

DRAFT Faculty Senate Policy Committee
Meeting Agenda, via Zoom, February 3, 2021, 3:30 to 5:00

3:30 Approvals

- Agenda
- Meeting Notes from Previous Meeting

3:35 Updates

- **C07 “Faculty Misconduct and Progressive Discipline Policy” and A53.1 “Faculty Misconduct Review Committee.”**
- **A88 “Creation and Reorganization of UNM Academic Units”**
- Consensual Relationships Taskforce

3:45 Discussion Items

- **Research Data Policy**

Preparation: Review information in agenda packet.

- **Copyright Issues**

Preparation: Review information in agenda packet.

Action: Discuss issues and whether there is a need for a policy and what might be addressed in the policy.

- New Business
- Work Status Table

4: 15 Action Items

- **A61.2 “Faculty Senate Curricula Committee (FSCC)”**

Preparation: Review .pdf document in agenda packet containing Curricula Chair’s comment and Dr. Pamela Cheeks recommendations. Review current Curricula policy A61.2 and draft revisions of A61.2 with procedures moved to draft A92 Curricula Approval in agenda packet.

Action: Discuss and work on revision to current policy and whether there is a need for a separate policy on Curricula Approvals

Desired outcome: Possible drafts to go to Operations for permission to send out for campus comment

5:00 Adjourn

Due to concerns about COVID-19, the AAUP office has [transitioned to telework](#). Please contact staff by [email](#).



Statement on Copyright

This statement was approved in March 1999 by the Association's Special Committee on Distance Education and Intellectual Property Issues. It was adopted by the Association's Council and endorsed by the Eighty-fifth Annual Meeting in June 1999.

The objective of copyright is, in the words of the U.S. Constitution, to “promote the progress of science and useful arts.” To achieve that objective, authors are given exclusive rights under the Copyright Act to reproduce their works, to use them as the basis for derivative works, to disseminate them to the public, and to perform and display them publicly. Institutions of higher learning in particular should interpret and apply the law of copyright so as to encourage the discovery of new knowledge and its dissemination to students, to the profession, and to the public. This mission is reflected in the 1940 *Statement of Principles on Academic Freedom and Tenure*: “Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.”

Academic Practice

Within that tradition, it has been the prevailing academic practice to treat the faculty member as the copyright owner of works that are created independently and at the faculty member's own initiative for traditional academic purposes. Examples include class notes and syllabi; books and articles; works of fiction and nonfiction; poems and dramatic works; musical and choreographic works; pictorial, graphic, and sculptural works; and educational software, commonly known as “courseware.” This practice has been followed for the most part, regardless of the physical medium in which these “traditional academic works” appear; that is, whether on paper or in audiovisual or electronic form. As will be developed below, this practice should therefore ordinarily apply to the development of courseware for use in programs of distance education.

Unilateral Institutional Policies

Some colleges and universities have promulgated policies, typically unenforced, that proclaim traditional academic works to be the property of the institution. Faculty handbooks, for example, sometimes declare that faculty members shall be regarded as having assigned their copyrights to the institution. The Copyright Act, however, explicitly requires that a transfer of copyright, or of any exclusive right (such as the exclusive right to publish), must be evidenced in writing and signed by the authortransferor. If the faculty member is indeed the initial owner of copyright, then a unilateral institutional declaration cannot effect a transfer, nor is it likely that a valid transfer can be effected by the issuance of appointment letters to new faculty members requiring, as a condition of employment, that they abide by a faculty handbook that purports to vest in the institution the ownership of all works created by the faculty member for an indefinite future.

Other colleges and universities instead proclaim that traditional academic works are “works made for hire,” with the consequence that the institution is regarded as the initial owner of copyright. This institutional claim is often stated to rest upon the use by the faculty member, in creating such works, of college or university resources, such as office space, supplies, library facilities, ordinary access to computers and networks, and money.

The pertinent definition of “work made for hire” is a work prepared by an “employee within the scope of his or her employment.” In the typical work-for-hire situation, the content and purpose of the employee-prepared works are under the control and direction of the employer; the employee is accountable to the employer for the content and design of the work. In the case of traditional academic works, however, the faculty member rather than the institution determines the subject matter, the intellectual approach and direction, and the conclusions. This is the very essence of academic freedom. Were the institution to own the copyright in such works, under a work-made-for-hire theory, it would have the power, for example, to decide where the work is to be published, to edit and otherwise revise it, to prepare derivative works based on it (such as translations, abridgments, and literary, musical, or artistic variations), and indeed to censor and forbid dissemination of the work altogether. Such powers, so deeply inconsistent with fundamental principles of academic freedom, cannot rest with the institution.

College or University Copyright Ownership

Situations do arise, however, in which the college or university may fairly claim ownership of, or an interest in, copyright in works created by faculty (or staff) members. Three general kinds of projects fall into this category: special works created in circumstances that may properly be regarded as “made for hire,” negotiated contractual transfers, and “joint works” as described in the Copyright Act.

1. *Works Made for Hire*. Although traditional academic work that is copyrightable—such as lecture notes, courseware, books, and articles—cannot normally be treated as works made for hire, some works created by college or university faculty and staff members do properly fall within that category, allowing the institution to claim copyright ownership. Works created as a specific requirement of employment or as an assigned institutional duty that may, for example, be included in a written job description or an employment agreement, may be fairly deemed works made for hire. Even absent such prior written specification, ownership will vest with the college or university in those cases in which it provides the specific authorization or supervision for the preparation of the work. Examples are reports developed by a dean or by the chair or members of a faculty committee, or college promotional brochures prepared by a director of admissions. Some institutions appear to treat course examinations as falling within this category, but the stronger case can be made for

treating examinations as part of the faculty member's customary instructional materials, with copyright thus owned by the individual.

The Copyright Act also defines as a "work made for hire" certain works that are commissioned from an individual who is not an employee but an "independent contractor." The institution will own the copyright in such a commissioned work when the author is not a college or university employee, or when the author is such an employee but the work to be created falls outside the normal scope of that person's employment duties (such as a professor of art history commissioned by the institution under special contract to write a catalog for a campus art gallery). In such situations, for the work-made-for-hire doctrine to apply there must be a written agreement so stating and signed by both parties; the work must also fall within a limited number of statutory categories, which include instructional texts, examinations, and contributions to a collective work.

2. *Contractual Transfers.* In situations in which the copyright ownership is held by the faculty (or staff) member, it is possible for the individual to transfer the entire copyright, or a more limited license, to the institution or to a third party. As already noted, under the Copyright Act, a transfer of all of the copyright or of an exclusive right must be reflected in a signed document in order to be valid. When, for example, a work is prepared pursuant to a program of "sponsored research" accompanied by a grant from a third party, a contract signed by the faculty member providing that copyright will be owned by the institution will be enforceable. Similarly, the college or university may reasonably request that the faculty member—when entering into an agreement granting the copyright or publishing rights to a third party—make efforts to reserve to the institution the right to use the work in its internally administered programs of teaching, research, and public service on a perpetual, royalty-free, nonexclusive basis.

3. *Joint Works.* Under certain circumstances, two or more persons may share copyright ownership of a work, notably when it is a "joint work." The most familiar example of a joint work is a book or article written, fully collaboratively, by two academic colleagues. Each is said to be a "co-owner" of the copyright, with each having all the usual rights of the copyright owner (i.e., to license others to publish, to distribute to the public, to translate, and the like), provided that any income from such uses is shared with the other. In rare situations, an example of which is discussed immediately below, it may be proper to treat a work as a product of the joint authorship of the faculty member and his or her institution, so that both have a shared interest in the copyright.

New Instructional Technologies

The development of new instructional technologies has led to some uncertainties with regard to the respective rights of the institution and its faculty members. For example, courseware prepared for programs of distance education will typically incorporate instructional content authored and presented by faculty members, but the college or university may contribute specialized services and facilities to the production of the courseware that go beyond what is traditionally provided to faculty members generally in the preparation of their course materials. On the one hand, the institution may simply supply "delivery mechanisms," such as videotaping, editing, and marketing services; in such a situation, it is very unlikely that the institution will be regarded as having contributed the kind of "authorship" that is necessary for a "joint work" that automatically entitles it to a share in the copyright ownership. On the other hand, the institution may, through its administrators and staff, effectively determine or contribute to such detailed matters as substantive coverage, creative graphic elements, and the like; in such a situation, the institution has a stronger claim to co-ownership rights.

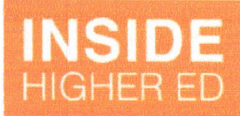
Ownership, Control, Use, and Compensation: Informed Allocation of Rights

Given the varying roles possibly played by the institution and the faculty member, and the nascent state of distance-education programs and technologies, it is not likely that a single principle of law can clearly allocate copyright-ownership interests in all cases. In some instances, the legal rules may warrant the conclusion that the college or university is a “joint author”; in other instances, that the institution should be compensated with royalties commensurate with its investment; and in yet others, that it has some sort of implied royalty-free “license to use” the copyrighted work. It is therefore useful for the respective rights of individual faculty members and the institution—concerning ownership, control, use, and compensation—to be negotiated in advance and reduced to a written agreement. Although the need for contractual arrangements has become more pressing with the advent of new instructional technologies, such arrangements should be considered even with respect to more traditional forms of authorship when the institution seeks to depart from the norm of faculty copyright ownership. An alternative format—perhaps somewhat less desirable, because less likely to be fully known to and appreciated by individual faculty members—would be detailed and explicit institutional regulations dealing with a variety of pertinent issues, subject to the strictures noted above concerning copyright transfers. Such regulations should, of course, give great weight to the views of the faculty, and may be reflected either in widely available institutional policy documents or in collective-bargaining agreements.

Whoever owns the copyright, the institution may reasonably require reimbursement for any unusual financial or technical support. That reimbursement might take the form of future royalties or a nonexclusive, royalty-free license to use the work for internal educational and administrative purposes. Conversely, when the institution holds all or part of the copyright, the faculty member should, at a minimum, retain the right to take credit for creative contributions, to reproduce the work for his or her instructional purposes, and to incorporate the work in future scholarly works authored by that faculty member. In the context of distance-education courseware, the faculty member should also be given rights in connection with its future uses, not only through compensation but also through the right of “first refusal” in making new versions, or at least the right to be consulted in good faith on reuse and revisions.

Report Category: [Standing Committee and Subcommittee Reports](#) [Distance Education and Intellectual Property](#)

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New AAUP report urges faculty to protect intellectual property rights

Submitted by Colleen Flaherty on October 11, 2013 - 3:00am

Faculty must defend their rights to their intellectual property, which are increasingly under threat, according to a draft report released Thursday by the American Association of University Professors.

The [report](#),^[1] called “Defending the Freedom to Innovate: Faculty Intellectual Property Rights after *Stanford v. Roche*,” argues that university attempts to assert ownership over faculty intellectual property have accelerated since – and in response to – that 2011 U.S. Supreme Court decision. In that case, [the court ruled](#)^[2] that the inventor, not the institution, retained primary ownership of the invention, even when it was conceived in a federally funded lab subject to the Bayh-Dole Act of 1980 limiting government claims to ownership.

Although the property in *Stanford v. Roche* was patentable, speaking to a long history of institutions claiming ownership over such research, AAUP says that colleges and universities have ramped up ownership claims to property subject to copyright, as well – including online course content. Notable examples include the University of Pennsylvania’s recent [non-compete draft policy](#).^[3] against faculty moonlighting as online course instructors elsewhere, without the university’s permission.

That has implications for academic freedom and future of the profession, AAUP argues, as “the same reasoning could apply to a faculty member expecting to issue a potentially profitable book with a commercial press, since a university could insist that its own press publish the book instead, or that the institution must negotiate the contract with the commercial press and take a share of the income for doing so.”

“We are issuing this report in the midst of these fundamental changes in the character of faculty rights and academic freedom,” AAUP says. “Our purpose is to put the dialog on intellectual property on a new foundation, one that leads to a principle-based restoration of faculty leadership in setting policy in this increasingly important area of university activity.”

Historically, professors do share intellectual property on inventions and products created with university support, but books tend to be controlled entirely by the faculty authors, even if they, too, benefited from the college resources. Property models for online content are still emerging.

The report also highlights the University of California System’s recent adjustments ^[4] to its faculty patent rights agreement, which explicitly assigns to the university the rights to inventions and patents made using its resources or facilities. AAUP says faculty must actively safeguard their intellectual property, ideally by signing a license granting the university the right to use – not own – the material.

Cary Nelson, professor of English at the University of Illinois at Urbana-Champaign and the report’s lead author, said via e-mail that because one faculty member may not have the “clout” to advocate for such an agreement, “[in] most cases, it’s going to take collective action by a faculty senate or a contract negotiating team to secure and preserve those rights for everyone — either in a faculty handbook or collective bargaining agreement.”

The report includes a series of suggested principles to consider in such policies, including that faculty inventor rights don’t “terminate” at the time of invention or discovery, but extend to management, licensing, public use and beyond; that the faculty senate or equivalent body will play a primary role in defining these policies; third-party “management agents” can be used to resolve disputes between the faculty member and university; and exclusive licensing should be avoided where possible.

The fight isn’t about money, but rather principle, Nelson said. Shared ownership or signing away ownership of original course content, for example, could mean that adjunct faculty are hired at “slave wages” to teach that course; that it could be revised without the professor’s consent; and that the professor

may not be able to teach the course at another institution, should he or she move, among other consequences.

Along with its report, which outlines a series of principles related to intellectual property, AAUP published a virtual intellectual property [tool kit](#) ^[5] for faculty, including a draft AAUP statement on intellectual property.

“The management of inventions, patents and other forms of intellectual property in a university setting warrant special guidance because it bears on so many aspects of the university’s core missions, values, and functions, including academic freedom, scholarship, research, shared governance, and the transmission and use of academic knowledge by the broader society,” the draft reads. “One fundamental principle should be clear: Inventions are owned initially by their own inventors. That is established in both the U.S. Constitution and U.S. federal patent law.”

It continues: “As such, faculty inventor ‘assignment’ of an invention to a management agent, including the university that hosted the underlying research, should be voluntary and negotiated, rather than mandatory, unless federal statutes of previous sponsored research agreements dictate otherwise. Faculty inventors retain a vital interest in the disposition of their research inventions and discoveries and should, therefore, retain rights to negotiate the terms of their position.”

Tracy Mitrano, director of IT policy and the Institute for Computer Policy and Law at Cornell University, said it’s a good idea – and essential – that such negotiations regarding online course enterprises happen before faculty work begins. But because each course is different, she said, it’s important that blanket policies are flexible, and can be adapted to each situation.

For example, she said, the average cost of a successful massive open online course is \$100,000, and likely involves IT staff and other support for the professor creating the course. For that reason, shared ownership may be something the institution and the faculty member will want to consider, whether at the “default” ratio of 50-50, or something else.

“It’s a brave new world,” with lots to work out, she said.

The report also attracted some veiled criticism from intellectual property and legal experts, for possibly exaggerating the extent to which faculty intellectual property rights are under threat.

Ada Meloy, general counsel for the American Council on Education, said she saw no evidence of an escalation in university claims to ownership over faculty intellectual property, and that what discussions have emerged following *Stanford v. Roche* are necessary.

"Many institutions are making these changes based on their reading of the Supreme Court decision," she said. "It's all intended to ensure that both the faculty member and institution can benefit from any successful commercialization of the research results," and to avoid the uncertainties of that case.

Douglas Lichtman, a professor of law specializing in intellectual property at the University of California at Los Angeles said via e-mail that such discussions make sense.

"The question is simple: what level of control should a university enjoy when a faculty member at that university invents or creates something?" Lichtman said. "It strikes me that there are a lot of plausible answers to that question, depending on what the university and the faculty member each understood to be their respective rights when the work began."

He continued: "Looking forward, this should just be a clear part of any employment agreement, with the university and the relevant faculty member negotiating about this just like they negotiate teaching loads, research support, and constraints on outside funding and employment."

The AAUP report is adapted from *Recommended Principles to Guide Academy-Industry Relationships*, a book scheduled for February publication by the AAUP Foundation.

Source URL: <https://www.insidehighered.com/news/2013/10/11/new-aaup-report-urges-faculty-protect-intellectual-property-rights>

Links

[1] <http://www.aaup.org/report/defending-freedom-innovate-faculty-intellectual-property-ip-rights->

after-stanford-v-roche

[2]

https://www.insidehighered.com/news/2011/06/07/supreme_court_rules_against_stanford_in_patent_case

[3] <https://www.insidehighered.com/news/2013/05/08/u-pennsylvania-drafts-guidelines-keep-professors-competing-against-it-online>

[4] <http://atyourservice.ucop.edu/administrators/employment/patent-acknowledgement-faq.html>

[5] <http://www.aaup.org/get-involved/issue-campaigns/intellectual-property-risk/aaup-policy-work-intellectual-property>

Defending the Freedom to Innovate: Faculty Intellectual Property Rights after *Stanford v. Roche*

(JUNE 2014)

The report that follows, prepared by a subcommittee of the Association's Committee A on Academic Freedom and Tenure, was approved by Committee A and adopted by the Association's Council in November 2013.

Tensions over control of the fruits of faculty scholarship have been slowly building since the 1980s and have intensified over the last three years. There have long been differences of opinion over ownership of patentable inventions, but recently a number of universities have categorically asserted that they own the products of faculty research. And there is increasing institutional interest in declaring ownership of faculty intellectual property subject to copyright—most notably evident in demands that faculty members cede ownership of online courses and other instructional materials to their universities, a trend that began escalating in the 2012–13 academic year.

The AAUP is issuing this report in the midst of these fundamental changes in the character of faculty rights and academic freedom. Its purpose in doing so is to put the dialogue on intellectual property on a new path, one that leads to a principle-based restoration of faculty leadership in setting policy in this increasingly important area of university activity. Administrative efforts to control the fruits of faculty scholarship augur a sea change in faculty employment conditions, one too often imposed without negotiation or consent. Indeed, underlying these developments is an administrative conviction that faculty members are not independent scholars, teachers, and researchers but rather employees no different from those working in for-profit corporations that exist for the benefit of investors.

The topics addressed in this report are moving targets. New developments occur almost weekly. Thus, for example, in May 2013 the University of Pennsylvania issued a draft policy declaring that faculty members could not decide to design and offer an online course through an outside company without university permission. The draft policy makes it clear that Penn could refuse permission because it wants to curtail potential competition with its own online offerings. The same reasoning could be applied to a faculty member expecting to issue a potentially profitable book with a commercial press, since a university could insist that its own press publish the book instead or that it must negotiate the contract with the commercial press and take a share of the income for doing so. Penn's draft policy also makes it clear that it wouldn't matter if the faculty member designed the course on his or her own time. The mere fact of employment now apparently trumps the deeply rooted expectation of faculty independence.

This report begins with some basic definitions, then introduces the key issues at stake. A section summarizing the history of university policies on patentable and copyrightable intellectual property follows. Finally, the report offers eleven very specific principles that ought to be included in handbooks or collective bargaining agreements to clarify intellectual property policies.

Much of this report is adapted from *Recommended Principles to Guide Academy-Industry Relationships*,

a book-length study that the AAUP Foundation published in 2014.

I. Definitions

The management of inventions, patents, and other forms of intellectual property in a university setting warrants special guidance because it bears directly on the university's core values, including academic freedom, scholarship, research, shared governance, and the transmission of knowledge. These core values distinguish university activity from that of government and industry, and they provide a basis for the argument for public support of research and the role of the university as an independent contributor to both policy and commerce. The negotiation and management of faculty-generated intellectual property can be complex and can carry significant consequences for those directly involved in negotiations (faculty investigators, inventors, and authors as well as companies, university administrators, attorneys, and invention-management agents) and for others who may be less directly affected (competing companies, the public, patients, and the wider research community).

Intellectual property refers broadly to patents, copyrights, trademarks, and (according to some definitions) trade secrets.¹ In common usage the term also refers to the underlying subject matter that is controlled by the owner of these property rights (inventions, works of authorship, and identifiers that distinguish goods and services in the marketplace). Patents provide the owner with the right to exclude others from “practicing” (making, using, and selling) an invention. A patent, unlike a copyright, goes beyond the protection of written expression to accord an exclusive right to the operational principles that underlie the invention. Copyright prohibits unauthorized copying or modification of particular instances of expression; a patent permits the exclusion of work created independently, is not limited to the precise “expression,” and has no “fair use” exception, even for nonprofit purposes. Thus, patents may have an additional and potentially substantial impact on university research, may affect the value and role of scholarly publication, and may influence collaborations and the transfer of technology developed or improved in other research settings. Recognizing the

potential for harm, the faculty of a number of medical schools for years prohibited the patenting of inventions pertaining to public health.

Patents may cover new, useful, and nonobvious inventions, which are categorized by patent law as processes, machines, manufacture, and composition of matter. Patentable inventions thus may span a wide range of results of academic work, including devices, chemical compounds, biological materials, research methods and tools, production processes, and software. Design patents cover new designs of useful articles. Plant patents and related plant-variety protection laws cover reproducing, selling, or using patented plants. Patents are acquired by an application that is reviewed by a patent examiner; the process may take up to three years. A patent has a term of twenty years from the date of application.

Trademarks distinguish goods and services in the marketplace and are classed as trademarks, service marks, certification marks (showing testing by an independent laboratory, for instance), and collective marks (identifying membership in an organization, such as real estate agents). Trademarks may be common law—that is, acquired by use in commerce—or registered at the state or federal level. A trademark remains in existence as long as it is being used. In academic settings, names, logos, and tag lines for assets such as software programs, research laboratories, new techniques, services offered by departments, websites, and programs of research may all come to have trademark status.

Copyright encompasses original works of authorship fixed in any tangible medium of expression. Copyright vests in a work when it meets these requirements of the law; no application or registration process is now required. Classes of copyright-eligible subject matter include literature and other printed matter, architectural or engineering drawings, circuit diagrams, lectures and other instructional materials, musical or dramatic compositions, motion pictures, sound recordings, choreography, computer software and databases, and pictorial and sculptural works. Copyright now has a term of the life of the author plus seventy years, or, in the case of work made for hire, ninety-five years from the date of first publication or 120 years from the date of creation of the work, whichever is shorter.

These lists are not exhaustive. The scope of work subject to intellectual property claims has expanded considerably over the past thirty years as a result of both changes in law and changes in university policies.

1. Trade secrets, which have economic value that is not generally known to the public and is subject to reasonable controls on disclosure, are sometimes, but not always, included in discussions of intellectual property.

Additionally, the term of copyright has been extended and registration formalities removed. Thus, even where university intellectual property policies have not changed, the range of faculty-led work subject to these policies has expanded, complicating the landscape for discussions of the appropriate role for institutional controls on scholarship and the responsibilities to the public of faculty authors, inventors, and entrepreneurs.

II. Why Does Intellectual Property Matter?

Whether ownership of a particular invention resides with the inventor or is assigned by the inventor to a university technology-transfer office, a university-affiliated foundation, or an independent invention-management agency, all those involved need to recognize the distinctive role played by inventions emerging from scholarly research. Faculty investigators and inventors, together with university administrators, must shape policies that govern the development and deployment of patent rights accordingly.

One fundamental principle should be clear: inventions are owned initially by their inventors. That principle is established in both the US Constitution and federal patent law. As the US Supreme Court affirmed in its 2011 decision in *Board of Trustees of Leland Stanford Junior University v. Roche Molecular Systems, Inc. (Stanford v. Roche)*, federal funding of faculty-led research does not change this principle: inventors in a university setting using federal funds are also the initial owners of their inventions. Universities, as hosts of federally supported research, have neither an obligation nor a mandate under federal law to take ownership of faculty inventions made in such research. Ownership of patent rights attached to an invention, however, may be transferred to another party by a written instrument signed by the inventor. Control of patent rights can be distinguished from ownership. A patent owner may contract with (or transfer title to) another entity that manages those patent rights on the owner's behalf. Furthermore, a patent owner's invention may include elements that are subject to the patent claims of others, and therefore the owner and any of the owner's licensees may not be able to practice the invention without a license from other patent holders. A university may become the owner of patent rights through voluntary assignment by a faculty inventor, as was the case at most universities prior to the Bayh-Dole Act of 1980.

Some universities have sought to make their ownership of all faculty patent rights a general condition

of employment, which implies that the university controls faculty scholarship as an employer and that faculty members are expressly hired to invent. Some cite use of university facilities as a justification for asserting their ownership or claim that participation in externally funded research requires that the university own the resulting intellectual property. Though these strategies are increasingly preferred by many universities, there is little to indicate that such ownership claims advance university interests, whether taken narrowly as the pursuit of income from patent licenses or broadly in terms of the social value of research and broad access to its results.

One fundamental problem with university ownership of patent rights to faculty inventions is that it creates institutional conflicts of interest between the university's governance role and its own financial and competitive interests in exploiting patented inventions. It is all too easy for universities to conflate royalty income from the use or manufacture of patented inventions with their public service mission to enhance economic growth while failing to perceive, or to acknowledge, the conflict that arises with respect to other institutional responsibilities and the university's long-standing commitment to the broad dissemination of knowledge.

When faculty inventors and university administrators agree to use patents only for defensive purposes and to allow general access to technology platforms and make them readily available for adoption, there is generally minimal institutional conflict of interest. But when an invention is used to seek financial gain by exploiting monopoly marketplace positions—as necessary as this may be at times—faculty inventors and administrators alike find themselves in a far more conflicted position. In these situations, it may be beneficial for the university and the faculty inventor to use an external invention-management agent to promote development of the underlying invention while simultaneously protecting continued use of the invention in ongoing research and education.

Despite distinctions often drawn in university policy statements, inventions are a natural outgrowth of scholarly activities and have enjoyed a symbiotic role in faculty research for more than a century. As patent law has expanded what is patentable to include software, business methods, and biological materials, results of scholarly activity have become more exposed to ownership claims based on patents. The scholarly nature of university-based inventions does not disappear with the addition of a potential

patent or other intellectual property rights. A patent is simply a specialized way of transmitting knowledge to society, of sharing a new invention with the world in exchange for limited rights to exclude others from practice in order to promote investment, development, and exploitation of the invention. Thus, patented inventions and other discoveries subject to intellectual property protection should properly be viewed as extensions of scholarship subject to the principles of academic freedom and faculty rights, just as are copyrights in manuscripts prepared by faculty members. Patents are regularly used in industry to exclude others from using inventions. But faculty members should often be focused instead on creating conditions that give the public access to inventions, regardless of the possibility that a monopoly position might attract more payment to the university for granting an exclusive license. It is a rare university-hosted invention that absolutely must enjoy a monopoly in order to attract the investment necessary to be used and developed.

Commercial development of university knowledge to stimulate economic growth and bring public benefits is unquestionably good. But some administrative practices associated with patenting and licensing operations may negatively affect economic growth as well as scholarship, the public interest, and the university's educational mission.² These include narrow exclusive licensing, speculative reselling and relicensing of patent rights, "assert licensing" (in which an offer to license is preceded by a claim of possible infringement), trolling activities (in which litigation is considered the primary means to realize the value of a patent), and aggressive reach-through provisions (which claim an interest—ownership or license—in inventions and other developments made with the use of a licensed invention). Other activities associated with commercialization may be consistent with scholarship and academic norms, particularly when broad access to university inventions and research is protected through fair, reasonable, nonexclusive licensing and where practice of the invention does not require any product to be developed, as is the case with many inventions that are methods. The university or other licensing agent should make an explicit dedication of rights for research and experimental practice. Faculty investigators and inventors must have a strong voice in decisions involving patent management. A university

administration and its faculty collectively also have an obligation to ensure that both institutional and individual interests in using patents to seek financial and logistic advantages are pursued within the context of (and remain subordinate to) the university's broader scholarly and public research missions.

Both contracting and licensing of intellectual property may be managed directly by the university or through one or more outside agents (such as a research foundation working under contract with the university or a private invention-management agency). Licensing is also regularly undertaken by inventors acting privately, as with open-source software. When negotiating sponsored research agreements, a university administration and its invention-management agents must address the management of intellectual property and proprietary matter that may be provided by the sponsor as well as the disposition of any inventions or discoveries that may arise in the course of the sponsored project (including intended deliverables, unexpected discoveries, or findings entirely unrelated to the sponsor's commercial goals).

University administrators and faculty members can also make research funded by the federal government and other sources available for public benefit. This might occur through broad dissemination of the research (as happened with the Cohen-Boyer gene-splicing technique, developed at Stanford University and the University of California, San Francisco, which launched the biotechnology revolution) or through more targeted exclusive licensing, which gives one firm—say, a pharmaceutical company—monopoly rights to a discovery provided that the company invests the substantial resources required to develop the discovery into a viable new drug.

Finally, a university's nonprofit status and its reliance on public funding mean that its management agents are responsible for upholding high academic, educational, and research standards. The obligations of nonprofit institutions necessarily shape the opportunities that may be considered by faculty members and administrators in choosing licensing models, invention-management agents, and acceptable licensing terms and practices.

The keys to proper intellectual property management are consultation, collaboration, and consent. Consultation does not guarantee that invention licensing and management negotiations will be easy, but it does promote a system of checks and balances that can potentially produce better overall results. Any of the parties to such negotiations can exercise bad

2. Mark A. Lemley, "Are Universities Patent Trolls?," *Fordham Intellectual Property, Media and Entertainment Law Journal* 18, no. 3 (2008).

judgment. Faculty members may have a sound understanding of the science and technology underlying their inventions but be unable to gauge their usefulness to industry or their marketability. University technology-transfer officers, by contrast, may understand the legal and technical aspects of an invention but not the underlying science with its uncertainties and thus may overstate an invention's commercial value and misjudge how to disseminate it most effectively. Each party in these negotiations (a university technology-transfer office and a sponsoring company or a faculty member) can be motivated by the narrower goal of maximizing profits and fail to consider the best interests of the public. That is one reason why faculty members collectively, through their governing bodies, need to be involved in setting policy.

The dangers in having institutions or their agents exercise unilateral authority over patenting and other intellectual property decisions are illustrated in a cautionary tale summarized by Siddhartha Mukherjee in his 2010 book *The Emperor of All Maladies: A Biography of Cancer*. In the late 1980s, Brian Drucker, a young faculty member at Boston's Harvard University-allied Dana-Farber Cancer Institute, was investigating chronic myelogenous leukemia (CML), a disease that affected only a few thousand people annually but was incurable, leaving those it did affect with a life expectancy after diagnosis of only three to five years. Drucker wanted to determine whether drugs might intervene in the cancer's genetics. Scientists at the pharmaceutical company Ciba-Geigy had synthesized a number of promising compounds, which were held in the firm's freezer in Basel, Switzerland. Drucker proposed a collaboration between Ciba-Geigy and the Dana-Farber Cancer Institute to test those compounds in patients, but, according to Mukherjee's account, "the agreement fell apart; the legal teams in Basel and Boston could not reach agreeable terms. . . . Scientists and lawyers could not partner with each other to bring these drugs to patients."³ It was not until Drucker moved to Portland's Oregon Health and Science University in 1993 that he was able to get independent authority from an academic institution to move his research forward.

One of the Ciba-Geigy compounds had shown dramatic results in the lab, but because CML afflicts only a few thousand patients a year in the United States, the company questioned whether further

research was worth the investment. Ciba-Geigy had meanwhile merged with Sandoz to form Novartis, and eventually the new company agreed to synthesize the experimental drug—Gleevec—for patient testing. The results were dramatic: Drucker witnessed dozens of deep remissions. Today the drug is so effective that the cumulative number of surviving patients is significant: "As of 2009, CML patients treated with Gleevec are expected to survive an average of thirty years after their diagnosis. . . . Within the next decade, 250,000 people will be living with CML in America."⁴

As this account reminds us, faculty members and administrators can fulfill an important shared governance role by collaboratively establishing the university-wide protocols for managing faculty inventions that will protect the best interests of the faculty, the university, and the national science and research communities while also promoting technological innovation, public health, economic development, and the public good. The AAUP recommends that faculty senates, together with their university administration, consider adoption of principles 11–21, delineated below in section V, to ensure that academic inventions and intellectual property management advance all these goals while protecting academic freedom.

III. The Struggle over Faculty Intellectual Property

Current disputes over faculty intellectual property have their roots in several trends and events. Declining state funding for higher education has led public universities to seek new revenue streams, including royalties from the licensing of faculty inventions. Unfortunately, many universities do not break even, and where there is licensing income, it is used not to offset costs in education but rather to supplement research budgets, which may actually create even more demands on administrative resources. More recently, the impulse to seek profits from faculty work has been extended to instructional materials. The long-term effects of landmark congressional legislation designed to stimulate campus-based research and development have also come to a head over the last two years, dramatically increasing administrative efforts to control faculty intellectual property. Legislation in this area began with a 1980 bill sponsored by Senators Birch Bayh and Robert Dole, known as the Bayh-Dole Act. Although it continued with a 1981 tax credit for

3. Siddhartha Mukherjee, *The Emperor of All Maladies: A Biography of Cancer* (New York: Scribner, 2010), 434.

4. *Ibid.*, 400.

research and development (enhanced in 1986) and relaxed antitrust rules for joint research and development ventures passed in 1984, Bayh-Dole remains the key piece of legislation in current controversies.

The Bayh-Dole Act addresses inventions and associated patent rights, not other forms of intellectual property. It established a uniform policy across all government agencies with regard to the use of inventions by federal agencies in federally supported research at universities, nonprofit organizations, and small businesses. The act did not mandate that universities own or that they have a first right to own inventions made with federal support, nor did it require that they commercialize such inventions. It did require universities to honor the conditions of a standard patent-rights clause to be developed by the Department of Commerce for use in all federal funding agreements. That standard rights clause instructs universities to require their research personnel to make a written agreement to protect the government's interest in any inventions they may make.

The written agreement—under the standard patent-rights clause, to be required by universities of their research personnel—provides (1) that faculty members notify their university when they have made an invention with federal support; (2) that faculty members (as initial owners of their inventions) sign documents allowing patent applications to be filed when the owner of the invention, which may be the government or an invention-management agent, desires such an application to proceed; and (3) that the inventors sign documents that establish the government's rights in their inventions, which may include assignment of ownership or a grant to the government of a non-exclusive right to use an invention developed with federal funds. The latter requirement assures federal agencies that they have access to federally funded inventions for government purposes.

These requirements were spelled out in a patent-rights clause that Bayh-Dole authorized the Department of Commerce to create. Universities—including the entire University of California system—have tried to claim that the only way they can guarantee that faculty members will honor these responsibilities is by taking ownership of all faculty inventions, but obviously there are contractual alternatives to what amounts to a wholesale institutional grab of significant developments of faculty scholarship. Indeed, faculty members have long been able to honor these requirements without assigning their intellectual property rights to the university. Bayh-Dole also carefully

avoided dictating to universities and faculty members alike what patent rights they might be interested in or how these rights might be used—whether dedicated to the public, licensed nonexclusively, licensed exclusively, or held so the university could develop an invention directly.

Nowhere does the act mandate university ownership of faculty inventions. Indeed, until a university intervenes—except for the requirement of the written agreement, which confirms the delegation of personal responsibility to potential inventors—the operative relationship is between the government and the inventor. It is only when a faculty member chooses to assign rights to another agent, such as the university, that Bayh-Dole's complexities come into play.

Nevertheless, over the course of thirty years, US university patent managers came to interpret the Bayh-Dole Act as granting them automatic ownership rights to all federally supported inventions generated on campus, including the right to license this intellectual property to industry and others in exchange for royalties, equity, and other fees. The US Supreme Court, however, in its landmark 2011 decision in *Stanford v. Roche*, offered a different interpretation of the Bayh-Dole Act. The court firmly rejected the claims by Stanford and other institutions favoring federally sanctioned, compulsory university ownership of faculty research inventions.⁵

Stanford had sued Roche in 2005, alleging that Roche's kits for detecting the human immunodeficiency virus infringed university patents. After years of litigation, Stanford pushed its case to the highest court, with support from other universities, including many major research universities, who saw the case as an opportunity to secure court endorsement for their interpretation of Bayh-Dole.⁶ In an amicus brief filed on behalf of Stanford, the Association of University Technology Managers (a professional organization representing university licensing staff) and the

5. The complete US Supreme Court decision in *Board of Trustees of Leland Stanford Junior University v. Roche Molecular Systems, Inc.* (2011) is available at <http://www.supremecourt.gov/opinions/10pdf/09-1159.pdf>.

6. Maddy F. Baer, Stephanie Lollo Donahue, and Rebecca J. Cantor, "Stanford v. Roche: Confirming the Basic Patent Law Principle That Inventors Ultimately Have Rights in Their Inventions," *les Nouvelles* (March 2012): 12–23, <http://www.lesi.org/les-nouvelles/les-nouvelles-online/march-2012/2012/02/29/stanford-v.-roche-confirming-the-basic-patent-law-principle-that-inventors-ultimately-have-rights-in-their-inventions>.

Association of American Universities (an association of sixty-two top research universities), joined by six other research associations and five dozen universities, argued that Bayh-Dole had been “incredibly successful in stimulating innovation by giving universities certainty regarding their ownership of federally funded inventions.” The brief went on to argue that Bayh-Dole vested ownership of inventions made with federal funds in the university that contracted to do the research: “Where, as here, a university elects to exercise its right under Bayh-Dole to retain title to an invention, the individual inventor cannot assign that invention to a third party because the invention is assigned, by operation of law, to the university.”⁷

But the Supreme Court in its ruling refuted this interpretation of the law. For while Bayh-Dole requires universities to secure faculty agreement to protect and honor *the US government’s interest* in federally funded inventions, the Court concluded that there was nothing in the act that automatically vested title to faculty members’ own inventions in their university employers. Nor does the act require faculty members to assign their inventions to their universities or any other agent for management.

In its own successful amicus brief, the AAUP elaborated on this very point, arguing that Bayh-Dole does not alter the basic ownership rights granted to inventors by law. Rather, it helps bring inventions forward to benefit the public by clarifying that government agencies are to allow certain assignees of federally funded inventions to retain ownership, if and when they come to accept ownership, provided they meet various requirements to protect the government’s interest and the public interest.⁸ The high court agreed, ruling that US patent law has always favored, and should continue to favor, the rights of individual inventors and that universities need a written assignment from researchers to establish ownership of their inventions.

The AAUP considers *Stanford v. Roche* an important victory for faculty rights. The Supreme Court decision demonstrates once again that academic researchers and inventors remain, as they have traditionally been, much more than mere employees of

their institutions, a conclusion underscored by the respect afforded them by the federal government in its contracting with universities. Arguments underlying the compulsory assignment of faculty intellectual property to university employers (which continue to be advanced by Stanford, the Association of University Technology Managers, the Association of American Universities, and many university administrations) begin with the assumption that faculty members are no different from corporate employees who owe their employers the fruits of their labor. But the AAUP’s 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* anticipated and firmly disputed that claim. The declaration observed that faculty members could not maintain academic freedom and the ability to serve the interests of society as truly independent experts and academic scholars unless they were recognized as “appointees,” not corporate employees.

Few academic administrators would now disagree that academic freedom firmly secures faculty members’ rights to direct and control their own scholarly research and classroom instruction. By attempting to assign ownership of faculty research inventions (and, more broadly, intangible assets in any form) to institutions, university administrations are effectively arguing that faculty members lose academic freedom the moment they become inventors, at which point their scholarly autonomy disappears and they become mere employees. The argument amounts to an assertion of employer control over faculty research, including the dissemination and possible future uses of academic research discoveries and results. Such a claim is as objectionable for faculty research as it is for classroom instruction. It is also objectionable to postdoctoral fellows and students, who should never be expected to give away their rights as inventors to their universities.

Of course, professors (and other kinds of academic investigators) may choose to negotiate separate contractual agreements with their universities outside of their normal teaching, research, and scholarly responsibilities. These agreements typically involve the performance of optional tasks that may be expressly identified in advance as “works for hire,” in which university ownership claims to resulting intellectual property may be reasonably included by mutual agreement. Such a situation might arise, for example, if a professor voluntarily consents to signing a discrete work-for-hire contract to develop a new online course. This kind of arrangement—which permits a university to own and distribute a course through

7. Lisa Lapin, “Stanford ‘Disappointed’ in Supreme Court Ruling in Roche Case,” Stanford University Press Release, June 7, 2011, <http://news.stanford.edu/news/2011/june/court-roche-ruling-060711.html>.

8. Kathi Westcott, “Faculty Ownership of Research Affirmed,” *Academe*, September–October 2011, 7–8, <http://www.aaup.org/AAUP/pubsres/academe/2011/SO/nb/patentlaw.htm>.

its online education division—is altogether different from university claims to automatic, broad ownership of all intellectual property developed in the course of ordinary and continuing faculty research, scholarship, and teaching. Such claims pose a direct challenge to academic freedom because they undermine faculty members’ ability to control and direct the dissemination of their research.

That said, it is altogether inappropriate to *require* a faculty member to cede ownership of a course to the university merely because the course is prepared in a format suitable to online presentation. Faculty members who do so should realize they may be signing away to the university their right to modify the course or control its performance. The university may modify the course, assign it to someone else to teach, or change the attribution of authorship. The major national outlets for massive open online courses (MOOCs) are so far apparently not demanding ownership of university-based courses. Nor do they require universities to assert ownership. University administrators are simply exploiting the situation as an opportunity to take ownership of instructional intellectual property, when all that is needed is for a faculty member to grant permission to the university to host a course in an online program.

Contrary to the emerging pattern of coopting the faculty’s instructional intellectual property, an April 2013 memorandum from the California State University, Long Beach, administration established an interim agreement for faculty members applying for 2013 internal grants to support development of online courses, using a very different approach to define a principle that could be widely adopted:

the faculty member shall retain ownership of all works he or she produces for . . . online instruction. Thus, in the absence of a separate, written “work-for-hire agreement” which may supersede this agreement, the undersigned faculty member shall be deemed to be the sole owner of all intellectual property rights in his or her course materials, even though the faculty member is receiving a financial stipend to support the creation of online lectures, electronic presentations, podcasts, quizzes, tests, readings, simulations, including development of software, and other teaching and learning activities or material. The fact that the faculty member might use common campus resources (e.g., computers, library books, library databases, software licensed to CSULB for

faculty and staff use, consultations with reference librarians, assistance from the Faculty Center for Professional Development and Instructional Technology Support Services staff) shall not alter faculty ownership of the works produced by the faculty member.

Faculty handbooks or collective bargaining agreements could embody the principle at stake—rejecting any institutional claim of ownership based on the use of university resources in course development—with the following language:

The university shall make no claim of ownership or financial interest in course materials prepared under the direction of a faculty member unless the university and faculty member have so agreed in a separate, voluntary agreement. Payment of a financial stipend, use of university resources, or release time to develop course materials shall not be construed by the university as creating a basis for a claim of institutional ownership of such materials, nor shall it be assumed that a work-for-hire relationship exists between the university and the faculty member with regard to the preparation of any such materials.

A provision like this would be especially relevant to the creation of MOOCs, where the use of university resources—especially assistance from staff—tends to be greater. One might note, however, that universities do not typically ask for an actual accounting of resources used.

The *Stanford v. Roche* decision challenges a number of practices university administrators have imposed on faculty members since Bayh-Dole, practices that lack legal standing. Soon after the Supreme Court’s ruling, intellectual property experts predicted that US universities would respond defensively by incorporating new clauses in faculty employment contracts that assign ownership of faculty inventions to the institutions automatically.⁹ The University of

9. See Matt Jones, “Supreme Court Rules for Roche, Clarifies Bayh-Dole,” *GenomeWeb Daily News*, June 6, 2011: “The most likely effect of the ruling will be that universities will begin making sure that their employees sign assignment agreements that make it clear if they expect to own the rights to the patents their employees generate, Steve Chang, an attorney with the IP firm Banner and Witcoff, told *GenomeWeb Daily News* Monday.” For an example of a comprehensive claim of intellectual property ownership by a university, see the University of Washington’s “Patent and Invention Policy” at <http://www.washington.edu/admin/rules/policies/PO/E36.html>.

California is acting comprehensively with a different strategy: at the end of 2011 it began demanding that current faculty members sign a letter assigning ownership to all their future inventions to the university.¹⁰ Such an arrangement is called an assignment of expectant interests, or a “present assignment.” The claim made for such assignments is that they become effective the moment an invention is made, without the need for notice to the university, review of circumstances, or a determination of the university’s proper interest in the invention as provided by policy.

The AAUP has in its files copies of letters from senior UC administrators informing UC faculty members that the university will refuse to approve their grant applications if they have not signed the new patent/invention assignment form. Indeed, the university is withdrawing already-submitted applications if faculty members refuse to comply.

In requiring present assignment of all future patent rights from current faculty members, the UC system is effectively violating the agreements faculty members made when they were appointed, for it had long followed a policy of evaluating inventions on a case-by-case basis. If that long-standing policy had contractual status, then the new requirement effectively modifies a contract without negotiation or consent. At the same time, institutions like the University of Illinois that have responded to *Stanford v. Roche* simply by posting a universal claim to institutional patent ownership on the university website are no better observers of academic freedom and faculty rights. They are imposing an objectionable condition of employment without a contract at all.

These deliberate strategies represent a disturbing, ongoing trend. Most of the developments in university research and invention policies over the past thirty years have significantly limited or even ended opportunities for faculty investigators and inventors to control the disposition of their research results

and instructional materials, whether prepared for their colleagues, for a research sponsor, for industry, or for the classroom. Some universities, such as the University of Washington, invoke state ethics laws to exclude faculty investigators from participating in intellectual property and invention-management transactions involving the state because, the universities argue, the faculty members might receive pay and other financial benefits from such negotiations (such as summer salary, which would not otherwise be allocated) and might therefore have a personal interest in the research agreement.

Universities also now sometimes insert automatic institutional ownership clauses into standard sponsored research agreements with industry and private foundations, claiming title and management rights to all faculty inventions created under the agreement even when the sponsor does not require such institutional interest. Faculty members with little bargaining power, including PhDs in their first tenure-track jobs, are particularly vulnerable to pressure to sign away their invention rights, possibly for their entire careers.

Many current university policies distinguish between faculty intellectual property that can be protected by copyright and intellectual property that is patentable, with universities commonly asserting automatic institutional ownership claims only on patentable intellectual property. This distinction is fundamentally flawed and should not be used in determination of ownership rights: it is not based on any rational analysis of the nature of faculty research and productivity, and it violates academic freedom. Indeed, the possibility arises that universities will expand their intellectual property ownership claims to copyrightable faculty work as well, given that the distinction in this context is arbitrary.

Since 2007 the National Association of College and University Attorneys (NACUA) has promoted university ownership of both patentable and copyrightable intellectual property. That year, four attorneys delivered a paper, “Creating Intellectual Property Policies and Current Issues in Administering Online Courses,” at NACUA’s annual meeting, and NACUA posted the paper on the members-only section of its website. The AAUP obtained a copy in 2012, and *Inside Higher Ed* subsequently obtained permission from NACUA to make it public.¹¹ The authors call for comprehensive

10. The University of California’s letter of assignment that all faculty members are required to sign reads, in part, “[in] consideration of my employment, and of wages and/or salary to be paid to me during any period of my employment, by University, and/or my utilization of University research facilities and/or my receipt of gift, grant, or contract research funds through the University . . . I acknowledge my obligation to assign, and do hereby assign, inventions and patents that I conceive or develop 1) within the course and scope of my University employment while employed by the University, 2) during the course of my utilization of any University research facilities, or 3) through any connection with my use of gift, grant, or contract research funds received through the University.”

11. Beth Cate, David Drooz, Pierre Hohenberg, and Kathy Schulz, “Creating Intellectual Property Policies and Current Issues in Administering Online Courses” (paper presentation, NACUA meeting,

university ownership of faculty intellectual property whenever its creation has involved substantial use of university resources. “Substantial resources,” they argue, “might include specialized computer resources or other equipment and significant use of student or research support.” A large number of income-producing activities, including textbook authorship, would readily fall under this broad definitional umbrella.

The NACUA paper also stipulates that institutions may claim a share of faculty consulting income if “the faculty member is involved with university research in the same area as the consulting” or if the consulting is in the same general area in which the faculty member teaches. Both conditions are widely applicable to faculty members consulting across numerous academic disciplines. Indeed, it is improbable that faculty members would be consulting in areas for which they have no demonstrated expertise as scholars and teachers. The NACUA paper further recommends that faculty members’ right to make any software they have created freely available through open-source licensing should be subject to review to determine whether “the goals of the institution would be better served through commercialization.” Such positions are serious challenges to academic freedom; from the perspective of universities’ long-standing commitments to broad public dissemination of new knowledge, they are all the more troubling. If a professor judges that his or her research would be more broadly used in continuing research or commercial applications if it were freely disseminated through “open sourcing,” why should that professor be compelled to adhere to the dictates of the university’s technology-transfer officers, who typically have far less insight into the technology in question and its possible applications? Why, furthermore, should faculty members lose the right to provide open access to their research if the technology-transfer office’s preference for control—and the imposition of licensing fees—stems principally from a desire to maximize revenue for the university rather than a desire to maximize public use of the invention? Such preferences for profit seeking undermine claims that institutional ownership is the best route to serving the public good.

San Diego, CA, November 7–9, 2007). See also Cary Nelson, “Whose Intellectual Property?,” *Inside Higher Ed*, June 21, 2012, <http://www.insidehighered.com/views/2012/06/21/essay-faculty-members-and-intellectual-property-rights>. The paper is posted on NACUA’s members-only website, but NACUA permitted *Inside Higher Ed* to link to it, noting that while the paper reflected the authors’ views at the time, some of the issues may have changed since then.

The recommendations contained in the 2007 NACUA paper violate the fundamental principle that faculty members should control their own research, and they further encourage universities to assert control over all potentially profitable faculty research products, regardless of whether those products are subject to copyright or are patentable. Indeed, one attitudinal survey of university technology-transfer officers, conducted by researchers Jerry Thursby, Richard Jensen, and Marie Thursby, found that most such individuals assume that comprehensive institutional ownership of faculty inventions is already the norm.¹² In response to the question “Who owns inventions and materials made or developed by faculty members or other personnel in your university?” all but one technology-transfer officer in the sample asserted that the university owns patentable inventions and materials. For copyrightable inventions, 66 percent stated that the university was also the owner.

A compulsory ownership claim changes the relationship between the faculty and the administration from one of administrative governance and support to one of an employer with authority over the disposition of work of employees. However routine in companies, such a relationship is neither routine nor acceptable for university faculty members.

Interestingly, the history of intellectual property management at universities makes it clear that some institutions once strongly respected faculty intellectual property rights.¹³ Whereas Stanford, the Massachusetts Institute of Technology, and the University of Illinois sought comprehensive control over faculty intellectual property as early as the 1930s or 1940s, the University of California’s 1943 policy went a different route: “Assignment to the Regents of whatever rights the inventor or discoverer may possess in the patent or appointment of the Board as the agent of the inventor or discoverer shall be optional on the part of the faculty member or employee.” Rutgers was

12. Kerry G. Thursby, Richard Jensen, and Marie C. Thursby, “Objectives, Characteristics and Outcomes of University Licensing: A Survey of Major US Universities,” *The Journal of Technology Transfer* 26, no. 1/2 (2001): 59–72.

13. Thirty-seven university patent policies were reprinted in the appendix to Archie M. Palmer, *Survey of University Patent Policies: Preliminary Report* (Washington, DC: National Research Council, 1948). Also see Archie M. Palmer, *University Research and Patent Policies, Practices, and Procedures* (Washington, DC: National Academy of Science–National Research Council, 1962), for a more extensive list of patent policies.

even more concise in 1946: “the University claims no interest in any invention by members of its staff.” That same year the University of Cincinnati affirmed “the right of absolute ownership by a faculty member or student or other person connected with the teaching or research staff of the University of his own inventions, discoveries, writings, creations, and/or developments, whether or not made while using the regular facility of the University.” Columbia included an exception typical of a number of institutions: “While it is the policy of the Faculty of Medicine to discourage the patenting of any medical discovery or invention[,] . . . the right of staff members in other divisions of the University to secure patents on their own inventions is well recognized.”

The policy for the University of Texas, adopted in 1945, similarly asserted that “the title to a patent for any discovery or invention made by an employee of the University of Texas belongs to the said employee and he is free to develop or handle it in any manner he sees fit.” The University of Arizona in 1939 also declared that “no inventor shall be compelled to submit an invention to the Patent Committee.” Princeton adopted its policy in 1938: “If a member of the University desires to obtain a patent on his own responsibility he may do so.” All three institutions did mandate modest profit sharing, which remains an appropriate and reasonable practice today. These university policies demonstrate that faculty research ownership and intellectual property rights do not have to be invented; they merely need to be revived, publicized, and reinforced.

The *Stanford v. Roche* decision opens the door for faculty members and their governing bodies to press for a return to the far stronger faculty inventor rights that led the development of new technology in the decades prior to the passage of the Bayh-Dole Act, and it highlights the need for more visionary shared governance systems around intellectual property and invention management. The Supreme Court’s ruling strongly bolsters the AAUP’s position that faculty members should be free to control the disposition of their scholarship without interference by university intellectual property administrators. It logically follows that faculty members should be free to choose how their inventions are managed, including how best to disseminate, license, or develop their discoveries, as well as which management agent is best equipped to work with them to handle the patenting and license negotiations. As a university makes disposition of these rights a condition of employment, these rights

could be secured for faculty members in collective bargaining agreements.

Under such a system, professors might very well choose to grant invention rights to their own institutions. But those institutions would have to compete for faculty business on a level playing field; they could not simply claim automatic monopoly control over faculty research. Instead, they would have to offer services consistent with faculty investigator objectives and be held accountable for the commitments made to support licensing of the invention. The institutions would also, then, have to show how their program of invention deployment better served the public than comparable services offered by private invention-management agents. Faculty members could choose instead to work with an outside intellectual property expert or management agency (unless they had previously agreed otherwise).

Allowing faculty members to retain title to their inventive scholarship protects academic freedom and inventors’ rights. It also requires universities to work much more collaboratively with faculty members, both in negotiations over individual faculty inventions and in the development of shared protocols to guide invention-management practices university-wide. The establishment of such shared governing protocols for the management of university intellectual property is critically important. In its 2011 report *Managing University Intellectual Property in the Public Interest*, the National Research Council and the National Academies called on faculty members, administrators, and other constituencies with an interest in campus-based inventions and intellectual property management practices to develop such protocols. As the authors of the report explained, “It is essential that universities give a clear policy mandate to their technology transfer offices and acknowledge the tensions among frequently stated goals: knowledge dissemination, regional economic development, service to faculty members, generation of revenue for the institution, and, more recently, addressing humanitarian needs.”¹⁴

Most universities currently operate without clear shared governance protocols to guide their invention-management and technology-transfer operations. The result is the widespread complaint—from faculty members, industry, private foundations, legal experts,

14. National Research Council, *Managing University Intellectual Property in the Public Interest* (Washington, DC: The National Academies Press, 2010), http://www.nap.edu/catalog.php?record_id=13001. See recommendations 1 and 2, quoted on pages 4 and 66.

government agencies, and public interest groups—that universities are unaccountable, overly focused on maximizing profits, and ineffective in managing inventions in the public interest. In 2007, officials from the Ewing Marion Kauffman Foundation, the leading US foundation dedicated to entrepreneurship research, wrote that university-based technology-transfer offices “were envisioned as gateways to facilitate the flow of innovation but have instead become gatekeepers that often constrain the flow of inventions and frustrate faculty, entrepreneurs, and industry.”¹⁵ Many in industry are quite vocal about the poor university management of research inventions, the lack of sufficient expertise in university technology-transfer offices, and the imposition of excessive licensing restrictions and fees that impede industry use.¹⁶

The AAUP agrees with the US Supreme Court that universities have a legal obligation to honor faculty inventor rights and to respect the central role of faculty members in the disposition of intellectual property deriving from their own research. The strongest opposition to this position is likely to emanate from the technology-transfer offices themselves, which have a vested interest in the status quo. In a written public comment submitted to the AAUP on July 17, 2012—after the Supreme Court’s *Stanford v. Roche* ruling—AUTM’s board of directors continued to proclaim that as “employees of a university, faculty members are subject to employment contracts like any other profession” and should not be granted “free agency” when it comes to the ownership and management of their research discoveries and inventions.

According to AUTM’s letter, compulsory assignment of invention rights is justified because technology-transfer offices are best equipped to fulfill the public objectives of technology transfer, which AUTM defines as follows: “1. to give taxpayers a return on their invested research dollars, and 2. to benefit the public by transferring new technologies for public use expeditiously and effectively.” In AUTM’s view,

university technology-transfer offices (also known as technology-licensing offices, or TLOs) are the most experienced managers of these inventions and also the least biased: “University TLOs, experienced in dealing with multiple inventors and multiple institutions, are in the best position to be neutral, objective, and unbiased advocates of federally funded inventions. Further, the benefit of this expertise extends to the transfer of technologies that have other sources of funding.”

AUTM provided no evidence to support its assertions, but most data on the management of campus-based research and inventions would counter the claim that technology-transfer offices are neutral and unbiased guardians of the public interest. Most universities expect these offices to be financially self-sustaining, which, given their operating costs, creates a strong incentive for their officers to put institutional revenue generation ahead of competing public interest goals. The survey cited above found that university technology-transfer officers rank revenue generation (from licensing royalties and fees) as their top priority, valuing it over widespread use of faculty inventions and even effective commercialization.

Yet there is one general caveat that applies to all invention-management negotiations: no party to a contract is inherently immune to disabling motivations and biases. Faculty inventors and administrators alike may be biased by the apparent opportunity for substantial profit when negotiating intellectual property and research contracts. The reality of such influences strengthens the argument for collectively defined university intellectual property protocols, such as the ones we recommend. These protocols could benefit the public by clarifying institutional support for procedures by which creative workers hosted by a university may transfer academic knowledge to society. When universities assume monopoly ownership over research inventions (and therefore do not negotiate with faculty inventors or face competition from independent intellectual property management agencies and professionals), they have a powerful incentive to pursue more restrictive licensing arrangements, which they believe are more profitable. In actual practice, such behaviors tend to rely on a very few licensing deals generating a disproportionate amount of licensing income, while the vast majority of inventions claimed by a university languish: the extra licensing income serves to file patents—that is, to claim formal institutional ownership of inventions—but is not used to transfer these inventions to the public. In fact, the institutionally created patents become barriers to access and serve

15. Robert E. Litan, Lesa Mitchell, and E. J. Reedy, “Commercializing University Innovations: A Better Way” (working paper), http://regulation2point0.org/wp-content/uploads/downloads/2010/04/RP07-16_topost.pdf.

16. *Bayh-Dole—The Next 25 Years, Testimony Before Comm. on Science and Technology, Subcomm. On Technology and Innovation, 110th Cong. (July 17, 2007)* (Statement of Wayne Johnson, vice president of university relations, Hewlett-Packard); David Kramer, “Universities and Industry Find Roadblocks to R&D Partnering,” *Physics Today* 61, no. 5 (2008): 20–22.

to undermine the value of the research that led to the discoveries and inventions in the first place.

In its written comments, AUTM argued that in order to foster successful technology transfer, it was necessary to give universities the power to patent government-funded inventions and license them exclusively to private companies. Otherwise, it stated, those companies would be unwilling to invest the capital required to bring embryonic academic inventions into commercial development. This more aggressive university focus on patents and exclusive licensing may aid in the development of some inventions, but—as recent cases involving stem cells, breast cancer genes, disease patents, and software demonstrate—it by no means helps with all university discoveries, and it is often not in the public interest.

AUTM and the university technology-licensing community routinely disparage all alternatives to their adopted policy model. Viable alternatives include using specialized invention-management agents, allowing investigators and inventors to work with the intellectual property attorneys and management agents of their choice, using nonexclusive licensing to promote competition and free enterprise, dedicating inventions to the public domain, using open innovation strategies, and licensing for quality control without requiring payment. Studies show that such alternative methods of technology transfer remain the most common channels by which industry gains access to academic knowledge and inventions. One survey of firms in the manufacturing sector reported that the four highest-ranked avenues for accessing university knowledge were traditional, open academic channels: publications, conferences, informal information exchange, and consulting.¹⁷ Patents and licensing ranked far lower on the list. Even in pharmaceuticals, where patents and licenses are considered important to facilitate commercialization, firms still rely heavily on traditional open channels.¹⁸

The notion that stronger intellectual property control accelerates commercialization of federally funded research runs contrary to important economic principles. When publicly funded knowledge is “non-rivalrous,” as academic science frequently is, its use in

additional applications poses no real economic cost. By contrast, when any one party is denied access to a discovery, it can stifle the potential for continuing research and other commercial applications.¹⁹

Ironically, most academic inventions reach the attention of strategically located people in industry through existing contacts with faculty inventors. When Thursby and colleagues asked technology-transfer officers to describe the procedures used to market scholarly work, the role of faculty inventors was paramount. Fifty-eight percent of the respondents listed faculty inventor contacts as useful for marketing academic technology to industry. “It is also likely,” noted the survey’s authors, “that some of the 75% of [the technology-transfer officers] who listed personal contacts as important were referring to the personal contacts of faculty.” A companion survey of businesses that license university technologies generated similar results: 46 percent of industry respondents said that personal contacts between their research and development staff and university faculty members were extremely important in identifying new technologies to license.²⁰ These results accord with a 1999 study finding that 56 percent of the primary leads for university license adoptions, in the 1,100 licenses examined, originated from faculty members.²¹ Technology-transfer offices, these surveys suggest, could not operate effectively without help from faculty inventors, through their contacts in industry and their deep knowledge of invention technologies and applications. According to the authors of the survey on technology-transfer officers, “[t]he importance of the faculty in finding licensees follows . . . from the generally early stage of university technologies since, for such technologies, it is the faculty who are able best to articulate the value and nature of such technologies.”

It thus seems particularly shortsighted for AUTM and university administrations to insist on the compulsory assignment of faculty research inventions to the

17. Wesley M. Cohen, Richard R. Nelson, and John P. Walsh, “Links and Impacts: The Influence of Public Research on Industrial R&D,” *Management Science* 48, no. 1 (2002): 1–23; Ajay Agrawal and Rebecca Henderson, “Putting Patents in Context: Exploring Knowledge Transfer from MIT,” *Management Science* 48, no. 1 (2002): 44–60.

18. Alfonso Gambardella, *Science and Innovation* (Cambridge: Cambridge University Press, 1995).

19. Kenneth J. Arrow, “Economic Welfare and the Allocation of Resources for Invention,” in *Science Bought and Sold: Essays in the Economics of Science*, ed. Philip Mirowski and Esther-Miriam Sent (1962; repr., Chicago: University of Chicago Press, 2002), 165–81; Richard R. Nelson, “The Simple Economics of Basic Research,” in *Science Bought and Sold* (1959; repr.), 151–64.

20. Jerry G. Thursby and Marie C. Thursby, “Industry Perspectives on Licensing University Technologies: Sources and Problems,” *Industry and Higher Education* 15, no. 4 (2001): 289–94.

21. Christina Jansen and Harrison F. Dillon, “Where Do the Leads for Licenses Come From? Source Data from Six Institutions,” *The Journal of the Association of University Technology Managers* 11 (1999).

university—a process that necessarily distances faculty members from the management and marketing of their own inventions. Given that faculty inventors have the deepest knowledge of their own inventions and sometimes are sole sources of the expertise that surrounds their scholarly work (which is often experiential and cannot be patented), it is simply sound policy for faculty members to control the dissemination of their own scholarship and research.

In seeking to strengthen these rights, faculty members will likely face considerable opposition from university technology-licensing officers and universities' legal counsel, who have grown accustomed to asserting monopoly positions on faculty scholarship and have a powerful interest in maintaining the status quo that funds their salaries. Propelled by Bayh-Dole and other legislative reforms, universities have invested heavily in their technology ownership and licensing operations over the last three decades, expending large sums on licensing staff, legal experts, patenting and licensing fees, and intellectual property-related litigation.

This expenditure has certainly brought some returns for a handful of institutions, but it has also generated substantial infrastructure overhead and expense. From 1983 to 2003, the number of patents issued directly to American universities grew from 434 to 3,259.²² The overwhelming majority of these patents were concentrated in biomedicine, but patents also came from engineering, computer science, agriculture, and numerous other fields. Universities, however, refuse to disclose how many of these patents have not been licensed and, of those that have, which of these licenses have resulted in new products made available to the public at a reasonable cost. Total annual revenues from the licensing of university inventions increased from roughly \$200 million in 1991 to \$1.85 billion in 2006.²³ In 2007, AUTM reported a

total of 3,148 cumulative, operational start-up firms associated with US university patenting and licensing activities. But it does not report how many of these firms are still in business or which of them has ever produced a new product offered for sale.²⁴

The figures are intended to look impressive. But they are not. Contrary to widespread assumptions, most universities have not actually generated substantial income from their patenting and licensing activities, nor has their licensing activity resulted in a significant number of new products coming into commercial use. Only roughly two dozen US universities with “blockbuster” inventions generate sizable revenue from their licensing activities.²⁵ A 2006 econometric analysis found that, after subtracting the costs of patent management, universities netted “on average, quite modest” revenues from 1998 until 2002, two decades after Bayh-Dole took effect. The study concluded: “[U]niversities should form a more realistic perspective of the possible economic returns from patenting and licensing activities.”²⁶ Lita Nelsen, director of the technology-licensing office at MIT, made similar observations: “[T]he direct economic impact of technology licensing on the universities themselves has been relatively small (a surprise to many who believed that royalties could compensate for declining federal support of research) . . . [M]ost university licensing offices barely break even.”²⁷ Licensing offices less than twenty years old and institutions with annual research budgets of less than \$100 million have particular difficulty breaking even. Those universities, especially, should adopt policies that restore faculty control of their inventive scholarship, for financial reasons and to protect academic freedom and support innovation. The

22. Wesley M. Cohen and John P. Walsh, “Real Impediments to Academic Biomedical Research,” *Innovation Policy and the Economy* 8 (2008): 1–30, <http://www.nber.org/~marschke/mice/Papers/cohenwalsh.pdf>.

23. All original statistics on university and hospital patenting and licensing come from licensing activity surveys coordinated by AUTM. However, these figures were extracted from Cohen and Walsh, “Real Impediments to Academic Biomedical Research” and from Anthony D. So, Bhaven N. Sampat, Arti K. Rai, Robert Cook-Deegan, Jerome H. Reichman, Robert Weissman, and Amy Kapczynski, “Is Bayh-Dole Good for Developing Countries? Lessons from the US Experience,” *PLoS Biology* 6, no. 10 (2008): e262, <http://www.plosbiology.org/article/info:doi/10.1371/journal.pbio.0060262>.

24. Association of University Technology Managers, *FY 2007 Licensing Activity Survey Full Report*, ed. Robert Tieckelmann, Richard Kordal, Sean Flanigan, Tanya Glavicic-Théberge, and Dana Bostrom (2007).

25. So et al., “Is Bayh-Dole Good for Developing Countries?” Original sources: Association of University Technology Managers, *FY 2006 US Licensing Activity Survey* (2006) and David C. Mowery, Richard R. Nelson, Bhaven N. Sampat, and Arvids A. Ziedonis, “The Growth of Patenting and Licensing by US Universities: An Assessment of the Effects of the Bayh-Dole Act of 1980,” *Research Policy* 30, no. 1 (2001): 99–119.

26. Harun Bulut and Giancarlo Moschini, “US Universities’ Net Returns from Patenting and Licensing: A Quantile Regression Analysis,” Center for Agricultural and Rural Development at Iowa State University Working Paper 06-WP 432 (2006), <http://www.card.iastate.edu/publications/dbs/pdffiles/06wp432.pdf>.

27. Lita Nelsen, “The Rise of Intellectual Property Protection in the American University,” *Science* 279, no. 5356 (1998): 1460–61.

blockbuster invention that a faculty member might make is more likely to benefit the institution when the relationship between the faculty inventor and the university is one of voluntary collaboration than when it is governed by a compulsory ownership policy.

Supporters of Bayh-Dole may have hoped the legislation would create opportunities for universities to manage academic inventions made with federal support and thus speed the pace of technological innovation in the United States. But here too the legislation's economic legacy has been mixed. Though university patents soared after Bayh-Dole, studies have found that academic patenting does not correlate well with increased industrial use or commercial development of academic discoveries.²⁸ A 2002 study of the patent portfolios of Stanford and Columbia found that, of eleven major inventions, seven would have been commercialized without any assertion of patent rights or technology-transfer office licensing, because "strategically located people in industry were well aware of the university research projects even before the universities' [technology-transfer offices] began to market the inventions."

IV. AAUP Policy Statements on Copyright and Patent Rights

The academic freedom principles undergirding principle 11 (below) have been guiding the AAUP since its founding. To our knowledge, this principle has not been endorsed previously by other professional academic groups; however, it builds on several recent policy statements issued by the AAUP relating to faculty-generated intellectual property. It is also consistent with long-standing principles of academic freedom and with US patent and copyright laws pertaining to the ownership rights of inventors.

As the AAUP's 1999 *Statement on Copyright* observed regarding faculty research and inventions subject to copyright, "the faculty member rather than the institution determines the subject matter, the intellectual approach and direction, and the conclusions"; for the institution to control the "dissemination of the work" would be "deeply inconsistent with fundamental principles of academic freedom." The statement goes on to note that "it has been the prevailing academic practice to treat the faculty member as the

copyright owner of works that are created independently and at the faculty member's own initiative for traditional academic purposes." And it adds, "It is unlikely that the institution will be regarded as having contributed the kind of 'authorship' that is necessary for a 'joint work' that automatically entitles it to a share in the copyright ownership."

In 1998, the AAUP established a Special Committee on Distance Education and Intellectual Property Issues, which released several documents the following year, including one recommending language for campus policies regarding intellectual property rights and management, *Sample Intellectual Property Policy and Contract Language*. This document begins, "The copyright statement takes as its guiding assumption that the faculty member (or members) who create the intellectual property own the intellectual property," adding that "that assumption applies to the patent area as well." It goes on to recommend the following language for campus adoption: "Intellectual property created, made, or originated by a faculty member shall be the sole and exclusive property of the faculty, author, or inventor, except as he or she may voluntarily choose to transfer such property, in full or in part." Drawing on a detailed discussion of "work made for hire" in the *Statement on Copyright*, the special committee endorsed the following: "A work should not be treated as 'made for hire' merely because it is created with the use of university resources, facilities, or materials of the sort traditionally and commonly made available to faculty members." It went on to note: "Funds received by the faculty member from the sale of intellectual property owned by the faculty author or inventor shall be allocated and expended as determined solely by the faculty author or inventor." Recognizing the current trend for universities to assign intellectual property rights to institutions involuntarily, the AAUP further warned in its *Statement on Copyright*: "If the faculty member is indeed the initial owner of copyright, then a unilateral institutional declaration cannot effect a transfer, nor is it likely that a valid transfer can be effected by the issuance of appointment letters to new faculty members requiring, as a condition of employment, that they abide by a faculty handbook that purports to vest in the institution the ownership of all works created by the faculty member for an indefinite future."

The AAUP's *Statement on Distance Education and Intellectual Property* is prefaced by a warning that the "vital intersection of emergent technologies and

28. David C. Mowery, Richard R. Nelson, Bhaven N. Sampat, and Arvids A. Ziedonis, *Ivory Tower and Industrial Innovation: University-Industry Technology Transfer before and after the Bayh-Dole Act* (Stanford, CA: Stanford Business Books, 2004): 5.

the traditional interests of faculty members in their own intellectual products requires scrutiny and the formulation of policies that address the former while preserving the latter.” The statement itself emphasizes that “the faculty should have primary responsibility for determining the policies and practices of the institution in regard to distance education.” That includes authority for determining whether particular courses should receive credit at a college and how much credit they should receive. The statement does not anticipate the phenomenon of a MOOC enrolling one hundred thousand students, but it takes a firm stand on principles that should govern online courses no matter what their size: “Provision should also be made for the original teacher-creator, the teacher-adapter, or an appropriate faculty body to exercise control over the future use and distribution of recorded instructional material and to determine whether the material should be revised or withdrawn from use.”

Even when a faculty member willingly creates a distance education course on a work-for-hire basis, the statement clarifies a key condition: “the faculty member should, at a minimum, retain the right to take credit for creative contributions, to reproduce the work for his or her instructional purposes, and to incorporate the work in future scholarly works authored by the faculty member.”

Principle 11 was additionally informed by recent evidence of university technology-transfer offices abrogating the academic freedom rights of faculty in intellectual property decisions pertaining to their research (some of these cases are discussed above or in *Recommended Principles to Guide Academy-Industry Relations*) and by a 2010 faculty advisory board ruling in an academic freedom case involving a dispute between Stanford University and a Stanford professor (also discussed in *Recommended Principles*).

Principle 12 grows directly out of earlier AAUP policy statements on intellectual property-related issues. The AAUP has already recommended that a campus intellectual property committee “play a role in policy development.” The AAUP’s 2004 *Statement on Corporate Funding of Academic Research* further observes, “Consistent with principles of sound academic governance, the faculty should have a major role not only in formulating the institution’s policy with respect to research undertaken in collaboration with industry, but also in developing the institution’s plan for assessing the effectiveness of the policy.” The AAUP has long asserted the faculty’s primary responsibility for the “subject matter and methods” of

research, a principle reaffirmed in the 1966 *Statement on Government of Colleges and Universities*. With regard to principle 13, one should note that the AAUP’s Statement on Graduate Students points out that “graduate students are entitled to the protection of their intellectual property rights.” More broadly, the AAUP’s 1999 *Sample Intellectual Property Policy and Contract Language* takes a parallel approach to the one offered here:

In light of the changing legislative environment, and in view of the evolution of contracts and policies in the intellectual property area, AAUP believes that the establishment of an on-going Intellectual Property Committee representing both faculty and administration would serve a useful purpose in both collective bargaining and non-collective bargaining environments. Such a committee could serve a variety of purposes, including keeping faculty and administration apprised of technological changes that will affect the legislative, contract, and policy contexts. Such a committee would play a role in policy development, as well as perform a dispute resolution function. In the absence of such an overall policy committee, a dispute resolution committee with both administrative and faculty representation is essential.

Principle 14 flows logically from the recommendations contained in principle 11, which were drawn from earlier AAUP statements relating to the rights of faculty members to own and control their intellectual property. The purpose of principle 14 is to extend these faculty rights to both traditional and larger-scale corporate sponsored research agreements.

Recommended Principles to Guide Academy-Industry Relations offers detailed citation of consensus statements by other academic and professional groups that support principles 15–21. Finally, the statement *Academic Freedom and Electronic Communications* reminds us that “teachers are entitled to freedom in the classroom in discussing their subject” and adds that “a classroom is not simply a physical space, but any location, real or virtual, in which instruction occurs.”

V. Intellectual Property Principles Designed for Incorporation into Faculty Handbooks and Collective Bargaining Agreements

These principles are reproduced (with the original numbering retained) from *Recommended Principles to Guide Academy-Industry Relations*.

HANDBOOK PRINCIPLE 11: Faculty Inventor Rights and Intellectual Property (IP) Management: Faculty members' fundamental rights to direct and control their own research do not terminate when they make a new invention or other research discovery; these rights extend to decisions about their intellectual property—involving invention management, IP licensing, commercialization, dissemination, and public use. Faculty assignment of an invention to a management agent, including the university that hosted the underlying research, will be voluntary and negotiated, rather than mandatory, unless federal statutes or previous sponsored research agreements dictate otherwise. Faculty inventors retain a vital interest in the disposition of their research inventions and discoveries and will, therefore, retain rights to negotiate the terms of their disposition. Neither the university nor its management agents will undertake IP decisions or legal actions directly or indirectly affecting a faculty member's research, inventions, instruction, or public service without the faculty member's and the inventor's express consent. Of course, faculty members, like other campus researchers, may voluntarily undertake specific projects as "work-for-hire" contracts. When such work-for-hire agreements are truly voluntary and uncoerced, their contracted terms may legitimately narrow faculty IP rights.

HANDBOOK PRINCIPLE 12: Shared Governance and the Management of University Inventions: The faculty senate or an equivalent body will play a primary role in defining the policies and public-interest commitments that will guide university-wide management of inventions and other knowledge assets stemming from campus-based research. University protocols that set the norms, standards, and expectations under which faculty discoveries and inventions will be controlled, distributed, licensed, and commercialized are subject to approval by the faculty senate or an equivalent governance body, as are the policies and public-interest commitments that will guide university-wide management of inventions and other knowledge assets stemming from campus-based research. A standing faculty committee will regularly review the university's invention-management practices, ensure compliance with these principles, represent the interests of faculty investigators and inventors to the campus, and make recommendations for reform when necessary.

HANDBOOK PRINCIPLE 13: Adjudicating Disputes Involving Inventor Rights: Just as the right to control research and instruction is integral to academic freedom, so too are faculty members' rights to

control the disposition of their research inventions. Inventions made in the context of university work are the results of scholarship. Invention-management agents are directed to represent and protect the expressed interests of faculty inventors, along with the interests of the institution and the broader public, to the maximum extent possible. Where the interests diverge insurmountably, the faculty senate or an equivalent body will adjudicate the dispute with the aim of recommending a course of action to promote the greatest benefit for the research in question, the broader academic community, and the public good. Student and other academic professional inventors have access to grievance procedures if they believe their inventor or other IP rights have been violated. Students will not be urged or required to surrender their IP rights to the university as a condition of participating in a degree program.

HANDBOOK PRINCIPLE 14: IP Management and Sponsored Research Agreements: In negotiating outside sponsored research agreements, university administrators will make every effort to inform potentially affected faculty researchers and to involve them meaningfully in early-stage negotiations concerning invention management and IP. In the case of large-scale corporate sponsored research agreements like strategic corporate alliances (SCAs), which can have an impact on large numbers of faculty members, not all of whom may be identifiable in advance, a special faculty committee will be convened to participate in early-stage negotiations, represent collective faculty interests, and ensure compliance with relevant university protocols. Faculty participation in all institutionally negotiated sponsored research agreements will always be voluntary.

HANDBOOK PRINCIPLE 15: Humanitarian Licensing, Access to Medicines: When lifesaving drugs and other critical public-health technologies are developed in academic laboratories with public funding support, the university will make a strong effort to license such inventions in a manner that will ensure broad public access in both the developing and the industrialized world. When issuing an exclusive license to a company for the development of a promising new drug—or any other critical agricultural, health, or environmental safety invention—the university will always seek to include provisions to facilitate distribution of these inventions in developing countries at affordable prices.

HANDBOOK PRINCIPLE 16: Securing Broad Research Use and Distribution Rights: All contracts

and agreements relating to university-generated inventions will include an express reservation of rights—often known as a “research exemption”—to allow for academic, nonprofit, and governmental use of academic inventions and associated intellectual property for noncommercial research purposes. Research exemptions will be reserved and well publicized prior to assignment or licensing so that faculty members and other academic researchers can share protected inventions and research results (including related data, reagents, and research tools) with colleagues located at this university or at any other nonprofit or governmental institution. The freedom to share and practice academic discoveries, for educational and research purposes, whether legally protected or not, is vitally important for the advancement of research and scientific inquiry. It also enables investigators to replicate and verify published results, a practice essential to scientific integrity.

HANDBOOK PRINCIPLE 17: Exclusive and Nonexclusive Licensing: The university, its contracted management agents, and faculty will always work to avoid exclusive licensing of patentable inventions, unless such licenses are absolutely necessary to foster follow-on use or to develop an invention that would otherwise languish. Exclusive and other restrictive licensing arrangements will be used sparingly, rather than as a presumptive default. When exclusive licenses are granted, they will have limited terms (preferably less than eight years); include requirements that the inventions be developed; and prohibit “assert licensing,” sometimes referred to as “trolling” (aggressively enforcing patents against an alleged infringer, often with no intention of manufacturing or marketing the product yourself). Exclusive licenses made with the intention of permitting broad access through reasonable and nondiscriminatory sublicensing, cross-licensing, and dedication of patents to an open standard should meet public-access expectations. However, the preferred methods for disseminating university research are nonexclusive licensing and open dissemination, to protect the university’s public-interest mission, open-research culture, and commitment to advancing research and inquiry through broad knowledge sharing. To enhance compliance and public accountability, the university requires all invention-management agents to report publicly and promptly any exclusive licenses issued together with written statements detailing why an exclusive license was necessary and why a nonexclusive one would not suffice. The faculty senate, or another designated governance

body, has the authority to review periodically any exclusive licenses and corresponding statements for consistency with the principle.

HANDBOOK PRINCIPLE 18: Upfront Exclusive Licensing Rights for Research Sponsors: The university will refrain from signing sponsored research agreements, especially multiyear, large-scale SCA agreements, granting sponsors broad title, or exclusive commercial rights, to future sponsored research inventions and discoveries unless such arrangements are narrowly defined and agreed to by all faculty members participating in, or foreseeably affected by, the alliance. If this arrangement is not feasible, as in the case of larger SCAs, the faculty senate (or another designated governance body) will review and approve the agreement and confirm its consistency with principles of academic freedom and faculty independence and with the university’s public-interest missions. Special consideration will be given to the impact exclusive licenses could have on future, as-yet-unimagined uses of technologies. When granted, exclusive rights will be defined as narrowly as possible and restricted to targeted fields of use only, and every effort will be made to safeguard against abuse of the exclusive position.

HANDBOOK PRINCIPLE 19: Research Tools and Upstream Platform Research: The university and its contracted management agents will undertake every effort to make available and broadly disseminate research tools and other upstream platform inventions in which they have acquired an ownership interest. They will avoid assessing fees, beyond those necessary to cover the costs of maintaining the tools and disseminating them, and avoid imposing other constraints that could hamper downstream research and development. No sponsored research agreement will include any contractual obligations that prevent outside investigators from accessing data, tools, inventions, and reports relating to scholarly review of published research, matters of public health and safety, environmental safety, and urgent public policy decisions.

HANDBOOK PRINCIPLE 20: Diverse Licensing Models for Diverse University Inventions: Faculty investigators and inventors and their management agents will work cooperatively to identify effective licensing or distribution models for each invention with the goal of enhancing public availability and use.

HANDBOOK PRINCIPLE 21: Rights to “Background Intellectual Property” (BIP): University administrators and their agents will not act unilaterally when granting sponsors rights to university-managed background intellectual property related to a sponsor’s

proposed research area but developed without the sponsor's funding support. The university will be mindful of how BIP rights will affect faculty inventors and other investigators who are not party to the sponsored research agreement. University administrators and managers will not obligate the BIP of one set of investigators to another's sponsored research project, unless that BIP is already being made available under nonexclusive licensing terms or the affected faculty inventors and investigators have consented. ■

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The Subcommittee

Ten Reasons Why You Should Care Whether You Own Your Online Course (MOOCs or Not)

By Cary Nelson

1. Do you want your U to be able to hire part-time faculty at slave wages to teach the course you designed—even if you were paid fairly for it?
2. Do you want to exercise some ethical and professional authority over how your course is used?
3. Do you want to retain the right to revise and update your online course as you see fit, or do you want to give that right to your U? Do you want the U to have the right to revise a course as *they* see fit?
4. Do you want your U to have the right to market segments of your course separately, perhaps without giving you credit?
5. Do you want the U to be able to insert lectures, powerpoints, graphics, or assignments by others into your course without your permission?
6. Do you want to give the U the right to ask someone else to update your course if you are still willing to do so? Might that person have a different agenda, different values, different intellectual commitments?
7. Do you want to retain the right to use elements of the course in other projects, perhaps another course or a textbook?
8. Do you want to retain the right to offer the course at another institution if you move?
9. Do you want to retain the right to offer the course on a second platform, or do you want the U to own the course and be able to deny you that right?
10. Do you want the right to design a course for another platform/distributor from the outset, perhaps because you think they have a larger distribution network or because you think their software is better, or are you willing to let your U control all your copyrightable intellectual property?

A faculty member wanting to retain copyright to online instructional materials could insist on signing a license that granted the university the right to use the material, without granting the U ownership. But the reality is one faculty member may not have the clout to protect his or her rights. In most cases it's going to take collective action by a faculty senate or a contract negotiating team to secure and preserve those rights for everyone—either in a FACULTY HANDBOOK or a COLLECTIVE BARGAINING CONTRACT.



Faculty Rights and Responsibilities in Distance Learning (2000)

Distance Learning and Intellectual Property:
Ownership and Related Faculty Rights and Responsibilities
By Donna R. Euben, AAUP Counsel
April 2000

According to a recent study by the U.S. Department of Education, nearly half of all U.S. colleges and universities offer classes taught outside a traditional classroom (by audio, video or over the Internet). See "Survey Finds 72% Rise in Number of Distance-Education Programs," *The Chronicle of Higher Education* (Jan. 7, 2000) at A57. By 1998, distance learning classes were offered by over 79 percent of public four-year universities. A total of 1.6 million students were enrolled in approximately 54,000 on-line courses nationwide. Not surprisingly, the greatest area of growth is in courses taught over the Internet. The data also revealed that public universities were getting involved in distance education at a much faster rate than private institutions, and that the largest colleges and universities were the most likely to offer such courses.

Distance education poses both opportunities and challenges. The opportunities include reaching out to those students who would not necessarily have access to college and university courses, such as parents with young children ("It is hard to be a single parent and be in school."), those in rural areas, individuals with disabilities, and those who work full-time. See, e.g., Jefferey R. Young, "Dispatches From Distance Education, Where Class is Always in Session," *The Chronicle of Higher Education* (Mar. 3, 2000).

Traditional notions of ownership, control and use of educational materials are being challenged by the revolution in communications technology. The authority and responsibilities of faculty members in this digital era with regard to how courses are developed, taught, and revised are in flux, and many existing institutional policies on these issues fail to address important questions raised in this changing environment. Accordingly, over the past several years the American Association of University Professors (AAUP) has studied these issues and developed policy guidance to focus on faculty rights and responsibilities. (For a list of relevant AAUP statements and reports, see the references at the end of this outline. AAUP statements on distance education and intellectual property are attached.)

The AAUP does not oppose the concept of distance education. Rather, the Association emphasizes the need to ensure the educational quality and integrity of such programs so as to be

consistent with the goals and ideals of colleges and universities in the development and dissemination of knowledge.

I. Educational Decision-Making

Distance education raises many of the same issues as traditional courses with regard to academic governance. As recognized in the AAUP [*Statement on Online and Distance Education*](#),

The governing board, administration, faculty, and students all have a continuing concern in determining the desirability and feasibility of utilizing new media as instruments of education. Institutional policies on distance education should define the responsibilities for each group in terms of the group's particular competence.

85 *Academe*: Bulletin of the American Association of University Professors 3:41, at 42 (May-June 1999) (hereinafter "*Academe*"). With regard to the role of faculty members in curriculum development in this context, the Statement notes that:

As with all other curricular matters, the faculty should have primary responsibility for determining the policies and practices of the institution in regard to distance education. The rules governing distance education and its technologies should be approved by vote of the faculty concerned or of a representative faculty body, officially adopted by the appropriate authority, and published and distributed to all concerned.

The applicable academic unit--usually a department or program--should determine the extent to which the new technologies of distance education will be utilized, and the form and manner of their use. These determinations should conform with institutional policies.

Id. Thus, when considering the development of distance education courses, it is important to be aware of the existing institutional procedures on curriculum approval.

For example, the collective bargaining agreement between Yuba College Faculty Association and the Yuba Community College District, Article 10.0 (Distance Learning), provides:

Other governance issues raised by distance education in which AAUP calls upon institutions to recognize and respect the faculty role in decision-making include the amount of credit awarded for such courses, rules regarding teaching loads and required faculty-student contact, and the allocation of necessary supporting resources (see section IV, *infra*).

II. Ownership and Control of Course Materials

The complexity and expense of the resources needed to provide distance education courses have raised questions about the appropriate distribution of authority and control among the administration, academic departments or units, and faculty members. See, e.g., Gail S. Chalmers, "Toward Shared Control of Distance Education," *The Chronicle of Higher Education* (Nov. 19, 1999) at B8 (discussing different ownership models).

A. Academic Freedom and the "Work for Hire" Doctrine

Traditionally, colleges and universities have not sought to assert copyright over course materials and other traditional scholarly works. See, e.g., Gorman, Robert A., "Intellectual Property: The Rights of Faculty as Creators and Users," 84 *Academe* 3:14 (May-June 1998); see also University-wide Task Force on Copyright: Report and Recommendations, University of California (Oct. 1999). Under the principle of academic freedom, faculty members generally have the right to develop and modify course materials within their fields of expertise, and to use pedagogical techniques they deem most appropriate for the subject matter. See "1940 Statement of Principles on Academic Freedom and Tenure," AAUP Policy Documents & Reports 3 (1995 ed.). As AAUP discusses in its policy statements, the "work made for hire" doctrine (see Copyright Act of 1976, 17 U.S.C. Sections 101 and 201)--under which an employer can assert ownership over materials prepared by its employees acting within the scope of their employment--is not an appropriate model for wholesale application to the preparation of scholarly and teaching materials because of the nature of academic work and academic freedom.

Few court decisions have been rendered on this subject, but some of the most prominent decisions of federal courts have followed traditional academic practice and found that faculty authors own copyright in their academic materials. See, e.g., *Weinstein v. University of Illinois*, 811 F.2d 1091, 1094 (7th Cir. 1987) (discussing the longstanding tradition that higher education faculty own the copyrights in their academic work, as stated in Nimmer's Copyright treatise and elsewhere); *Hays v. Sony Corp. of America*, 847 F.2d 412, 416 (7th Cir. 1988) (noting that although college faculty do academic writing as part of their employment responsibilities and use employer facilities and resources to do so, "[a] college or university does not supervise its faculty in the preparation of academic books or articles, and is poorly equipped to exploit their writings, whether through publication or otherwise").

B. Faculty Ownership and Institutional/CBA Policies

AAUP's Statement on Copyright provides that faculty members who create the intellectual property own it, unless an agreement between the faculty a member and administration provides otherwise. That statement states:

It has been the prevailing academic practice to treat the faculty member as the copyright owner of works that are created independently and at the faculty member's own initiative for traditional academic purposes.

The AAUP-Wright State University contract, Section 27.2.3 provides:

Traditional faculty products of scholarly activity that have customarily been considered to be the restricted property of the author will be owned by the author regardless of the medium in which the work is embodied.

There are three limited and expressly defined set of circumstances in which the college or university can claim ownership of the copyright:

1. special works credited in circumstances that may properly be regarded as "made for hire"; the

use of university resources, facilities or materials of the sort traditionally made available to faculty members does not transform a faculty work into "made for hire"; extra ordinary university resources must be used

2. negotiated contractual transfers; and

3. joint works, as defined in the Copyright Act, where the institution may be considered a co-author.

The current AAUP-Rider University contract provides the following:

The bargaining unit creators of intellectual property, in all its forms, shall be the owners of that property, except when a bargaining unit member and the University enter into a specific agreement to create such intellectual property or the University provides "substantial or unusual funds, facilities or opportunities which the bargaining unit member would not ordinarily be entitled to have for any chosen project."

Article XXIX, 2.

At the University of Texas System, faculty members retain ownership of any Web courses they create. The University claims ownership, however, when parties agree beforehand that some is hired for the sole purpose of creating an on-line course.

At the University of Missouri at Columbia, faculty members own the on-line courses they create. They also can control how the on-line courses are used, and may even leave with the course content if they move to another university. The institution does own the graphics and artwork that are developed by university staff for the on-line courses, unless the faculty member develops those features without assistance. Dan Carnevale & Jeffery R. Young, "Who Owns On-Line Courses? Colleges and Professors Start to Sort It Out," *The Chronicle of Higher Education* (Dec. 17, 1999).

At the same time, a collective bargaining agreement may allow for institutions to use works created by faculty members without charge for educational and administrative purposes within the institution. In addition, faculty members should be encouraged to include such uses in their agreements transferring copyright for such works to a publisher.

B. Contractual Ownership Arrangements

In many instances, colleges and universities have avoided confusion regarding ownership by entering contracts with faculty members in advance of the development of course materials for distance education. Under these circumstances, a faculty member agrees to develop particular materials for the institution, and the terms and conditions of those arrangements, including ownership and control rights, are specified in writing upfront.

In the absence of such contracts, institutions may find that their policies do not clearly address certain situations in which faculty members create and use course materials. Many institutional policies assert university ownership when "substantial university resources" are used, for

example, but questions inevitably arise about the nature and extent of normal institutional support for day-to-day faculty work.

Arthur Miller, a prominent Harvard Law School professor, recently became embroiled in a dispute with Harvard after he supplied videotaped lectures for Concord University School of Law, an on-line institution, without Harvard's permission. See "Who Owns On-Line Courses? Colleges and Professors Start to Sort It Out," *The Chronicle of Higher Education* (December 17, 1999) at A45 (discussing a future in which faculty members might become free agents who would own their course materials and sell access to various on-line institutions). Professor Miller argued that he did not violate Harvard's policies because he did not teach at the virtual law school or interact with its students either in person or on-line. What about professors who publish books and articles, or give lectures off-campus on topics within their professional expertise? The Arthur Miller controversy raises these possible analogies for university policies and practices.

Some universities have negotiated contracts with other institutions so that their faculty members may offer on-line courses at these other institutions. Still other universities have reached agreements with for-profit corporations to market on-line courses. See, e.g., "For-Profit Venture to Market Distance-Education Courses Stirs Concern at Temple," *The Chronicle of Higher Education* (Dec. 17, 1999) at A46. In all of these situations, contracts can be used to sort out rights of ownership and control. In the rush to expand markets or earn profits, however, colleges and universities should take care not to lose sight of notions of academic freedom, shared governance, and educational quality.

III. Educational Quality and Integrity Issues

Distance education raises a host of educational quality and integrity issues that have yet to be answered in this rapidly changing environment. AAUP recommends that faculty members should be involved in the oversight of distance-education courses to the same extent as in other courses with regard to factors such as course development and approval, selection of qualified faculty to teach, pedagogical determinations about appropriate class size, and oversight of final course offerings by the appropriate faculty committee to ensure conformity with previously established traditions of course quality and relevance to programs. See "AAUP Statement on Distance Education," 85 *Academe* 3:41, at 42 (May-June 1999). For a helpful list of practical considerations for faculty, see "Teaching at an Internet Distance: The Pedagogy of Online Teaching and Learning: The Report of a 1998-1999 University of Illinois Faculty Seminar," <http://www.vpaa.uillinois.edu/tid/report/tid_report.html.> See also "Distance Education Quality Checklist," National Education Association (1999).

A. Academic Freedom in Course Content and Delivery

Distance education creates special concerns with academic freedom and educational quality to the extent that the creation, use, and revision of course materials may not necessarily be handled by the same faculty member(s)--or even by faculty members at all. In some for-profit institutions, for example, the individuals who create original course materials are not involved at all in the use of those materials and do not interact with students. Thus, their ideas are left in the hands of others to interpret and revise. The individuals who are responsible for the "delivery" of

the course content may not have the same expertise or training as the creators. The institution might also ask for courses to be structured and packaged in very specific ways to meet its own needs, thus placing other constraints on traditional academic freedom in teaching.

AAUP's Committee on Accrediting of Colleges and Universities, which has been active in seeking to ensure that accrediting agencies maintain standards of academic quality and integrity in the face of increasing requests involving on-line courses, has noted that distance education can alter the very nature of higher education because of the change in the nature of faculty involvement:

The fundamental difficulty with institutions that rely heavily, or exclusively, on distance education is that they are characterized by a practice called 'unbundling.' In that practice, course materials are prepared by a 'content expert' and delivered by a 'faculty facilitator,' in a uniform manner, producing predictable and measurable 'outcomes' that fit uniform assessment tools. Such a process of turning education into modular units represents a basic change in an essential characteristic of higher education.

Perley, James & Tanguay, Denise Marie, "Accrediting On-Line Institutions Diminishes Higher Education," *The Chronicle of Higher Education: Colloquy* (Oct. 29, 1999), expressing concerns with regional accreditation of totally on-line institutions using traditional methods.

AAUP recommends the following:

The faculty member (or an appropriate faculty body) who teaches the course (or adopts a pre-existing course) for use in distance education shall exercise control over the future use, modification, and distribution of recorded instructional material and shall determine whether the material should be revised or withdrawn from use.

Moreover, additional compensation may be negotiated for faculty members involved in extensive revision and modifications of courses they develop.

The AAUP-Rider University collective bargaining agreement provides: "The faculty member will have the same responsibility for the selection and presentation of materials and points of view in a Distance Learning course as he/she would have in a traditional course." Art. XXXVI, 3.d. Furthermore, "[a]ll such courses must be approved by the department/program and by the appropriate APC. This review will occur even then the proposed Distance Learning course is a section of an already existing and approved course." Art. XXVI, 3.b.

The policy from the University of North Texas provides an example of how to address some of these concerns:

D. Revision Rights. Faculty members should normally retain the right to update, edit or otherwise revise electronically developed course materials that become out of date, or, in certain circumstances, should place a time limit upon the use of electronically developed course materials that are particularly time sensitive, regardless of who owns copyright in the electronically developed course materials. These rights and limitations may be negotiated in advance of the creation of the electronically developed course materials and may be reduced to

writing. Absent a written agreement, each faculty member will have the right and moral obligation to revise work on an annual basis in order to maintain academic standards. . . . University of North Texas, "Creation, Use, Ownership, Royalties, Revision and Distribution of Electronically Developed Course Materials," (Draft Policy Adopted by the Faculty Senate, 12/08/99).

B. Student-Faculty Interaction

Universities may be tempted to create mega-courses to make as much money as possible from them, especially in light of the substantial expenditures necessary to develop and provide on-line courses. The number of students is a critical factor, however, in determining how a course will be taught and what types of interaction will be most effective. If distance-education courses are expected to produce substantial interaction among students and faculty, the student-faculty ratio must be considered even if the technology makes it possible to reach a much larger number of students than a traditional course. See, e.g., University of Illinois faculty report, "Teaching at an Internet Distance," <<http://www.vpaa.uillinois.edu/tid/report/>>.

Given the overall mission of colleges and universities, the need for some form of socialization and interaction for students may be critical to the success and viability of many distance-education programs. See, e.g., "An On-Line Student Enjoys Class Flexibility but Misses Social Contact," *The Chronicle of Higher Education: Academe Today* (Dec. 8, 1999). On the other hand, some proponents of distance education have noted that the lack of personal interaction may encourage shy, quiet students to participate more actively electronically than they would in person.

Finally, the fact that students can participate in distance-education courses at times and places that suit their own schedules may mean that some students will be more well-prepared than they would be otherwise. Yet some students may need direct, personal interaction with a faculty member and fellow students to motivate and inspire them. According to a recent article in *The Chronicle of Higher Education*,

No national statistics exist yet about how many students complete distance programs or courses, but anecdotal evidence and studies by individual institutions suggest that course-completion and program-retention rates are generally lower in distance-education courses than in their face-to-face counterparts. . . . [S]everal administrators concur that course-completion rates are often 10 to 20 percentage points higher in traditional courses than in distance offerings . "As Distance Education Comes of Age, the Challenge is Keeping the Students," *The Chronicle of Higher Education: Academe Today* (Feb. 7, 2000).

C. Grading and Evaluations

Distance education programs have begun to raise questions about how to grade students whom the faculty member has never met, how students are to evaluate faculty, and how to ensure that the students themselves (rather than surrogates, for example) are participating in the course, taking the examinations. Thus, distance-education programs must include safeguards to ensure

that students are held to the same standards of academic honesty as students in traditional courses.

Students enrolled in distance-education courses should be held to the same requirements of academic honesty as students enrolled in traditional courses. In addition, protections should be built into the collective bargaining agreement to ensure that students have the opportunity to evaluate faculty, and faculty should have protections to ensure that faculty members are evaluated fairly. In the end, "Faculty members participating in the distance-education program shall be evaluated in the same manner as all other faculty members in accordance with the appropriate provisions of the collective bargaining agreement or institutional policy." At the same time, that evaluation form should be modified to address issues relevant to distance-education courses. For example, a question that addresses technological difficulties should be included, but should not reflect positively or negatively on the faculty member's teaching because that is an institutional responsibility.

Technical difficulties can also hamper the ability of students to participate fully or to complete course requirements. For example, in the fall of 1999, more than half of the 1,900 students enrolled in an experimental on-line course at the University of Iowa received F's on their midterm report cards. Many of them had not even started the course, and some of the lessons were not even up on the course website. The course was taught by a single professor (with help from 20 undergraduate teaching assistants), making it very difficult for the faculty member to have a sense of each individual's circumstances. Although such problems already exist in large lecture courses, they are exacerbated by the nature of distance education and the lack of face-to-face contact.

IV. Institutional Support and Compensation

Significant resources are required to develop and maintain distance-education programs. Faculty members must give thought to how materials will be presented and how students will be evaluated, and must also become familiar with the technologies of instruction prior to delivery of distance-education courses. Accordingly, faculty members charged with these responsibilities may need significant release time from ordinary teaching duties while developing such courses. See AAUP "Report on Distance Education and Intellectual Property Issues," *Academe* (May-June 1999). Once a course has been developed, a faculty member also needs to figure out how best to maintain contact with his or her students.

A. Faculty Workload/Teaching Responsibility

Faculty workload and salary policies should take these types of considerations into account. Anecdotal evidence "suggests that investment of faculty time involved in teaching a distance education course is substantially greater than that required for a comparable traditional course. The time spent on-line answering student inquiries is reported as being more than double the amount of time required in interacting with students in comparable traditional classes." AAUP, "Special Committee on Distance Education and Intellectual Property Issues: Sample Language for Institutional Policies and Contract Lineage" (Dec. 3, 1999).

In terms of enrollment, class size should be based on pedagogical considerations, and "[l]arge sections should be compensated by additional credit in load assignment in the same manner as traditional classes." *Id.* The AAUP-Rider University contract provides: "Enrollment maximums for Distance Learning Courses will be no greater than for the same or similar level courses offered by that department or program." Art. XXVI, 3.e.

The extra time required by faculty to prepare distance education courses should be additionally compensated either financially or the form of a credit toward load assignment.

Furthermore, faculty regular in-the-office hours for those teaching on-line courses may not be helpful to students; accordingly, faculty members may determine whether some of the expected office hours may be held on-line.

Moreover, that assignment of faculty to distance-education courses should be voluntary, not mandatory. The current AAUP-Rider University Contract provides: "No faculty member will be required to develop or teach a Distance Learning Course." Article XXVI, c.

Accordingly, distance-education offerings should not reduce on-campus offering to the point where a faculty member must teach distance-education courses to teach a full load. As discussed above, these issues should be addressed in writing in collective bargaining agreement policies, faculty contracts and/or institutional policies before the commencement of such work.

B. Technical Assistance

To carry out their instructional responsibilities, faculty members will need technical training and support. As noted in the AAUP report, however,

The technical and administrative support units responsible for maintaining and operating the means of delivering distance-education courses and programs are usually separate from particular academic departments or units which offer those courses and programs. *Id.* at 42. Accordingly, faculty members will need to be able to call upon these technical resources as needed throughout the duration of distance-education courses.

V. Use of Intellectual Property

Faculty members involved in distance-education courses are users as well as creators of intellectual property. Thus, complicated questions involving "fair use" of intellectual property arise in the distance-education context--particularly in light of the increased ease of gaining access to and reproducing information in a variety of formats using computers. Questions arise not just in the development and dissemination of materials for on-line teaching purposes, but also in the development of coursepacks and web pages. As Professor Robert Gorman has aptly summarized,

The statutory provisions of fair use are open-ended. They require the consideration, and the weighing, of a number of factors: the purpose of the copying, whether it is done for commercial

or nonprofit purposes, the quantity copied, the nature of the copied material, and the adverse impact that copying may have on the market for the copyrighted work.

Gorman, Robert A., "Intellectual Property: The Rights of Faculty as Creators and Users," 84 *Academe* 3:14, at 17 (May-June 1998). Professor Gorman warns that the existing fair-use doctrine may not be applied in a manner that makes the boundaries clear for faculty members engaged in distance education:

[T]he very power that the new pedagogies have to bring education to geographically dispersed audiences may lead courts to apply the fair-use doctrine in an ungenerous manner; the larger the audience, after all, the fairer it might seem to allow the copyright owner to share in academic fees or at least to require that the instructor consult before embarking upon such new and potentially renumeration projects.

Id. at 17-18. Thus, institutions need to help faculty members understand their responsibilities as users of intellectual property when creating and disseminating course materials.

VI. Resolution of Disputes

In light of the rapidly changing legislative, policy, and technological environment, disputes about intellectual property rights and responsibilities on campus are inevitable. Accordingly, AAUP has recommended that colleges establish an Intellectual Property Committee--representing both faculty and administration--to play a role in both policy development and dispute resolution. See AAUP "Special Committee on Distance Education and Intellectual Property Issues: Suggestions and Guidelines" (Dec. 3, 1999), <http://www.aaup.org> (under "Distance Education & Intellectual Property Issues").

Some Helpful Resources from AAUP

For updated information on policies and reports from the American Association of University Professors (AAUP), see the AAUP website and click on "Issues." The Association has also recently established a Working Group on Distance Education to monitor and guide AAUP's response to developments in distance education, and an Intellectual Property Rights Strike Force to monitor developments regarding intellectual property rights and responsibilities. Additional information can be obtained by calling the national office at (202) 737-5900.

85 *Academe: Bulletin of the American Association of University Professors* 5 (Sep./Oct. 1999) Special issue on Education Bytes: The Problems and the Promise of Technology, including several articles on distance education.

85 *Academe* 3 (May/June 1999)

Contains the "Report of Special Committee on Distance Education & Intellectual Property Issues," including the "Statement on Distance Education" and the "Statement on Copyright."

84 *Academe* 3 (May/June 1998)

Special issue on Technology & Intellectual Property: Who's in Control?

Contains "Report on Distance Learning" (by AAUP's Committee R on Government Relations),

as well as "Report on Copyright Issues in Colleges and Universities" (by subcommittee of AAUP's Committee A on Academic Freedom and Tenure), and several articles on intellectual property issues.

83 *Academe* 4 (July/August 1997)

Contains the preliminary report on Academic Freedom and Electronic Communication (by subcommittee of AAUP's Committee A on Academic Freedom and Tenure).

82 *Academe* (May/June 1996)

Contains the preliminary report on The Use of Technology in College and University Instruction (by subcommittee of AAUP's Committee C on College and University Teaching, Research, and Publication).



Sample Distance Education Policy & Contract Language

By the Special Committee on Distance Education and Intellectual Property Issues

While proponents and opponents debate the implementation and effectiveness of distance education, colleges and universities across the country continue to implement programs utilizing broadcast and computer technology. In several recent documents, AAUP has addressed the issue, recognizing that the existence of distance education is not a future possibility, but a current reality where growth potential is virtually unlimited.

Although the Association accepts the reality of distance education programs, it continues to affirm the responsibility of faculty to play a significant or meaningful role in determining the appropriate implementation of these programs. In 1999, the AAUP adopted the [*Statement on Online and Distance Education*](#), which asserts the fundamental principle that:

As with all other curricular matters, the faculty should have primary responsibility for determining the policies and practices of the institution in regard to distance education. The rules governing distance education and its technologies should be approved by vote of the faculty concerned or of a representative faculty body, officially adopted by the appropriate authority, and published and distributed to all concerned.

Policies or contract language governing distance education programs, need to be developed within the context of the overall purposes of colleges and universities: "to preserve, augment, and transmit knowledge and to foster the abilities of students to learn" ([*Statement on Online and Distance Education*](#)). Whether within collective bargaining contracts or through some other understanding such as policies adopted through the faculty governance process, faculties need appropriate guidance and protection. The following sample language was taken from a review of existing policies, contracts, and AAUP policy statements, and may be modified to fit varied circumstances.

Matters to Address

- General Definitions
- Academic Freedom
- Working Conditions
- Workload; including Compensation, Appointment & Evaluation
- Technical Support

- Intellectual Property
- Miscellaneous

General

Be sure to refer to all types of technology and incorporate all non-traditional media. Make your language broad so that it will not be out of date as technology changes.

The Parties recognize that advances in technology, as they relate to this collective bargaining agreement (policy), may allow for the development of technologically innovative methods of instruction. The terms "Distance Education" or "Distance Learning" as used herein refer to instruction where the teacher and the student are separated geographically so that face-to-face communication is absent; communication is accomplished instead by one or more technological media. This communication consists of live or recorded visual presentations and material using direct signal or cable, transmission by telephone line, fiber-optic line, digital and/or analog videotape, audiotape, CD-ROM, computer or internet technology, email or other electronic means, now known or hereafter developed, utilized to teach any course originating from or sponsored by X institution. "Course" refers to any class offered for credit or otherwise required for a degree.

Academic Freedom

Academic freedom applies to both distance education and traditional classroom instruction.

Faculty members engaged in distance education shall have academic freedom as teachers and researchers in full accordance with the provisions of the 1940 [*Statement of Principles on Academic Freedom and Tenure*](#), including "freedom in the classroom in discussing their subject" and "full freedom in research and in the publication of the results."

Methods of presentation and course materials are to be under the control of the faculty member assigned to develop and/or teach the distance education course. Oversight by the faculty member's colleagues within the department or program shall be subject to the usual norms and responsibilities of supervision and oversight associated with the functions of the department.

Selection of Materials

Individual faculty members should have the same responsibility for selecting and presenting materials in courses offered through distance education technologies that they have in those offered in traditional classroom settings. For team-taught or interdisciplinary courses and programs, the faculty involved should share this responsibility.

Quality Control of the Curriculum

Make sure that the same procedures are used for faculty oversight in distance education courses as in any other course.

Distance education courses (or modifications thereto) shall comply with all of the standard practices, procedures, and criteria which have been established for traditional in-the-classroom courses including but not limited to, faculty involvement at the level of course development and approval, selection of qualified faculty to teach the course, pedagogical determinations about appropriate class size, and oversight of all final course offerings by the appropriate faculty committee to ensure conformity with previously established traditions of course quality and relevance to programs.

Working Conditions

Workload/Teaching Responsibility. The time needed to develop a distance education course should be carefully considered. The Association recognizes that evidence documenting the amount of work required for distance education courses remains largely anecdotal. Every attempt should be made to ensure that more definitive information is developed. Some campuses have held roundtables among the faculty to collect actual data on that campus. This practice has proven successful in those cases. In the absence of more definitive data, workload provisions should take into account the anecdotal evidence that distance education course development is taking two to three times as long as comparable courses taught in the traditional manner. The same evidence suggests that the investment of faculty time involved in teaching a distance education course is substantially greater than that required for a comparable traditional course. The time spent online answering student inquiries is reported as being more than double the amount of time required in interacting with students in comparable traditional classes.

Enrollment. Determination of class size for a distance education class should be based on pedagogical considerations. Large sections should be compensated by additional credit in load assignment in the same manner as traditional classes.

Preparation. Faculty who teach in distance education programs should be additionally compensated for the extra time required to prepare for their courses. This compensation should be in the form of credit toward load assignment in order to promote quality, or can be financial.

Compensation. Courses taught via distance education may be included as part of the faculty member's regular load, or may constitute an overload, or a combination of both. The teaching responsibilities as they relate to assignments, scheduling, syllabi, papers and tests, shall be no different from those of the corresponding traditional course sections. Grades will be issued using the normal University procedures.

Faculty members teaching a course utilizing distance-education technology for the first time shall be provided course load reductions to properly prepare the course. This reduction should be provided prior to the offering of the course, and may be supplemented with an additional reduction during the first term the course is taught. Acceptance of these reductions constitutes agreement to teach two additional sections of the course over the next three terms. However, if after the course has been taught for the first time the administration or the department deems (for academic, financial, or other reasons) that it is not viable/practicable to teach it again using the distance-education format, the faculty member shall be relieved of this obligation.

Faculty members shall not be required to travel to distance education off-campus sites. If the faculty member deems it appropriate to visit an off-campus site, the faculty member will receive reimbursement for travel at the normal University rates.

In the event that the institution makes any modifications to the distance education course(s) and/or delivery systems which increase or substantially alter the faculty member's workload, the university shall be required to notify the union at least forty-five (45) days prior to the effective date of the modifications, in order to negotiate with the union over increased compensation and workload.

Online Office Hours

Discussions should occur and agreement should be reached on how the faculty member teaching a distance education course will hold office hours for the distance-education students. Regular office hours may not be helpful for the students.

A faculty member teaching a distance-education course shall conduct the normally expected total number of office hours. In order to accommodate distance education student needs, if it is deemed appropriate by the faculty member, some of the normally expected office hours may be held online to conduct business and consult with students utilizing technology.

Teaching Appointments

From the AAUP [*Statement on Online and Distance Education*](#):

The precise terms and conditions of every appointment should be stated in writing and be in the possession of the faculty member and the institution before the faculty member is assigned to utilize distance education technologies in the delivery of instructional material in a course for academic credit. No member of the faculty should be required to participate in distance-education courses or programs without adequate preparation and training, and without prior approval of such courses and programs by the appropriate faculty body.

We should note that some individual chapters have negotiated agreements that make the assignment of faculty to distance education courses voluntary, not mandatory.

Distance Education Courses Should Not Reduce the On-Campus Programs or Faculty

Care should be taken to ensure that on-campus programs are not jeopardized by distance-education courses. The offerings should not reduce on-campus offerings to the point where a faculty member must teach distance-education courses to maintain a full load. Distance education should enhance not replace on-campus programs.

The use of distance education technology shall not be used to reduce, eliminate, or consolidate full-time faculty positions at the college or university. There will be no reduction in the number of full-time teaching positions as a result of distance-education classes being added to the class schedule. No prerecorded form of instruction shall be employed by the institution for the purpose of replacing faculty members, in whole or in part, regardless of the technology utilized.

Technical Assistance

The [Statement on Online and Distance Education](#) points out that the "institution is responsible for the technological delivery of the course." This means that the institution shall ensure that the necessary technology and equipment is identified and in place, that the institution shall provide appropriate training for faculty members, and that the institution shall ensure that faculty members have access to adequate technical support personnel.

Available Technology and Equipment

Prior to distance education courses being taught, the technology and equipment needs should be identified and in place. The institution will provide the faculty member with the necessary equipment to teach the distance education course.

Training for Teaching

Prior to distance education courses being taught, appropriate training both technical and curricular should be available to potential users. Any faculty member teaching a distance education course for the first time will receive training for which he or she will receive a one time payment. If new technologies are added, further training will be offered and the faculty member will be compensated at a hourly rate. If the necessary training is not available on campus, the college/university shall arrange for and pay the costs of any special training required by the faculty member.

Availability of Assistance

Prior to distance-education courses being taught, appropriate forms of assistance should be made available to the faculty member and the students. The institution will provide adequate support services at both the sending and receiving site for all distance education classes. Further, the institution will provide adequate security for all faculty members teaching distance education courses. Provisions will be made for clerical, technical, and library support as needed. In addition, graduate assistants and/or student employees will be made available on a priority basis to support faculty members in the delivery of distance-education courses.

Assistance will be provided by the college or university, to develop study guides, teaching aids, and other course materials, and in clearing copyrights for use of material in the course.

Intellectual Property

Ownership of Materials

The materials created by faculty members for distance-education courses should be treated in exactly the same fashion as materials created by faculty members for traditional courses. For further information, please see the [AAUP Statement on Copyright](#) (also available upon request from academicfreedom@aaup.org).

Changing and Updating Materials & Re-transmission of Courses

The AAUP [Statement on Online and Distance Education](#) asserts that a "teacher's course

presentation should not be recorded without the teacher's prior knowledge and consent. Recordings of course material are academic documents, and thus, as with other works of scholarship, should have their author or creator cited accordingly." The [Statement on Copyright](#) asserts faculty ownership of the copyright of traditional academic works "regardless of the physical medium" in which they appear. (Institutions may be reimbursed for the technical expenses of producing recordings of courses and presentations.)

Courses and course presentations shall not be recorded without prior knowledge and consent of the faculty member. Such recordings are not to be reused or revised without the written consent of the faculty member.

Copyright of recordings of courses and course presentations shall be owned by the faculty member(s) as in the case of traditional course materials.

The faculty member (or an appropriate faculty body) who creates the course (or adapts a pre-existing course) for use in distance education shall exercise control over the future use, modification, and distribution of recorded instructional material and shall determine whether the material should be revised or withdrawn from use.

Additional compensation may be negotiated for faculty members involved in extensive revision and modifications of courses they developed.

Miscellaneous

Academic Honesty

Students taking distance-education courses should be held to the same requirements of academic honesty as students taking traditional courses.

The University will ensure that safeguards have been built into the distance-education course format to require that students be held to the same standards of academic honesty as students in traditional courses.

Evaluation of Class & Faculty Member

Protections should be built into the collective bargaining agreement or the institutional policy to ensure that students have the opportunity to evaluate a course taken via distance education. There should also be safeguards to ensure that the faculty member is evaluated fairly.

The institution shall implement a process to assure that students are able to evaluate the teaching performance of faculty members who offer courses taken via the distance-education format. Distance-education equipment shall not be used to evaluate faculty performance. Faculty members participating in the distance-education program shall be evaluated in the same manner as all other faculty members in accordance with the appropriate provisions of the collective bargaining agreement or institutional policy. If any classroom observations or evaluations take place, the observer shall be in the same room as the faculty member. No outside visitor shall be allowed unless the faculty member agrees in advance to the visit.

Tuition & Fees

Appropriate tuition and fees should be charged for a distance-education course to assure that a department or college is not losing money.

The tuition and fees charged for a distance-education course shall be set by the administration taking into consideration the added cost of this teaching format. No department or college shall incur any additional financial expenses for offering a course via the distance-education format.

THE CHRONICLE OF HIGHER EDUCATION

May 19, 2014 by Colleen Lye and James Vernon

The Erosion of Faculty Rights

In the rush to online education, faculty members have been signing contracts that **abrogate the ownership of their classes**, erode their collective interests, and threaten the quality of higher education. No standard (let alone best) practice has yet emerged, and faculty members are largely in the dark about what is at stake.

Put simply, the stakes are huge. Online education is the new frontier where the traditional rights of faculty members and the quality of instruction are up for grabs. It is a frontier that threatens to turn all faculty members, including those on the tenure track, into teachers who “work for hire.”

In some ways, our own campus, the University of California at Berkeley, is typical. In 2013, without any faculty consultation, the administration signed a contract with MIT-Harvard’s edX in a scramble to join the club of private elite universities and private spinoffs that are developing online-education platforms and course content targeted at underfunded public-education markets. Within Berkeley itself, there are in-house platforms developed by a newly established, relatively under-the-radar entity, called the Berkeley Resource Center for Online Education, that operates fully online or hybrid master’s-degree programs at the School of Public Health and the Haas School of Business, as well as a variety of undergraduate, summer, and extension courses online now being offered for certification and for credit.

Meanwhile, other professional schools at Berkeley, including the schools of information and of law, have gone into business independently with external platform providers, such as 2U and Canvas, to deliver fully online or hybrid degree programs. As those administration-led online-education programs have proliferated, the faculty senate has been hard-pressed to keep pace. It is unclear whether the vaunted “dual governance structure” of faculty and administration is adequate to reckon with the consequences of these online contracts for faculty rights and curricular oversight, at Berkeley or beyond.

The University of California system’s existing policy is that **all teaching on campuses** —**including the materials instructors create for classes, whether lecture notes,**

multimedia presentations, or web-ready content—is protected by copyright, and the creators of the material have exclusive rights to their uses.

Yet in the Wild West of online education, faculty members are being offered a variety of terms and contracts. Some accord course copyright exclusively to the university so that the courses are no longer considered the property of their creators. Other contracts establish joint ownership by the instructor and the university on the grounds that the university has invested substantial resources in putting the course online. Often faculty members are offered no contract at all, and though the University of California's course copyright policy states that copyright lies with the instructor, there is no assurance of judicial protection.

Even assuming that a faculty member has the resources to litigate, two recent decisions (*Manning v. Board of Trustees of Community College District No. 505 (Parkland College)* and *Forasté v. Brown University*) suggest that general university policies are not preventing courts from deeming courses as “work for hire” created by “employees within the scope of their employment.”

Finally, there are contracts that accord copyright to the instructor but license the university to have the course taught by others and to modify it at will.

It seems likely that, because the costs of developing online classes good enough to attract paying customers (whether individuals or other campuses) are considerable, universities will increasingly seek to assert full or joint copyright ownership, and/or aggressive licensing agreements, so as to recoup their investment.

What does that mean for faculty members? The Berkeley Faculty Association consulted an intellectual-property lawyer to find out. This is what we discovered.

When the university claims full ownership of a course, the university is free to re-offer it, revise it, license its use by others, or transfer its ownership to a third party. The university would be able to do that without either seeking the approval of the instructor who developed the intellectual content of the course, or paying her any additional compensation. In contrast, the instructor would not be able to use the course materials without a license or permission from the university, and could be sued for damages on the grounds of copyright infringement if she did so. The instructor would also be unable

to use the course materials to create derivative works. Demanding that faculty members sign over their course copyright is effectively a land grab of the intellectual property and the academic reputation of the instructor.

In comparison, at first sight, joint ownership of copyright seems like a sensible compromise. It offers the instructor and the university the right to commercially exploit the course as long as they both share equally in the proceeds. Yet the instructor would still effectively lose control of the course and its materials. The university would still be able to offer the course in its original form for as long as it liked or in any number of derivative versions, without consultation or approval by the instructor. Thus the faculty individual would not be able to stop the university from offering a course she considers egregiously outdated or from offering dumbed-down versions of her lectures. As co-owner, however, the university would not be able to enter into an exclusive license agreement with a third party since such an agreement would harm the ability of the other joint owner to use or license the work.

When universities sign contracts with online-platform companies, they have university lawyers to look out for their interests. Yet when faculty members are recruited by their own universities to participate in those initiatives, they seldom have access to the legal advice that could inform them of what they may be signing away. This is a problem for faculty members who want to teach online courses. But it is also a problem for faculty members who will never teach an online course.

At stake here is the **erosion of the rights of faculty members and their expert responsibility to guarantee the quality of education**. When a university or online company claims full or joint ownership of a course because of its technological contribution to the course, faculty members lose the ability to maintain standards of excellence in their own courses. So does the university lose its ability to assure instructional quality, a standard of excellence that is founded on the reputation of its faculty and can only partly be enforced by course-approval committees because they are generally not in a position to judge the expert content of a course.

By embracing online education, universities run the risk of reducing their faculties to mere “content providers” whose value is considered secondary to—and less worthy of investment than—the technological platform. The university would be selling reputation

detached from content, and the quality could not be guaranteed.

Ironically, the result of the increased digital delivery of American higher education could well be a more static, less dynamic model of knowledge transmission—particularly when online courses are seen as a source of revenue savings by cash-strapped campuses. In a world where faculty members may no longer own the intellectual content of our courses, university teaching is being modeled after textbook publishing, and less and less tied to the cutting-edge research that continually transforms what we know and how we teach our classes.

Last fall the Rutgers faculty voted to block new online programs the university had contracted with Pearson that would require faculty members to license the university to have their courses taught in the future by others. Faculty members at the University of Virginia, the University of Michigan, and Duke have also rebelled against Coursera contracts that give their universities incentives to claim ownership of faculty-created content. Faculty bodies at more universities should closely scrutinize the deals their administrations are making and the kinds of instructor agreements they'll be seeking. Meanwhile, individual faculty members who consider teaching online classes should at least make sure that they are not signing contracts injurious to themselves and, by extension, to us all.

Colleen Lye and James Vernon are co-chairs of the Faculty Association at the University of California at Berkeley.

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UNIVERSITY OF MINNESOTA

ADMINISTRATIVE POLICY

Copyright Ownership

Responsible University Officer(s):	Policy Owner(s):	Policy contact(s):	Date Revised:
• Executive Vice President and Provost	• Executive Vice President and Provost	• Nancy Sims	Mar 23, 2017
			Effective Date:
			Sep 30, 2008

POLICY STATEMENT

Copyright protects and promotes the creation of intellectual assets that are critical to academic endeavors and thus is fundamental to the creation and sharing of knowledge. The Board of Regents Policy: *Copyright* and federal law establish rules governing the ownership of works created by University faculty, staff and students.

Copyright Ownership by Faculty and by Employees with Faculty-Like Appointments. University faculty and University employees who have a "faculty-like" appointment own the copyright in their academic works. as provided in Board of Regents Policy: *Copyright*.

Faculty members and University employees with faculty-like appointments also hold the copyright in software that they develop in the course of or within the scope of their University employment and that is an academic work. In Board of Regents Policy: *Copyright*, University claims ownership of the copyright in that software if:

- it was a directed work,;
- a specially ordered or commissioned work,;
- a work of administration; or
- a work created under a sponsored project.

The University also claims ownership of the copyright in software developed in the course of or within the scope of an individual's University employment if it is not an academic work and in software so developed by an individual who is not a member of the faculty and does not hold a faculty-like appointment. Under Board of Regents Policy: *Commercialization of Intellectual Property Rights* policy, the University claims ownership of the patent rights in all software developed at the University, including software that is an academic work.

A person may perform faculty-like duties as part of the person's position and, therefore, under Board of Regents Policy: *Copyright*, be deemed to have a faculty-like appointment in connection with those particular duties only; the balance of the person's duties would not constitute a faculty-like appointment.

The dean or the chair/head of the relevant unit will decide whether an individual holds a faculty-like appointment based on the definition of faculty-like contained in Board of Regents Policy: *Copyright*. The decision whether an individual holds a faculty-like appointment may be appealed. Such decision is relevant only in relation to Board of Regents Policy: *Copyright*.

Copyright Ownership by Students. Students own the copyright in works created in or as part of a University course.

Nevertheless a [University college](#), department or unit may reserve rights to use the work consistent with the rules and guidelines of the relevant college, department or unit. The University may require a student, as a condition of enrolling in a course or course of study or otherwise participating in a University activity, to permit it to reproduce, distribute, display, perform or otherwise use a work the student authored. The University also may require a student to permit the University to archive a work created and owned by the student.

The University owns the copyright in works created by students as part of their employment by the University, for example as research or teaching assistants. The University will permit a University faculty member or a University employee who has a "faculty-like" appointment to use a work created by a student as part of the student's employment as the University faculty member's or such University employee's research or teaching assistant. The permission extends to using the work in performing academic duties (including creating an academic work) at the University. The University generally will not assert ownership interest in the copyright in an academic work authored jointly by University faculty or University employee who has a "faculty-like" appointment and by a University student employed as a research assistant. The University will only claim copyright ownership in such a work if

the work is a directed work, a work specially ordered or commissioned by the University, a work created in connection with the administration of the University or a work created pursuant to a contract with an outside sponsor that provides for University ownership of the copyright in the work.

Copyright Ownership by the University. Federal copyright law vests in an employer ownership of the copyright in works authored by its employees in the course of their employment. Federal law, however, permits employers to vest that copyright ownership in its employees in designated works or classes of works. Consistent with federal law, the University owns the copyright in works created by University employees in the course of their employment except for ownership rights vested in faculty, University employees holding a "faculty-like" appointment and students as provided in Board of Regents Policy: *Copyright*.

The University owns the copyright in audio and visual recordings or transmissions of courses, lectures or other events delivered by University faculty, staff or students to University students and others. However, the University's claim extends only to recordings or transmissions created by it or its agents or [contractors](#), not to recordings created by faculty or University employees with "faculty-like" appointments at that person's direction and instigation. The University's recording or transmitting of such a lecture or other audio or video presentation, standing alone, would not grant the University under federal law any ownership interest in an academic work presented in the lecture or presentation.

Ownership of Joint Works. Federal copyright law grants authors of a joint work equal ownership and rights to use the work. Federal law permits such authors to agree to different ownership and use rules. The University encourages authors of a joint work created at the University to enter into a written agreement providing for ownership, attribution, use, sharing of royalty or other income, and the registration and protection of the work.

Registration and Protection of Works. The University will not register or otherwise protect or enforce the copyright in works it does not own. The University may register and protect the copyright in a work in which it has some right, title or interest.

Management of Copyrights. Having a more open access to works created by University faculty, staff and students, directly and strategically benefits the University and University faculty, staff and students who will use the works. The University encourages owners of academic works to manage the copyright in the works so as to provide the greatest possible scholarly and public access to the works.

Credit and Attribution. Irrespective of copyright ownership, there is a professional and ethical obligation of University faculty, staff or students to credit or attribute creation of a work appropriately.

Reports. Annually, the Executive Vice President and Provost (or designate) will report to the Faculty Consultative Committee on the implementation of Board of Regents Policy: *Copyright* and the related administrative policy and procedure.

REASON FOR POLICY

This administrative policy implements Board of Regents Policy: *Copyright*. The policy promotes compliance and provides guidelines for following the Copyright Policy.

PROCEDURES

There are no procedures associated with this policy.

FORMS/INSTRUCTIONS

There are no forms associated with this policy.

APPENDICES

There are no appendices associated with this policy.

FREQUENTLY ASKED QUESTIONS

See: [Copyright Policy: Background and Resources FAQ](#)

CONTACTS

Subject	Contact	Phone	Email
Primary Contact(s)	Nancy Sims	612-624-1851	nasims@umn.edu

DEFINITIONS

Academic work

A "scholarly, pedagogical or creative work . . ." Board of Regents Policy: *Copyright*, §II, subd. 3. Whether a work is an academic work or not will be determined consistent with the traditions, customs and practices within the relevant academic discipline.

Copyright Protection

The rights granted by federal law to the owner of a copyright in a work to do and to authorize (others to do) any of the following:

- to reproduce the copyrighted work;
- to prepare derivative works based upon the copyrighted work;
- to distribute copies or phonorecords of the copyrighted work;
- to perform certain copyrighted works publicly;
- to display certain copyrighted works publicly; and
- to perform sound recordings publicly by means of a digital transmission.

See United States Code, Chapter 17, §106.

Directed Works

A "work agreed upon between the University and faculty creator(s), the creation of which is based on a specific request by the University and which is supported by substantial University resources beyond those customarily provided to faculty in the respective discipline and University unit." The agreement to create a directed work must be in writing.

Joint Work

A "work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." United States Code, Chapter 17, §101.

Faculty

Members of the faculty as defined in the policies of the Board of Regents. See Board of Regents Policy: *Employee Group Definitions*.

Faculty-Like Appointment

A "University employee who teach(es) or conduct(s) research at the University with a level of responsibility and self-direction similar to that exercised and enjoyed by faculty in a similar activity." Board of Regents Policy: *Copyright*, §II, subd. 4.

Student

"A registered student at the University." Board of Regents Policy: *Copyright*, §II, subd. 5.

Work

"A work protected under the United States copyright law." Board of Regents Policy: *Copyright*, §II, subd. 4. Federal law provides that "copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device." United States Code, Chapter 17, §102.

RESPONSIBILITIES

Faculty and "faculty-like" employees

Manage the copyright in works they own under Board of Regents Policy: *Copyright*.

RELATED INFORMATION

- Board of Regents Policy: [Commercialization of Intellectual Property Rights](#)
 - Board of Regents Policy: [Copyright](#)
 - Board of Regents Policy: [Outside Consulting and Other Commitments](#)
 - Board of Regents Policy: [Academic Freedom and Responsibility](#)
-

HISTORY

Amended:

March 2017 - Comprehensive Review, Major Revision. Specifies who holds the copyright in software that faculty and employees develop as part of their University employment that is academic work.

Effective:

October 2008

Policy Committee Work Status Table (updated 1/21/21)

(Rows **Bold** –recently added, shaded **orange** indicates active with FSPC; shaded **purple** indicates pending action by another group)

Policy #	Brief Title	Date Last Revised	Date Added to List	Summary of Recommended Action	Related Documents & Notes or Concerns	Target Cycle	FSPC Action	Campus Comment Period	Faculty Senate Action	FH Status
NA	Policy Approval Table	N/A	November 2015	Identify the required approvals for all FH Policies						
A52.1.1	FMRC Charge		Feb 2018	Recommended by AF&T linked to C07		Spring '21	Ready for Faculty Senate approval	8/12/20 to 9/14/20	Approved by Senate 1/26/21	Doesn't need Regent approval; will post after C07 approved by Regents
A53.1	Policies Applicable to Faculty	4/20/2018		Update to reflect new and revised policies		Spring '21		NA	NA	
A53	Policy Development	1/19/16	9/28/20	Add to Procedures -- authority for OUS to make editorial and title changes without approval		Spring '21				
A53 Standard	Policy Process	New	5/27/20	Need to provide guidance on process		Spring '21	On FSPC June 3, 2020 agenda			
A 61.2	Curricula Committee	4/28/20	5/278/20	Curricula Chair has additional changes to discuss with FSPC also Dr. Cheek		Spring '21	On FSPC Feb 3, 2021 agenda			
A61.8	Faculty Ethics and Advisory Committee	unknown	June 2015	The Ethics Committee wants to update their charge. Referred to AF&T		Spring '21	FSPC approved 1/2/21	10/20/20 - 11/22/20	Goes to Senate in Feb 2021	
Appendix VIII	Faculty Ethics and Advisory Committee	unknown	June 2015	The Ethics Committee wants to update their charge. Referred to AF&T		Spring '21	Went out for comment, after FSPC review will be ready for Faculty Senate approval.	10/20/20 - 11/22/20		Approved by AF&T; will post after A61.8 approved by Senate
A66	Policy Committee Charge	11/28/17	5/28/20	Need to revise to clarify requirements		Spring '21				
Sec B	AF&T			Hasn't been updated for approx. 20 years. AF&T has appointed a task force to review			Sec B taskforce working on revisions to Sec B policies			
C07	Faculty Disciplinary Policy	3/22/11	5/6/15	Assigned to AF&T for review. 1) need to add peer hearing procedures. 2) Stephens working with AF&T on revision		Spring '21	Ready for Faculty Senate approval	8/12/20 to 9/14/20	Approved by Senate 1/26/21	Going to Regents next for approval
C50	Faculty Contracts	unknown	3/6/14	Update and possibly remove annual leave issues if C205 developed; need to add items from section B		Fall '21				
C150	Political Activities of UNM faculty	Sept 1970	12/2/15	COG taskforce asked FSPC to perform a comprehensive review.		Fall '21	FSPC briefly reviewed; will take up in Fall 2021			
C170	Endowed Chairs	10/15/13		Add definitions for endowed chairs and named professors.	Related to Sec B issues above		AF& T reviewing as part of Sec B Taskforce work.			

										Posted to Section B
CXXX	Consensual Relationships	New	Fall '20	FSPC began discussions of need for more robust policy applicable to faculty than the one in UAP. President has appointed a taskforce beyond Faculty Governance groups. FSPC to work with TF chair Bishop		Fall '21				
C200	Sabbatical Leave	05/14/04	01/29/14	Good enough for now, but needs to be updated.	RPM 5.4; May require BOR approval	???	1) AF&T and FSPC requested moving current C200 to Section B. Then Sec B taskforce will address proposed changes.	2/18/15 to 3/20/15	Moving to Section B – action <u>delayed</u> in 4/28/20 FS	
C205	Annual Leave	Unknown	01/29/14	Propose a policy be written that reflects current practice and removes annual leave information from C50 Faculty Contracts Policy	C50, RPM 5.4; May require BOR approval. Look at HSC policies for outside work	Depends on C50	Tied to C 50 included in memo to be sent Parker to remind her. Need to discuss at future mtg.			
C210	Sick Leave	08/29/78	01/29/14	Out of date. Needs to be completely rewritten	C50 RPM 5.4; May require BOR approval		Discussed at 2/4/15 meeting. Per FSPC Chairs leave alone.			
C225	Professional Leave	8/29/78	11/4/15	COG taskforce asked FSPC to add reference. FSPC identified a few other required changes		Spring '17	Approved by OPS for campus comment.	Ends 4/19/16	Approved by FS 4/26/16	Needs approval of faculty and Regents
C230	Military Leave	8/29/78	10/13/14	Review for consistency with revised admin policy; need to address tenure and also new military recruiting policy	UAP 3425 Military recruit law	???	FSPC approved 1/2/21	10/20/20 - 11/22/20	Goes to Senate in Feb 2021	
C240	LOA Incident to Political Activity			See C 150 above			On FSPC 2/13/19 agenda. Needs further discussion			
C305	Emeriti Policy	4/27/10	12/20/15	Add dept. processes and criteria for emeriti status.			Under consideration by Section B Taskforce and AF&T			
D75	Classroom Conduct	Unknown	10/5/16	Reassign from info item to Policy document put in new format. Address Copyright issues			On FSPC 3/6/19 agenda. Needs further discussion			
E40	Research Misconduct	4/13/04	9/2015	Address ORI Concerns	RPM 5.13 may need to be revised.	Fall '17	ORI endorses per Dr Larson. RPM 5.13 may need to be revised.	4/7/17 to 4/21/17	Approved by FS 4/25/17	Posted Sept 2017 May need to be approved by Regents—

Recently Completed Work

A53.1	Policies Applicable to Faculty	12/22/2015	3/27/2018	Update to reflect new and revised policies		Spring '18	Approved by FSPC 4/4/18	NA	Approved by Operations April 2018	Posted
A60	Faculty Senate Bylaws	4/27/04	11/4/15	Major changes required to reflect the Faculty Senate restructure. COG taskforce asked FSPC to add reference to RPM 1.7. Final action awaiting FS report to COG		Spring '20	Approved by FS at April 2020 meeting. Awaiting Provost approval to post.	3/16/20 – 4/14/20	Approved	Posted Summer '20
A61 – A70	Council and Committee Charges			Charges need to be developed for new councils and committee charges need to be revised to reflect FS restructure in accordance with revision of A60 above		Spring '20	Approved by FS at April 2020 meeting. Awaiting Provost approval to post.	3/16/20 – 4/14/20	Approved	Posted Summer '20
C05	Rights and Responsibilities at UNM	July 1982	12/2/15	COG taskforce asked FSPC to perform a comprehensive review. AF&T recommend		Fall '20	FSPC and AF&T requested Faculty Senate approval to remove the policy. FSPC Chair presented		Removal Approved 4/28/20	Removal Approved by Provost 1/6/21

				change to State of Emergency and move disciplinary language to C07			request to FS 11/26/19. FS indicated they would take action in Jan 2020.			
D170	Student Attendance	unknown	12/2/15	COG taskforce asked FSPC to perform a comprehensive review. Taskforce work progressing	Pathfinder, Dean of Students pro, Catalog	Fall '19	FSPC made changes to address campus comments. FSPC to consider adding guidelines for attendance accommodation. On Nov 6, 2019 agenda	1/30/19 – 3/1/19 2nd CP 9/25/19 - 10/25/19		Posted Summer '20
D175	Student Grievance Procedure	5/13/2014	June 2016	Inconsistencies between Pathfinder and FH; identified by DOJ as needing immediate attention			Awaiting Approval by President Stokes.	4/7/17- 5/10/17 2/13/19 to 4/13/16	Approved by FS 9/24/19	Posted Summer '20
D176	Graduate Student Grievance	3/1/17		Remove graduate students from d175 and expand D176			Awaiting Approval by President Stokes.	2/13/19 to 4/13/16	Approved by FS 9/24/19	Posted Summer '20
C190	Lecturer Reviews	1/27/20		Section B Taskforce believes this belongs in Sec B			AF&T and FSPC requested moving current C190 to Section B. Sec B Taskforce reviewing current policy.		Moving to Section B Approved 4/28/20	
C250	Academic Leave for Lectures	10/8/13	July 2015	Section B Taskforce believes this belongs in Sec B. Need to align with proposed changes to Sabbatical		??? depends on C200	AF&T and FSPC requested moving current C250 to Section B. Sec B Taskforce reviewing current policy. . FSPC needs to discuss and decide if to move off list re C200 Sabbatical & AF&T's request not to change.		Moving to Section B Approved 4/28/20	Posted to Section B
F90	Branch AF&T	1/27/20		Section B Taskforce believes this belongs in Sec B.			AF&T and FSPC requested moving current F90 to Section B.		Moving to Section B Approved 4/28/20	Posted to Section B

A61.2: Faculty Senate Curricula Committee (FSCC)

Approved By: Faculty Senate

Last Updated: April 28, 2020 **Draft January 21, 2021 (to move procedures to Policy A92)**

Responsible Faculty Committee: Faculty Senate Curricula Committee

Office Responsible for Administration: Office of the University Secretary

Revisions to the Policy Rationale, Policy Statement, and Applicability sections of this document must be approved by the full Faculty Senate.

POLICY RATIONALE

The Faculty Senate Curricula Committee (FSCC) is one of four (4) committees that comprise the Faculty Senate Academic Council, which provides leadership to and coordination of Faculty Senate Committee efforts that deal with academic issues. The primary role of the FSCC, in cooperation with the Senate Graduate and Professional Committee (SGPC), is responsibility for maintaining and enhancing the quality of education and the curricula at the University of New Mexico (UNM), its branch community colleges, and its graduate centers

POLICY STATEMENT

Faculty members will be appointed by the Faculty Senate or in the case of branch community colleges faculty who will be appointed by their respective faculty assemblies. The Curricula Committee shall consist, the following faculty members. One (1) faculty member from each of the branch community colleges; four (4) from Arts and Sciences, [one (1) from the humanities (including foreign languages), one (1) from the social and behavioral sciences, one (1) from the natural/physical sciences and math, one (1) at large,] and one (1) each from Architecture and Planning, Dental Hygiene Programs, Education and Human Sciences, Engineering, Fine Arts, Honors College, University Libraries, Law, Anderson School of Management, Medicine, Nursing, Pharmacy, Population Health, two (2) students appointed by the Associated Students of UNM (ASUNM) and one (1) student appointed by the Graduate and Professional Student Association (GPSA), respectively. Ex-officio members shall include the Registrar, a Collection Development Librarian, a faculty administrator from the Office of Academic Affairs, the Director of University Advising, a faculty administrator from the Office of the Executive Vice President for Health Sciences, Dean of Students, Associate Provost for Student Success, and one (1) representative from the SGPC.

The terms of office for faculty members shall be for three (3) years, set up on a staggered basis so that the terms of approximately one-third (1/3) of members will expire each year. Student terms are usually one (1) year.

The chairperson is elected by the Committee.

The functions of the Committee shall include, but not be limited to, all of the following.

1. Reviewing the recommendations of the SGPC concerning all proposals for major changes in programs (Form D), including new degrees, new programs, new majors and minors, name changes, and substantive changes in existing programs, and transmitting them to the Faculty Senate for final approval.
2. Reviewing and making recommendations on all proposals for minor course changes (Form A), new courses (Form B), minor changes in existing programs (Form C), originating from students, departments, programs, divisions, schools, colleges of UNM and its branch community colleges and graduate centers, and Faculty Senate committees.
3. Participating with members of the SGPC in periodic reviews of instructional units and programs.
4. Hearing curricular disputes and recommending means for their resolution.
5. Initiating occasional reviews of curricular offerings and policies at UNM.
6. Recommending to the Faculty Senate both programs and the application of curricular policies.
7. Overseeing the approval and ongoing assessment of the Core Curriculum in consultation with the Faculty Senate.

APPLICABILITY

All UNM faculty, including the Health Sciences Center and Branch Community Colleges.

DEFINITIONS

No specific definitions are required for the Policy Statement.

Revisions to the remaining sections of this document may be amended with the approval of the Faculty Senate Policy and Operations Committee in consultation with the responsible Faculty Senate Committee listed in Policy Heading.

WHO SHOULD READ THIS POLICY

- Academic chairs, directors, and deans
- Non-academic managers and directors
- Vice presidents and other executives

RELATED DOCUMENTS

Faculty Handbook:

[Policy A51](#) “Faculty Constitution”

[Policy A53](#) “Development and Approval of Faculty Policies”

[Policy A60](#) “Faculty Senate Bylaws”

[Policy A61](#) “Academic Council”

[Policy A61.3](#) “Senate Graduate and Professional Committee”

[“Plan for Assessment of Courses in the UG General Education Core Curriculum Template”](#)

CONTACTS

Direct any questions about this policy to the UNM Office of the University Secretary.

PROCEDURES

The FSCC will schedule regular meetings. The Committee Chair will report Committee recommendations through the Academic Council for consideration by the Faculty Senate.

DRAFT HISTORY

January 21, 2021 –revise to move procedures to a new Policy A92 “Curriculum Approval Policy”

HISTORY

April 28, 2020 – Amended policy approved by Faculty Senate

November 22, 2016 -- Amended policy approved by Faculty Senate

February 4, 2014 –Amended procedures approved by Faculty Senate Operations Committee

January 29, 2014 –Amended procedures approved by Faculty Senate Policy Committee

June 16, 2011 –Approved by UNM President

March 22, 2011 – Approved by Faculty Senate

A92: Curriculum Approval Policy

Approved By: Faculty Senate

Effective: **Draft January 21, 2021 NEW POLICY Proposed**

Responsible Faculty Committee: Curricula

Office Responsible for Administration: Office of the Registrar, Provost and HSC Chancellor

Revisions to the Policy Rationale, Policy Statement, and Applicability sections of this document must be approved by the full Faculty Senate.

POLICY RATIONALE

A variety of reasons may necessitate changes to existing program and curricula: new knowledge, changing concepts and requirements in the delivery of program components, consideration of program accreditation, and fulfillment of certification and licensure requirements. This may necessitate changes in the curriculum of a given program, department, or college. Full consideration must be given to the impact these changes might have on the student's overall academic program during his or her period of matriculation. Consideration will also be given to the impact of any changes on the faculty and on the institution as a whole. The purpose of this policy is to articulate an institutional approval process for all curriculum revisions.

POLICY STATEMENT

In accordance with the **Faculty Constitution** and Regents' Policy 5.1, faculty have the right of review and action in regard to major curricular changes. The Faculty Senate Curricula Committee in cooperation with the Senate Graduate and Professional Committee is responsible for maintaining and enhancing the quality of education and the curricula at the University of New Mexico (UNM), its branch community colleges, and its graduate centers in accordance with the procedures listed in this document. After review and approval of proposed changes by the Faculty Senate Curricula Committee, such changes will be submitted to the Faculty Senate for final approval.

APPLICABILITY

All UNM academic units, including the Health Sciences Center and Branch Community Colleges

Revisions to the remaining sections of this document may be amended with the approval of the Faculty Senate Policy and Operations Committee in consultation with the responsible Faculty Senate Committee listed in Policy Heading.

DEFINITIONS

No specific definitions are required for the Policy Statement.

WHO SHOULD READ THIS POLICY

- Academic chairs, directors, and deans
- Non-academic managers and directors
- Vice presidents and other executives

RELATED DOCUMENTS

Regents Policy Manual:

RPM 5.1 “The Faculty's Role in the University's Academic Mission”

Faculty Handbook:

A51: Faculty Constitution

A61: Academic Council

A61.3: Senate Graduate and Professional Committee (SGPC)

“Plan for Assessment of Courses in the UG General Education Core Curriculum Template”

CONTACTS

Direct any questions about this policy to the UNM Office of the University Secretary.

PROCEDURES

Note: (Moved from A61.2 Faculty Senate Curricula Committee)

1. Procedures for Adding Courses to the General Education Program

1.1 Documentation Required

Departments wishing to add courses to the UNM General Education Program must submit a Form C for each proposed new course. The Form C should be accompanied by the following material:

- Identification of the area into which the course will fit (writing/speaking, math, science, social/behavioral sciences, humanities, non-English language, fine arts.)
- Rationale for adding the course to the General Education Program.
 - Justification for adding the course to the General Education Program.
- How will this course benefit UNM students?
- Why does it belong in the UNM Core Curriculum?
 - Impact statement on the effect this addition may have upon other departments/courses currently in the General Education Program.

- Explanation of how the course meets updated criteria for General Education Program courses, including UNM criteria and NM Higher Education Department criteria on required essential skills adopted by the FSCC and posted on the website of the UNM Registrar (registrar.unm.edu).
- Current and predicted enrollments for the next three (3) years.
- Awareness and adoption of UNM General Education Program Assessment posted by the Office of Assessment (assessment.unm.edu).
- Budget/Faculty Load statement.
 - Budget impact statement.
 - Resources (faculty/facilities) that the department has for teaching the course.
 - Memo from Dean or College Curriculum Committee regarding financial support for five (5) to ten (10) years.
- Student learning outcomes and proposed techniques to assess those outcomes through class assignments.
- Documentation of UNM General Education Program criteria met and of NMHED Essential Skills met.
- Complete syllabus and course schedule including time on topics and suggested text.

1.2 Approvals

- Approval by department's college curriculum committee/dean
- Review by the SGPC
- Approval by Faculty Senate Curricula Committee
- Office of the Provost
- Vote by Faculty Senate
- HED General Education Program certification form (information provided to UNM Associate Registrar for submission to HED and New Mexico Common course number (NMCCN) form (information provided to UNM Associate Registrar for submission to HED)
- Office of the Provost will collaborate with the Office of the Registrar in ensuring that additions to the UNM General Education Program are appropriately reviewed, recorded, and meet the requirements of NM HED.

1.3 Timeline

- Departments must submit the Form C to Curriculum Workflow early in the fall semester.
- Faculty Senate Curriculum Committee must receive proposal by December 1 for the opportunity for inclusion in the upcoming course catalog.

2. Procedures for Deleting Courses from the General Education Program

2.1. Documentation Required

Departments wishing to delete courses from the UNM Core Curriculum/General Education Program must submit a Form C for each course to be deleted. The Form C should be accompanied by the following material:

- Identification of the area 1-7 into which the course fits.

- Rationale for deleting the course from the UNM Core Curriculum/General Education Program.
 - Justification for deleting the course.
 - Impact statement on the effect this deletion may have upon other departments/courses.
 - Enrollment history for the previous three (3) years.
- Budget/Faculty Load statement.
 - Budget impact statement.
 - Memo from Dean or College Curriculum Committee regarding support for removing this course.

2.2 Approval Procedures

- Approval by department's college curriculum committee/dean
- Review by the SGPC
- Approval by Faculty Senate Curricula Committee
- Office of the Provost
- Vote by Faculty Senate
- Collaboration with Office of the Registrar on submission of forms for removing the course from the NM HED record of general education program courses at UNM and, if relevant, from the NM HED record of CCN courses at UNM.
 - Provost's Office
- Provost's Office will inform Registrar's office of deletion from the UNM General Education Program

2.3 Timeline

- Departments must submit the Form C to Curriculum Workflow early in the fall semester.
- Faculty Senate Curriculum Committee must receive proposal by December 1 for the deletion in the upcoming course catalog.

HISTORY

New Policy

DRAFT HISTORY

January 21, 2021 -- Proposed draft on Curriculum approval policy.

FSCC voted unanimously to approve this requirement on Friday April 10, 2020.

Departments and Programs preparing curriculum form course proposals that contain content from general education areas outside the department/program's routine offerings OR that appear to be interdisciplinary in content (i.e., content is routinely offered by another department/program at UNM) must inform the other department/program of the course proposal. The other department/program signatory authority (chair, Dean) must approve of the course proposal prior to submission to the curriculum workflow process. Proof of the other department/program's approval must be attached to the curriculum form upon submission.

FW: Addition to A61.2

Kenedi Hubbard <kthubbard@unm.edu>

Tue 4/14/2020 5:51 PM

To: Leslie Oakes <loakes@unm.edu>; Carol Stephens <stephens@unm.edu>; Candyce Torres <ctorres@unm.edu> 1 attachments (16 KB)

FSCC Requirement 041020.docx;

Afternoon,

This was discussed and brought up at Ops today... I wanted to send it your way--

Thanks! Best, Kenedi

From: Angeline C Delucas <adelucas@salud.unm.edu>**Sent:** Tuesday, April 14, 2020 5:05 PM**To:** Kenedi Hubbard <kthubbard@unm.edu>**Cc:** Kristina M Wittstrom <KWittstrom@salud.unm.edu>; Janet Vassilev <jvassil@unm.edu>**Subject:** Addition to A61.2**Importance:** High

Hi Kenedi,

On behalf of the FSCC, as per discussion with the FS Ops committee, we are requesting this be added to the FSCC Policy revision under Procedures and General Education 1.1 as an additional bullet. The committee will be using this process to assess courses pertain to interdisciplinary and/or General Education as indicated.

Christine

Christine Delucas, DNP, MPH, RN, NEA-BC

Associate Professor

DNP Program Director

College of Nursing

FSCC Chair

University of New Mexico

1 University of New Mexico

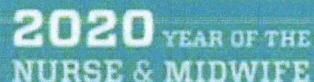
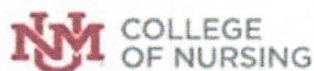
Albuquerque, NM 87131-0001

adelucas@salud.unm.edu

Office: 505-272-8241

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Fax: 505-272-8901



Memorandum

Date: April 21, 2020

To: Dr. Christine Delucas, Chair of Faculty Senate Curricula Committee

From: Dr. Leslie Oakes, Chair of Faculty Senate Policy Committee

Re: Request for Addition to Policy A61.2 "Faculty Senate Curricula Committee (FSCC)"

The Policy Committee discussed the addition you requested to Policy A61.2 "Faculty Senate Curricula Committee (FSCC)." The Policy Committee determined that the addition requires further clarification and faculty discussion, and due to the significance of the change, a policy draft with that addition would need to be sent out for a subsequent 30-day campus review period to allow faculty to comment on the proposed change. Because that comment period cannot take place until next fall, and the proposed revision to A61.2 contains important changes that address Gen Ed requirements and the Faculty Senate Council structure, the Policy Committee recommends the Faculty Senate approve the proposed revision of Policy A61.2 dated 3/8/2020.

Although this revision does not contain the addition you requested, the Policy Committee will address your recommendation at its next meeting in June to determine the best course of action. One course of action could be to work with your Committee on developing a robust Curricula Policy which would:

- *include the addition you requested,*
- move the procedures for adding and deleting courses to Core Curriculum from the Committee Charge to a Curricula Policy, and
- address additional issues raised by Dr. Pamela Cheek, the Associate Provost for Student Success.

The Policy Committee looks forward to working with you to address these important policy issues. Please let me know if you have any questions. Thank you.

Cc: Dr. Finnie Coleman, Faculty Senate President
Kenedi Hubbard, University Secretary

FW: A61.2 FS Curricula Committee (FSCC)

Candyce Torres <ctorres@unm.edu>

Mon 2/24/2020 11:40 AM

To: Carol Stephens <stephens@unm.edu>; Leslie Oakes <loakes@unm.edu>

Cc: Kenedi Hubbard <kthubbard@unm.edu>

 1 attachments (45 KB)

A61.2 Curricula Committee draft 2.16.20_PC changes.docx;

FYI.

Thank you,
Candyce

From: Pamela Cheek <pcheek@unm.edu>

Sent: Sunday, February 23, 2020 11:03 PM

To: Leslie Oakes <loakes@unm.edu>

Cc: Kenedi Hubbard <kthubbard@unm.edu>; Candyce Torres <ctorres@unm.edu>; Michael Raine <mraine@unm.edu>

Subject: Re: A61.2 FS Curricula Committee (FSCC)

Dear Dr. Oakes,

I very much appreciate the opportunity to review A61.2. As you may know, NM Higher Education Department statute and NM state legislation have brought significant changes to what used to be called the "Core Curriculum" and is now called the "General Education Program." I have sought to incorporate these changes in the attached review of A61.2. You will find references to external documents in my additions: the General Education Program Assessment Plan, the HED General Education certification form, the General Education Program Evaluation Criteria adopted by the FSCC (just recently adopted and soon to be posted on the site of the Office of the Registrar), and the HED Common Course Numbering forms. I tried to correct things with minimal changes to A61.2 as you lay it out here, even though the HED statute has brought significant change to how we are required to manage general education. With more time and consultation, I think it would be possible to write a document that would provide a more thorough and streamlined guide to faculty with clear references to the multiple HED procedures we must follow.

A critical issue with this version of A61.2 is that it assigns review of General Education courses to the Senate Graduate and Professional Committee. This is a wonderful committee (it does great, thoughtful, and thorough work), but many of its members are engaged primarily or entirely in graduate education; it is not a committee equipped to provide review and oversight of general education. There is a significant need for a committee or sub-committee concerned with undergraduate education that would provide review and oversight. Such a committee would probably be most effective if it had a structure parallel to SGPC – that is, support from someone like Robben Baca Brown and ex officio membership and involvement from a Dean, Associate Dean, or Associate Provost (parallel to the role that Julie Coonrod plays with SGPC).

In respect for your work, I have tried to change as little as possible to A61.2 while correcting errors in the alignment of the policy with HED statute. Yet if your approach to A61.2 permits it, I would like to make myself available to work with you and the policy committee on some of the issues addressed above to create a more robust version of the policy. Thank you, again, for the opportunity to review and to work with you on this.

Best wishes,
Pamela

Dr. Pamela Cheek
Associate Provost for Student Success

From: Candyce Torres <ctorres@unm.edu>
Date: Wednesday, February 19, 2020 at 12:34 PM
To: Pamela Cheek <pcheek@unm.edu>
Cc: Kenedi Hubbard <kthubbard@unm.edu>, Leslie Oakes <loakes@unm.edu>
Subject: A61.2 FS Curricula Committee (FSCC)

Hello Dr. Cheek,

At the February 5, 2020 Faculty Senate Policy Committee meeting members decided that the revised draft of Policy A61.2 "Faculty Senate Curricula Committee (FSCC)" should be sent to you for review as the Associate Provost. I've attached the latest draft (with one minor change made by the Committee). Please respond if you have any feedback by Friday, February 21, 2020.

Thank you.

Best,

Candyce L.M. Torres
Administrative Coordinator
Office of the University Secretary
The University of New Mexico

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Albuquerque, NM 87131

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