

**The University of Washington
Faculty Council on Research**

The Faculty Council on Research met Wednesday, **January 17, 2001** at 9:00 a.m. in 36 Gerberding. Chair Mark Bothwell presided.

PRESENT: Professors Bothwell, Bosch, Ewart, Gordon, Stewart. *Ex officio* Camber, *Jewell, Kwiram, Sjøvik. *Special guest* Malcolm Parks, Office of Research.

ABSENT: Professors Heath, Kartsonis (excused), Kennedy, Kronmal, Mirza, Vance. *Ex officio* Ludwig, Perrin, *Sheehan, Zuiches, Kahl.

The **Minutes from December 7, 2000** were approved with changes.

Discussion of Proposed Consulting Corporation - Ewart

Ewart reminded the council that last year the FCR formed a subcommittee to explore creating a consulting corporation similar to the University of Washington Physicians (UWP) that would allow UW faculty to engage in outside consulting while complying with state ethics laws which prohibit the use of state resources and facilities for non-University-related purposes. The subcommittee consists of Terry Ewart (Chair), David Boulware, and Richard Kronmal. Bothwell asked if Ewart saw the need to replace Boulware and/or Kronmal on the subcommittee because neither was an FCR member this year. Ewart said he did not see a need for this because both had agreed to remain on the subcommittee.

Ewart advised that he had spoken extensively with Attorney General Christine Hughes about the consulting corporation and she conceded that the faculty could set up such a corporation. Ewart also advised that he did a survey of faculty last year, asking them about FCR's proposal to set up the consulting corporation; although the response rate was not what Ewart would have liked, the data clearly showed that over 60% of responding faculty were in favor of setting up the consulting corporation and were willing to contribute anywhere from 1% to 13% of their consulting fees to compensate the University for use of its facilities. Ewart said he had also spoken with representatives from the Research Advisory Committee (RAC) and the Board of Deans, all of whom approved the proposal.

Ewart proposed setting up a meeting between the subcommittee, Ed Rubel (Chair of IPMAC), Alvin Kwiram, Michael Corn (from the Office of Research), and Bill Bakamis to establish a business plan for the proposed corporation. The plan could then be vetted by FCR, the Attorney General's Office, Steven Olswang and the Provost's Office, the President's Office, and the Faculty Senate (if necessary).

The council recognized that the University of Washington, though a major research university, has no mechanism for faculty to consult outside the University and the state ethics laws place undue burdens on faculty who use University equipment and resources to do their consulting work. The consulting corporation would allow faculty to compensate the University for the resources they used and would allow them to comply with the ethics laws. Sjøvik asked if Ewart thought there was any need to attempt to change state law. Ewart said that would probably not be necessary (according to Christine Hughes). Stewart asked if participation in the corporation would be mandatory. Ewart said no, it would be next to impossible to set up a corporation that required mandatory participation.

Gordon noted that UW faculty cannot even use University telephones to engage in outside work, and any mechanism that would allow faculty to use resources and to compensate the University for their use was a good idea. The council asked if other institutions have these types of corporations. Bothwell noted that there are not many states whose ethics laws impinge so heavily on faculty who consult.

Ewart noted that representatives from the Medical School with whom he spoke were opposed to the consulting corporation because it might damage the existing consulting arrangement that physicians have via the UWP. Bosch asked if the proposal would allow the UW to market its faculty. Ewart said he believes that UW faculty should be better utilized by the community and the University should take an active role in marketing its faculty via scholarly journals and other means. If faculty are better integrated into the community it can only contribute to an increased valuation of the University in the community's eyes. Another benefit of increased consulting by faculty would be to create a new revenue stream for the University.

Parks clarified that the impetus for the corporation was not to create a revenue stream for the UW but to allow faculty to do outside consulting without violating the state ethics law, using the UWP as a model. Any revenue stream created would go toward compensating the University for its resources. Stewart asked how the intellectual property (IP) of consulting is treated--could the consulting corporation claim IP rights? Kwiram replied that IP rights are imbedded in the UW/faculty agreement: faculty cannot transfer IP rights to outside corporations and the state ethics law states that any IP clause in a faculty consulting contract must be reviewed by the Office of Technology Transfer (OTT).

Continued Discussion of UW Copyright Policy

Parks revisited the recent modifications to UW copyright policy by reminding the council that the UW produces millions of copyrightable items every day: emails, lectures, research data, etc. , and there must be a robust system in place to manage this intellectual property. At the last FCR meeting (December 7, 2000), the council raised several important questions regarding the modified copyright policy and Parks endeavored to address each one of them. The questions were as follows: Who is requesting this change to the policy? Who benefits from this policy? Who may be hurt by this policy? Why is FCR being asked to review this policy? Is someone trying to "grab" something by implementing these changes?

Parks noted that there is a huge debate over what universities are going to take interest in with regard to IP and the modified copyright policy is an effort to clarify the University's position. In response to the first question, Parks advised that the policy is being modified at the request of the Intellectual Property Management Advisory Committee (IPMAC--a combination of a faculty policy group and a cadre of technical interests), in cooperation with the Office of Research and OTT. In relation to the "work made for hire" addition to the policy, Parks said the language had been added to reference federal copyright law. At the last FCR meeting, several council members had expressed concern over what "work made for hire" constituted. What this clarification does is make clear that faculty are bound by federal copyright law with regard to assigning copyrights under appropriate circumstances. Parks advised that the University has encountered situations where faculty and staff assume that federal law does not apply because it is not specifically referenced in the UW's copyright policy--this situation breeds an adversarial stance that is not helpful for anyone.

The default position of the policy is that faculty own copyrights, except under the following circumstances: when specific contractual agreements require that the University of Washington take an ownership interest in a copyright (i.e., Grant and Contract Limitations); when copyrights

are the result of works made for hire that are specifically commissioned by the UW or UW faculty (e.g., if Distance Learning asks a faculty member to develop an online course and the faculty member is paid, above his or her regular salary, to perform the work *or* if faculty hire graduate students or staff to perform similar duties works made for hire duties)--Parks added that the modified policy recognizes that something will be required outside normal faculty duties for assignment to take place in these situations; or, if faculty develop the copyrightable material in the course of performing their normal duties while utilizing University staff, resources or funding to develop the work.

Kwiram observed that the policy, as it exists now, not only stipulates greatly-expanded constraints but assesses steep financial penalties against faculty who violate copyright agreements. The new policy seeks to alleviate these burdens. Bosch noted, however, that the phrase "usual scholarly activities" is so broadly defined that it allows the University to include almost anything under the definition. Parks replied that copyright law is sufficiently complex to necessitate a case-by-case approach to defining the terms of any policy--it is doubtful that a policy could be written that would entirely eliminate ambiguity from copyright law and that would address each possible scenario that might arise. Attorney General for the University, Christine Hughes, advised Parks that in copyright law the answer to every question is, "It depends."

Bosch asked if it would be helpful to define the scope of "works made for hire" and to include examples of how "works made for hire" might be interpreted under various circumstances. Parks said this was an interesting idea and he would speak with representatives from IPMAC, the Office of Research, and OTT. According to federal law, universities could say, "We own everything"; the University of Washington's policy takes the opposite approach--that faculty own copyrights except under certain conditions. Bothwell asked if there were a substantial court record of how these situations play themselves out. Parks replied that most copyright cases that make it to court are cases where one party (either the faculty or staff member, or the university) has clearly overstepped their bounds, e.g., when a university says, "We own everything"; or when faculty develop a course using university resources, then try to market the course as "My course from University-X."

Sjåvik asked about the following hypothetical situation: suppose a Scandinavian Studies professor invents a perpetual motion machine *and* writes a book about the machine--would the university have a financial interest in the invention and/or the book? Parks said he would be hard-pressed to see how a university could lay claim to patent or copyrights as long as the professor had not used university resources to achieve the invention, nor had the Scandinavian Studies professor (for whatever strange reason) been involved in a university-sanctioned research line relating to perpetual motion.

Bothwell said he agreed with Bosch that examples would go a long way toward clarifying the policy modifications to faculty who may not be experts in copyright law. Kwiram advised that the most prevalent scenario arises when the UW contracts with a corporation to research a specific area or to create a specific device and all parties involved agree to assign patent and copyrights according to federal law. Then, at the last minute, one of the people involved decides that he or she does not want to assign copyrights and the University is forced to expend a tremendous amount of time, energy, and resources to demonstrate to the person that they must, under federal law, assign their copyrights.

Jewell asked Parks to explain the last sentence in item 3 of the modified policy regarding "University-Sponsored Materials." Parks explained this section with the following example: If a

faculty member published a book that contained a large series of photographs and the photos were processed at a UW photo lab--if the faculty member paid for the photo processing out of pocket, then the University resources were "compensated"; if the faculty member does not pay for the processing, then the resources are said to be "uncompensated" and the University could claim an interest in the copyrights.

Bothwell asked about the following scenario: what if a Creative Writing professor uses a university computer on university time to write a best-selling novel--would the university have the right to claim an interest in the royalties. Parks said he could not imagine the UW coming after a professor for this. Sjøvik said he would argue that, in the case of the Creative Writing professor, the creative process takes place in the mind of the writer and typing on the computer is only a miniscule part of the process, plus, creative writing is part of the faculty's normal scholarly duties. Kwiram added that the goal of the UW's copyright policy is to exclude the need for state intervention in University affairs similar to what has happened in the state of Massachusetts. In most cases, the University has no interest in copyrights--the administrative costs far outweigh any financial gain--though there are exceptions and the UW must have a policy in place.

Parks emphasized that there is a tremendous disincentive for the University going after faculty in situations not specified in the copyright policy. Such a stance can only harm University/ faculty relations. Bothwell noted that, at the last FCR meeting, Brad Holt had expressed some concerns about the policy's effect on distance learning (DL) course copyrighting, though Parks' clarifications had clarified the issue satisfactorily; Bothwell wondered if any council members still had concerns related to DL. Bosch pointed out that the modified policy concerns how products are created and what resources are used, not in what medium the products are created.

Bothwell asked for a motion to approve the modifications to the University copyright policy. The motion was made, was voted on, and passed unanimously.

Mechanism to Support Undergraduate Research

At the December 7 FCR meeting, Faculty Senate Vice-Chair Brad Holt advised the council of his idea to support faculty who supervise undergraduate (UG) research. He proposed the allocation of approximately \$10 per credit hour to help offset the cost of UG research. At the December meeting, the council decided it was important for the University to support UG research and, Bothwell noted, UG research is a great way to maintain positive relations with the community--many citizens feel that any time faculty spend outside the classroom is time wasted and of no benefit to students. One of the best ways to boost the community's perception of faculty research is through UG research. However, the council decided that Holt's proposal was not the best way to proceed and Bothwell proposed that the council set up a subcommittee to pursue other methods for supporting UG research.

Ewart apprised the council of his positive experiences with UG researchers in the Applied Physics Laboratory and Bothwell mentioned his positive experiences supporting UG researchers at Princeton University, where every UG must engage in a major research project. Kwiram advised that, in his last budget for the Office of Research, he requested \$1 million for UG research. The idea was to go to the Legislature and ask for the \$1 million, more as a way to introduce the issue of UG research support. However, his request was not included in the final budget and the matter was never presented to the Legislature. The proposal would have disseminated the \$1 million in block grants to departments who would then distribute funds to faculty who were doing exceptional work with UG research. Kwiram said he believes that allowing UG's to engage in research is one of the most important things the University can do for students, and he feels that the University should demonstrate its support for UG research.

Bothwell added that UG's are also ambassadors for the University and they are more likely to develop positive opinions of faculty members and their research endeavors if given the chance to work with faculty in a research setting. Ewart noted that Oceanography takes UG's on research cruises and teaches them how to use oceanographic equipment--he knows this creates positive impressions on students.

Bothwell asked the council to consider joining the subcommittee on UG research and said the council would form the subcommittee at its February 14 meeting.

Meeting adjourned at 10:30 a.m. Minutes by Todd Reid, Recorder.