

**UNIVERSITY OF WASHINGTON
FACULTY COUNCIL ON FACULTY AFFAIRS**

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The Faculty Council on Faculty Affairs met on April 24, 2003, at 9:30 a.m., in 36 Gerberding Hall. Chair Kate O'Neill presided.

Present: *Regular:* Ceccarelli, Hildebrandt, Kirtley, Kolko, Landis, Lydon-Rochelle, Luchtel, O'Neill
Ex-officio Krieger-Brockett, Blumenthal, Green

Absent: *Regular:* Dzwirek, Graubard, Lydon-Rochelle, Luchtel, O'Brien, Poznanski
Ex-officio: Colonnese, Olswang, Sjavik, Johnson, Croft

Synopsis

1. Approve Agenda
2. Approve Minutes
3. Intellectual Property Policy Revisions

O'Neill called the meeting to order at 10:00.

Approval of agenda

The agenda was approved.

Approval of minutes

The March 20 and April 14 (joint meeting with FCR) minutes were approved.

Intellectual Property Policy Revisions

After meeting jointly on April 14 with the Faculty Council on Research, FCFA members discussed the appropriate response to the proposed revisions of the University's Intellectual Property (IP) policy.

O'Neill supplied copies of Ed Rubel's letter withdrawing the University's claims to all software, and the Severson letter, which commented on the Intellectual Property revisions and also recommended that the "contentious proposals on the ownership of software" be removed.

O'Neill said that in her view there are still several questions to be answered about the IP revisions, and she is not inclined to accede to pressure for a quick "up or down" vote. She invited discussion.

Luchtel said that he had researched FCFA minutes from 1/11/2001 and discovered that the same issues were brought up as changes to the "copyright policy" and were discussed on 1/25/01, 2/8/01, 3/8/01, and 3/29/01. On 3/29/01, the proposed copyright policy was withdrawn and the issue was dismissed. At that time, as now, the Research Council was in favor of the policy and Faculty Affairs had major concerns about it. The administration withdrew the policy, commenting that it needed rewriting if two Faculty Councils could read it and have two drastically different interpretations.

O'Neill cited Carol Green's suggestion that the policy include definitions of several terms – for example, exactly what is meant by the ambiguous term "technology?" The policy should define what is subject to the terms of the policy. Mac Parks does not want to be too specific, for fear that the policy might then conflict with portions of the State ethics law.

Copyright law distinguishes between employer-owned texts and work-for-hire, and is quite specific. However,

faculty scholarship falls into a gray area of federal copyright law because it is not specifically addressed in the law. O'Neill said. Green commented that the copyrighting of scholarly works was not an issue in academia until the advent of electronic text made these copyrights potentially lucrative.

O'Neill added that a quirk of history resulted in software being copyrightable material, which further muddies the copyright laws. To avoid confusion, she thinks any UW copyright policy should specifically say that the UW owns patentable inventions and commercially exploitable software.

Kolko said that would take care of her major concern, which is ownership of Web-based course materials. If the University directs faculty to produce Web-based course materials and then owns the materials, what's to stop them from firing the faculty but still offering their courses in perpetuity?

Green and Krieger-Brockett both mentioned the work that the American Association of University Professors (AAUP) has done on this issue. Copies of AAUP position statements can be found on the Web at <http://www.aaup.org/Issues/DistanceEd/deipdocs.htm>

Leah Ceccarelli raised the issue of the proposed IP Policy changes in the distribution of income – at a time when we are trying to increase faculty income, this proposal decreases faculty income by reducing future revenue streams. Attempting to soften that blow with dollar-matching programs is not persuasive. In effect, the proposed policy says "If you donate more of your income to the University, we'll match it." That's not an answer to budget problems, Ceccarelli said. As a body representing faculty interests, FCFA should think seriously about whether faculty interests are being served by this change, Ceccarelli added.

Ceccarelli reported that she and Katherine Graubard tried to find a way to soften the effect of this proposed change by having an incentive at the beginning of the revenue stream for a license – this plan was proposed to Jim Severson of OIPPTT via email, but he is not in favor of the idea. In his view, it would "complicate" the flat system that's being proposed. If no compromise on this issue can be found, Ceccarelli cannot support the proposed IP revisions.

Several FCFA members expressed skepticism about the rationale Parks and Rubel expressed for instituting a "flat" revenue stream for inventions – that it would be impossible to create a computer program that could handle the present tiered revenue stream.

Green said that part of the problem is that the IP Policy lumps patents, inventions, and copyrights – all of which are governed by completely different laws - under the term "technology," and then attempts to treat them all alike. The Research Council's views are driven more by their focus on faculty inventions, about which the IP Policy is more straightforward. FCFA is concerned with the too-broad spectrum of rights addressed by the proposed IP policy, and finds the documents to be potentially inconsistent with the interests of all faculty.

Because – even after much discussion and a joint meeting with FCR - Faculty Affairs has significant unanswered questions and concerns about the effect on the entire faculty of the revenue stream issue, the copyright issue, and other issues, and because the comment deadline is near, Kirtley moved that:

- FCFA communicate via letter from Kate O'Neill to the Faculty Senate Chair, Sandra Silberstein. that FCFA cannot support the IP revision in its present text, listing FCFA's questions and concerns (which include scholarship and copyright issues, revenue distribution policies, definition of terms such as technology and extensive use, and other issues), and stating that FCFA is not prepared to endorse the IP revisions until the stated questions and concerns are satisfactorily answered.

Kirtley's motion was seconded and passed. Bearing in mind that FCR has endorsed the revision via letter, and that the time for response to the administration is short, it was also decided to immediately notify Silberstein of

FCFA's position and let her know a letter will be forthcoming.

Other Issues

A/B Salary – The A/B Salary subcommittee will present its draft report at the next FCFA meeting.

Appropriate Dispute Resolution (ADR) – Kirtley has a student, Neil Luna, who is gathering data for the ADR project. Kirtley will not be at the next FCFA meeting, but will circulate some information on the subject to all. The goal of the project is to recommend a system for handling disputes.

Winn Settlement Investigation – O'Neill will update the Council at the next meeting.

The meeting was adjourned at 11:04 a.m.. *Minutes by Linda Fullerton, Recorder.*