

January 10, 2024

LORI KLETZER

Campus Provost and Executive Vice Chancellor

Re: New Policy on Income Disposition for UC-owned Copyrighted Materials, Data, and Tangible Research Property

Dear Lori,

The Academic Senate has reviewed your request for consultation on the Office of Research's proposed New Policy on Income Disposition for University of California-owned Copyrighted Materials, Data, and Tangible Research Property with the Committees on Academic Personnel (CAP), the Library and Scholarly Communication (COLASC), and Research (COR) responding.

The committees thank you for your efforts to create policy to ensure the consistent allocation of research-related royalties across campus. While CAP and COR were generally supportive of the policy, COLASC found it challenging to evaluate without additional context. In particular, COLASC asked how the proposed distribution aligns with policy of similar institutions.

The committees commented on needed clarification regarding: distribution of funds, how this policy interacts with existing policies, how funds can be used, clarification on types of materials/property covered, and how to address materials offered for free. A summary of these points is listed below, though we've provided detailed responses as well.

Regarding distribution, COR observed that as research units frequently collaborate with other groups, it was not clear where the boundaries of a "research lab" lie. In which cases does the term "research lab" also include a larger entity, such as a research consortium, ORU, or academic department? COR and COLASC also asked for clarification on how royalties will be distributed in situations where there is more than one Principal Investigator (PI) or a PI that transitions between units?

Both CAP and COLASC had questions related to "inactive" contributors. To prevent confusion, CAP asked that the specific time period (one quarter, one year, etc.) of "inactivity" be stated. CAP observed that a retired PI may refrain from seeking active funding but may continue to manage a lab, in which case, CAP believes the PI should continue to receive royalties.

CAP members interpreted the policy to say that retirees, "inactive" researchers, and those who leave campus would still receive the "Contributor" portion of the royalties, and that only the lab portion would be reallocated, or decided by the VCR, under these conditions. If correct, it would be helpful for the policy to explicitly state this point.

Additionally, COLASC asks for guidance on how royalties will be allocated when labor contributions vary greatly across contributors or units.

COLASC and CAP noted that this policy likely interacts with existing policies. Specifically, CAP encourages that the allocation of royalties in this policy align with those of the Intellectual Property Policy. COLASC noted it would be helpful to explain how this policy interacts with existing systemwide policies on open-access publishing and with new mandates that federally-funded projects make their research data publicly available. COLASC recommends including guidance about how to address copyrighted objects that are shared free of charge.

While acknowledging the policy itself may not be the appropriate place for this information, COR asked for transparency regarding any restrictions on how these funds are used.

COLASC notes that many artistic works may include software, virtual reality artworks, music, video games, interactive apps which may include contributors who are not organized around a lab and recommends guidance on how this policy applies in cases such as these.

Thank you for the opportunity to comment.

Sincerely,



Patty Gallagher
Chair, Academic Senate

Enc: Senate Committee Responses (Bundled)

cc: Diane Lallemand, Director, Administrative Policy & Records
John MacMillan, Vice Chancellor for Research
Maureen Callanan, Co-Chair, Committee on Academic Personnel
Susan Gillman, Co-Chair, Committee on Academic Personnel
Jeffrey Erbig, Chair, Committee on Library and Scholarly Communication
Michael Hance, Chair, Committee on Research
Matthew Mednick, Executive Director, Academic Senate

December 8, 2023

Patty Gallagher, Chair
Academic Senate

**Re: Divisional Review – Proposed Policy on Income Disposition for UC Owned
Copyrighted Materials, Data, and Tangible Research Property**

Dear Patty,

During its meeting of October 26, 2023, the Committee on Academic Personnel (CAP) discussed the proposed new campus policy on Income Disposition for UC-Owned Copyrighted Materials, Data, and Tangible Research Property. CAP members appreciate the underlying objective of creating a clear policy that will provide uniform allocation across campus. However, members raised several questions about the proposed policy.

The current draft policy needs additional clarification in the following sections:

(1) *“For the purposes of this Policy, a Research Lab can become inactive through the Principal Investigator of the Research Lab retiring from or otherwise leaving UC Santa Cruz, the Research Lab no longer maintaining a physical presence at UC Santa Cruz, or the Research Lab no longer applying for or receiving grant funding.”*

This section would benefit from clarification of the time frame. In the phrase "the Research Lab no longer applying for or receiving grant funding", the absence of a defined time frame raises questions. Should a scenario arise where a Principal Investigator (PI) refrains from applying for or receiving grants for a duration of one quarter, or one year, would the lab be deemed inactive? It is essential to establish a clear and unambiguous definition of inactivity, considering that a PI may effectively manage a laboratory for a period of time without actively pursuing or securing grant funding, and it is not clear why royalties should not continue to be allocated to the PI and their lab.

(2) *“If the Contributor was not a member of a UCSC Research Lab at the time the Copyrightable Work, Research Data or Tangible Research Property was disclosed to the UC Santa Cruz Authorized Licensing Office, the allocation of the Research Lab Share for that Contributor will be decided by the Vice Chancellor for Research in their sole discretion.”*

CAP members interpret the policy to say that retirees, “inactive” researchers, and those who leave campus would still receive the “Contributor” portion of the royalties, and that only the lab portion would be reallocated, or decided by the VCR, under these conditions. If we are correct in our interpretation, we think it would be helpful to explicitly state this point.

Finally, we encourage the campus to ensure that the allocation of royalties in this proposed policy aligns with established policies for other categories of intellectual property.

Thank you for the opportunity to opine.

Sincerely,



Maureen Callanan
Co-Chair, Committee on Academic Personnel



Susan Gillman
Co-Chair, Committee on Academic Personnel

cc: Roger Schoenman, Chair, Committee on Academic Freedom
Enrico Ramirez-Ruiz, Chair, Committee on Development and Fundraising
Jeffrey Erbig, Chair, Committee on Library and Scholarly Communication
Michael Hance, Chair, Committee on Research

December 13, 2023

Patty Gallagher, Chair
Academic Senate

RE: Proposed Income Disposition for UC-owned Copyrightable Materials, Data, and Tangible Research Property Policy

Dear Patty,

The Committee on Library and Scholarly Communication reviewed the Proposed Income Disposition for UC-owned Copyrightable Materials, Data, and Tangible Research Property Policy at their November 30, 2023 meeting. Overall, the committee deemed that the proposal required more context and detail, and we recommend that the revised policy address the following items.

In its current form, the proposed policy does not explain the decision-making process for when certain copyrighted items are distributed free of charge (i.e. software, tangible objects, etc.). We recommend adding this language or referring to the policy that guides those decisions. Likewise, we recommend an explanation of how this proposed policy interacts with existing systemwide policies on open-access publishing and with new mandates that federally funded projects make their research data publicly available.

Along these same lines, it is unclear which copyrightable works will be held by the UC and which by individuals when they are produced outside of a lab setting. The policy specifies that “Scholarly and Aesthetic works, as defined in the UC Policy on Copyright Ownership, are most commonly owned by the Contributor(s) as an individual (as individuals) and not the UC. Most UC-owned Copyrighted Works involve software code.” However, many artistic works involve software code; these may or may not be geared towards commercial consumption. Examples include video games, interactive apps, augmented reality and virtual reality artworks, and music generated via algorithm, among others. Often these artworks have many contributors who are not organized around a lab. How does this policy affect these cases?

More information is also necessary to explain the distribution of royalties as laid out on the tables. We were struck by the fact that in the first scenario nearly two thirds of the money would flow to the university, via the general fund or via the contributors’ research lab, leaving only 35% to the contributors themselves. Even in the "alternate distribution" scenario, having 30% of the royalties go to the campus general fund seems quite high. What is the basis for this proposed breakdown of distribution, and how does it compare to distributions in comparable institutions?

The current policy framework may also require further clarification regarding the role of contributors, particularly in terms of royalty allocation. For instance, it does not address situations where a UCSC research lab is discontinued while the Principal Investigator remains active at the university, raising questions about the rightful allocation of their 35% royalty share. Additionally, the policy falls short in detailing the management of royalties when contributors transition between different units, divisions, or institutions, when they are simultaneously part of multiple units, or when projects have co-PIs. Lastly, the policy omits guidance for labs where the extent of individual labor contributions varies significantly, such as when some contributors are involved for the entire duration of a project, while others participate only partially.

We encourage the Office of Research to address these items when revising the policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Erbig". The signature is fluid and cursive, with the first name "Jeffrey" being the most prominent.

Jeffrey Erbig, Chair

Committee on Library and Scholarly Communication

Cc: Maureen Callanan, Co-Chair, Committee on Academic Personnel
Susan Gillman, Co-Chair, Committee on Academic Personnel
Michael Hance, Chair, Committee on Research

December 4, 2023

PATTY GALLAGHER, Chair
Academic Senate, Santa Cruz Division

Re: Income Disposition for UC-owned Copyrightable Materials, Data, and Tangible Research Property

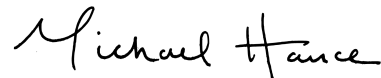
Dear Patty,

The Committee on Research (COR) reviewed the proposed policy from the University of California, Santa Cruz Office of Research (OR) on “Income Disposition for UC-owned Copyrightable Materials, Data, and Tangible Research Property” in its November 14th meeting. We found the policy to be thoughtfully constructed and reasonable in its proposals. There are just a few parts of the “research lab” share that we hope that OR can clarify:

- The definition of a “research lab” is vague. Does the 35% share to the research lab effectively go into a FOAPAL controlled by the contributor (or their PI in the case of students or postdocs)? Or does “lab” imply a larger umbrella entity, such as an ORU or academic department?
- How would the “research lab” share be distributed if there are multiple contributors to the project, possibly from different labs? Is the “research lab” share also split equally among the labs of the different contributors?
- This may not be appropriate to clarify in the policy, but COR members wondered what restrictions will be attached to the royalties distributed to the research labs. Are they treated as state or federal funds? Can these funds be used for summer salaries?

Thank you for the opportunity to comment on this proposed policy.

Sincerely



Michael Hance, Chair
Committee on Research

cc: Roger Schoenman, Chair, Committee on Academic Freedom (CAF)
Maureen Callanan, Chair, Committee on Academic Personnel (CAP)
Enrico Ramirez-Ruiz, Chair, Committee on Development and Fundraising (CDF)
Jeffery Erbig, Chair, Committee on Library and Scholarly Communication (COLASC)