

Status Report

UC Copyright Ownership Policy Working Group Systemwide Library and Scholarly Information Advisory Committee (SLASIAC)

September 30, 2013

Background:

The UC Copyright Ownership Policy Working Group was formed in Spring, 2013, with the following charge:

The Copyright Subcommittee asks the Working Group to develop principles involved in University ownership and/or maintenance of software developed by faculty, and to make concrete suggestions for changes in the policy.

In order to analyze the strengths and potential weaknesses of the 1992 UC Policy On Copyright Ownership (“UC Copyright Ownership Policy”), the working group reviewed the copyright policies of twenty-two (22) universities including the Comp-8 universities and fourteen (14) universities that are recognized as having strong technology transfer offices and/or significant activity in copyright licensing and commercialization¹. Additionally, the working group designed a survey to solicit comments from university faculty, researchers and staff on their experiences with the UC Copyright Policy. The survey was sent to a diverse array of constituents, including intellectual property and library-related committees, deans and department chairs of relevant departments, technology transfer professionals and general counsel. The working group received fifty-seven (57) responses to the survey.

Initial Recommendations and Findings:

As a result of the above activities and analysis, the Working Group has identified several issues concerning the UC Copyright Ownership Policy that should be examined in-depth. Each of these issues would require a different set of subject matter experts and discussions to generate detailed recommendations. The Working Group recommends that it review these issues sequentially over the course of fiscal year 2013-14, which would allow for the Working Group to bring in appropriate subject matter experts and to conduct deeper discussions and analysis. The following three issues were identified as benefiting from further discussions and analysis:

1. The UC Copyright Ownership Policy Works For Non-Software Traditional Academic Works and Is Consistent with Other University Policies, But Broadening the Application Should Be Considered.

The first question the committee examined is whether the UC Copyright Ownership Policy could benefit from changes with respect to traditional academic works that are not software (e.g., books, theses, journal articles, lectures, conference presentations etc.). These traditional

¹ A list of Universities surveyed is attached.

academic works are classified as “Scholarly/Aesthetic Works” in the UC Copyright Policy. “Designated Academic Appointees” own the Scholarly/Aesthetic Works that they create, with some limited exceptions.

The survey respondents who generate traditional academic works as Designated Academic Appointees indicated that the rights granted to them under the UC Copyright Ownership Policy provide what is necessary to broadly disseminate those works. While details vary, all universities surveyed (with the possible exception of MIT) clearly grant researchers the right to own non-software traditional scholarly works. Thus, at this time, the Working Group does not recommend making significant changes to the treatment of these works except as follows:

a. Definition of Designated Academic Appointee.

The definition of Designated Academic Appointees, as currently written, creates confusion and is more limited than the definitions used by many peer universities. The UC Copyright Ownership Policy defines “Designated Academic Appointees” as including only the following specific titles: the Professor series, In-Residence series and the Professional Research Series. The Chancellor of a specific campus is authorized to include other academic titles, but must take affirmative steps to do so.

Today, there are many other positions which create traditional academic works in the same manner as tenured faculty, but are not included within the definition of a Designated Academic Appointee. Examples include graduate students, postdoctoral scholars, senior technicians and some lecturers. The Working Group has learned that this lack of clarity has occasionally created recruitment issues at some campuses.

When reviewing the policies of other universities, the Working Group determined that only seven (7) out of the twenty-two (22) universities restrict ownership of traditional academic works to faculty position, only. The majority of peer institutions, including Harvard, MIT, University of Illinois and Stanford, have a much broader definition. Many have the same policy for all employees, regardless of title, others specifically extend ownership to students and postdoctoral scholars.²

The Working Group recommends that the definition of “Designated Academic Appointee” is expanded to be much more inclusive and to capture all current job titles that have the potential of creating scholarly works. Alternatively, a specific definition of traditional academic works, which would include non-controversial traditional scholarly works only (i.e, written books, articles, lectures and presentations) could be created and apply to all university employees regardless of title, as some other universities have done.

² Note, under current UC Copyright Ownership Policy, the right of graduate student to own their own scholarly works is not clear because (1) they do not appear to automatically fall within the current definition of “Designated Academic Appointees” and, (2) “Student Works,” which are owned by students, are limited to those that are proceeded “outside any University employment and not under a sponsored project agreement.” Graduate Students are typically employed by the University.

- b. *When Non-Software Traditional Scholarly Works Are Owned By The University, The University Should Consider Automatically Granting Title to The Designated Academic Appointee In Certain Situations.*

The UC Copyright Ownership Policy states that the University “may” release title of copyrighted works to the faculty when there are no overriding or special obligations to a sponsor or third party and when the best interest of the University is served.

In the humanities, social sciences and education disciplines, it is not unusual to receive grant funding to support activities like the translation of foreign works, the digitization of ancient materials and the development of education curricula. These works would be considered by most in the UC community to be classic examples of traditional scholarly work. However, under the UC Copyright Policy, because a grant was received, these works are considered “sponsored works,” owned by the University.

When the University owns a traditional scholarly work, typical dissemination routes can be challenging to implement. For example, there are standard terms in academic publication concerning warranties and indemnifications that would require Regental approval to accept. These Regental rules were developed to protect the University when third parties create commercial products based on UC intellectual property, but apply to all intellectual property agreements. One campus reported a situation where The Regents owned an academic publication and the campus had been unable to agree to standard publication terms. An individual academic, however, would have been able to readily agree to such terms.

It is critical for the University to own a copyrighted work whenever obligations to third parties are present or when the grantor’s intent is best served by retaining ownership. However, it may be in the best interests of the University, both in the dissemination of information and in the interest of administrative efficiency, if the University created an automatic grant-back of ownership to non-software traditional scholarly works (while potentially retaining the right to use the scholarly work for educational and research purposes) in cases where extramural funds were accepted, but those extramural funds did not establish any obligations or expectations to the sponsor funding the work or to other third parties.

- c. *The University should consider Clarifying That “Significant Use” of University Resources, But Not “Incidental Use,” Would Potentially Trigger UC Ownership of Non-Software Traditional Scholarly Works.*

In the survey of copyright policies, most universities maintain copyright policies that grant ownership to non-software traditional scholarly works to the faculty and/or researchers, with the same general exceptions as found in the UC Policy (sponsored works, patentable works, commissioned works, contracted facilities works and institutional works). There is, however, one general exception found in almost all of the examined university policies that is conspicuously absent in the UC Copyright Policy: an exception to faculty ownership if the faculty used substantial university resources to create the work (defined as resources above the typical offices, computers and general administrative support provided to faculty). In these policies, incidental use of University resources does not trigger University ownership, only “substantial use,” and

“substantial use” is often specifically defined. This exception is not present in UC Copyright Ownership Policy. The closest language to this exception allows a Chancellor to designate certain campus facilities as requiring special copyright arrangements (presumably because they are substantial resources), requiring the Chancellor to take an affirmative act to designate those facilities.

Carefully defining “substantial use” of University resources could provide important clarity to University academics with respect to non-software traditional scholarly works. While it is generally accepted that the use of office computers, telephones and academic year salary to create scholarly writings do not trigger UC ownership, other types of resources are not as clear cut. For example, faculty members are often required to pay certain publication costs to have scholarly articles published. These publication costs are relatively small (\$500 - \$1500), but if UC funding is used to cover the publication costs, UC ownership is likely triggered. By defining what resources are considered substantial enough to trigger UC ownership (as well as defining resources that are “incidental” and do not affect ownership), UC would be able to assure that modest resources used to further UC’s core mission (such as publication costs for scholarly works) are treated in a manner that supports and encourages that mission.

2. The Treatment of Software Under the UC Copyright Ownership Policy Should Be Examined in Further Detail

In examining the inclusion of software in policies that grant rights in traditional scholarly works to the faculty, software is not typically included in the specific examples of what is considered a traditional scholarly or academic work. Books, articles, lectures, instructional materials and course notes are most commonly used as examples of academic works. Often, software is included by default because the policies refer more generally to “copyrightable works.” When software is mentioned in the policies, it is often to discuss limitations to ownership. (The policies generally include a statement that the patent policy supersedes the copyright policy if the software contains patentable inventions.) The observation raises the question of whether other universities have expressly contemplated treating software as a traditional scholarly work or have acknowledged that it does not fit neatly in that category as other types of copyrightable works.

Out of the twenty-two (22) university policies reviewed, thirty-six percent (36%), either did not grant faculty ownership of software rights or significantly limited the right of faculty to own software rights. Six (6) universities do not grant faculty ownership of software rights at all (including University of Virginia, NYU, Princeton, Caltech, USC and University of Texas). Two others limit faculty ownership to “educational software” or “informational software” that share the properties of traditional scholarly or academic works (University of Illinois and Wake Forest). One university (Northwestern) requires faculty to share revenue if the copyrighted software generates revenue and significant university resources were used.

Given that most university policies do not expressly include software as an example of a traditional scholarly work and a significant percentage of universities examined by the Working Group treat software differently from traditional scholarly works, the Working Group recommends that it gather additional input and conduct in-depth discussions to examine the

following questions and determine if software should be treated differently under UC's copyright policies:

- How could a university distinguish between traditional academic scholarly works and more commercially focused software?
- Should the University of California assure that it receives an appropriate return on the taxpayers' investment when computer software is developed that has commercial value (as stated above, the UC Copyright Ownership Policy does not have an exception to ownership when substantial UC resources are used)?
- Are there any concerns about treating faculty equally when producing software in different circumstances and in different disciplines?
- Should the University implement open access principles for software, to assure academics can continue to build and use software for educational and research purposes (current open access policies do not apply to software)
- Do start-up companies actually benefit from having a license, and direct relationship to, the University of California?

3. New Educational Tools Should Be Developed To Help The University Community Understand and Correctly Interpret the UC Copyright Policy.

The Working Group has found that there is significant confusion about the UC Copyright Ownership Policy, based on both personal experiences and the survey of the UC community. A Quickguide was created for this policy, but many in the UC community are unaware of this tool and it is limited in content. The Working Group recommends that guidelines and FAQs are developed to aid the UC community in quickly and accurately interpret the policy. The Working Group would welcome the ability to be involved in that effort.

Conclusion

In sum, the Working Group recommends that it continue to examine the issues identified in these initial recommendations, using subject-matter experts to gain a deeper understanding and differing perspective. The Working Group thanks SLASIAC for the opportunity to work on this important issue.

ATTACHMENT A

University Copyright Policies Examined

Comp-8 Universities:

Harvard
MIT
Stanford
SUNY Buffalo
University of Illinois, Champagne-Urbana
University of Michigan
University of Virginia
Yale

Other Leading Universities:

Caltech
Columbia University
Cornell University
Northwestern University
NYU
Princeton
University of Minnesota
University of Rochester
University of Southern California
University of Texas
University of Utah
University of Washington
University of Wisconsin
Wake Forest University