

5 March 2007

Members Present: Anderson-Connolly, Anton (Chair), Bartanen, Bristow, Foster, Haltom, Hanson, Joshi, McGruder, O'Neil, Ostrom, Rowe, Ryken, Segawa, Singleton

Guests: Alyce DeMarais; Randy Bentsen

Announcements – Chair Anton announced that the Student Life Committee had completed its self-assessment and forwarded it to Anton who would relay it to senators; Senator Bartanen reported that trustees had passed an amendment to the *Faculty Code* regarding early retirement.

The minutes of 19 February 2007 were approved without comment or change.

NEW BUSINESS – Randy Bentsen and John Hanson distributed two handouts appended to these minutes. One suggested changes to Chapter I, Part E of the Faculty Code to insure faculty that they would retain rights over some intellectual property that they create. The other was a preliminary draft of a policy to make more explicit faculty ownership of copyright or intellectual property. Asking “Who owns copyright on faculty-produced materials?” the two proposed [on behalf of LMIS] that the faculty might a) amend the faculty code to state explicitly that faculty rights over their own labors and b) use the proposed policy revisions at least as a stop-gap regarding intellectual property and copyrights until code can be modified. DeMarais informed senators that an attorney had stated that faculty and University must have a written agreement stating faculty ownership of copyright to remain in compliance with Copyright Law. Bentsen indicated that a code change would constitute such a written agreement.

Senator Hanson – M/S/postponed – that the revised code language on a handout be adopted by the senate and forwarded to the faculty and thence to the trustees. Hanson argued that the *Faculty Code* would trump policy, so changes in *Faculty Code* would correct deficiencies and gaps in current code. Faculty should have a presumption of ownership over what they create. Senator Bartanen asked whether senators were clear among themselves about what would count as University business and what as intellectual property. Senator Joshi responded that the standard of voluntariness in the proposed amendment and agreement “up front” might resolve many issues. Senator Hanson admitted that murky matters might need to be fleshed out, but argued that they were optional matters subject to negotiation. Senator Haltom found this discussion and the proposed amendment precipitous because neither faculty nor senators know whether policy trumps code or code trumps policy. He further maintained that assertions in faculty meetings or in the Faculty Senate about the meaning of code language do not become part of code, so interpretations in one or more meetings will not accompany the new language into the *Faculty Code*. Senator Hanson offered that faculty have little or

no protection of their products at present and that the proposed change would remedy that. Senator Ostrom opined that immediate protection would be welcome. Senator Anderson-Connolly suggested that the emphasis on voluntariness in the proposed code-language would put the onus on the University to overcome presumption that faculty own their own products. Senator Joshi agreed that the University should have to be explicit when it asserts ownership of faculty creations. Senator McGruder asked whether the senate usually generated policies given how often policies had been deployed to circumvent the senate. Senator Anderson-Connolly favored the code language and hoped that the policy statement would come back to the Senate, to which Senator Hanson responded that the policy was still evolving but the code-language ready to go. Senator Segawa asked whether copyrights presumptively belong to employers unless employers explicitly except work. Bentsen stated that the “work-for-hire” view presumed University ownership while the proposed amendment would say faculty own unless University reaches a voluntary agreement. Senator Bartanen asked why the amendment needed to be considered on the very day on which LMIS had sent proposed new language to Bartanen, who passed it along to university lawyers at LMIS’s request. Senators Ostrom, Joshi, and Bentsen urged that intellectual property rights should be asserted soon lest faculty continue to have none. Senator Haltom M/S/P Postpone this discussion until next Senate meeting [19 March 2007].

Senator McGruder – M/S/P – Sense of the Faculty Senate that LMIS had worked hard on this issue and proposed useful language for an improvement in the code.

OLD BUSINESS – Senator Hanson opened an informal discussion of the fourth recommendation of the Ad Hoc Committee on Professional Standards: the Professional Standards Committee [PSC] may extend the deadline for the hearing of a grievance if all parties agree or if, upon referral from the PSC, a majority of Senate Executives [the Chair, Vice-Chair, and Secretary of the Faculty Senate] concurs. Senators agreed to discuss that issue and then to formulate language for the code. Senator Ostrom supported the recommendation provided a suitable place in the existing *Faculty Code* were found. Senator Ryken stated that she would prefer that two erstwhile chairs of the PSC and the Chair of the Senate hear any referrals from the PSC in the grievance owing to the confidentiality conferred on and observed by present and past members of the PSC. Senator Ostrom feared that past PSC chairs would tend to side with the PSC that they had recently left. Senator Foster noted that the by-laws assign the senate oversight of senate committees and so the senate executives would be an appropriate appeals board. Senator Haltom reminded all present that any confidentiality authorized by the code attached to matters raised at a hearing and not to preliminary proceedings, so that members of the Senate Executive Committee would have as much or as little reason to observe confidentiality as would members of the PSC. Senator Anderson-Connolly saw no need for micro-management of grievances from outside – if a majority of the PSC saw some reason for delay, the grievance should be delayed. Senator Joshi disagreed and argued that if anyone disputed the necessity or convenience of postponement, the PSC should not get to overrule objections of grievant or respondent. Senator McGruder concurred and observed that if reasons for delay were compelling the PSC, grievant, and respondent

likely would agree readily and that, if any party were reluctant, a neutral outside body would gauge the advisability and fairness of a delay. Senator Ostrom agreed with Joshi and McGruder because an incompetent or delinquent PSC could cover its own missteps by extending deadlines at the convenience of the PSC to the detriment of one or both parties. Senator Hanson proposed to end this informal discussion until language could be formulated to clarify options and issues.

Senator Hanson inaugurated an informal discussion of the AHCPS's fifth recommendation: that the Professional Standards Committee send reports regarding grievances heard to the parties to the grievance at same time as the PSC submits same to the President. Senator McGruder agreed that such should have been in the code from the start.

Senator Hanson then ended informal discussion by putting a motion – M/S/P Recommendations 5a and 5b [italicized language in the report of the AHCPS to be inserted here] be adopted as changes in the code. Senator McGruder stated that all that the change does is to let the parties know what has become of their dispute. Senator Haltom noted that in Academic Year 2003-2004 the PSC had notified grievant and respondent simultaneously to reporting to the President their resolution of the first grievance heard that year but had read over the code before a second grievance and determined that the code did not authorize the PSC to release its report to anyone but the President. He opined that while the latter practice conformed to the code and the former did not, he preferred that presidents and parties get resolutions simultaneously.

With the Hanson motion passed, the senate adjourned.

Appended Proposal for Policy

Faculty Ownership of Copyright

Faculty at the University of Puget Sound are scholars as well as teachers. The results of their scholarship often take forms such as articles, textbooks, monographs, paintings, music and software. Faculty are interested in the free exchange of ideas, both within the university community and outside of the university, and so typically desire to see their ideas communicated to others. Individual faculty members are the best to judge how to exercise the rights to their work granted by copyright. For this reason, faculty members own the copyright in their works.

Faculty ownership of copyright is consistent with the tradition of academic freedom as described in Part E of the Faculty Code (June 2004): “Academic freedom is the right of all members of the academic community to study, discuss, investigate, teach, conduct research, publish or administer freely as appropriate to their respective roles and

responsibilities... A faculty member is entitled to freedom in research and in publication of the results, subject to the adequate performance of the faculty member's other academic duties.”

There are three exceptions to faculty ownership.

1. When a faculty member receives extra support from the university for the creation of curricular materials for use at the University of Puget Sound (UPS), the faculty member will be expected to grant UPS a perpetual license for the use of those materials within the UPS academic program, whether or not the faculty member is still employed at the university. This license will be requested and granted only at the time the university commits the support.
2. When a faculty member is involved in a project related to the business functions of the university (such as materials used in Admissions), then the copyright in those works will be owned by the university just as would be the case for works created by staff.
3. When a faculty member receives support from an external granting agency, then the copyright in those works produced under the grant will be owned as stipulated by the granting agency.

Appended Proposal for Code Language

FACULTY CODE

CHAPTER I

PART E - ACADEMIC FREEDOM

Section 1 - Definition

- a. Academic freedom is the right of all members of the academic community to study, discuss, investigate, teach, conduct research, publish or administer freely as appropriate to their respective roles and responsibilities. It is the obligation of all members of the university academic community to protect and assure these rights within the governing framework of the institution.
- b. Academic freedom should be distinguished clearly from constitutional freedom, which all citizens enjoy equally under the law. Academic freedom is an additional assurance to those who teach and pursue knowledge, and, thus, properly should be restricted to rights of expression

pertaining to teaching and research within their areas of recognized professional competencies. Beyond this, expressions by members of the academic community should carry no more weight or protection than that accorded any other citizen under the guarantee of constitutional rights. That is, outside of one's professional field, one must accept the same responsibility which all other individuals bear for their acts and utterances.

Section 2 - Specific Applications

- a. A faculty member must be able to participate in the democratic process of the institution, must be able to learn and teach what scholarship suggests is the truth, must be able to question even what is believed to have been settled, and must be able to publish what scholarship has discovered without fear of reprisal.
- b. A faculty member is entitled to freedom in research and in publication of the results, subject to the adequate performance of the faculty member's other academic duties. **Intellectual property created, made, or originated by a faculty member shall be the sole and exclusive property of the faculty, author, or inventor, except as he or she may voluntarily choose to transfer such property, in full, or in part.**
- c. A faculty member is entitled to freedom in the classroom in discussing the relevant subject matter. It is the faculty member's mastery of the subject and scholarship which entitles him or her to the classroom and this freedom in the presentation of the subject. Thus, it is improper for faculty persistently to intrude material which has no relationship to the subject, or to fail to present the subject matter of the course.

Section 3 - Enforcement

If a faculty member's rights as provided by Chapter 1, Part D (p.4) of the faculty code have been denied, that faculty member may initiate a grievance action as provided in Chapter VI hereof. In case of a dismissal, the faculty member may request a hearing board to review the case as provided in Chapter V of this code.