

**Final Report of the  
SLASIAC UC Copyright Ownership Policy Working Group**

October 2014

**Introduction**

In April, 2013, SLASIAC charged the UC Copyright Ownership Policy Working Group<sup>1</sup> with examining whether the 1992 UC Copyright Ownership Policy (the “UC Copyright Policy”)<sup>2</sup> is aligned with the current needs of the UC System and its campuses and if not, to make concrete suggestions for changes in the policy. In addition to a general review of the UC Copyright Policy against current needs, the Working Group was also asked to review the policy’s current approach to the ownership and maintenance of software created by UC employees.

In order to analyze the strengths and weaknesses of the UC Copyright 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 commercialization.<sup>3</sup> 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. The Working Group also conducted several informal consultations with individuals that have had significant experience with the UC Copyright Policy and discussed certain labor restrictions with human resources experts at UCOP.

After careful examination and considerable discussion, the Working Group has arrived at several key recommendations for SLASIAC to consider in order to alleviate confusion, strengthen the ability to disseminate copyrightable works, minimize administrative burden and more closely align the UC Copyright Policy with the current copyright ownership policies of other major research universities.

**I. Designated Academic Appointees**

- A. *SLASIAC should consider expanding the class of employees that are allowed to own their Scholarly/Aesthetic Works.*

Under the current terms of the UC Copyright Policy, only “designated academic appointees” are able to own their “Scholarly/Aesthetic Works.” A “Scholarly/Aesthetic Work” is defined as “a work originated by a designated academic appointee resulting from an independent academic effort,” and it is generally accepted as including scholarly books and journal articles, musical compositions, art, creative writing and in some cases, software. A

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<sup>1</sup> The charge and membership of the Working Group can be found in Attachment A.

<sup>2</sup> Capitalized terms in this paper have the same meanings as set forth in the UC Copyright Policy.

<sup>3</sup> The universities surveyed are listed in Attachment B.

“designated academic appointee” is defined specifically as “those University employees who have a general obligation to produce scholarly/aesthetic works. Included are all appointees in 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 positions within the University that create scholarly works in the same manner as tenured faculty that are not included within the definition of a Designated Academic Appointee. Often, these graduate students, postdoctoral scholars, fellows, senior technicians, etc. are co-authors of scholarly works with faculty members and yet their copyright ownership status may differ.

In the survey of university copyright policies, only seven out of twenty-two surveyed universities restrict the ownership of scholarly works to the faculty and similar titles. The majority of surveyed peer institutions (12), including Harvard, MIT, University of Illinois and Stanford, allow all employees to own their scholarly works, and three others allow all researcher positions to own their scholarly works. Based on this finding, restricting ownership of scholarly works to faculty and professional researchers places the University of California in the minority.

Restricting ownership of scholarly works to the current definition of Designated Academic Appointees complicates the efforts of both our faculty and the University to disseminate scholarly works. For example, graduate student researchers are often co-authors of academic journal articles. Under the UC Copyright Policy, the contributing faculty members clearly own their contributions to the journal article, but the students do not necessarily have the same right. Publishers frequently require authors to sign a publishing contract in which the authors warrant that they own the work. If a graduate student researcher signs a publication agreement and does not own his or her interest in the copyright, the warranty they make in the publishing agreement may not be accurate. Since standard publication contracts often contain terms that conflict with Regental policy (such as indemnification and warranties/representations), it can be extremely difficult for the University to sign a publication agreement in place of that graduate student. The interests of both the faculty and the University would be best served by assuring all authors of an scholarly text own their interest in the copyright.

Campuses have also reported recruitment issues when seeking senior, highly experienced personnel to join a campus and enrich a research center or department, either as a lecturer or through a senior management position (such as executive director of a major research center or as a business expert participating in entrepreneurship programs). When these individuals, who are highly accomplished outside the university and are expected to participate in various academic activities, learn that they will not be able to own their scholarly works, they are often reluctant to participate.

While there are potentially significant labor issues to work through and time correctly, most notably with respect to positions that are represented by unions, the University of California should revise its policy to allow all job titles (including faculty, graduate students and

staff) to own the scholarly/aesthetic works they create.<sup>4</sup> This policy revision is not only consistent with many of the universities surveyed, but is consistent with the needs of publishers who disseminate our academic community's scholarly/aesthetic works. It will also help attract individuals who are in a position to enrich our academic community through non-faculty positions.

- B. *Even if the definition of “designated academic appointee” is not expanded, the University should clearly identify which job titles are considered “designated academic appointees” and periodically review the job titles used on campuses to assure that all appropriate titles are identified.*

In reviewing the copyright policy, the Working Group learned that many campus representatives experience significant difficulty in determining which job titles are considered to be “designated academic appointees.” Over time, there have been determinations about specific titles when campuses consult UCOP policy experts on specific cases, but the results are not broadly disseminated.

The Working Group recommends that, if the distinction of “designated academic appointee” must remain in the policy, SLASIAC consider working with the UC Office of General Counsel and other appropriate subject-matter experts to create a comprehensive list of all job titles that fall into the “designated academic appointee” category. The list should be placed on the UCOP Copyright Webpage as a reference tool and updated on a regular schedule. Because new job titles are occasionally created and specific job titles may change, the Working Group recommends that a subcommittee of SLASIAC (and perhaps key representatives from other units, such as the Office of General Counsel and Human Resources) reviews the listed job titles every five (5) years to assure the list is comprehensive and remains relevant. Providing such a list will eliminate confusion, be administratively efficient and help the campuses implement the UC Copyright Policy in a consistent manner.

## **II. Clarification regarding use of “university resources”**

In the UC Copyright Policy, some copyrighted works can be owned by the authors only if University resources are not used to create the work (see, *e.g.*, the definition of Personal Work in Section II.A.2, or the conditions to release title in Section III.C.). Additionally, there is a “catch-all” category of copyrighted works called “Institutional Works” that applies to any work that does not fall neatly within other categories which states that the University owns all works “made with the use of University resources.” “University resources” is currently defined to include all university funds (which includes any funds, regardless of source, that are under the control of, or managed by, the University) or facilities.

The UC Copyright Policy makes little distinction among the types or levels of university resources used. Taken literally, the UC Copyright Policy's definition of “University resources” includes faculty offices, local telephone usage, campus libraries and other customary and modest resources provided to all UC employees. While the general practice of the campuses is to

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<sup>4</sup> In the event this change is adopted, if needed, UCOP could provide guidance on how to determine whether a copyrighted work is a “scholarly/aesthetic work.”

interpret the definition of university resources as covering only “non-incidental” support, the actual language of the UC Copyright Policy does not align with this practical interpretation.

Confusion exists on how the use of modest university resources can affect ownership. Campus copyright policy experts are frequently asked by faculty whether the use of the University’s resources or facilities would trigger University ownership and it can be difficult to provide sufficient assurances. There is also concern that the use of University funds to cover the publication costs customarily charged by academic publishers will result in University ownership of the copyright.

The vast majority of the copyright policies of the surveyed peer institutions define what level of University resources would trigger potential ownership by the University, either through a description of what the University would consider “incidental use” of resources or what would be considered an “exceptional” or “significant” use of University resources. To eliminate further confusion and anxiety, the Working Group recommends that a definition of “incidental use” of University resources is added to the UC Copyright Policy. The definition of “University Resources” should then be modified to specifically exclude the “incidental use” of University resources.

In its definition of “Exceptional University Resources,” the UC Policy on Ownership of Course Materials already provides a good example of what the University should consider to be incidental uses of University resources. With a few additional references to cover publication costs and general research assistance, the Working Group suggests that the definition of “Exceptional University Resources” in the Policy on Ownership of Course Materials be incorporated into the UC Copyright Policy, with the following definition of “incidental use” added:

“Incidental Use includes customary secretarial support, library facilities, office space, personal computer, access to computers and networks, customary publication costs,<sup>5</sup> customary library and research assistant support, and academic year salary.”

The acknowledgment that certain incidental uses of University resources will not trigger UC ownership would provide valuable clarification and minimize further confusion.

### **III. Automatic Grant Back for Traditional Scholarly/Aesthetic Works**

Section III.C. of the UC Copyright Policy allows the University to release its ownership rights upon request if “(a) there are no overriding or special obligations to a sponsor or other third party; and (b) the best interests of the University would be so served.” If rights are released, the authors cannot use any University resources in the further development of the released work and the university is provided a free non-exclusive, worldwide license to use the work for any research or educational purpose.

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<sup>5</sup> A working group, composed of faculty from various disciplines, could be established to arrive at what would be considered “customary publication costs.”

In the humanities and arts, grants are often provided to allow the faculty to generate academic writings or translations. As currently written, these works are considered “Sponsored Works” that are owned by the University. Authors must affirmatively request a release of ownership from the University to own the copyright. As a result, there are likely many instances where a faculty member believes he or she owns the copyright to a scholarly work but does not realize that, because the work is a “Sponsored Work” under the UC copyright policy, the copyright is, in fact, owned by the University. Authors may face legal liability if they sign a publishing agreement where they warrant that they are the copyright owners of the work. Since most publication contracts have standard contract clauses that violate UC policy and thus, would require Regental approval if UC owned the copyright, maintaining University ownership over traditional scholarly writings simply because of the presence of extramural funding does not necessarily support the University’s mission to disseminate information through publication. Additionally, if all of the faculty that accept extramural funding for the creation of a written work were to request formal release to each scholarly work they create under these circumstances, the University would quickly face a large administrative burden.

The Working Group recommends that for *non-software, traditional scholarly writings* (e.g., articles, books, translations) where the University holds the copyright under the policy, the University considers automatically granting back ownership to the author (subject to any obligations to third parties, such as the agencies that provided the research funding), rather than requiring the authors to identify this issue and affirmatively request title.

#### **IV. Ownership of Software**

The working group was asked to review whether the University of California should modify the UC Copyright Policy to treat the ownership of software differently than other more traditional scholarly works. Historically, U.S. universities have followed the academic tradition of providing faculty with the ability to own their “Scholarly/Aesthetic Works.” This longstanding tradition was adopted well before the advent of software, when the copyrighted works produced by research universities generally consisted of academic writings (textbooks and journal articles) and the fine arts. When Congress extended copyright protection to software as a “literary work” in 1974, software automatically fell within existing university copyright policies. Often, however, software bears little resemblance to traditional forms of scholarly output. These differences have created tensions in the implementation of the UC copyright ownership policies.

It also has been observed that software, and potentially other newer categories of copyrightable works, have more opportunities to generate licensing revenue and thus it may be reasonable to treat these copyrightable works more like patentable inventions, which are owned by the University, not the inventor, under the UC Patent Policy. Copyrightable works can generate significant income for the owner. A survey of seven (7) UC campuses revealed eleven (11) copyrighted works that generated over \$200,000 in revenue for the University, including three (3) that have generated \$1.0 million or more. Additionally, there are multiple examples of faculty-owned software or educational curricula that were developed within the UC Copyright Policy’s definition of “Scholarly/Aesthetic Works,” being used as the foundation to form highly successful companies. Based on the above survey, the Working Group discussed whether UC should assert automatic ownership of software as it does for patentable inventions, in order to

assure the same return on investment to UC as it receives for the commercialization of patentable inventions and be consistent with the UC's general obligation to achieve a "fair return" on commercial intellectual property licensing activities.

The Working Group found it difficult to craft wording that would clearly differentiate between copyrighted works that were more commercial in nature and those that could fairly be considered primarily a scholarly or academic work. For example, software cannot be presumed commercially-oriented in every instance. Many University researchers create pieces of software to serve as research tools. Some of that software has been successfully commercialized, including a genome browser from UC Santa Cruz and a protein structure prediction software from UC Irvine. However, other software research tools have proven valuable only within a small niche of the research community. There are other non-software categories of copyrighted works created in the UC system that share the potential to be both commercial and scholarly in nature including, but not limited to, musical compositions (which can have a popular style aimed at a more general audience) and political/historical books (which can focus on subjects of interest to mainstream media).

Upon concluding that it would be difficult to differentiate between categories of software or other copyrightable works, the Working Group discussed whether there were factors that weighed in favor of University ownership. The Working Group concluded that when the University invests significant resources in the creation of a copyrightable work, it would be appropriate for the University to automatically own the resulting work.

One use of one significant resources already provides for University copyright ownership: the use of extramural funds (whether gift, contract or grant) to create a work.<sup>6</sup> However, as discussed in previous sections of these recommendations, the current UC policy also asserts ownership in certain circumstances when "University resources" are used, regardless of the level of University resources used. Adding a clear definition of "incidental use" of University resources would help distinguish cases when the University has committed significant enough resources in a work (including software) to create a potential ownership interest. Clarifying that the University would only assert ownership if more than "incidental" University resources were used would also be helpful.

## **V. Other: University Return on Investment**

Regardless of ownership, in recognition of the potential commercial value of some copyrightable works, the University should consider adopting a mechanism to assure the University receives a return on its investment when commercially-oriented copyrightable works (or other copyrightable works) is developed. One mechanism that could be considered would be a requirement that, if the copyrighted work is owned by the authors, the authors share a modest

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<sup>6</sup> Section III.A.4 of the Copyright Policy already states that the University owns any copyrighted work "first produced by or through the University in the performance of a written agreement between the University and a sponsor..." clarifying that "sponsored works do not include journal articles, lecture, books or other copyrighted works created through independent academic effort and based on the findings of the sponsored projects, unless the sponsored agreement states otherwise." The acceptance and management of extramural funding through contracts, grants and gifts is one type of significant resource the University provides.

percentage of profit after a certain revenue threshold is reached if they engage in for-profit activities. The Working Group recommends that SLASIAC discuss whether, regardless of ownership, the University should receive an appropriate return on its investment in faculty-owned copyrighted works that enjoy unusual levels of commercial success.

**Conclusion**

The Working Group would like to thank SLASIAC for the opportunity to review the UC Copyright Policy. If there are any questions about the content of this report, please contact the Chair for additional input.

## Attachment A

### Charge and Members of the SLASIAC Copyright Ownership Policy Working Group

UC Copyright Ownership Policy Working Group Charge  
(Revised 4/17/13)

It has come to the attention of [SLASIAC](#) (the Systemwide Library and Scholarly Advisory Committee) and its [Standing Subcommittee on Copyright Policy](#) that [UC's 1992 Copyright Ownership Policy](#) (also available at: <http://copyright.universityofcalifornia.edu/systemwide/pcoi.html>) is causing confusion on the campuses. The Working Group is charged with helping to clarify the issues and ensuring that the UC's policy is aligned with the current needs of the campuses (and UC as a whole). One of the main issues concerns the copyright status of software created by faculty, which depends on whether the software was developed as part of a grant or through independent effort. Another question has arisen about the term "designated academic appointee," which is defined in the Policy, but causes confusion. 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.

The Working Group may wish to review copyright ownership policies from other institutions, talk to technology transfer personnel on campuses, and solicit opinions from faculty (senate and non-senate) as part of its first stage of information-gathering. The UC Patent Policy should also be considered. The Working Group will complete its analysis in time for reporting to the fall, 2013, SLASIAC meeting.

#### Estimated timeline:

- April: Establish schedule with group
- April - July: Fact-gathering. Research campus issues, faculty opinions, copyright policies of other institutions (especially from the last 10 years)
- July – Sept: Analyze findings and develop recommendations.
- September/October: Bring results to fall SLASIAC meeting.

#### Membership:

- Jan D Carmikle, Senior Intellectual Property Officer, Technology Transfer Services, UC Davis
- Sherylle Englander, Director, Office of Technology & Industry Alliances, UCSB (will chair working group)
- Kat Fibiger, Copyright Licensing Officer, UCLA
- Brian Kolner, Professor, Electrical & Computer Engineering, UC Davis
- Eugene Volokh, Law Professor, UCLA
- Jim Whitehead, Computer Science Professor, UCSC

#### Consultant:

- Martha Winnacker, Executive Director, Systemwide Academic Senate, UCOP

#### Staff:

- Joanne Miller, Systemwide Library Planning, UCOP
- Katie Fortney, Copyright Management Officer, California Digital Library (UCOP)



**Attachment B**

**University Copyright Policies Examined**

**Comp-8 Universities:**

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

**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