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UC.09.01

University Senates Conference
377 Henry Administration Building, MC-348
506 South Wright Street
Urbana, IL 61801

November 4, 2008

Dr. B. Joseph White
President
364 Henry Administration Building
Urbana-Champaign MC-346

Re: Proposed Revisions to *The General Rules* (USC GR-40)

Dear Joe:

On October 9, the University Senates Conference transmitted proposed revisions to *The General Rules*, Article III, with the request that you forward the document to the Board of Trustees for approval. The intent of the proposed revisions is to clarify language describing faculty ownership of their course materials.

Subsequently, Vice President Rao indicated that the language does not address the broader implications of courseware ownership that might extend to other groups of employees, such as non-tenure track faculty and academic professionals.

The Conference believes it is important to clarify the language in *The General Rules* as quickly as possible. The changes we have proposed provide continuing consultation on changes to *The General Rules* previously created by the University Intellectual Property Committee, and we view any new changes related to groups of employees other than faculty as separate from the original work of the committee. We request that you not delay action on our proposed revisions.

Sincerely,



Elliot R. Kaufman, Chair
University Senates Conference

cc: Robert C. Damrau ✓
Elizabeth A. Dooley
Avijit Ghosh
Mrinalini C. Rao
Kathy L. Rutherford
Michele M. Thompson
Members, University Senates Conference

Proposed Revisions to *The General Rules*, Article III, Sections 1-4

Background

In an April 2006 letter to the University Senates Conference (USC), James Weyhenmeyer, Chair of the Intellectual Property Committee, presented "proposed amendments to Article III and V of *The General Rules*." He continued, "The proposed amendments to *The General Rules* represent an update and clarification of current practice for managing intellectual property (Article III) and the use of University facilities for purposes other than education and research (Article V). As such, the proposed revisions are not intended to introduce new policy."

In June of 2006, President White requested USC to consider and comment on these proposed changes to *The General Rules* prior to his recommendation for adoption to the Board of Trustees. At this time USC requested the advice of the Senates. In December of 2006, USC, benefitting from the advice of the Senates, suggested modifications that the President referred to the University Intellectual Property Committee. Not all of USC's modifications were adopted. The President recommended revisions to *The General Rules* that were approved by the Trustees on 13 March 2007.

In April of 2008, USC sent a letter to Avijit Ghosh, Vice President for Technology and Economic Development, expressing continued concerns that *The General Rules* do not explicitly protect faculty ownership of courseware and that as currently written may be open to misinterpretation. In May of 2008, USC, in a letter to Mrinalini Rao, Vice President for Academic Affairs, expressed the concern that the current *General Rules* "neither adequately nor expressly protects faculty ownership of courseware." Vice President Rao suggested that USC draft language that would revise the appropriate sections of Article III to better reflect the historical ownership of course materials by faculty.

As a result, the USC Statutes Committee drafted revisions to Article III, Sections 1-4. The proposed revisions were approved by the Statutes Committee on 22 September 2008 and by USC on 23 September 2008 at its regular meeting. These revisions clearly and explicitly leave ownership of what is created in connection with the faculty's regular teaching vested with the creators, while allowing the University to have ownership of the things created for specific purposes it may have, and of the things for which the University has incurred supplementary expense. The revisions proposed here do not change what we have been assured is the intent of *The General Rules*, but rather clarify that intent.

Overview of Proposed Changes to *The General Rules*, Article II, Sections 1-4

Section 1	stylistic changes
Section 2	grammatical changes
Section 3	grammatical and stylistic changes
Section 4a	explicit wording in regard to faculty ownership, and grammatical changes
Section 4a1	grammatical changes
Section 4a2	explicit wording to clarify that the faculty own the copyrights to their material, except when the University: <ul style="list-style-type: none"> • Provides motivation for the work, • The work is part of the employment duties, or • The University incurs “supplementary expense” for the work, and stylistic changes
Section 4a4	stylistic changes
Section 4b	grammatical changes
Section 4b1	grammatical changes
Section 4c1	grammatical changes
Section 4c2	grammatical changes
Section 4d	change requirement to imperative.

Recommendations

(Text to be added is in underline and text to be deleted is in ~~strikethrough~~.)

ARTICLE III. INTELLECTUAL PROPERTY

1. Objectives
2. Definitions
3. Application
4. Copyrights
5. Other Intellectual Property
6. Trademarks
7. Intellectual Property Administration
8. Proceeds Distribution

SECTION 1. OBJECTIVES

Technical information, inventions, discoveries, copyrightable works and other creative works that have the potential to be brought into practical use may result from the activities of University employees in the course of their teaching, research, and service responsibilities ~~duties~~ or through the use, by any person, of University resources such as facilities, equipment, or funds.

The ~~primary~~ first purpose of this intellectual property policy is to provide the necessary protections and incentives to encourage both the discovery and development of new knowledge, its transfer for the public benefit and its use for development of the economy; a second purpose is to enhance the generation of revenue for the University and to provide financial and reputational benefits for the creator(s); and a third purpose is to preserve the University's freedom to conduct research and to use the intellectual property created by that research or pursuant to an institutional initiative. The University is guided by the following general objectives:

- (i) To optimize the environment and incentives for research and for the creation of new knowledge at the University;
- (ii) To ensure that the educational mission of the University is not compromised;
- (iii) To bring technology into practical use for the public benefit as quickly and effectively as possible;
- (iv) To protect the interest of the people of Illinois through a reasonable consideration for the University's investment in its intellectual property.

SECTION 2. DEFINITIONS

(a) *Intellectual Property*. The term "intellectual property" is broadly defined to include inventions, discoveries, know-how, show-how, processes, unique materials, copyrightable works, original data and other creative or artistic works which have value. Intellectual property includes that which is protectable by statute or legislation, such as patents, registered or unregistered copyrights, registered or unregistered trademarks, service marks, trade secrets, mask works, and plant variety protection certificates. It also includes the physical embodiments of intellectual effort, for example, models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, other compositions of matter, plants, and records of research and experimental results.

(b) *Traditional Academic Copyrightable Works*. "Traditional academic copyrightable works" are a subset of copyrightable works created independently and at the creator's initiative for academic purposes. Examples may include class notes, books, theses and dissertations, educational software (also known as courseware or lessonware), articles, non-fiction, fiction, poems, musical works, dramatic works including any accompanying music, pantomimes and choreographic works, pictorial, graphic and sculptural works, or other works of artistic imagination that are not created as an institutional initiative (as specified in Section 4(a)(2) below).

(c) *Creator*. "Creator" refers to an individual or group of individuals who make, conceive, reduce to practice, author, or otherwise make a substantive intellectual contribution to the creation of intellectual property. "Creator" includes the definition of "inventor" used in U.S. patent law for patentable inventions and the definition of "author" used in the U.S. Copyright Act for copy written works of authorship.

(d) *University Resources Usually and Customarily Provided*. When determining ownership and license rights in copyrightable works, "University resources usually and customarily provided" includes office space, library facilities, ordinary access to computers and networks, or salary. In general, it does not include the use of students or employees as support staff to develop the work, or substantial use of specialized or unique facilities and equipment, or other special subventions provided by the University unless approved as an exception.

Exceptions are expected in units where the tradition is to provide subvention to some faculty in the form of graduate assistants to help prepare traditional academic copyrightable works. Exceptions are also expected in situations where creators use University-provided facilities and resources in the creation of works of artistic imagination, for example, use of studios, pottery wheels, or kilns for the creation of paintings, sculpture or ceramics; use of high-end computer hardware and software in the creation of artistic graphical images; and so on. Other individual exceptions may be approved on a case-by-case basis [see section 7(k)].

SECTION 3. APPLICATION

This policy is considered a part of the conditions of employment for every employee of the University and a part of the conditions of enrollment and attendance at for every student of the

University ~~by students~~. It is also the policy of the University that individuals (including visitors) by participating in a sponsored research project and/or making significant use of University-administered resources thereby accept the principles of ownership of intellectual property as stated in this policy unless an exception is approved in writing by the University. All University creators of intellectual property shall execute appropriate assignment and/or other documents required to determine ownership and rights as specified in this policy.
[SEE END NOTE 1]

This policy applies only to intellectual property disclosed after the effective date of the policy (September 3, 1998).

SECTION 4. COPYRIGHTS

(a) *Ownership*. Unless subject to any of the exceptions specified below or in Section 4(c), creators retain copyright rights to academic copyrightable works as defined in Section 2(b) above, including coursework they may design for courses they teach – in pursuance of their regularly assigned teaching responsibilities – that are subject to no specific requirement of employment. (See, however, Sections 4(b)(2) below.)

The University shall own copyrightable works as follows:

- (1) Works created pursuant to the terms of a University agreement with a third party, ~~or~~.
- (2) Works created as a specific requirement of employment or as an assigned University duty that may be specified, for example, in a written job description or an employment agreement. Such specification may define the full scope or content of the employee's University employment duties comprehensively or may be limited to terms applicable to a single copyrightable work. Absent such prior written specification, ownership will vest with the ~~University in those cases where the~~ creator, except in cases in which the University provides the motivation for the preparation of the specific work, the topic or content of which is determined by the creator's employment duties and/or when the work is prepared at the University's supplementary expense. "Supplementary expense" here means above and beyond payment of salary and provision of resources usually and customarily provided in connection with regularly assigned teaching and other responsibilities. [SEE END NOTE 2]
- (3) Works specifically commissioned by the University. The term "commissioned work" refers to a copyrightable work prepared under an agreement between the University and the creator when (1) the creator is not a University employee or (2) the creator is a University employee but the work to be performed falls outside the normal scope of the creator's University employment. Contracts covering commissioned works shall specify that the author convey by assignment, if necessary, such rights as are required by the University.
- (4) Works that are also patentable. The University reserves the right to pursue multiple forms of legal protection ~~concomitantly~~ simultaneously if available. Computer software, for example, can be protected by copyright, patent, trade secret and trademark.

(b) *University Rights in Creator-Owned Works.*

(1) Traditional academic copyrightable works created using ~~u~~University resources usually and customarily provided are owned by the creators. Such works need not be licensed to the University.

(2) Traditional academic copyrightable works created with use of University resources over and above those usually and customarily provided shall be owned by the creators but licensed to the University. The minimum terms of such license shall grant the University the right to use the original work in its internally administered programs of teaching, research, and public service on a perpetual, royalty-free, non-exclusive basis. The University may retain more than the minimum license rights when justified by the circumstances of development.

(c) *Student Works.* Unless subject to the provisions of paragraph (a) or provided otherwise by written agreement, copyrightable works prepared by students as part of the requirements for a University degree program are deemed to be the property of the student but are subject to the following provisions:

(1) The original records (including software) of an investigation for a graduate thesis or dissertation are the property of the University but a copy may be retained by the student at the discretion of the student's major department.

(2) The University shall have, as a condition ~~of the degree award~~ of awarding the degree, the royalty-free right to retain, use and distribute a ~~limited~~ reasonable number of copies of the thesis, together with the right to require its publication for archival use.

(d) *Copyright Registration and Notice.* University-owned works ~~should~~ must be protected by copyright notice in the name of the Board of Trustees of the University of Illinois. Such copyright notice ~~should~~ must be composed and affixed in accordance with the United States Copyright Law. Registration of the copyright for University-owned works shall be in accordance with the operational guidelines and procedures established by the vice chancellor for research on each campus. The University ~~may~~ might also decide to release a work to the public domain and if so, should so indicate.

(e) *University Press Publications.* The University Press shall be responsible for copyright registration of works owned by the University and published by the Press and for administering contracts with its authors. Such contracts shall define the rights and obligations of the author and the University and shall be processed as are other University contracts.

(f) *Compliance with the Copyright Act.* University units that administer activities involving any usage regulated by the Copyright Act are responsible for knowing applicable regulations, monitoring their continuing evolution, and conducting their programs in full compliance with the applicable laws and regulations.

END NOTES

1 The creator's obligation to assign rights to the University is subject to the provisions of the Illinois Employee Patent Act, which provides in part:

A provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer does not apply to an invention for which no equipment, supplies, facilities, or trade secret information of the employer was used and which was developed entirely on the employee's own time unless (a) the invention relates (i) to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of the state and is to that extent void and unenforceable. The employee shall bear the burden of proof in establishing that his invention qualifies under this subsection.

2 Provisions (1) and (2) under Article III, Section 4. Copyrights, (a) Ownership define those works that fall within the scope of University employment as that term is used in the definition of "work made for hire" in the U.S. Copyright Statute (see Title 17, USC, Section 101).