<p><u>Berkeley Committee on Educational Policy (Lisa Alvarez-Cohen, Chair) (12)</u> We were concerned that the term “syllabi” was too vague and encompassing. That is, some syllabi can be extensive in nature, more akin to lecture notes. It was felt that the copyright to such products should reside with the creator. It was also noted that for some general lecture courses (e.g., Chemistry 1A, Math 1A) it may be necessary for a department to reach consensus about the content covered in those courses. In such cases, the syllabi may reflect an entire department’s ideas rather than just that of the instructor. There should be a distinction made between syllabi for core courses and those for non-core courses that might be more reflective of an individual instructor’s ideas about course content. Therefore, the committee feels that not all syllabi should automatically become University property and that the final sentence of section B, item 1, should be stricken or at least revised to be more specific.</p>
	<p><u>Davis Divisional Executive Council of the Academic Senate (Jeffery C. Gibeling, Chair) (16)</u> It does not appear that the term “designated academic employee” includes teaching assistants. With regard to the footnote on the first page of the Draft Policy on Ownership..., the Executive Council felt it would be appropriate to include TAs, who are often the sole authors of materials for laboratory and/or discussion sections and may have their presentations recorded.</p>
	<p><u>Davis Committee on Research (Roger McDonald, Chair) (17)</u> There seems to be a built in contradiction as the first sentence of this section seems to assign ownership to the designated academic employee, while the last sentence gives the University the right to do whatever it wants with the material, royalty-free.</p>

¹ The term "designated academic employee" is used here in a manner consistent with the UC Policy on Copyright Ownership (<<http://www.ucop.edu/ucophome/uwnews/copyr.html>>). The Committee recognizes that the term as presently defined may not be adequate for the purposes of this policy, and solicits comments on how this term should be redefined, or an appropriate new term established.

	<p><u>Davis Committee on Academic Freedom and Responsibility (Michael Jubien, Chair) (21)</u> ...last sentence: The clause “and make derivative works from them” is so vague that we have no clear idea what it might be held to cover. Accordingly, we recommend that this clause be deleted entirely and replaced by “and no other course materials”, so that it is explicit that the University may not avail itself of more elaborate course materials that might, for example, be keyed to entries on a syllabus.</p>
	<p><u>Irvine Graduate Council (Frances Jurnak, Chair) (22)</u> The proposed Policy on Ownership and Use uses the term “designated academic employee,” and refers to the UC Policy on Copyright Ownership. However the latter policy defines “designated academic appointee,” not “employee.” Furthermore, in this UC document, the term “designated academic appointee” specifically does not include students, postdocs, or instructors. The Graduate Council encourages clarification of the definition of the appropriate term for the originators of the course materials, to ensure that the proposed policies on Ownership of Course Materials include students, postdocs and instructors as cited above in the list of originators.</p>
	<p><u>Irvine Council on Faculty Welfare, Rights, Responsibilities, and Diversity (plus campus administrators) (Allan Hubbell, Chair) (23)</u> --A key issue is the definition of “syllabus.” When a course is originally approved, there is a “course description” which can be specific or vague. A general “course syllabi may belong to the University and a detailed “course syllabi” may be the property of the faculty member. It was suggested that a faculty member should not include more detail into the course syllabus than he is willing to allow the university to own. --There was general agreement that the curriculum, which includes the catalogue, is owned by the university. One of the university’s conditions of employment is that all patentable intellectual property belongs to the university. A practice has been established that most copyrightable material belongs to the faculty member. These policies need to be compatible with the conditions of employment that have already been signed.</p>
	<p><u>UCSD Committee on Faculty Welfare (Ross M. Starr, Chair) (29)</u> Re: “The University shall have the right to use any course syllabi, and make derivative works...” The Committee wasn’t quite sure what was meant by “syllabi” here. Is it really just a reading and assignment list? There was a fair amount of confusion as to what a “derivative work” was likely to be. Would this include using an existing course syllabus as the outline of a correspondence school or virtual university course? Would this include commercial applications?</p>
	<p><u>Univeristy Committee on Academic Freedom (Margaret Wallhagen, Chair) (41)</u> UCAF echoes concerns found in the recommendations of other committees about the need to define the term "syllabus". The Committee suggests using the term "minimal syllabus," and defining that term in such a way that it would meet faculty's departmental obligations in supplying a course syllabus, but would not represent substantial original work that could possibly become the object of a copyright dispute. UCAF recommends removing “... and make derivative works from them," and replacing it with "and no other course materials." This change allows the University perpetual use rights to only the (minimal) syllabus</p>
	<p><u>University Committee on Educational Policy (David Dooley, Chair) (42)</u> UCEP was concerned about the language in the last sentence of B. 1. Ownership of Course Materials regarding "course syllabi." It should be recognized that some course syllabi are quite elaborate approaching book length. UCEP believes that faculty who create such extensive educational products should enjoy more protection than this provision seems to indicate. We suggest that for purposes of this document "course syllabi" should defined to include brief (i.e., a few pages) course outlines, schedules, and reading assignments and not to include more elaborate creative efforts.</p>

	<p><u>UCSD Committee on Planning & Budget – Further Observations (Michael Parrish, Chair) (35)</u></p> <p>Federal copyright law has long provided a "teacher exception" to the "work made for hire" doctrine with respect to course materials fixed in tangible form. This would seem to already cover "any course syllabi," although that term has not been defined precisely in the policy as many commentators have pointed out.</p> <p>The concept of syllabi needs further clarification; even so, the suggestion that the University shall have the right to use any course syllabi and "make derivative works from them, on a perpetual, royalty free, non-exclusive basis" is probably in conflict with both federal and state law.</p>
	<p><u>Academic Council of the Academic Senate (Chand Viswanathan, Chair)</u></p> <p>Provide a clear definition of who is designated as an “academic employee” in University copyright policy.</p>
<p><u>– Sponsored Works or Contracted Facilities Works.</u> Ownership of Course Materials which constitute Sponsored Works or Contracted Facilities Works shall be governed by the University of California Copyright Policy.</p>	

<p>– <u>Created with the Use of Exceptional University Resources</u>: Ownership of the rights to course materials created by designated academic employees with the use of Exceptional University Resources shall be governed by a written agreement entered into between the designated academic employee(s) and the University. The agreement shall specify the way in which rights will be owned and controlled and the way in which any revenues from commercialization of the materials will be divided.</p> <p>In the absence of an agreement, rights to course materials created with the use of Exceptional University Resources shall belong jointly to the designated academic employee(s) who created them and the University. If these materials are commercialized, the designated academic employee(s) and the University shall enter into a written agreement specifying who shall control the use of the materials and how any revenues will be divided. If no agreement can be reached, the dispute shall be referred to the Course Materials Policy Committee. Copies of all agreements on course materials created with the use of exceptional University resources shall be filed with the UC Standing Committee on Copyright.</p>	<p><u>Berkeley Committee on Educational Policy (Lisa Alvarez-Cohen, Chair) (12)</u> paragraph 2: The CEP felt that a “default” should be included that indicates how revenues would be divided specifically, for example, by replacing “belong jointly to” with “be equally held by”.</p>
	<p><u>UCSD Committee on Privilege and Tenure (Colin M. Bloor, Chair) (34)</u> Regarding ownership of course materials, there appears to be a lingering question as to how a "reasonable share of revenues" is determined as the negotiations proceed. We think that the steps in this process should be defined more specifically.</p>
	<p><u>UCSD Committee on Research (32)</u> ...the best way to avoid disputes if for all parties to agree, in advance, about the terms of ownership. The committee agreed that a wide range of fair and workable joint agreements is possible, and agreements should be tailored to suit the specific circumstances of individual cases. We, therefore, suggest that a mechanism be established to facilitate the establishment of joint agreements between individual faculty members and the University, possibly through the Office of Technology Transfer.</p>

<p>– <u>Jointly Originated Works</u>: Ownership of rights to course materials that are created by the intellectual labor of more than one person shall be owned jointly. If course materials are created jointly, including the intellectual labor of designated academic employees and others, ownership of the designated academic employee(s) contribution shall be governed by this Policy, and the contribution of others shall be governed by the University of California Policy on Copyright. Ownership of the rights to jointly originated works shall be determined by separately assessing the Category of Work of each originator.</p>	<p><u>UCSD Graduate Council (Anne Hoger, Chair) (36)</u> Members commented that the document needed clarification and examples</p>
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<p>C. Course Materials Policy Committee: A Course Materials Policy Committee shall be established at each campus. The committee shall consist of at least five members, appointed by the divisional Academic Senate and advisory to the Chancellor. This committee will resolve any disputes concerning: (1) what constitutes the use of Exceptional University Resources; and (2) the commercialization of course materials created with the use of Exceptional University Resources. The Course Materials Policy Committee shall make a written report of its resolution of each dispute, which shall be filed with the Chancellor of the campus and with the UC Standing Committee on Copyright.</p>	<p><u>Berkeley Academic Freedom Committee (Robert Powell, Chair) (10)</u> We are troubled by the possibility that each campus’s Course Materials Policy Committee could develop and apply quite different standards. Is this the intention? We think that it might be useful to have an “experimental” period during which the various campuses develop potentially different standards. But in the long run we believe that the standards should be the same across campuses.</p>
	<p><u>Davis Divisional Executive Council of the Academic Senate (Jeffery C. Gibeling, Chair) (16)</u> The Executive Council also expressed concern about the proposed Course Materials Policy Committee. It appears that the policy would mandate that the divisional Senates create a particular committee, which seems to stand counter to the autonomy of the Senate to organize itself to conduct its business. After some discussion, the Executive Council unanimously agreed that each division should be permitted to develop a mechanism to resolve relevant disputes.</p>
	<p><u>University Committee on Research Policy (37)</u> Regarding the Course Materials Policy Committee, its charge seems vague as well. If the only role is to deal with exceptionality in university resources, we believe that the role is too narrow. Or is there some anticipation that there will be so much conflict over questions of "exceptionality" that the committee will have plenty to do just on this matter? We prefer that the committee have a broader charge to include all the items in the "Ownership and Use of Course Materials" section. On the other hand, if the expectation is that conflicts over these matters are likely to be rare, then relying on special ad hoc committees might be more effective.</p>
	<p><u>Report of the UCPB Subcommittee on Copyright Policy (Prepared by Bob Meister & Ted Groves) (40)</u> It is not clear from the draft whether this committee is intended to have the final authority ("will resolve") in disputed cases or whether it is merely advisory to the Chancellor or Chancellor's designee, where final authority lies. To be most effective, this Committee should be charged to review all atypical course-materials ownership agreements before the actual work begins. We note, moreover, that with separate campus committees the likely result will be divergent interpretations on different campuses. Are locally disadvantaged faculty entitled to systemwide uniformity on questions of intellectual property? Should there be provision for systemwide guidelines?</p>
	<p><u>University Committee on Academic Freedom (Margaret Wallhagen, Chair) (41)</u> If decisions handed down by a Course Materials Policy Committee can be appealed, that right to appeal should be made explicit, as well as the avenue of appeal (i.e., a grievance brought to the Privilege and Tenure Committee).</p>
	<p><u>University Committee on Academic Personnel (Barbara Doshier, Chair) (43)</u> Does the reference to a "course materials policy committee" mean that a new, additional committee must be established at each campus, or would extant Committees on Courses adequately be able to meet the responsibilities described?</p>
	<p><u>UCSD Graduate Council (Anne Hoger, Chair) (36)</u> Members considered it necessary that the document clarify how this policy differs from the current policy and whether the proposed policy deviates from current law.</p>

	<p><u>Academic Council of the Academic Senate (Chand Viswanathan, Chair) (Add'l Material)</u> Clarify the University's intent with respect to several issues surrounding the Course Materials Policy Committee such as:</p> <ul style="list-style-type: none"> • Is this committee to be a new Senate committee on each campus or is its work going to be taken up by existing campus Senate committees? • What does the draft mean when it says this committee "will resolve" copyright disputes? Does it mean the committee has final authority to make decisions on cases within a campus? • What is the relationship between this committee and Senate Privilege & Tenure Committees on the campuses? Do faculty involved in the copyright disputes have the right to grieve Course Materials Committee decisions within the P&T framework? <p>...It seems likely that the Standing Committee on Copyright will want to consult with the Senate before arriving at any conclusions about the membership and authority of the Course Materials Policy Committee.</p>
<p>D. Using Course Materials Outside the University: In using course materials outside the University of California, designated academic employees shall abide by University policies on the use of the University's name (DA 0864, May 3, 1985) (http://www.ucop.edu/ucophome/coordrev/da/da0864.html) and seal (DA 0865, May 3, 1985) (http://www.ucop.edu/ucophome/coordrev/da/da0865.html) and the policy on conflict of commitment and outside activities of faculty members (APM 025) (http://www.ucop.edu/acadv/acadvpers/apm/s1-025.html). They shall also comply with the prohibition on use of University facilities for commercial purposes (APM 015 Part II.C.3) (http://www.ucop.edu/acadv/acadvpers/apm/s1-015.html)</p>	<p><u>Berkeley Academic Freedom Committee (Robert Powell, Chair) (10)</u> We do not understand the last sentence which states that academic employees "shall also comply with the prohibition on use [sic] of the University facilities for commercial purposes (APM 015 Part II.C.3)." At best this provision seems redundant. The provision of the APM prohibits the "Unauthorized use of University resources or facilities on a significant scale for personal, commercial, political, or religious purposes." By definition, this provision does not seem to apply to course materials that do not draw on Exceptional University Resources since they do not use University facilities or resources on a significant scale. At most, the APM policy applies to course materials that do make use of exceptional university resources. But in this case this material is to be governed by a written agreement between the academic employee and the University.</p> <p><u>Report of the UCPB Subcommittee on Copyright Policy (Prepared by Bob Meister & Ted Groves) (40)</u> Section D "Using Course Materials Outside the University" is not sufficiently supported by the section on "Definitions" We strongly recommend, for example, that the final version policy include a definition of "commercial purpose," that is consistent with that in the Romero Bill on the use of lecture notes and recordings; viz. "Commercial purpose means any purpose that has financial or economic gain as an objective." The applicable sections of the conflict of commitment policy should also be referenced in the present policy.</p>

General Comments:

Berkeley Academic Freedom Committee (Robert Powell, Chair) (10)

The Committee strongly endorses the overall thrust of the draft policy, which is to give sole ownership of course materials to the faculty member unless the project has made use of exceptional University resources or are sponsored contracted works.

Berkeley Committee on Courses of Instruction (Ronelle Alexander, Chair) (11)

The status of Graduate Student Instructors needs to be better defined. Graduate Student Instructors are, in some instances, required to provide primary material for courses. The extent, and the manner, to which policy applies to them should be made explicit.

Davis Committee on Academic Freedom and Responsibility (Michael Jubien, Chair) (19)

“Policy on Copyright Ownership,” item IV B: We believe that the definition of “personal work” is too narrow, and thus allows the University to claim copyright in cases that would normally be seen as inappropriate. (For example, copyright on a work of fiction produced by a physicist on a university computer under the “incidental personal use” doctrine.) We therefore recommend that the clause, “without the use of University Resources,” be replaced by “without substantial use of University Resources.”

Irvine Graduate Council (Frances Jurnak, Chair) (22)

Endorses proposed policies. Needs further clarification on: Are students, Teaching Assistants/Associates, Graduate Student Researchers, Postdoctoral Scholars, and Instructors also protected by the policies?

Irvine Council on Faculty Welfare, Rights, Responsibilities, and Diversity (plus campus administrators) (Allan Hubbell, Chair) (23)

Dean Matkin summarized the issues by stating that the University is seeking clarity and assistance from the Academic Senate in defining what the faculty can legitimately own according to standard practice. The University also needs to define what is a stake of its core value that needs protecting so that it can fulfill its mission to teach students. What level of specificity should the university assert over rights of ownership that is over and above the right of ownership of a faculty member? He suggested that every Academic Senate should be able to specify the format of documents and the detail of the documents that they review when they decide to approve a course. That documentation, if not owned by the university, should be usable by the university on a perpetual, royalty-free basis.

UCSD Academic Senate (Michael A. Bernstein, Chair) (28)

During the Senate-Administration Council’s discussion, a theme that emerged was a desire for the policies to mention specific examples. For instance, explicit descriptions of “exceptional university resources” would be helpful. It was also noted that, while the transmittal from Academic Council advised that the draft policies should be reviewed in the context of the 1992 Policy on Copyright Ownership, it was unclear whether the intent is to incorporate the final provisions into the existing policy. If it is intended that these revisions ultimately become sections of an updated comprehensive copyright policy, it was recommended that any future revisions be presented in a form that incorporates the proposed revisions into the extant policy using some method of identifying text proposed for deletion and text proposed for addition. Finally, the opinion was expressed that existing law already bestows the rights addressed, and that any future revisions should make this clear and not give the impression that the University’s policy itself establishes these rights.

UCSD Planning and Budget Committee (Michael E. Parrish, Chair) (30)

We commend the UC Standing Committee on Copyright’s efforts in this draft proposal to protect the rights of faculty. They propose to equate course materials and recordings of course presentations, particularly those in digital form, with materials covered by the existing university policy on copyright. This policy provides that “copyrights to scholarly/aesthetic works shall reside with the designated academic appointee originator, unless they are also sponsored works or contracted facilities works, or unless the designated academic appointee agrees to participate in a project which has special provisions on copyright ownership...”

We hope the committee’s approach to this issue will win favor with the administration and, ultimately, with the Regents, because it will ensure that the creative efforts of faculty remain protected to the same extent as books, articles, performances and other examples of creative work that do not utilize “exceptional university resources” or fall under the categories of either sponsored works or those using contracted facilities.

As its deliberations continue, we encourage the committee to consider the impact, if any, of the recent Supreme Court decision in *Tasini v. New York Times* (2001). They may also wish to address the problem of “all rights contracts” which now confront all scholarly/aesthetic works produced by UC faculty when they seek publication in various venues, including those controlled by the University of California.

UCSD Committee on Educational Policy (Vistasp M. Karbhari, Chair) (31)

CEP sought assurance that the application of these policies not affect Associated Students office procedures, and, in particular, the existing operation of Soft Reserves. Although the Committee wondered who would police these policies, CEP considered most of the policies reasonable.

UCSD Committee on Planning & Budget – Further Observations (Michael Parrish, Chair) (35)

A single comprehensive document should be drafted, one indicating the proposed changes in the 1992 Policy on Copyright Ownership that is now in effect. The new document should indicate through interlinear changes the proposed revisions.

UCSD Committee on Research (Joan Stiles, Chair) (32)

In principle, the committee endorsed the tone and spirit of the proposed policy, and agreed that the draft proposal strikes the correct balance between recognizing the rights of the individual faculty member while acknowledging, where appropriate, contributions of the University to faculty teaching efforts. It is to the mutual benefit of individual faculty members and the University to establish this kind of joint agreement. However, the draft proposal suffers from under-specification of certain key concepts. This lack of specification has the potential to ultimately undermine the utility of the policy.

A question that arose in the committee discussion concerned the distinction between research and pedagogy. This policy targets the application of comparatively new technologies that are applied in the arena of teaching. At this stage in the development of these technological applications there may be a fuzzy line between what constitutes teaching and what counts as research. The committee considered a hypothetical case where government or private funding agencies provided grants to a faculty member to develop high tech course materials. In this case, how is the contribution of University to be evaluated? Specifically, in cases where the University provides exceptional support to such a project, is that support in service of course material exclusively for pedagogy, and development of course materials as part of a research enterprise, and if so what are the rules for ownership? Further, in some cases, these may be multi-site projects where different groups contribute different resources to the project. Such projects would be even more complicated, involving multiple faculty members and multiple institutions, in addition to the questions about research vs. pedagogy. How will the ownership agreements be defined in those cases?

University Committee on Planning and Budget (Alan Jackman, Chair) (39)

We feel that it is essential that a "redlined" document be created that clearly shows how the revised policy differs from the current policy. As presented, it is very difficult to know exactly what has been changed and how. We believe that this is standard procedure for revising policies and procedures

Report of the UCPB Subcommittee on Copyright Policy (Prepared by Bob Meister & Ted Groves) (40)*Recommendation on Format and Form*

UCPB endorses the intentions of the three policy proposals, and feels that they go far to correct deficiencies in the previous proposals to update the 1992 Policy on Copyright Ownership that is presently in effect. We are concerned, however, that aspects of the present document may later be presumed to supersede the 1992 policy without the opportunity for adequate discussion of possible points of difference. We recommend, therefore, that a single comprehensive document, showing interlinear changes, be prepared for the Academic Council before final action is taken - and that such final action take the form of an amendment to the 1992 Policy on Copyright Ownership. In addition, we ask that the following comments, both general and specific, be taken into account when the proposed policy is revised.

General Comments

The Standing Committee comes to the right conclusion in Sec. B. 1 on the basic question before it (ownership of course materials), but there is no acknowledgement that this conclusion was not optional for the University. Federal copyright law provides a "teacher exemption" to the "work made for hire" doctrine with respect to course materials fixed in tangible form. With respect to live lectures and presentations (which lie outside federal copyright law), faculty ownership has long been settled as a matter of state law. It was declared in -Cal. Civ. Code § 980, which codifies California case law going back to 1969, and reaffirmed by the Legislature as recently as 2000, when it passed AB 1773 (the Romero Bill) dealing with the reproduction of lecture notes and recordings for commercial use.

The proposed University "Policy on Ownership and Use of Course Materials" respects these legal rights of faculty, but the rights themselves are not based on the policy. Whatever the recommendations of this (or any future) University committee, ownership of classroom presentations could not be acquired by the University without contractual agreement by the individual faculty member, or by the faculty member's legal bargaining agent. Any approved version of the proposed policy should make this point explicit.

University Committee on Academic Freedom (Margaret Wallhagen, Chair) (41)

Section IV, B of the [current] 1992 University of California Policy on Copyright Ownership: To be consistent with the language of the proposed revisions, this section should read: "...without exceptional use of University resources."

In addition to the language changes noted above, we would also recommend that any further revisions consolidate the draft proposals with the standing policy in a single "redlined" document that clearly distinguishes original text from the proposed revisions.

UCSD Committee on Privilege and Tenure (Colin M. Bloor, Chair) (34)

Overall, one concern arose. How would these policies affect formal affiliation agreements between UCSD and other institutions, for example the ongoing affiliations between the Department of Biology and the Salk Institute concerning the Biology Graduate Program and the Molecular Pathology Graduate Program and the Burnham Institute? The participating institutions in such affiliation agreements may have similar or different concerns from the ones we raise.

Coordinating Committee on Graduate Affairs (Charles Perrin, Chair) (Add'l Material)

Some attention should be paid to the problem of protection of electronic material that is posted for class use.