

DRAFT – FOR SLASIAC SUBCOMMITTEE REVIEW

To: SLASIAC Standing Subcommittee on Copyright Policy
From: Rita Hao, OGC Senior Counsel
Re: Payment of Faculty Members' Publication Ancillary Costs by UC Departments
Date: Feb. 5. 2013

I. Introduction and Factual Summary

This memo clarifies previous guidance issued by the UC Office of General Counsel (“OGC”) in a June 29, 2004 email and a subsequent February 1, 2008 email where OGC opined that it was improper for academic departments to pay permission fees and other associated costs of article publication. Such costs include but are not limited to: publication fees requested by certain journals, image licensing fees, editorial consulting services, and other similar fees (“Ancillary Costs”).

Several departments now request permission to underwrite Ancillary Costs associated with the publication of faculty works of authorship in journals and have asked that OGC revisit the issue.

II. Short Answer

Upon further review of the relevant policies by the OGC governance group, research compliance group, and intellectual property group, OGC now concludes that the payment of Ancillary Costs is not prohibited under the UC Standards of Ethical Conduct and may be properly made with university funds.

OGC recommends that departments implement procedures providing that if personal funds are subsequently earned from publications supported with university funding, that the author repay to the university any Ancillary Funds originally received.

III. Relevant Policy Sections

Relevant excerpts of the policies at issue appear below.

The UC Standards of Ethical Conduct state:

10. Use of University Resources

University resources may only be used for activities on behalf of the University. They may not be used for private gain or personal purposes except in limited circumstances permitted by existing policy where incidental personal use does not conflict with and is reasonable in relation to University duties (e.g., telephones)....

For purposes of applying this policy, University resources is defined to include [i]ntellectual property rights.”

(emphasis added)

The UC Policy of Copyright Ownership states:

Independent Academic Effort. Inquiry, investigation, or research carried out by designated academic appointees to advance knowledge or the arts where the specific choice, content, course, and direction of the effort is determined by the designated academic appointee without direct assignment or supervision by the University. The general obligation of designated academic appointees to produce scholarly/aesthetic works is considered independent academic effort.

(emphasis added).

IV. Analysis

While we acknowledge that this situation potentially falls within a gray area of the Ethical Standards policy, OGC nonetheless concludes that under section 10 of the UC Standards of Ethical Conduct, payment of Ancillary Costs is permissible.

The payment of Ancillary Costs 1) is not prohibited under existing IP policy, 2) does not conflict with faculty members' University duties to produce scholarly/aesthetic works, and 3) is reasonable in relation to those duties.

Thus, because article publication by UC faculty members constitutes an activity undertaken on behalf of the University, payment of Ancillary Costs is permissible if the payments are not made "for private gain or personal purposes." Alternately, to the extent that publication of the article also benefits the faculty member personally, any payment of Ancillary Costs by the university may be considered "incidental personal use" of University Resources which is not prohibited.

OGC notes that payment of Ancillary Costs is only permitted in circumstances where the copyrightable work in question is created as part of the faculty member's academic duties for the University of California. For copyrightable works created outside the scope of UC employment (for example, a physics professor writing a non-scientific children's book), any payment of University funds in support of those projects would not be reasonable in relation to University duties and would be in violation of the UC Standards of Ethical Conduct.

To avoid any appearance of impropriety, OGC further recommends that departments paying Ancillary Costs implement procedures, guidelines, or suggestions that should an author earn significant personal funds from a publication supported in part with university funding, that the author repay the Ancillary Costs to the department.