

FACULTY SENATE STEERING COMMITTEE MEETING

NOVEMBER 13, 2001 – 3:30 PM – 307 FERGUSON

UNCORRECTED MINUTES

ATTENDING: Norm Baldwin, Keith Woodbury, Steve Miller, Bill Keel, Bob Sigler, Bing Blewitt, Harry Price, John Mason, Don DeSmet, Margaret Garner, Jerry Rosiek, Terry Royed, Joanna Hutt (Dialog)

The minutes of the October 9, 2001, Steering Committee meeting were approved.

Action Items:

President Norm Baldwin began the meeting with information concerning the **release of student evaluations**. Norm met with Law Professor Harry Hopkins. According to Professor Hopkins, the faculty has legitimate reasons to resist posting evaluations because student evaluations are sensitive information exempt from being release. Although not taking a position on the release of student evaluations, Glen Powell, Chief Legal Counsel for the Alabama system, indicated that Professor Hopkin's position was a legitimate position. President Sorensen has stated that he will not impose the release of student evaluations. The students have no resources to pursue a legal solution to this problem while the faculty would have the legal expertise of University attorneys thus presenting an ethical dilemma. After several meetings, a compromise has not been reached. The students maintain that they have a right to this information. They could set up their own web page. The point was made in one of the meetings that the students could walk into the classroom with preconceived ideas of that instructor and it would be detrimental to their learning. The motivation behind the request for evaluations could possibly have come from a student that complained that time in class was taken up with the instructor's personal issues and was impairing their education. The results of a student poll were 95-98% felt their professors did a very good job. It was felt that student evaluations of the newer faculty members would be a problem. Also, evaluations by students with a poor attendance record would not be accurate. The faculty was polled with the results that the faculty does not want evaluations to be posted. The President and the Provost want the Faculty Senate to be open and honest with the students and would like for a compromise to be reached. It was suggested that each department decide if they want to post evaluations. It could also be voluntary; however, if faculty decided not to participate, there could be pressure on faculty to release evaluations because otherwise it would perhaps reflect poor teaching or some other reason not to divulge their evaluations. A motion was made that a report be written to the Provost and the SGA stating: "It is the consensus and position of the Steering Committee in review of the poll and another meeting of the Academic Affairs Committee that the faculty do not wish to have evaluations released." Discussion concerning the personal opinion of the Steering Committee and their representation of their constituents resulted in some feeling that they should represent those that elected them. The motion passed with two abstentions.

The ad hoc committee on **Revision of Intellectual Property Rights** drafted their revision of Appendix H (*attached*) and this was given to the Council of Deans. The Council of Deans added numbers five and six under "(B.) Exceptions". The phrase "(5) When University faculty or employees author non-institutional works, normally no royalty or other consideration shall be paid to the faculty member or employee when that non-institutional work is used for instruction at the University" was interpreted to mean that the University would not pay royalties or other considerations. The committee could not think of any circumstance where the University would pay royalties, so they questioned the

intent and meaning of this statement. The committee asked Ron Rogers to explain and the example was given of a faculty member selling an entire distance learning degree program to another institution. They tried to address that situation and eliminate ambiguous language. The committee then addressed the second part of number five, "Non-institutional works shall not be sold, leased, rented or otherwise used by the faculty member or employee in a manner that competes in a substantial way with the for-credit offerings of the University unless that transaction has received the prior approval of the Office for Academic Affairs". The term "institutional work" means a work prepared at the direction of the University for the use of the University in conducting its own affairs such as a handbook or press release or a work that could not reasonably be attributed to a single author or group of authors because it is the result of contributions or revisions by numerous faculty members, employees, or students of the University. It was felt that point numbers five and six place restrictions on an individual's work. The committee suggested that number five be modified to read "Selling, renting or leasing video or online courses requires the prior approval of the Office for Academic Affairs, consistent with the supplemental compensation policy in Chapter Three, Part VII of the Handbook." This narrows the scope to videos and online courses. Further discussion included the points of the use of labs and other University resources to develop your program, what are the rights of the University and the individual pertaining to the use of that program. It was suggested to eliminate number six which reads, "When non-institutional work is courseware, electronic or otherwise, or computer software, the faculty member or employee shall have the right to **take and use the work upon** departure from the University, subject to a perpetual, non-exclusive, royalty-free license for the University to make, use, edit, reproduce, and distribute copies of and to prepare derivative works from the work for use by the University in teaching, scholarship, and research." The committee feels "courseware" should be defined and that Point number six suggests that the University could edit an internet course as they see fit, and continue to offer it indefinitely. The issue of authorship is raised. If a faculty member developed a course and the University edits it, would the faculty member's name remain on the course? The faculty member would have no control over the content. Could a faculty member develop a course and no changes be made but it is then presented as someone else's course. This would be plagiarism. Where are the boundaries of courseware, electronic or otherwise – does this include your files, reading lists, course notes, etc. There seems to be a conflict of University and faculty interests. The comparison was made to actors not being paid re-run royalties for their work in films and television. A concern of the University is to sustain the course in the unexpected absence of a professor and it is perceived that the University sees this as a way to make money. The critical point of this issue is the ownership of intellectual properties. Point number seven added by the ad hoc committee addresses copyrightable work of potential commercial value. The Steering Committee passed the proposal that these revisions be presented to the Faculty Senate at the next meeting.

A committee member representing the **Resolution of proposing the privatization of the Greek system** was not present. The Steering Committee recommended that this be referred back to the committee.

President's Report – (*Norm Baldwin*) A letter was received from Dr. Sorensen and Dr. Barrett expressing their appreciation for the resolution passed commending the President and Provost on a job well done.

The Faculty Senate has been working quietly on the **Greek Desegregation** issue. Dr. Sybil Todd has been invited along with anyone else she would like to bring to the December Faculty Senate Steering Committee meeting. The SGA was very respectful of the Greek Desegregation resolution passed by the Faculty Senate and they passed one of their own.

Officers of the Faculty Senate have been invited to the next Faculty and Staff Benefits meeting to show continued Faculty Senate Steering Committee support of **domestic partner benefits**. The resolution supporting these benefits passed last year by the Faculty Senate Steering Committee was reaffirmed by a vote of the Steering Committee and the Steering Committee supported having Norm, Steve Miller and Jerry Rosiek attend the Benefits meeting.

The question was asked if the **survey of the general faculty** concerning the posting of student evaluations should be reported to the faculty. The consensus of the Committee was to report the findings.

The progress of the **Evaluation of Deans and Chairs resolution** was discussed.

Senate Operations – *(Steve Miller & Harry Price)* Dexter Gordon has asked Mark Nelson to attend the meetings in his place for an indefinite time. William Chaplin was contacted concerning his absences. He is on sabbatical in New York. He was asked to contact an alternate to attend in his place but a response was not received. It was decided to contact the dean to appoint someone.

Legislative Agenda Committee – *(Margaret Garner)* The HEP Executive Board issued a statement following the Legislative Breakfast Meeting supporting state leaders and the avoidance of proration. The members of ACUFP have been notified of the constitutional reform seminars. We will have the responsibility of setting up for those meetings on our campus. Dean John Dolly will conduct an **open forum for Task Force Three** on November 27 with a mandatory, one-issue focused meeting of the Faculty Senate.

The issue of **Fall Break** will be affected by the fact that Tuscaloosa city and county schools do not coordinate their fall breaks at the same time. It was requested that the committee come back with suggestions concerning the timing, how other institutions do this, and logistics of a fall break. Several problems exist with extra time off for staff, economic burden for the University, beginning classes earlier, and other obstacles.

Meeting adjourned 5:25 PM

Attachment:

To: The Steering Committee

From: Terry Royed and Keith Woodbury, The Financial Affairs Committee

In Spring, 2000, an ad hoc "Intellectual Property Rights Committee" met, at the request of the Provost, to revise Appendix H (on intellectual property rights) of the Faculty Handbook in light of the increased use of Internet course materials. They presented draft revisions in April, 2000; the Council of Deans then met and revised their draft. Immediately below is this revised draft; the main change made by the Council of Deans was to add #5 and #6. The Provost presented this to the Faculty Senate over Summer, 2001, and the Financial Affairs Committee has now come up with a response to this draft. Our response is presented below the Council of Deans' draft. As you can see, our committee's main concern was with the proposed #5 and #6.

**REVISION OF INTELLECTUAL PROPERTY RIGHTS COMMITTEE'S
APRIL 2000 DRAFT OF**

APPENDIX H

DETERMINATION OF RIGHTS IN COPYRIGHTABLE MATERIALS

AT THE UNIVERSITY OF ALABAMA

It is the policy of The University of Alabama to encourage the creation of **copyrightable** works by its faculty and employees. Such works are an important contribution to the University's pedagogical, scholarly, and public service missions.

A. Ownership of Copyright

(1) Except as provided below, faculty and employees of the University who are the authors of **copyrightable** works shall own the copyrights in those works, regardless of whether those works constitute "works for hire" as defined in the Copyright Act. "Employees" include students who receive salaries, grants, or other compensation from the University.

(2) "Copyrightable works" includes, without limitation, computer software, online course materials, multimedia, films and videotapes, in so far as they fall within the subject matter of copyright. To the extent that such works embody patentable inventions, rights to those inventions shall be determined by The University of Alabama Patent Policy (*Faculty Handbook*, April 1999, Appendix **G**), or as the same is amended.

B. Exceptions

(1) If the University contributes extraordinary resources to the creation of a **copyrightable** work, the respective rights of the author and University to that work should be negotiated at the time such resources are provided. "Extraordinary resources" means facilities, equipment, funding, release or **re-assigned** time or other assistance exceeding the resources normally provided to faculty or employees in a particular department. It shall be the responsibility of the dean at the time such "extraordinary resources" are provided, to notify the faculty member and negotiate the terms. Those terms may include assignment of copyright, license of rights, or division of royalties.

(2) If a **copyrightable** work is funded, in whole or part, by a contract or grant from an agency outside the University, copyright shall be assigned in accordance with the terms of the contract or grant.

(3) If a **copyrightable** work is commissioned by the University, meaning that a faculty member or employee receives supplemental compensation from the University to prepare a specific **copyrightable** work, rights to that work shall be according to terms negotiated at the time of the commission. Those terms may include assignment of copyright, license of rights, or division of royalties.

(4) Copyright in "institutional works" shall be owned by the University. An "institutional work" means either (a) a work prepared at the direction of the University for the use of the University in conducting its own affairs (for example, University handbooks, press releases, and software tools); or (b) a work that cannot reasonably be attributed to a single author or group of authors because it is the result of contributions or

revisions by numerous faculty members, employees, or students of the University. Textbooks and other course materials prepared by a faculty member shall not be considered "institutional works."

(5) When University faculty or employees author non-institutional works, normally no royalty or other consideration shall be paid to the faculty member or employee when that non-institutional work is used for instruction at the University. Non-institutional works shall not be sold, leased, rented or otherwise used by the faculty member or employee in a manner that competes in a substantial way with the for-credit offerings of the University unless that transaction has received the prior approval of the Office for Academic Affairs.

(6) When non-institutional work is **courseware**, electronic or otherwise, or computer software, the faculty member or employee shall have the right to **take and use the work upon** departure from the University, **subject** to a Perpetual, non-exclusive, royalty-free license for the University to make, use, edit, reproduce, and distribute copies of and to prepare derivative works from the work for use by the University in teaching, scholarship, and research.

(7) Any **copyrightable** work of potential commercial value should be disclosed at the earliest practicable time by the author to the author's department chair or immediate administrative supervisor. For those works that are owned by the University or in which the University has an interest, the author shall cooperate with officials of the University and of any organization to whom the University assigns rights to such works in the registering of copyrights as well as in licensing the works.

C. Administration

Except as otherwise set forth, the administration of these policies shall be the responsibility of the Office for Academic Affairs.

DRAFT

To: Nancy S. Barrett, Provost

From: Financial Affairs Committee, Faculty Senate

Re: Draft revision of Faculty Handbook Appendix H

The committee considered the draft revisions to Appendix H of the Faculty Handbook at its first meeting of the year, on September 4. We then agreed to have Ron Rogers come and explain why the Council of Deans added points #5 and #6 under "Exceptions" to the draft completed by the Intellectual Property Rights Committee in April, 2000. Dr. Rogers explained that these points were designed to address a situation that arose at this university in which an entire degree program had been developed for distance education, and a faculty member sold this entire degree program to another university; the added language was thus to offer protection to university degree programs.

After meeting with Dr. Rogers, the committee raised the following questions and concerns about points #5 and #6:

Point #5:

- a. The first sentence as written would seem to suggest that faculty members can't get royalties for books they have written; clearly, this was not the intent. We speculated that the intent was that "no royalty....

shall be paid *by the university* to the faculty member..." However, we don't understand what situation this sentence is designed to address, and so we don't see it as necessary.

b. Apparently the second sentence of #5 was designed to address the case raised by Dr. Rogers, and the committee agrees with this intent. However, the wording of the sentence could be interpreted to preclude the publication of a textbook sold and used at a competing institution, and thus the wording is problematic. In addition, existing language in the Faculty Handbook on supplemental compensation seems to address whatever scenarios #5 had in mind. Chapter Three, Part VII of the handbook states the following: "The policy on supplemental compensation requires faculty members to obtain prior agreement from officials of the University before undertaking activities that provide supplemental compensation for professionally-related activities."

Point #6:

a. What exactly is meant by "courseware"? A definition and/or examples would help.

b. Many members of the committee expressed a concern that, to the extent that we understand #6 correctly, it seems to infringe on faculty rights. The following scenario was raised: suppose a faculty member develops an internet course for "distance learning." If this faculty member leaves the University, it is our view that the course they developed should leave with them, just as it does with a traditional course. Where are the limits of point #6? Does it cover course notes, outlines, power point presentations, ...?

c. Point #6 seems to suggest that the university could edit an internet course as they see fit, and continue to offer it indefinitely. The committee believes this would be wrong. Further, it raises an issue of authorship; would the course developed by Faculty Member X be edited, and then still presented as having been developed by Faculty Member X? This would be objectionable. Equally objectionable, would the course developed by Faculty Member X not be changed at all, but then presented as someone else's course? This would be plagiarism.

d. Another scenario might involve a video-taped course. Point #6 would seem to suggest that the university could continue to use a videotaped course after the instructor for the course had left, with no compensation to that instructor beyond his or her normal pay for the term in which it was originally taught. Our committee objects to this as well.

Based on all of the above, our committee agreed that a) points #5 and #6 are vague and ambiguous, and therefore would introduce more problems than they would solve, and b) to the extent that we understand the intent of #6, we disagree with it. Therefore, we recommend the following:

1. To address the situation raised by Dr. Rogers, add a clarifying sentence at the end of #4: "Degree programs shall always be considered 'institutional work.'"

2. Modify #5 to read:

"Selling, renting or leasing video or online courses requires the prior approval of the Office for Academic Affairs, consistent with the supplemental compensation policy in Chapter Three, Part VII of the Handbook."

3. Eliminate #6 entirely.

We believe these proposed changes eliminate the ambiguities and questions raised above, while protecting both the University's and the faculty's interests.