

Policy on Ownership and Use of Course Materials

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| 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>Davis (3)</u> We question the use of "unfixed" in the context of “course materials prepared for use in teaching.</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 situated faculty members. Such things as ordinary secretarial support, library facilities, office space, personal computers, ordinary access to computers and networks, and academic year salary are not Exceptional University Resources.</p> | <p><u>Berkeley (Campus Committee) (1)</u> The definition of “exceptional University resource” is not completely clear. For example, some grants from the Academic Senate Committee on Teaching are available to all faculty. Such grants are therefore considered “support generally available to similarly situated faculty members,” even though not all faculty seek them. Would a COT grant constitute exceptional University resources? Similarly, not all courses are allocated GSI support. Are materials produced by or with the help of GSIs deemed to have been produced using exceptional University resources?</p> <p><u>Davis (3)</u> “Exceptional University Resources” -- Although most readers understood the need for this term—especially when coupled in Section B.1 with the other two terms (“Sponsored Works” and “Contracted Facilities Works”) which are carve-outs to the general rule being stated, nonetheless they find the term ambiguous. At minimum a sentence must be added to this defined term to account for funds made available to faculty for course improvement on UC campuses on an internally competitive basis (on the UCD campus they’re called “Instructional Improvement Grants” or Instructional Improvement Funds)—are these to be included in Exceptional University Resources?</p> |

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| | <p><u>Charles Nash, Davis (4)</u></p> <p>1. The definition of “Exceptional University Resources” is vague and unworkable. Rather than trying to come up with one that is less objectionable, I recommend scrapping the concept entirely. Instead, speak to the ownership of the materials in question by substantially reworking the sections on either “Sponsored Works” or “Jointly Originated Works” in Section B.</p> <p>The term “sponsored works” could easily be extended to encompass course materials prepared by one or more university employees, the realization of which was funded by instructional improvement grants administered by Learning Skills or Teaching Resources Centers. These awards would be contingent upon all parties signing off on a contract whose terms delineate the ownership rights of the various contributors-including UC as the funding sponsor.</p> <p>The ownership of materials produced as “sponsored works” funded by an external agency is governed by the contractual terms agreed upon by the creator(s) and the funding agency. The 1992 UC Copyright Policy somewhat left-handedly already recognizes this fact.</p> <p>The term “Jointly originated” works describes virtually everything else I can think of that might be created using “exceptional university resources.” I cannot imagine that in this day and age anyone would want to embark on an elaborate project involving tangible contributions from various individuals (some of whom could well be staff members) without already having in hand a written understanding of the distribution of the resulting intellectual property rights. Joint ownership is a clearly recognized element of federal copyright law.</p> <p>2. I strongly recommend that the policy include the definition of “commercial purpose” given in the Romero bill; viz. “Commercial purpose means any purpose that has financial or economic gain as an objective.”</p> <hr/> <p><u>Santa Barbara (8)</u></p> <p><u>“Exceptional Circumstances.”</u> The definition of “exceptional circumstances” is vague, and appears to state only what is not considered exceptional circumstances. The definition should be narrowed, and concrete examples should be given to demonstrate what constitutes exceptional circumstances under the policy, so users of the policy can have clearer guidance.</p> <p>The policy requires each campus to establish a standing committee to interpret when exceptional circumstances exist. The establishment of a committee on campus is a burdensome process, and may create undue expenses. Smaller campuses, like Santa Barbara, may find it more efficient to have more streamlined procedures, while others may find it beneficial to form a full committee. The committee recommends that the policy is written more flexibly, to allow each campus to adopt its own procedures for implementing and interpreting this policy.</p> <p>Further, the policy does not contain any “trigger” for bringing a case to the committee, which may cause confusion. Under the current draft policy, individual faculty members would need to decide when to bring their particular situation to the committee’s attention, which is likely to cause confusion. Additionally, such determinations would likely be able to occur only after the materials are fully developed. This <i>ex post facto</i> determination could expose the faculty members to substantial uncertainty during the development process and to potential liability if the faculty member interacts with outside business prior to completion of the materials. It would be helpful if the policy contained a trigger that allowed a clear, early opportunity to determine whether “exceptional circumstances” exist.</p> <p>In sum, the “exceptional circumstances” exception should be narrowly defined with clear examples, each campus should be allowed to implement its own procedures for interpretation, and the policy should identify a trigger that will allow for a timely determination of whether exceptional circumstances exist.</p> |
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| <p>B. Ownership of Course Materials</p> <p><u>– Not Sponsored Works or Contracted Facilities Works or Works Made with Exceptional University Resources.</u></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>UCLA (Lindemann) (6)</u></p> <p>There is a concern that the term "any course syllabi" is not sufficiently descriptive and suggests that the term "any course materials" be substituted. Derivative works or copies of course materials, not just syllabi, are important because without them there is a risk that the educational continuity of established courses may be lost if a faculty member resigns or retires, taking his/her materials with them. It is very difficult to "re-create" a course in a limited time frame, which places the students in jeopardy. This is increasingly acute with courses contained in electronic format. There may not be a paper syllabus available to copy and even if available, it represents only one of many potential course materials, according to section A. Definitions. Course Materials.</p> <p>The department should have the right to request and receive a copy (paper and/or electronic) of all course materials and presentations, and make derivative works from them, on a perpetual, royalty-free, non exclusive basis. The developer of the course materials would still retain ownership and copyright (if pending) per the draft policy.</p> <p>Course materials created by residents, postdoctoral students, and graduate students in the course of their training should be treated in a similar manner to faculty-created course materials and therefore should be accessible to the University Department as a copy: e.g. clinical case histories, and seminar and lecture presentations.</p> <p><u>Berkeley (Campus Committee) (1)</u></p> <p>We suggest that the Standing Committee clarify the definition further and include a definition of "syllabus." (In Section B.1, UC reserves the right to use syllabi and derivative works. In some cases—notably, service courses or core major courses—syllabi are joint intellectual products of several faculty or an entire department.)</p> <p>The distinction between syllabi and other course materials seems artificial. There is no conventional notion of "syllabus." Reserving the right for UC to use syllabi and derivative works troubles some faculty, partly because some syllabi are substantial intellectual products with pedagogical value—essentially course lecture notes or drafts of textbooks—while other syllabi are little more than a reading list and a grading policy. Some faculty are concerned that losing control over syllabi could affect their professional reputations, for example, if the University published a syllabus that had been edited in a way that did not accurately represent the faculty member's views, but continued to list the faculty member as its author. Can UC reserve the right to use syllabi and derivative works without negotiating a new employment contract with academic employees? Is this policy consistent with current copyright law? We recommend that the Committee strike the clause regarding syllabi.</p> |
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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.

Davis (3)

To accomplish the intent of this Section it would need to be revised as follows, making the final sentence the first: **Subject to the University's non-exclusive, royalty-free right in perpetuity to use, reproduce, prepare derivative works, distribute, perform and/or display, license and sell such materials for mission-related purposes (i.e., teaching, research, public service and patient care), ownership of the rights to course materials, including copyright, shall reside with the designated academic employee (should this be designated academic appointee?) who creates them, unless such materials constitute Sponsored Works or Contracted Facilities Works, as defined in UC Copyright Ownership Policy, or have been created with the use of Exceptional University Resources.** The campus had several recommendations that this section *expand* the University's license (last sentence). "Use" and "make derivative works" are only two of the copyright rights, and they would not necessarily allow the University to copy verbatim (say if it was already in digital medium and we wanted to put on our server). We would also add "worldwide" to the license in anticipation of distance learning.

All reviewers note UC Policy on Copyright Ownership defines "Designated Academic Appointees" but this policy refers to "Designated Academic Employees." There is concern whether the term is consistent, and a number raise the strong suggestion that the term be more inclusive (for example of Academic Federation faculty, lecturers, graduate students, designers).

Several reviewers observed that the University ought to retain the right to use course materials for the purpose of providing instruction in the course for which they were developed, as this would allow the course to be completed in the event the instructor should suddenly die or terminate her/his affiliation with the University. Hence the modification to B.1. which we note above

This comment, in turn, raised the question of the definition of "course materials" and "syllabi." Faculty have nearly as many definitions of syllabi and course materials as there are faculty. In the example above, another instructor could conceivably complete the course using the course outline, course book list and course bibliography and the academic department and dean's office to which that course belongs wouldn't think twice about who owns those items.

Charles Nash, Davis (4)

Given the "teacher exemption" to the "work made for hire" rule afforded by the first sentence of paragraph B-1, its last clause asserting that the University has "...the right to use course syllabi and to make derivative works from them on a perpetual, royalty-free, nonexclusive basis" contravenes federal copyright law. Such a transfer of property rights requires a signed agreement. Here I am assuming that a course syllabus meets minimal federal requirements re "original expression."

As a practical matter there is no universal operating definition of the term "syllabus." Some faculty view it as a one or two page statement of the topics to be covered in the course and the schedule for exams and other graded exercises. Others see it as an elaborate compendium of addenda to the textbook, study questions etc., etc. Furthermore, according to APM 005 "courses are integral parts of curricula." Courses must be formally authorized by a standing committee of the divisional Senate and curricula must be authorized and supervised by Schools and Colleges.

It therefore seems to me that APM 005 would prohibit "the University" from making "derivative works" from an existing course syllabus (which I assume is consistent with the course content as approved by the relevant academic agencies) without the formal approval of the academic program in question and the appropriate external review committees. Finally, there arises the important question of whether or not a particular faculty member's name would remain attached to a syllabus which has been significantly transmogrified by "the University."

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| | <p><u>UCSF Committee on Educational Policy (25)</u></p> <p>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>Guidelines and a sample document be developed for faculty purposes when requesting royalty-free use of their published work. Development and use of this type of document should become standard procedure at all UC campuses when original work is being published.</p> <p>The Committee has a related concern regarding the already established University of California Policy on Copyright Ownership. It is not apparent that Clinical X faculty have the same protections for their creative work as so Ladder Rank, In Residence and Research faculty (see section III(B)) and believes the policy should be modified to incorporate Clinical X.</p> <p>Any UC copyright policy should cover the rights of faculty in all series, including the Clinical X series.</p> <hr/> <p><u>Santa Barbara (8)</u></p> <p>This section grants the University a royalty-free, non-exclusive right to use course syllabi for the purpose of teaching future courses. The Committee agreed that his license is reasonable in principle. However, the Committee is concerned that the course syllabi, alone, may be inadequate to teach a course, particularly in the sciences. In addition to the course syllabi, in order to replicate a course after a faculty member leaves the University, the department would need the lab books describing the experiments developed for the course, any special exercises created for the course, and other customized materials. The Committee suggests that the policy is broadened to include all customized materials developed for a particular course, not just the syllabi.</p> <p>The license granted in this section should also be narrowed to clarify that the University's license is solely for the purpose of continuing to offer the course to University students. The Committee is concerned that the license, as currently written, would allow the University to use the course syllabi for purely commercial activities. The Committee recommends that the license is modified to state that the University has a "perpetual, royalty-free, non-exclusive license for the purpose of teaching the course content at the University."</p> |
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| <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>Davis (3)</u> We assume you refer readers to the 1992 UC Copyright Policy rather than federal copyright law or the agreement governing the sponsored project or contracted facilities work because later on this policy will be incorporated in the 1992 UC Copyright Ownership 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 (Campus Committee) (1)</u> We suggest that the Committee include guidelines and examples regarding the division of ownership be included in this section. A default allocation of ownership, or a default formula to use to arrive at an allocation could also be included. For example, the share of ownership might derive from the monetary value of the exceptional University resources compared with the monetary value of the academic employee's time, valued using an appropriate hourly rate.</p> <p><u>Donohue, Berkeley (2)</u> I wanted to insure that your committee understood the full impact and possible negative impact of such a default provision of holding title to a copyrighted work "jointly."</p> <p>One scenario of concern would be where the author/professor clearly used Exceptional University Resources but the University contribution fairly represented only 25% of the undertaking. This joint ownership provision would immediately elevate the University's share to 50% which would probably make the author/professor claim that the University had administratively taken more than its fair share.</p> <p>The second scenario of concern is the unexpected liability for the University or the University's obligation to defend itself due to an author/professor's actions with respect to the copyrighted asset. In <i>Edward B. Marks Music Corp vs. Jerry Vogel Music</i> 140 F2d 268 (2nd Cir. 1944) the court held, and subsequent courts have held, that joint owners may exercise broad rights to exploit the copyrighted assets including prosecuting or defending law suits, provided that royalties are shared between the owners of the copyright. Thus the University could find itself sharing 50-50 in royalties where the author/professor could license the work, but also, the University could find itself defending itself 50-50 from liability for a copyright infringement action caused by a author/professor. If the University is the "deep pocket" the burden of defense and the liability could rise to 100%.</p> <p>We have proposed here at Berkeley an office where agreements to financially exploit the copyrighted work are created in close collaboration with a campus office which will provide business and professional expertise to the author/faculty. Such an office will possess skills so that potential liabilities can be reduced to a minimum and potential financial return can be maximized, for both the author/professor as well as the campus.</p> <p><u>Davis (3)</u> First sub-paragraph, page 1, beginning "The agreement shall specify..." should be modified to state "The agreement shall specify the way in which rights shall be owned, used and disposed of..." Those are the three action verbs which cover the entire spectrum of rights. Last paragraph, missing caps on "exceptional University resources," a defined term.</p> <p><u>UCSD, Technology Transfer & Intellectual Property Services (7)</u> It will be desirable to add some "default language" to Paragraph B.3 to address situations when there are no written agreements in advance between the designated academic employee and the university.</p> |

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| <p>– Jointly Originated Works: 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>Davis (3)</u> Most reviewers were initially confused by the sudden use of “person” (end of 2nd line) rather than “designated academic employee” or “designated academic appointee.” We assume the exact same thing could be achieved by stating that “copyrightable works created by two or more authors shall be jointly owned as provided in federal copyright law” (and then give the citation), and if one of the authors is a “designated academic employee” then his/her contribution shall be governed by this Policy while the contributions of non-University persons shall be governed by federal copyright law.</p> <p>Last line, “Category of Work” is not a defined term in this policy, please refer readers to the 1992 UC Copyright Ownership Policy.</p> |
| <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 (Campus Committee) (1)</u> Some faculty expressed concern that this could result in very different standards on different campuses. We suggest that steps be taken to ensure that the standards are commensurable across campuses, for example, by <u>allowing appeal to a University-wide Course Materials Policy Committee.</u></p> |
| | <p><u>Davis (3)</u> Most reviewers state that this Committee needs membership from the administrative side of the house for purposes of implementation and advice. On the UCD campus, for example, my office is charged with administration of copyright and advises them on a daily basis in all matters relating to copyright. We recommend that the Chancellor’s Office on each campus appoint the committee, on the advice of the Academic Senate so that staff could be called upon to advise and implement</p> <p>There is a further problem here in that this Committee likely shall not have final authority to resolve disputed cases; we assume as with most such Committees, the final arbiter shall be the Chancellor or her/his designee.</p> <p>Why would the campus Committee need to report to the UC Standing Committee on Copyright? How would that be useful to the campuses?</p> |
| | <p>Charles Nash, Davis (4) 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—as with virtually all such bodies—advisory to the Chancellor or his designee, where the buck really stops. It goes almost without saying that this committee should be charged to review all atypical course-materials ownership agreements before the actual work begins rather than after the task is completed and a war starts.</p> |

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| <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/acadadv/acadpers/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/acadadv/acadpers/apm/s1-015.html)</p> | <p><u>Berkeley (Campus Committee) (1)</u> We recommend deletion of this section, since it merely states that academic employees shall abide by existing APM policies and seems redundant.</p> |
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General Comments:UCLA (Neighbour) (5)

The University Copyright Policy provides for the handling of copyrights and distinguishes between those developed and assignable to faculty versus those that arise from sponsored activities and are owned by the University. There is no affirmative requirement that faculty/staff or students report or disclose copyrightable works that are developed under sponsored research projects. This omission could lead to confusion and reinforce the commonly held belief that there is no obligation to disclose.

UCSF (25)

The Committee has a related concern regarding the already established University of California Policy on Copyright Ownership. It is not apparent that Clinical X faculty have the same protections for their creative work as so Ladder Rank, In Residence and Research faculty (see section III(B)) and believes the policy should be modified to incorporate Clinical X.

- Guidelines and a sample document be developed for faculty purposes when requesting royalty-free use of their published work. Development and use of this type of document should become standard procedure at all UC campuses when original work is being published.
- The UC Standing Committee on Copyright provide further clarification as to whether a faculty member retains rights to his or her material if (s)he leaves the University.
- Any UC copyright policy should cover the rights of faculty in **all** series, including the Clinical X series.

Davis (3)

Need for Statement of Purpose of Policies: Most reviewers commented on the need for a statement of purpose, indicating that “as it stands, it is difficult to understand the policy’s purpose and scope.” The campus realizes the drafts are quite informal, that you wish eventually to incorporate them into the 1992 University of California Policy on Copyright Ownership, and—more importantly for purposes of this comment—that the intent is to develop a policy that will form a basis for and facilitate the provision of distance learning by the University of California. We believe there is great merit in having the UC Standing Committee on Copyright simply *state the distance learning*

objective up front as part of its purpose. Faculty appear to be accepting of the concept provided there is appropriate division of any revenues accruing from the distance learning enterprise.

Univ. of California Policy on Copyright Ownership: It will be desirable to expand on the definition of “Scholarly/Aesthetic Work” under Paragraph IV.A. Since almost all work in the university is scholarly in nature, it may be helpful to the reader to have a clearer explanation on the meaning of “Aesthetic,” what the “/” between the words “Scholarly” and “Aesthetic” intends to imply, and the meaning of “independent academic effort.”