

**JOURNAL OF THE FACULTY SENATE**  
 The University of Oklahoma (Norman campus)  
 Regular session - December 11, 1989 - 3:30 p.m.  
 Conoco Auditorium, Neustadt Wing, Bizzell Memorial Library

The Faculty Senate was called to order by Professor Andy R. Magid, Chair.

**PRESENT:** Ahern, Baker, Blick, Christian, Farmer, Flowers, Foote, Gabert, Gilje, Goodey, Gudmundson, Hamm, Harper, Hill, Hinson, Jaffe, Kenderdine, Kiacz, Knapp, Kutner, Levy, Magid, McManus, Minnis, Moore, Mouser, Nelson, Paolino, Petry, Rideout, Ryan, Salisbury, Sankowski, Schnell, Smith, Stoltenberg, Striz, Swoyer, Vestal, Ward, Weaver-Meyers, Wedel, Zaman

Provost's office representative: Wadlow  
 PSA representatives: Bloomgarden, Scott, Spigner-Littles  
 GSS representative: Lazarus  
 UOSA representatives: Hamilton, McDaniel, Tillman

**ABSENT:** Bergey, Fife, Herstand, Hopkins, James, Nicewander, White, Zelby, Zonana

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**APPROVAL OF JOURNAL**

The Senate Journal for the regular session of November 13, 1989, was approved.

**ANNOUNCEMENTS**

The regular meetings of the Faculty Senate for 1990 will be held at 3:30 p.m. in the Conoco Auditorium on the following Mondays: January 15, February 12, March 5, April 9, May 7, September 10, October 8, November 12, and December 10.

The Senate Executive Committee selected Professors David Mair (English) and Gordon Uno (Botany & Microbiology)/John Farmer (Zoology) to serve on the Orientation Working Group. [Professor Uno will serve Fall semester then be replaced by Professor Farmer.]

Student Congress elected the following students as representatives to the Faculty Senate: Victoria Allred, Julie Ann Hamilton, and Jennifer Tillman. The Professional Staff Association representatives to the Senate are Aleta Barth, Jeff Bloomgarden, Connie Boehme, Bette Scott, and Dorscine Spigner-Littles.

**SENATE CHAIR'S REPORT**

(See Appendix I.)

**FOCUS ON EXCELLENCE: Bruce Roe**

Prof. Rideout focused on Prof. Bruce Roe, of the Department of Chemistry. One of the more controversial and alluring programs supported by the Federal Government in recent years has been the funding of the GENOME project. The larger portion of the initial \$27 million allocated for that project last year has been spent on "mapping," the effort to locate genes. Four universities received grants to "sequence" genes--determining how gene information is encoded and used by cells--and to develop better methods of sequencing. The Universities of Wisconsin and Texas join OU and Cal Tech in these efforts. Specifically, \$500,000 in grants are coming to OU in the next three years as a result of the effort in this area led by Professor Bruce Roe of the Department of Chemistry. The money will be spent in the study of "onco" genes, those few genes that change adversely and affect the development of childhood leukemia.

**ELECTION, UNIVERSITY AND CAMPUS COUNCILS, COMMITTEES AND BOARDS**

The Senate approved the following nominations of the Committee on Committee to fill vacancies on University and Campus Councils, Committees and Boards:

- To complete the 1988-91 term of George England on the Research Council:  
Marilyn Flowers (Economics)
- To complete the 1988-91 term of Michael McInerney on the Research Council:  
David McCarthy (Botany & Microbiology)
- To complete the 1988-91 term of Nim Razook on the Senate Committee on Faculty Compensation: William Weitzel (Management)

**CENTENNIAL ANNOUNCEMENT**

Prof. Magid reported that extra emphasis would be placed on this academic year's graduation ceremony because of the Centennial celebration. He announced that Regent Hogan had arranged for an endowment to pay the rental fee for caps and gowns for faculty and said he assumed that would encourage even more faculty to attend. Mr. Randy McDaniel, UOSA President, said the students were very excited about commencement and would welcome suggestions from the faculty on how to make the Centennial commencement special.

**REPORT ON COMPARATIVE OU AND OSU HEALTH INSURANCE COSTS BY PROF. SUSAN VEHIK, CHAIR OF THE SENATE COMMITTEE ON FACULTY WELFARE**

Following up on a suggestion made at the conclusion of her report at the October 16 Senate meeting, Prof. Vehik presented a comparison of OU and OSU fringe benefits (see Appendix II). She noted that OU has far more health insurance options. The costs between the two schools are fairly comparable except for children; OSU's cost is \$49, compared with OU's minimum cost of \$105. OSU was recently faced with a 34% increase in insurance rates, so they elected some cost containment procedures to bring the increase down to 15% [point 4]. Prof. Vehik stressed that points 5 through 7 in her report really compare apples with oranges, because the systems operate differently. The main difference is that the stop-loss point (the point at which 100% of the insured's expenses are covered) for OSU's medical insurance is \$25,000; at OU it is \$2500. There are also some differences in life insurance and long-term disability [page 4]. OU's flexible benefits plan, which probably will be operational in July, will include all of the present insurance options. OSU's plan will simply allow the employee to tax shelter premiums for dependents and out-of-pocket expenses. OSU does not have dental insurance nor accidental death and dismemberment. The contributions to TRS and TIAA/CREF are handled somewhat differently by the two institutions [page 5]. TIAA/CREF will soon offer some other options in addition to those already in place. Apparently the OU administration is concerned about its liability if an employee elects an option which results in the loss of the employee's retirement funds.

Answering questions from the floor, Prof. Vehik noted that OU's optional long-term disability insurance is paid by the employee, and it costs more than OSU's, even though it is through the same carrier. The decision on which new TIAA/CREF options will be offered will have to be approved by the Regents. When asked how much the OSU employees contribute to TIAA/CREF, Prof. Vehik said she would find out. [Note: OSU employees contribute 10% of salaries earned in excess of \$7800 in fiscal year July through June.] [Also included in Appendix II is a memo from Don Flegal, received by Prof. Vehik after the Senate meeting, that explains benefits costs.]

**REVISED COPYRIGHT POLICY**

See pages 4-6 of the 11/89 Journal for background information on the proposed policy. A memo from William Varley to Peter Kutner and the report of the ad hoc committee are attached as Appendix III. The final page of the report from the ad hoc committee contains four recommendations: that the Senate adopt the report of the ad hoc committee; that the University not adopt the proposed copyright policy and directives, that the Copyright Committee be requested to reexamine the matter; and that the Faculty Senate consider any recommendation made by the Copyright Committee after its reexamination.

Prof. Ryan commended the committee for its work and commented that in the proposed policy almost nothing would be a personal work. He also pointed out that faculty who wanted to create commercially valuable software would most likely do it on their own time and with their own resources. Prof. Magid noted that he had been asked to read a memo in opposition to the proposed policy from Prof. Zelby, who could not be at the meeting, but that he believed Prof. Zelby's points were subsumed in the report of the ad hoc committee. The recommendations of the ad hoc committee were approved by a show of hands, 39 to 0, with 1 abstention.

#### **PROGRAM RE-APPROVAL PROCEDURES**

The following was presented as a motion of the Executive Committee (see also 11/89 Journal, page 6):

All programs or courses being considered for delivery off the Norman Campus must be reviewed by the Graduate Council or Academic Programs Council to assure that the integrity of the program or course is not compromised by any change in support services.

Many of the questions from the floor had to do with whether the University Center at Tulsa and OCCCE were considered on- or off-campus and whether this would apply to intersession and advanced program classes offered off-campus. Prof. Magid said the key was whether the integrity of the course would be compromised. Prof. Weaver-Meyers noted that one of the major problems was a lack of library resources. Professors Ahern and Farmer reported that the Graduate Council and Academic Programs Council, respectively, look at whether the facilities and personnel are adequate when asked to approve a course. The Graduate Council has reviewed some programs being offered at Tulsa, but none have gone through the Academic Programs Council yet. There was some discussion on the additional workload that this motion would create for these two councils and whether their response time would be quick enough.

Prof. Magid read a memo from the Chair of the Academic Program Council of the Health Sciences Center which requested and urged, even when an emergency situation arises, that strict adherence to the approved review process for all programs be followed. He said it sounded as though the HSC Academic Program Council intended to have a quick response to these sorts of requests. Prof. Smith said he thought this procedure was already taking place and if not, then faculty should be concerned because it is a curriculum issue. Prof. Magid pointed out that the Graduate Council and Academic Programs Council were notified that the President was recommending that the Regents approve certain programs at UCT without having the approval of either of the councils, so apparently the procedure is not being followed. Prof. Kenderdine noted the subtle re-allocation of resources that occurs when programs are moved from Norman to Tulsa. Prof. Foote argued that only courses that had already been approved would be offered in Tulsa, and that it is the administration's duty to provide the necessary resources. He said the additional enrollment in Tulsa should generate the necessary added resources. The motion was approved by a show of hands, 33 to 4, with 4 abstentions.

### **PARKING FOR GRADUATE ASSISTANTS**

At last month's meeting Prof. Vestal moved to consider at this meeting a motion to support the request of the Graduate Student Senate to allow Graduate Teaching and Research Assistants to purchase faculty/staff parking permits. Prof. Foote spoke against the motion, saying there are not enough parking spaces as it is. When asked about the impact this would have, Prof. Vestal said it is estimated that an additional 500 GAs would purchase faculty/staff permits. Currently 2800 permits are sold for 2200 spaces.

Mr. Steve Lazarus, Vice-Chair of the GSS, said the GSS would appreciate the Senate's support and did not want to have parking spaces at anyone else's expense. He said the GSS is concerned about the safety of GAs because many are on campus until late at night. Much of the discussion concerned the current lack of parking spaces on campus and the existing options available to graduate students. For instance, they can purchase commuter permits and park in commuter lots or use most of the faculty/staff lots after 4:00. Prof. Schnell, former Chair of the Campus Planning Council, pointed out that OU has the most liberal policy for GAs in the Big 8, because the University provides parking spaces for 200 GAs, or about one-fourth of the GAs.

Prof. Rideout presented an amendment to the motion asking that the parking committee review the present policy to more equitably allocate the existing spaces for faculty, staff, and research and teaching assistants. There was a brief discussion about the meaning of "equitably" and possible solutions considering there are not enough parking spaces to go around. Prof. Schnell said one solution would be to add more spaces, but then the fees would have to be increased. Prof. Kutner said he believed the amendment called for exactly what the Campus Planning Council does. Prof. Schnell agreed that parking issues come under the charge of the Campus Planning Council. Prof. Magid related some points made to him by Prof. Deborah Watson (Physics & Astronomy), who was concerned that because of differences in work patterns, prime parking spaces are not available to faculty whose schedules are later than 8 a.m. to 5 p.m., and who often carry briefcases full of books and homework papers back and forth. Prof. Baker pointed out that there is still a problem with unauthorized persons parking in faculty/staff lots. Prof. Salisbury said an alternative would be to assign some commuter lots to the GAs, but then that would be at the undergraduates' expense. Mr. McDaniel pointed out that legislation of the GSS and Student Congress was presently in committee, and that the Senate might want to wait to hear the results of that discussion. Following a motion to table all motions on the floor, the Senate voted, 34 to 4, to table the amendment and 34 to 5 to table the original motion supporting the GSS request.

### **OU-TEXAS HOLIDAY**

Prof. Magid said he had received a letter from President Van Horn indicating that he is considering a UOSA proposal to make the Monday after the OU-Texas game a permanent student holiday. Prof. Magid reminded the group that the last action of the Senate was to abolish the holiday, although there was a close vote to designate Friday as the holiday. Prof. Magid asked if the Senate wanted to make any further statement. Several senators said they would prefer to have the holiday on Friday because many students are absent from class that day as it is. Other senators pointed out that this holiday and Labor Day cause scheduling problems for classes meeting on Monday. Prof. Magid said he would convey these comments to the President.

Prof. Petry said he believed there should be a resolution from the Senate stating that a fall holiday is fine as long as the official standard number of teaching days is retained. He moved that the Senate resolve that there should be the appropriate number of teaching days per semester. The motion will be voted on at the next meeting.

**RESOLUTION ON OFF-SITE TEACHING ASSIGNMENTS**

Prof. Magid presented the following motion of the Executive Committee for consideration at the next meeting:

WHEREAS, faculty teaching assignments are a departmental administrative decision (Faculty Handbook 2.8.2(c)); and

WHEREAS, guaranteeing the academic integrity of a course is the instructor's responsibility (Faculty Handbook 3.2.2); and

WHEREAS, an off-site teaching assignment under conditions where available support services or classroom contact periods are inadequate or inappropriate may affect that academic responsibility adversely; and

WHEREAS, fulfilling an off-site teaching assignment may impair or disrupt other ongoing research, teaching, or service functions which the instructor has the academic responsibility to pursue (Faculty Handbook 3.2.2);

THEREFORE LET IT BE RESOLVED THAT faculty members have the right to appeal an off-site teaching assignment, under Faculty Handbook 3.9, where available support services or classroom contact periods are inadequate or inappropriate or which impairs or disrupts other ongoing research, teaching, or service functions; and

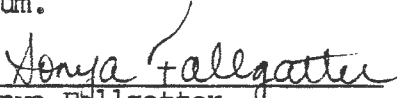
LET IT FURTHER BE RESOLVED that this resolution is legislation of the Norman Campus Faculty Senate (Faculty Handbook 3.10.2 (1)).

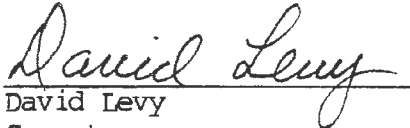
**PARKING PERMIT INITIATIVES**

Prof. Magid announced that the Parking and Transportation office is investigating the possibility of a payroll deduction for parking permit fees and a permanent gate card/parking permit. Comments or suggestions are welcomed.

**ADJOURNMENT**

The meeting adjourned at 4:52 p.m. The next regular session of the Senate will be held at 3:30 p.m. on Monday, January 15, 1990, in the Conoco Auditorium.

  
Sonya Fallgatter  
Administrative Coordinator

  
David Levy  
Secretary

**Chair's Report**  
December 11, 1989

ANDY R. MAGID

**Chancellor Brisch.** On Friday, December 1, Chair-Elect Roger Rideout and I, along with our counterparts from the OSU Faculty Council met with Chancellor for Higher Education Hans Brisch in Dr. Brisch's Oklahoma City office. One of the outcomes of the Fall meeting between our Executive Committee and that of the OSU Faculty Council had been to initiate steps to try to ensure that the State Regents for Higher Education had access to faculty insights, especially from the comprehensive universities' faculties. We learned from Chancellor Brisch that the State Regents were considering an agenda item (which they subsequently adopted) to form a Faculty Advisory Council to the Regents, formed of two faculty representatives from each of the three institutional tiers in the state system of higher education. Dr. Brisch is anxious to guarantee that these faculty representatives be independent of the administrations of their home institutions. The Regents' agenda item called for the representatives to be elected from the immediate past chairs of their institution's Faculty Senates. Among other things, this should lead to the establishment of senates at those institutions currently without faculty governance, a development we can all applaud.

We also spoke with the Chancellor's staff. One of the Vice-Chancellors, in the process of explaining to us the new Regent's funding model, told us that it is expected that State Regent's policy this year will require the distinctions between faculty and staff salary increases (local market forces determine staff salaries, national markets determine faculty salaries) that President Van Horn has proposed for OU.

**President Van Horn.** On Wednesday November 29 the Executive Committee held its regular monthly meeting with President Van Horn. You will recall that in his remarks to the Fall General Faculty meeting Dr. Van Horn spoke of the need to "refine the *Strategy for Excellence*." We asked the President to explain what this meant. Dr. Van Horn wants the University to identify those areas where it intends to excel. Typically, this would represent an area within a department, as opposed to an entire department or a college. He views the identification process as building on the similar exercises previously carried out at the budget unit level. In response to a question, Dr. Van Horn advised the Committee that he did not see any need to similarly refine the Program Review Process, or indeed make any changes in it.

We also discussed the Resource Allocation Board, and resource allocation, with the President. In the course of this discussion, the President made the point that it may be possible to take advantage of the local market and substitute outside contractors for University auxiliaries, such as the Physical Plant, in providing some services. He gave us an example of a recent printing contract, which is going to an outside contractor who underbid University Printing Services. The potential savings to the academic areas of the University here are substantial, and we need to congratulate Dr. Van Horn on his leadership in this area. Of course our Regents have been unhappy with the dimensions of our Auxiliary Services for some time, and former Senator and Executive Committee member Professor Karl Bergey of AME brought the explosive growth of the auxiliaries to the Senate's attention in a number of forums.

**Provost Wadlow.** Provost Joan Wadlow joined the Executive Committee on Monday December 4 for our regular meeting. Among some topics of general faculty interest, including moving some programs out of the Physical Science Center to provide an additional 10,000  $ft^2$  of laboratory space for Chemistry, Provost Wadlow spoke at length about a refinement in the admissions standards. As you know, our admissions standards, as set by the State Regents, use ACT test scores as well as high school grade point average and rank in class. The refinement concerns the ACT test score component for under-represented minorities: blacks, Hispanics, and Native Americans. Because of differential performance patterns on the ACT test (what I would characterize as its cultural bias), a much smaller percentage of the minority population than the majority population will meet the ACT scores required for guaranteed admission. To eliminate this

problem, the ACT score requirements will be set so that the same percentile of each ethnic group is eligible for admission. Of course, this will not affect the other components of the admission requirements, and we can hope that continual improvement of the ACT instrument will eventually eliminate bias.

**Minorities.** There are a couple of other events related to minorities and the University that I want to share with you. First, I want to report briefly on the Symposium on **Cultural Diversity and Quality Education: Desegregation and Community Preservation** organized by our member Professor Wanda Ward of Psychology and the Center for Research on Minority Education which she directs. An impressive array of speakers, including Professor Ward, gave a series of presentations on the need to expand and improve educational success among the nation's minorities. There are at least two important social needs here: one is simple social justice, and the other is the fact that the country's shrinking educated personnel base will present huge human resource problems in many areas, including higher education faculties, unless far greater percentages of minorities can be included in that base of educated personnel. Put simply, expanding minority educational success is not just idealism anymore, it's economic survival in a technological world.

I received a visit on Wednesday December 6 from Brenda Rodriguez, a graduate student in Political Science and Vice President of the newly organized Minority Graduate Student Association. Among the activities the MGSA will be involved in is peer recruitment of minority graduate students. Faculty wanting the help of the MGSA for such recruitment can contact the Association through their advisor, Dorscine Spigner-Littles, who attends our meetings as a representative of the Professional Staff Association.

**Dale Hall Classroom Conversion.** You'll recall that at the November Senate Meeting Professor Alan Nicewander asked the Executive Committee to look into the conversion of the ninth floor Dale Hall seminar rooms into offices for our new Professor of Geopolitics, a facility that I'm afraid will inevitably have to be known as the "Crowe's Nest". Accordingly, I wrote to Provost Wadlow on behalf of the Executive Committee, inquiring about faculty input into the decision, about the justification for the decision in the context of classroom space shortages, and what steps could be taken to change the decision. The Provost sent a reply reporting that Professor Don Maletz of Political Science was consulted about housing Professor Crowe close to the Political Science faculty and that Jeff Stark of Classroom Scheduling was consulted about the impact of the loss of a classroom in Dale Hall tower. The Provost further stated that the classroom shortage is for large classrooms, and she had no comment about steps to change the decision. Indeed, those of you who read Professor John Moore's letter in the December 6 *Oklahoma Daily* know that the classes in the room in question have already been moved elsewhere in mid semester; in Professor Moore's case, from the Dale Hall seminar room to the Armory. (See attached correspondence between Professor Magid and Provost Wadlow.)

**Help Day.** I have received more faculty comment about the renaming of "Stop Day" than any other administration action so far during my term as your Chair. Faculty, who for the most part have usually voluntarily planned special student assistance activities on "Stop Day", were in part worried that the message being sent would suggest to students that relatively minor activities at the last minute could stave off an inevitable failure by a student who had ignored assistance opportunities throughout the semester, but were mostly put out by the connotations that the new name seemed to imply. (The most charitable characterization I heard was "jejune"). In the hopes of saving the valuable parts of the concept, I'd like to announce a contest for an alternative name to "Help Day". Some possible choices are **Student Teacher Open Period**, or **S.T.O.P. Day**; **Semester Terminus Optional Participation Day** (same acronym); and **Departmentally Organized Orientation, Matriculation, and Study**, or **D.O.O.M.S. Day**. Please submit your entry to the Senate Office by the end of finals week. Anonymous entries are acceptable. The winner will be announced in the Senate Journal.





*The*  
**University of Oklahoma**

**FACULTY SENATE**  
900 Asp Avenue, Room 406  
Norman, Oklahoma 73019  
(405) 325-6789

**TO:** Joan Wadlow, Provost

**FROM:** Andy Magid, Chair *AM*  
Norman Campus Faculty Senate

**DATE:** November 29, 1989

**RE:** Conversion of Dale Hall Classroom to Office

On behalf of the Faculty Senate Executive Committee, I write to inquire about the conversion of a ninth floor Dale Hall seminar room into an office for Professor Crowe. Several questions about this conversion were raised at the Faculty Senate meeting of 13 November. Namely:

1. How was the input of faculty and departments that use this room sought prior to making any decisions?
2. In the light of the shortage of classroom space in Dale Hall and elsewhere, how is this conversion to be justified?
3. What steps can those faculty who rely on this room take to see that some other alternative is used to provide office space for Professor Crowe?



The University of Oklahoma

OFFICE OF THE PROVOST
660 Parrington Oval, Room 104
Norman, Oklahoma 73019-0390
(405) 325-3221

TO: Professor Andy Magid, Chair
Faculty Senate
FROM: Provost Urban Wadlow
DATE: December 4, 1989
SUBJECT: Conversion of Dale Hall Classroom Space

In response to your november 29, 1989 memo, there are three classrooms (905, 906, 907) with capacities of 15-25 students on the ninth floor of Dale Hall Tower. Because of their small size, they are primarily being used as seminar rooms for small classes. In addition, at the request of the departments in that building, no classes are scheduled after 5:00 p.m. so that the faculty can use the lounge for other activities. Hence, the utilization of these classrooms has never been high.

After visiting with Professor Don Maletz, it was decided that it would be better to house Admiral Crowe close to the Political Science faculty. However, as the Political Science Department was already short of space for the new faculty it was recruiting, one of the classrooms on the ninth floor was considered for Professor Crowe's office. All three classrooms are under the control of Classroom Scheduling and, as no particular department has special claims on these rooms, we consulted with Jeff Stark as to the impact of a loss of a classroom in Dale Hall Tower. Mr. Stark assured us that it would not create any real scheduling problem since he could use more effectively the other two classrooms on the ninth floor as well as the classrooms on the first floor.

We are aware of the shortage of classroom space in the Norman campus. However, the shortage is for large classrooms (capacity of 45 or more). This Fall we have made available the following new classrooms for Classroom Scheduling:

Holmberg Hall

Room 211 capacity 45
Room 305 capacity 45
Room 306 capacity 60

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Armory

Room 101 capacity 32
Room 103 capacity 45
Room 105 capacity 45

Physical Sciences

Room 128 capacity 55
Room 364 capacity 57

Energy Center

P 207 capacity 50
P 209 capacity 60
A 235 capacity 124
A 236 capacity 50
M 206 capacity 70

JW/ap

## Comparison of OU and OSU Fringe Benefits

- 1). OSU has only one health insurance carrier-American Fidelity.
- 2). OSU runs their fiscal year from Jan. to Jan. and has just finished negotiations for 1990.
- 3). The attached table provides cost comparisons.
- 4). Faced with a 34% increase in costs for 1990 OSU elected several cost containment measures so as to hold the increase to 15%. Those measures were:
  - a). American Fidelity retained a company, Health International, to manage care including requirement of precertification of hospital visits and second opinions for some surgery.
  - b). Increase basic hospitalization deductible from \$100 to \$150 per admission.
  - c). Major medical deductible will increase from \$200 \$250 with a maximum of two deductibles per family per calendar year.
  - d). Inpatient hospital mental and nervous disorder benefits will be limited to \$2500 per calendar year unless precertified by the managed care provider.
- 5). Comparison of OSU and OU Health Benefits:
  - a). Inpatient Benefits.
    - (1). Maximum Indemnity Period:
      - (a). 90 days per confinement (OSU).
      - (b). Unlimited (BC/BS OU).
      - (c). Unlimited days (Prucare OU).
      - (d). Unlimited days (BlueLincs OU).
    - (2). Base Deductible:
      - (a). \$150 per confinement (OSU).
      - (b). None (BC/BS for OU PPO System).  
None (BC/BS PPO System OU).  
\$200 per confinement (BC/BS OU Core System).
      - (c). No charge (Prucare OU).
      - (d). 20% copayment of first \$2500 (BlueLincs OU).
    - (3). Maximum Daily Benefit for Room and Board:
      - (a). Intensive Care Unit:
        1. \$250/day (OSU).
        2. 95% (BC/BS for OU PPO).  
85% (BC/BS PPO System OU).  
75% (BC/BS OU Core System).
        3. No limit (Prucare OU).
        4. Rule 5).a).(2).(d)., then no limit (BlueLincs OU).

Comparative OU and OSU Health Insurance Costs 1989-1990 Per Month

Insurer:	OSU	BC/BS	OU	Goddard BlueLincs
	American Fidelity		Prucare	
University Pays Employee	\$111.00	\$120.96	\$120.96	\$120.96
Employee Pays				
Family	\$178.00	187.48	226.96	260.54
Spouse	111.00	125.88	126.72	192.76
Children	49.00	105.48	107.26	110.94
Employee	NA	NA	NA	NA

- (b). Semi-Private Room:
  - 1. Full cost (OSU).
  - 2. 95% (BC/BS for OU PPO).  
85% (BC/BS PPO System OU).  
75% (BC/BS OU Core System).
  - 3. Full cost (Prucare OU)
  - 4. Rule 5).a).(2).(d)., then no cost (BlueLincs OU).
- (4). Amount for Allowable Miscellaneous Fees:
  - (a). Full costs (OSU).
  - (b). 95% (BC/BS for OU PPO).  
85% (BC/BS PPO System OU).  
75% (BC/BS OU Core System).
  - (c). Full costs (Prucare OU).
  - (d). Full costs (BlueLincs OU).
- (5). Physician's Visits during Hospital Confinement:
  - (a). \$15/day, not to exceed \$1350/confinement (OSU).
  - (b). 95% (BC/BS for OU PPO).  
85% (BC/BS PPO System OU).  
75% (BC/BS OU Core System).
  - (c). Full costs (Prucare OU).
  - (d). Full costs (BlueLincs OU).
- (6). Surgical Procedure Expense Benefit:
  - (a). 80% of physician's charge (OSU).
  - (b). 95% (BC/BS for OU PPO).  
85% (BC/BS PPO System OU).  
75% (BC/BS OU Core System).
  - (c). \$5/visit (?) (Prucare OU).
  - (d). Full costs (BlueLincs OU).
- (7). Anesthesia Expense:
  - (a). Full costs (OSU).
  - (b). 95% (BC/BS for OU PPO).  
85% (BC/BS PPO System OU).  
75% (BC/BS OU Core System).
  - (c). \$5/visit (Prucare OU).
  - (d). Full costs (BlueLincs OU).
- b). Out-Patient Benefits:
  - (1). Room and Supply Charges for Out-Patient Surgery:
    - (a). Full costs (OSU).
    - (b). 95% (BC/BS for OU PPO).  
85% (BC/BS PPO System OU).  
85% (BC/BS OU Core System).
    - (c). Full costs (Prucare OU).
    - (d). \$35/visit (BlueLincs OU).
  - (2). Diagnostic Laboratory and X-ray Benefit:
    - (a). \$100/calendar year (OSU).
    - (b). 95% (BC/BS for OU PPO).  
85% (BC/BS PPO System OU).  
85% (BC/BS OU Core System).
    - (c). No limit (Prucare OU).
    - (d). No limit (BlueLincs OU).

- (3). Routine Health Screening Benefits:
  - (a). \$100/calendar year (OSU).
  - (b). None (BC/BS OU).
  - (c). \$5/visit (Prucare OU).
  - (d). No limit (BlueLincs OU).
- c). Supplemental Accident Benefit:
  - (1). Not subject to base deductible, \$500/accident (OSU).
  - (2). None (BC/BS OU).
  - (3). NA (Prucare OU).
  - (4). NA (BlueLincs OU).
- d). Major medical deductibles:
  - (1). \$250 with a maximum of two deductibles per family per calendar year (OSU).
  - (2). \$100 per person, per year with a family maximum of \$250 (BC/BS for OU PPO).  
\$200 per person, per year with a family maximum of \$500 (BC/BS PPO and Core Systems).
  - (3). NA (Prucare OU).
  - (4). NA (BlueLincs OU).
- e). Lifetime Maximum Per Insured Person:
  - (1). One million (OSU).
  - (2). One million (BC/BS OU).
  - (3). NA (Prucare OU).
  - (4). NA (BlueLincs OU).
- f). Co-Insurance:
  - (1). 80% of first \$25,000 covered medical expenses; then 100% for the remainder of that benefit period (OSU). That is, you must co-pay up to the point where you incur \$25,000 in medical expenses per covered person.
  - (2). You must co-pay up to point where you incur \$2500 in medical expenses per person (BC/BS OU).
  - (3). NA (Prucare OU).
  - (4). NA (BlueLincs OU).
- g). Inpatient Hospital Mental and Nervous Disorder Benefits:
  - (1). Limited to \$2500/calendar year unless pre-certified by the managed care provider; otherwise 30 days/12 month period (OSU).
  - (2). 95% (BC/BS for OU PPO).  
85% (BC/BS PPO System OU).  
75% (BC/BS OU Core System)  
All subject to a Lifetime Maximum for inpatient and outpatient of \$10,000.
  - (3). No charge for first 5 days, 20% for next 25 days (Prucare OU).
  - (4). 50% co-payment for a maximum of 14 days (BlueLincs OU).

- h). Out-patient Mental and Nervous Disorder Benefits:
- (1). 50% of expenses in excess of deductible with maximum benefit of \$1000/year (OSU).
  - (2). All require 50% co-payment with a maximum benefit of \$1000/year (BC/BS OU).
  - (3). No charge for first 3 visits, 20% for next 23 visits for counseling; no charge for first 10 days, 20% for next 50 days for day treatment (Prucare OU).
  - (4). 20 visits per calendar year-50% co-payment (BlueLincs OU).
- 6). Life Insurance:
- a). OSU:
    - (1). University pays \$0.59 per \$1000 coverage per month for 1.5 times annualized salary for maximum coverage of \$75,000.
    - (2). Employee pays \$1.28 per month for all dependents:
      - (a). Spouse to age 65, \$2000 maximum.
      - (b). Children 14 days to 6 months, \$100 maximum.
      - (c). Children 6 months to 21 years, \$1000 maximum.
  - b). OU:
    - (1). University will pay benefit equal to 1.5 times annual salary.
    - (2). Dependent coverage may be paid by employee at rate of \$3.50/month for:
      - (a). Decreasing term based on age of spouse.
      - (b). Children for \$2000 maximum, terminating at age 22.
- 7). Long-Term Disability:
- a). OSU:
    - (1). University pays \$0.204/\$100 of salary/month to a limit of \$6000.
    - (2). Employee pays \$0.102/\$100 of salary/month to a limit of \$6000.
    - (3). Guarantees 66 and two thirds of salary, limited to \$4000/month.
  - b). OU:
    - (1). Employee pays \$0.85/\$100 of salary/month.
    - (2). Guarantees 66 and two thirds of salary, limited to \$4000/month.
- 8). Flexible Benefit Plan.
- a). OSU:
    - (1). Employee may tax shelter premiums for dependents (as long as uses OSU carriers) and out of pocket medical expenses.
    - (2). Only \$1200/year until employee has been eligible for three full years.
    - (3). After three years then may contribute \$3600/year.

- b). OU:
  - (1). Includes medical, dental, life, and other insurance.
- 9). OSU does not have dental insurance or accidental death and dismemberment.
- 10). Oklahoma Teachers' Retirement System:
  - a). OSU: the University contributes to this as does the Employee.
  - b). OU: the Employee contributes to this.
- 11). TIAA/CREF:
  - a). OSU: the University contributes to this as does the Employee.
  - b). OU: the University makes the contribution.
- 12). TIAA/CREF-options will increase but can retain what you already have, University concerned about liability under some options.



*The*  
**University of Oklahoma**

**DIRECTOR OF PERSONNEL**  
905 Asp Avenue, Room 242B  
Norman, Oklahoma 73019-0420  
(405) 325-2578

TO: Susan C. Vehik  
Chair, Faculty Senate Welfare Committee

FROM: Don Flegal  
Director of Personnel

DATE: December 14, 1989

SUBJECT: Benefits Costs

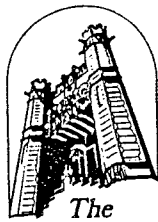
The Comprehensive Health Care Benefits Plan for employees of the University of Oklahoma is self-funded and experience-rated. The University's and your contributions are determined by the plan's actual claims experience. Claims experience is a direct reflection of the cost of medical care, the number of people who use that care and how much of it they use. The more care you use and the more expensive it is, the higher our contributions must be to cover the cost.

When annual negotiations for renewal rates begin, the Employment Benefits Committee along with Administration reviews the rate increases needed to fund the plan for the following year. Blue Cross and Blue Shield actuaries advise the University a percentage amount that could be saved were the University to make certain cost containment changes to the plan. If the Committee has been asked by the employees they represent to enhance the plan by adding benefits, the actuaries advise the University of the percent of increase that will be required to do this.

In the past the Employment Benefits Committee has been hesitant to reduce benefits. We believe that they communicate the wishes of the employees they represent. Health care costs nationwide are increasing at an alarming rate. The Federal government through legislation is passing additional costs to employers' plans. For example, the COBRA legislation requires the University to offer continued coverage to terminating employees and their dependents. This same law requires that coverage be extended to persons no longer eligible for group coverage due to age, marriage and divorce. However, this law precludes us from recouping the actual cost of insuring this group. Only the ones who need the benefit take it, and their claims far exceed the premium they must pay.

We are beginning the renewal process for 1990/91. I encourage you and your colleagues to share your recommendations with representatives of the Employment Benefits Committee.

DBF:slt



The  
University of Oklahoma at Norman

Office of Research Administration

12/89 (Appendix III)

TO: Professor Peter Kutner  
College of Law

FROM: William L. Varley, Director  
Office of Research Administration

DATE: October 25, 1989

SUBJECT: Background on Drafting of Proposed Revised Copyright Policy

The following information is in response to your request for clarification of the objectives for the new Copyright Policy.

As we discussed on the telephone, I am happy to provide you with documents and some amplification based on things I have been told orally, mostly by then Vice Provost for Research Administration Dr. Kenneth L. Hoving. I hope that this information will be useful to you in evaluating the Draft Revised Copyright Policy.

Over the last two or three years, Ken Hoving from time to time has indicated that changes in technology would require eventually that the Regents Copyright Policy which had been promulgated in the early 80's be revised. He told me that at various times members of the Board of Regents had expressed to him their concern that individual faculty members were creating computer programs with substantial use of University resources, or resources provided through the University. In the context of the University Patent Policy, the rights to an invention or discovery made under similar circumstances would belong to the University and the Regents felt that copyrightable computer programs should be treated in a similar manner.

In October 1988, at the Regents' request, Mr. Kurt Ockershauser made a presentation to the Regents on the status of the Patent and Copyright Policies. Dr. Hoving subsequently told me that the Regents, or at least some Regents, had again expressed the need for the existing policy to be revised to provide for the University to share in any income which might be gained from computer programs created by faculty under the circumstances analogous to those contemplated by the Patent Policy.

In January 1989, at least partly in response to a memorandum which Dr. Hoving had sent to the Provost on this subject, Interim President Swank directed the Provost and through her Vice Provost Hoving, to begin the process of drafting a new copyright policy. Although not stated in the memorandum to the Provost, a principal reason for the revision was to be accommodation of the concerns expressed by the Regents. The existing Copyright Committee was to be the mechanism for studying what other universities had as policies and getting a revised policy drafted. A copy of that memorandum is attached at Enclosure 1.

After receiving this memo, Dr. Hoving was concerned that the existing Copyright Committee did not adequately represent the interests of the faculty of the two campuses. His concern was not with the individuals on the Committee, but that for an undertaking of such scope and such importance to the faculty, more faculty should take part in the process. Accordingly, Dr. Hoving recommended and with the Provost's concurrence, four additional faculty (two from each campus) were appointed to the Committee "Task Force." A copy of an associated memo is at Enclosure 2.

As the initial steps were being taken to accomplish the revision, two unrelated events which had copyright and copyright policy implications occurred within a few days of each other. In one case the University was tendered a very large contract, the explicit purpose of which was the production of a computer program, and the issue of ownership of the copyrights became a large issue in the negotiation of the contract. In the second, a faculty member asserted copyright ownership over a property which, even under the old policy, the University believed belonged to the University.

In the course of dealing with these events both University Legal Counsel (Kurt Ockershauser) and an attorney from our intellectual property outside counsel (Mary Lee of Dunlap, Coddling, Peterson and Lee) became involved. In due course we all came to believe that court interpretations of the 1978 statute in effect had threatened faculty ownership of works, such as journal articles, textbooks and so forth, which had "traditionally" belonged to the faculty without question. The outcome of dealing with these events made all of us believe that the principal objective of rewriting the copyright policy, while accommodating the Regents' wishes, should be crafting a policy which would permit faculty to retain the rights to those traditional areas.

In April 1989, at their regular meeting the Regents, or at least some Regents, again asked to have a report on patenting, copyrighting and the University's attempts to commercialize the intellectual property produced at the University. Vice Provost Hoving submitted a lengthy report in writing to the Regents and also made an oral presentation at the May Regents' meeting. Once again the issue of revising the copyright policy to make it more closely parallel the patent policy with respect to things produced with substantial University support was raised. A copy of the Regents' Agenda item and excerpts from Dr. Hoving's written report to the Regents are at Enclosures 3 and 4, respectively.

As I mentioned to you on the telephone, and as part of my charge in Interim President Swank's January memo, I collected copyright policies from twenty or so other universities including the Big Eight, some Big Ten, and others which we believed to be similarly situated with respect to mission and so forth. Those policies were provided to the Copyright Committee. At a subsequent meeting, Mary Lee made a presentation on the state of the law, and the Committee discussed the policies of other universities. At the conclusion of the meeting the Committee requested Dr. Hoving to prepare a draft and circulate it to the Committee and others for coordination.

I, in fact, prepared the first draft. After sending it to both legal counsel and Dr. Hoving, I prepared a clean draft and sent it to members of the Committee for them to study in anticipation of the next meeting. The cover memorandum which sent the draft to the Committee once again restates the principal objectives of the rewrite. A copy of that memorandum is at Enclosure 5.

At the next Committee meeting, there was considerable discussion of the substance of the draft and many suggestions for changes. As I mentioned, Andy Magid in particular requested that some language from the Stanford policy be included to make the definition of Personal Works broader and more encompassing, and also to clarify more explicitly the University's intention that those works would belong to the faculty. Also added was a provision that even if the works vested in the University under the law the University said as a matter of policy it would assign the rights to the creator.

The draft which resulted from these revisions was circulated to the committee and counsel. The committee met and unanimously voted to recommend approval of the policy subject to some corrections and non-substantive changes. In addition, I polled the absent Committee members by telephone and they too voted unanimously to recommend approval.

The draft revised policy was then sent to the two Faculty Senates for consideration. The cover memorandum once again set forth the reasons for the revision.

If you have any more questions, please feel free to call me. I am most anxious that we wind up with a policy which secures the faculty's interests, accommodates the Regents' wishes, and is workable.

WLV/dkj  
Enclosures

cc: Kenneth L. Hoving, Dean, Graduate College  
Eddie Carol Smith, Acting Vice Provost for Research Administration  
Kurt Ockershauser, Legal Counsel  
Mary Lee, Dunlap, Coddling, Peterson and Lee  
Andy Magid, Chair, Faculty Senate



REPORT TO FACULTY SENATE OF AD HOC COMMITTEE ON PROPOSED NEW UNIVERSITY COPYRIGHT POLICY (11 December 1989)

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INTRODUCTION

On October 4, 1989, the Vice Provost for Research Administration, Dr. Kenneth Hoving, sent to the Chair of the Faculty Senate the text of a proposed new copyright policy for the University, approved by the University Copyright Committee. Dean Hoving requested that the Faculty Senate consider and recommend approval of the policy. Copies of the proposed new policy and Dean Hoving's memorandum were distributed at the October Faculty Senate meeting. At the October meeting, the Chair of the Faculty Senate announced that he had established an ad hoc committee of the Senate to review the proposed new copyright policy. The Chair appointed as members of the ad hoc committee Professors Sherril Christian, Ted Herstand, Peter Kutner and Kenneth Wedel. At the November Faculty Senate meeting, the chairman of the ad hoc committee (Professor Kutner) presented orally an interim report. The following report presents the ad hoc committee's conclusions concerning the proposal for a new copyright policy and recommendations for action by the Faculty Senate and the University.

THE PRESENT UNIVERSITY COPYRIGHT POLICY (FACULTY HANDBOOK § 3.27)

The University copyright policy now in force was established in 1980. The policy approved by the Regents in 1980 was drafted by a seven member ad hoc committee appointed by the officers of the Faculty Senate. In preparation for drafting the policy, the ad hoc committee examined the policies of other universities and solicited comments from such professional groups as AAUP, the Authors' League and ASCAP. A member of the committee who was a specialist in copyright law conducted legal research and obtained opinions from leading authorities on copyright law. The ad hoc committee met with or received the comments of a Health Sciences Center ad hoc committee on copyright, the Employee Executive Council, and the University's Chief Legal Counsel (Minutes of Faculty Senate, June 1980). The policy drafted by the ad hoc committee, which was described as "a compromise between the view of the administration and those of the Committee" (Minutes of Faculty Senate, October 1980), was approved by both the Norman Campus Faculty Senate and Health Sciences Center Faculty Senate before its submission to the Regents.

The policy consists of four parts, entitled "Policy", "Basic Objectives", "Copyright Ownership and Royalty Distribution", and "University Copyright Committee". The "Policy" (Faculty Handbook

§3.27.1) is essentially to encourage and promote creative and scholarly activities by faculty, staff and students. The "Basic Objectives" (§ 3.27.2) are:

- (a) "To maintain the University's academic policy of encouraging research and scholarship as such without regard to potential gain from royalties or other income."
- (b) "To make copyrightable materials created pursuant to University objectives available in the public interest under conditions that will promote their effective utilization."
- (c) "To provide adequate incentive and recognition to faculty and staff through proceeds derived from their works."

The terms of "Copyright Ownership and Royalty Distribution" (§ 3.27.3) are that "All University personnel...are free to develop, create, and publish copyrightable works" and that, with limited exceptions, "Copyrighted works produced by the University faculty and staff are the property of the creator of that work. All rights afforded copyright owners...reside with the creator unless he or she has assigned or licensed any of the enumerated rights."

The exceptions to the rule that copyright ownership and rights reside with the creator are that royalties are to be shared with the University when University service units, such as a media production department, "are involved with the production of a substantially completed copyrightable product" (§ 3.27.3(f)) and that, unless otherwise provided by contract, copyright in works specifically commissioned by the University under § 201(b) of the 1976 Copyright Act belong to the University, which will share royalties with the creator (§ 3.27.3(d)). Having the University Copyright Committee consider disputes concerning "Distribution of royalties that may have required specific and unusual University expenses" (§ 3.27.4(a)) implies that creators are to share royalties with the University when works require "specific and unusual University expenses", but there is no explicit provision for sharing of royalties in these circumstances. Works produced under a contract or grant agreement between the University and an outside agency or organization are subject to the general rule that copyright resides with the creator, but the terms of the contract or grant will prevail if they are different (§ 3.27.3(e)).

The last part of the policy (§ 3.27.4) establishes the membership, terms and duties of the University Copyright Committee. The President of the University appoints the members of the committee. Four members are selected from two-for-one nominations by the Norman Campus and Health Science Center Faculty Senates, two members are selected from two-for-one nominations by the Employee Executive Council, and a seventh member is selected solely by the President. The committee elects its own chair. The principal function of the committee is to consider and recommend resolutions of disputes involving ownership of University-commissioned works, terms of commissions, distribution of royalties for University-produced works, and distribution of royalties for works that may have required "specific and unusual University expenses". Also, the committee may review the copyright policy and recommend changes to the President.

THE PROPOSED NEW UNIVERSITY COPYRIGHT POLICY

The proposal under consideration by the Faculty Senate has two parts: "Copyright Policy" and "Vice Provost for Research Administration Directives". The "Copyright Policy" is proposed for adoption by the Regents in substitution for the present policy. The "Directives" would be issued by the Vice Provost for Research Administration, with the approval of the President. The "Directives" could subsequently be added to or amended by the Vice Provost, with the President's approval, while action by the Regents would be required for alteration of the "Policy".

The proposed policy differs in numerous respects from the present policy. The most significant differences regarding "Policy" and "Objectives" are that the new policy deletes the objectives of encouraging research and scholarship without regard to potential income and providing incentive and recognition to faculty and staff, and adds the objectives of "protection of commercially valuable or potentially commercially valuable products of University programs,...the development of these products

for the public good, and...the most equitable distribution of the benefits derived from these products". The policy to promote creative and scholarly activities by faculty, staff and students is retained (Proposal Parts I, III, V).

The most important differences between the present policy and proposed policy concern what the present policy terms "Copyright Ownership and Royalty Distribution". As explained above, the present policy provides that, with limited exceptions, ownership of copyright and rights of ownership belong to the person who created the work. The proposed policy divides copyrightable works into two categories: "Personal Works" and "University Works". The copyright in "Personal Works" is to be owned by their creators. The copyright in "University Works" is to be owned by the University (Proposal Part IV). For this reason, the definitions of "Personal Work" and "University Work" are critical.

"University Works" are defined to mean:

- (a) works created by a University employee (faculty, staff or student) within the scope of employment;
- (b) works created by a University employee which are specially ordered or commissioned by a signed written agreement between the University and the employee;
- (c) works created by an author who is not a University employee under a written contract which provides that the University shall own the copyright in the work;
- (d) works produced in furtherance of "Sponsored Programs", which are defined to mean "any activity in which the University or one of its units agrees to perform research, development, training or another activity in which the University receives payment for conducting the activity"; and
- (e) works produced in furtherance of "University Programs", which are defined to mean any research, development, training or other activity which (1) is undertaken in connection with a Sponsored Program; (2) is directly or immediately related to duties or responsibilities for which an employee is compensated by the University or one of its units, excepting classroom teaching; or (3) is conducted with more than insignificant use of funds, facilities or other resources provided by or through the University.

The provision on "Personal Works" is that "Personal Works shall mean works of artistry or traditional scholarship, such as books, textbooks, and articles, including descriptions and discussions of University Programs and the results thereof, regardless of the tangible medium in which they are embodied. In keeping with tradition, the University does not claim ownership of these and similar works, the intended purpose of which is to disseminate the results of academic research or other scholarly activity. Similarly, the University claims no ownership of popular nonfiction, novels, poems, musical compositions or other works of artistic imagination which are not University works." It is also provided that "If title to copyright in [Personal Works] rests in the University by law, the University will, upon request and to the extent consistent with its legal obligations, convey copyright to the creator(s) of such works." The function of this sentence is addressed in the section of this report entitled "The Copyright Act and 'Works Made for Hire'".

Although the definition of "University Works" consists of a series of specific elements, it encompasses all copyrightable works created by faculty members and other University employees expected to engage in research or creative activity other than works that have no connection to the field in which an employee is expected by the University to teach, conduct research or create and were created with no significant use of University facilities or resources. If a faculty or staff member created a purely personal document or a literary or artistic work that had no connection with the person's field of scholarship and did not make significant use of any University facilities or resources, the work would not be a "University Work". However, in the typical case of faculty or staff creating something connected to the field in which the faculty or staff member "works", what is created would be within the definition of "University Work" because it would be considered created within the scope of employment or within the definition of "University Program".

Since almost everything created by a faculty or professional staff member that is the product of research or scholarly creative activity would fall within the definition of "University Work", the question arises what function the definition of "Personal Work" was intended to have. The answer is that it was intended that works falling within the definition of "Personal Work" be treated as "Personal Works" and be owned by the creators even though they also fell within the definition of "University Work". The proposed policy can be clarified to more clearly express this intent by making the following changes:

In Part IV.1, delete "which are not University Works".

In Part IV.2(a) & (d), insert "other than Personal Works" after "Works".

In Part IV.2(b), insert at the end "which provides that the University shall own the copyright in the work".

In Part V, simply provide that copyright in "Personal Works" shall be owned by the creator and copyright in "University Works" shall be owned by the University. (The "purposes" language, which duplicates the language of Part I, should be deleted.)

In view of the ease with these changes can be made and the assurances given to the ad hoc committee and the Faculty Senate that it was intended to treat works within the "Personal Works" definition as "Personal Works" owned by the creator, although also within the description of "University Works", we will assume for the purposes of the remainder of this report that the proposed policy will be clarified to this effect.

The language of the proposed policy treats as a "University Work" any work produced in furtherance of "any research, development, training or other activity which...[i]s conducted with more than insignificant use of funds, facilities or other resources provided by or through the University" (Proposal Part IV.4.). Since works created within the scope of the creator's employment with the University of Oklahoma are made "University Works" under another provision (Proposal Part IV.2(a)), the quoted language can only mean that the University is to own works created outside the scope of employment, whenever the creator made more than insignificant use of University facilities or resources. The ad hoc committee was informed that this was not the intent of the proposal: the proposal was not intended to give the University a claim to works created outside the scope of employment (other than specially commissioned works and works acquired under contracts with non-employees) and it was not intended to give the University ownership of works simply because there was "more than insignificant use" of such University facilities as libraries, faculty offices and office equipment. Rather, the idea was that substantial use of such University facilities as the mainframe computer, by faculty and staff members creating works within the scope of their employment as scholars/researchers/creators, justified division between the creator and the University of revenues from marketing the works. (See the discussion of "Reasons for the Proposal", below.)

The proposed policy needs to be clarified in this respect. The best way to make clear that works created outside the scope of employment are not to be "University Works" simply because some use of University facilities was made, is to delete IV.4(c). In fact, all of IV.4 can be deleted, as IV.4(a) duplicates IV.2(d) and IV.4(b) duplicates IV.2(a). Any attempt to give the University ownership of works created outside the scope of employment with the University, other than specially commissioned works and works acquired under contracts with non-employees, would be wholly inappropriate and inconsistent with the provisions of the Copyright Act. (See the discussion of "The Copyright Act and 'Works Made for Hire'", below.) To be consistent with the Copyright Act, the words "as defined for purposes of Section 101 of the 1976 Copyright Act" should be inserted in IV.2(a), after "scope of his or her employment". Since these changes match what we understand to be the intent of the drafters of the proposed policy, we will assume that this is a non-controversial point and that such changes will be made. If use of University facilities is to be a criterion of whether a work is a "University Work" or a "Personal Work"--which is a controversial point--this belongs in IV.2(a). One could add at the end of IV.2(a): "with substantial use of funds, facilities or other resources provided by or through the University". If it is not intended that use of such facilities as offices, office equipment, departmental

laboratories or libraries makes a work a "University Work", this needs to be spelled out.

Part VI ("Administration") of the proposed policy contains provisions for the University Copyright Committee. The duties of the committee would be similar to those assigned to it under the present policy: consideration of disputes concerning copyright ownership, terms of commissions and distribution of royalties, and consideration of changes to the University's copyright policy. However, Part VI contains no provisions for the membership of the University Copyright Committee. This would be provided for in the Directives of the Vice Provost for Research Administration. Part VI includes provisions that have no counterpart in the present policy: the Vice Provost for Research Administration is to be responsible for administration of the copyright policy and is empowered to establish, with the approval of the President, such directives as the Vice Provost deems necessary for the orderly administration of the policy. A draft of the initial set of Vice Provost's Directives was distributed with the proposed new University copyright policy.

#### REASONS FOR THE PROPOSAL

Why is there a proposal for a new copyright policy? According to the October 4, 1989, memorandum from Dean Hoving to the Chair of the Faculty Senate, "Interim President Swank directed that the University Copyright Committee...and I draft a revised Copyright Policy. There were several reasons why this should be done, but the most compelling was a court case which changed the interpretation of the 'work made for hire' and 'in the normal course of employment' language in the 1978 statute." Judicial interpretation of the statute--the Copyright Act of 1976--indeed played a role in the formulation of the proposed policy, but a more important role was played by the perception that the Regents of the University were concerned about revenue from commercially valuable computer software and wanted to have the University share revenue from the marketing of computer software produced with the use of University facilities. The perception was, specifically, that the Regents believed that faculty and staff were producing computer software by substantial use of such University facilities as the mainframe computer, and receiving considerable revenue from commercial marketing of the software, none of which was shared with the University despite the University's provision of facilities that made development of the software possible, and that the Regents wanted a policy that provided for the University to receive revenue (shared with the creator) in these circumstances.

Before making its interim report to the Faculty Senate in November, the ad hoc committee arranged a meeting with members of the University Copyright Committee, University administrators responsible for the drafting and eventual implementation of the proposal, and legal counsel. At the meeting, we were told that the proposal was not intended to change the University's policy that copyright be owned by the creator of the work except in the limited category of commercially valuable software, produced with University facilities or resources, of a type analogous to inventions falling under the University's patent policy, as distinct from software created in circumstances or for purposes analogous to traditional media of scholarship. The proposed policy was intended to give the University copyright in this one type of material (which the University could release to the creator if it was not interested in commercial marketing of the material) and to confirm ownership by the creator of other types of copyrighted material.

#### THE COPYRIGHT ACT AND "WORKS MADE FOR HIRE"

Under the 1976 Copyright Act, copyright comes into existence when an original work of a copyrightable type is created. The types of works that are copyrightable are listed in Part III of the proposed policy: (1) literary works [including computer programs], (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; and (7) sound recordings. Copyright Act Section 102(a). As any "original work of authorship fixed in a tangible medium of expression" is copyrightable, every medium by which faculty or staff members communicate the results of research, other scholarship or creative activity has

a copyright except a medium that is not "fixed", such as a live lecture or live performance. Even live lectures or performances are "fixed" when recorded or copied with the authority of the "author".

As stated above, one of the reasons given for proposal of a new copyright policy is judicial interpretation of terms in the 1976 Copyright Act (Section 101): "works made for hire" and "work prepared by an employee within the scope of his or her employment". The two terms are connected: a work is a "work made for hire" if it is prepared by an employee within the scope of employment. Also, in the case of certain works that are specially ordered or commissioned, a work may be made a "work made for hire" by express agreement of the parties. Usually, when a copyrightable work is created, the person who in common parlance is the "author" becomes the owner of copyright in the work. However, Section 201(b) of the Copyright Act provides a different rule for "works made for hire". "In the case of a work made for hire, the employer or other person for whom the work was prepared...owns all of the rights comprised in the copyright" "unless the parties have expressly agreed otherwise in a written instrument signed by them".

This provision was well known to the drafters of the present University copyright policy (see Minutes of Faculty Senate, June 1980) and has not been amended since 1980. What has changed is the body of legal precedent on what is meant by "prepared by an employee within the scope of his or her employment", which in turn affects what is meant by "work made for hire". It had been widely believed that scholarly works by faculty members were not "works made for hire" because universities and colleges exercised no control over the contents of such works and because university ownership of copyright would be inconsistent with traditional academic freedoms and practices. However, in June 1989 the Supreme Court of the United States, in a case not involving a university employee, interpreted the Copyright Act in a way that appears to make works prepared pursuant to the faculty mission of "teaching, research/creative achievement and service" works "prepared...within the scope of... employment" and therefore "works made for hire".

The Copyright Act does not require that employers own the copyright in works created by employees within the scope of employment. Neither does it require that employers own "works made for hire" when they are created, with employers having the option of releasing the works to employees at a later time. What the Act provides, in Section 201(b), is that employers shall own the copyright of "works made for hire" "unless the parties have expressly agreed otherwise in a written instrument signed by them". The Copyright Act in no way prevents implementation of a University policy that copyright is to be owned by the work's creator, as under the present policy, or that copyright in "Personal Works" is to be owned by the creator, except to require that the policy be embodied in a written, signed instrument (document). If a written, signed agreement for an employee to own copyright is made before the work is created, the employee becomes the owner as soon as the work is created.

As the provisions of the Copyright Act and their judicial interpretation do not require University ownership or prevent faculty or staff ownership of copyright in works authored by faculty or staff, the University is free to decide who should have ownership. The only real issue affecting the drafting of a copyright policy is whether adoption and publication of the policy is effective to settle ownership or whether employees and a University official must sign a document containing the terms of the policy. The present University copyright policy and the copyright policies of other universities obtained by the ad hoc committee assume that adoption of a written policy is effective to make employees the owners of the works as provided in the policy. This may meet the "written instrument signed" requirement because the policy is a written part of the employment agreement between employees and the University, an agreement usually formed when a University official signs an appointment letter or document and an employee signs an acceptance or enrollment form. However, a court may disagree.

The problem can be avoided by circulation of a form, to be signed by employees and a University official, that contains the text of the copyright policy. Use of such a form should be provided for in the copyright policy. Furthermore, the policy's provisions on ownership (§ 3.27.3(c) of the present policy; Part V of the proposal) should commence with, "It is expressly agreed in terms of Section

201(b) of the Copyright Act that..." It is these simple steps, not a process by which the University releases works to employees some time after the works are created, that are necessary to ensure that employees become the owners of works the policy says they are to own. The sentence in Part IV.1 of the proposal that "If title to copyright in works...vests in the University by law, the University will, upon request...convey copyright to the creator(s)" should be retained only as a back-up provision in case the form was not signed before creation of the work.

#### THE RELATIONSHIP BETWEEN THE PROPOSED POLICY'S PROVISIONS AND REASONS GIVEN FOR ITS DEVELOPMENT

Is the proposed policy consistent with the reasons given for its development? In a word, "no". The proposal does not do the one thing necessary to avoid problems created by recent judicial interpretation of the Copyright Act--provide for a signed document embodying the University policy on ownership of works created within the scope of employment--and does not simply give the University a share of revenue from commercially marketed software, while leaving undisturbed the remainder of the rights held by faculty and staff members under the present policy. The proposal goes way beyond the goal of meeting the Regents' concern about revenue from software, for it grants to the University not merely revenue, but ownership of copyright, and it makes the University the owner of works other than the type of software the Regents are concerned with.

That the proposal makes the University the owner of faculty and staff creations is clear from the text of the proposed policy, even assuming that only works falling outside the definition of "Personal Works" will be "University Works". Why this was done is not clear, for the policy could have provided instead that the University receive proceeds from marketing of certain works, thus meeting the principal concern of the Regents. (A right to a share of royalties or other income can be established separately from ownership.) The most likely reasons are that the drafters of the proposal believed that the copyright policy should parallel the University's patent policy, which gives the University ownership of inventions, and that they believed faculty members would not exploit commercially things that could be exploited. As will be explained below, the ad hoc committee believes that these are not sound reasons for taking ownership of works away from the creator. If a goal of the copyright policy is to have the University share revenue from the marketing of software, or any other type of work, this should be achieved by a provision for the sharing of revenue and not by divesting faculty and staff members of the ownership rights they have under the present policy.

In addition, the proposal makes the University the owner of faculty and staff creations other than the one type of work whose ownership the policy is supposedly intended to change: commercially valuable computer software. In fact, software is not mentioned in the provisions on ownership. Rather, the University is to own copyrightable works other than "works of artistry or traditional scholarship, such as books, textbooks, and articles, including descriptions and discussions of University Programs and the results thereof, regardless of the tangible medium in which they are embodied...and similar works, the intended purpose of which is to disseminate the results of academic research or other scholarly activity...popular nonfiction, novels, poems, musical compositions or other works of artistic imagination which are not University works". The term "traditional scholarship", coupled with the examples of "books, textbooks, and articles", implies that non-traditional media, such as computer programs and data bases, are not to be "Personal Works". The phrase "regardless of the tangible medium in which they are embodied" implies that works of scholarship in recently-developed media can be "Personal Works", but such scholarship may not be "traditional".

During the ad hoc committee's meeting with the University Copyright Committee and others responsible for the proposed policy, we were told that not only data bases, but also computer software, would be "Personal Works" if they were developed in a manner or for purposes analogous to traditional scholarship. The faculty member writing a computer program on a p.c., like the faculty member writing a book on a p.c., could be creating a "personal work". Faculty and staff who communicated information and methods of using it by means of software or data bases would be treated the same as

faculty and staff who utilized print media. Only more commercial types of computer programs, analogous to inventions that fall under the patent policy, that were developed with substantial University resources or by use of such facilities as the mainframe, would be "University Works".

The attempt to distinguish "commercial" software from "scholarly" software appears to be the reason for a definition of "Personal Works" that mentions scholarship but not computer programs. As will be developed more fully below, the ad hoc committee recommends that there be no such distinction in the copyright policy. However, if there is to be such a distinction, the "Personal Works" definition is inadequate for this purpose. We doubt that any language would be adequate to make such a nebulous distinction. However, a good beginning would be to delete "traditional" and "such as books, textbooks, and articles," from the first sentence of IV.1, and thus remove the implication that works in newer types of media cannot be "Personal Works".

#### WORKS PRODUCED IN FURTHERANCE OF SPONSORED PROGRAMS

An additional feature of the proposed copyright policy, unrelated to judicial interpretation of the Copyright Act or the object of obtaining revenue from commercially valuable software, is to define "Works produced in furtherance of Sponsored Programs" as "University Works". (Proposal Part IV.2(d). "Sponsored Program" is defined in IV.3.) Thus, the University would own works and the administrative process set forth in the Vice Provost's Directives would apply when works were produced in sponsored programs, even though there was no other reason for treating them as "University Works".

The ad hoc committee sees no justification for drawing a distinction between works produced in sponsored programs and works produced in other circumstances beyond what is provided in the present policy: "Works produced under a specific contract or grant agreement between the University and a governmental or other agency or organization are subject to the terms of the grant or contract for purposes of copyright." (Faculty Handbook § 3.27.3(e)). This is entirely adequate to enable the University to negotiate the terms of a grant or contract. It would be ironic for producers of copyrightable works, who so often will have been responsible for obtaining grant or contract funding, to have to cede ownership or revenue to the University on account of the fact that their programs are not funded by the University. "Works produced in furtherance of Sponsored Works" should be deleted from the proposal's list of "University Works". The present policy on works produced under grants and contracts (Faculty Handbook § 3.27.3(e)) should be retained.

#### SHOULD COMMERCIALY VALUABLE COMPUTER PROGRAMS BE DIFFERENTIATED FROM OTHER COPYRIGHTABLE WORKS?

As stated at previous points in this report, gaining for the University revenue from "commercially valuable" computer programs is a principal object of the proposed policy. The proposal, we were told, is not intended to take from the faculty and staff ownership of or revenue from other creations. Is a distinction between commercially valuable computer programs and other works, including other computer software, justified?

A distinction between computer programs and other types of copyrightable works cannot possibly be justified because of the form of the work. There is no reason to treat differently text communicated in print and text communicated by computer, whether the text is designed to transmit information on its own or to facilitate the use of something else. Many works that formerly would have been embodied in print will now be embodied in both print and software or in software alone, and an increasing amount of software is produced for use with printed material.

Is a distinction of "scholarly" and "commercial" computer programs justified? It is true that works which communicate the results of research or other scholarly endeavors are closer to the "core" of the University's mission than works which would be used to operate systems for business or industrial

operations. But in many fields, much of the faculty's teaching, research, publication and professional service can be and is intended to be applied in commercial businesses or industrial operations. At this University and others, faculty whose work has commercial application are highly regarded and much sought-after. It is professional expertise, of a type that faculty and professional staff are expected or encouraged to acquire, that enables a faculty or staff member to develop software with commercial applications. This work is not peripheral to the missions of faculty and staff but rather one form of productive research/creative activity.

The fact that a computer program can be "commercially valuable", in the sense that substantial revenue can be received from selling or licensing it, is no reason to distinguish it from other works of authorship. Other copyrightable works, such as textbooks, can be equally "commercially valuable". Neither is there reason to distinguish computer programs on the ground of the University resources or facilities used to create them. Some computer programs are developed because the University has made a research or project grant or because expensive laboratory or computer equipment can be used. However, many computer programs can be developed with personal computers and no funding or facilities other than the departmental and University resources generally available to faculty members. Thus, the University's financial contribution to the development of software will be no greater than its contribution to the development of works which, under the proposed policy, are not to be a source of revenue for the University.

The ad hoc committee concludes that differential treatment of commercially valuable computer programs is not justified and should not be embodied in the University's copyright policy.

#### THE ISSUE OF COPYRIGHT OWNERSHIP AND THE PATENT PARALLEL

A critical element of the proposed policy is that, in contrast to the present policy, the University is to own the copyright of certain works created by faculty and staff members. This section of the ad hoc committee's report addresses the question of whether the University should be given ownership of works created by faculty and staff.

At the outset, it should be mentioned that everyone would agree that one category of work, not specifically addressed in either the proposed policy or the present policy, should be owned by the University: works created for internal University purposes pursuant to specific job assignments--for example, records maintained in administrative offices and libraries and the output of staff programmers. Neither is there a question about works specifically commissioned by the University and other works created under a contract providing that the University will own the copyright. The issue concerns other works created "within the scope of employment".

As owner of the copyright, the University would be entitled to receive revenue from the sale or licensing of the work, but the more important implications are non-economic. As owner, it would be the University administration, not the author, who would determine whether a work would be published or produced, how and who would publish or produce the work, what uses would be made of the work, and whether it would be revised. The University would have complete control over content, and could make revisions without the consent of the author or refuse to make revisions the author deemed necessary. It would even control who would be identified as the author or creator. In addition, as owner the University would be responsible to the public for the contents and quality of the work. The University could not insulate itself from criticism or legal responsibility.

During the ad hoc committee's meeting with the University Copyright Committee, one University official expressed the view that faculty members might not be interested in commercialization of their works and the University would therefore lose revenue that otherwise could be obtained through University ownership and licensing of the copyright. The ad hoc committee does not regard this as a sound reason to confer copyright ownership on the University. To the contrary, it illustrates the dangers of University ownership. If there are opportunities to commercially market such works as

computer programs but the creator does not want to have the work marketed in the manner proposed, it is likely because of concerns about the quality of what will be produced, the manner in which the work will be marketed or used, foreclosing other opportunities for production, distribution or use of the work, or the effect of the commercialization on the creator's reputation, which also affects the reputation of the University. The University should not have the power to commercialize a faculty or staff member's work of authorship, be it a computer program or a "traditional" work, without the consent of the faculty or staff member. Valid considerations concerning quality, use and reputation should not give way to efforts to generate revenue through commercialization.

Another rationale for this element of the proposed policy is that the copyright policy should parallel the University's patent policy--especially for copyrightable works analogous to inventions falling within the patent policy, by which is meant "commercial" (as distinct from "scholarly") computer software. Accordingly, the proposed policy, like the patent policy (Faculty Handbook § 3.26), provides that works (in the patent policy, "discoveries or inventions") made by faculty and staff are owned by the University, and in the Vice Provost's Directives establishes a procedure for determination of whether the University wishes to commercially exploit the work, release to the creator of works the University does not wish to exploit, and division of royalties between the University, the creator (who is to receive not less than 35%, as in the patent policy) and the creator's department.

Copyrights bear a superficial resemblance to patents in that both are forms of ownership of intellectual property established by federal statute. However, there are great differences between the fields of copyright and patent with respect to what is "copyrightable" and what is "patentable", the requirements of obtaining exclusive ownership, and methods and procedures for commercialization. One very important difference is that because of the rigorous requirements for obtaining a patent, relatively few things produced at the University are patentable and the process of obtaining a patent is expensive. Also, licensing can be quite complicated. The patent policy relieves the inventor of the expenses of obtaining and maintaining patents in the United States and foreign countries; these are borne by the University. Furthermore, creators will often have made detailed arrangements with University administrators before work is far advanced. In contrast, copyrights are easily--indeed, automatically--created, at no cost, large numbers of copyrightable works are created at the University, typically no arrangements with University administrators are involved, and most licensing is not complicated outside fields where professional agents are employed. Copyrighted works, unlike patents, are often revised. Revisions of computer software are likely.

University ownership of copyright would not only take from the creator control over revisions. It would be a fertile source of conflict when a work was created by a University employee who made a revised edition or derivative work after leaving the University, or by a person who created a work before coming to the University and prepared a revision or derivative work while at the University. The University's copyright policy should not imitate the University's patent policy.

In reality, making the University the copyright owner is unlikely to promote the successful commercialization of copyrightable works, including software. The University has no special expertise in commercialization of copyrightable works. Creators already have an economic and a reputational incentive to take advantage of realistic opportunities for commercialization, and often have the ability to do so without the assistance of agents or other intermediaries. The one certain effect of University ownership is delay. No agreement for commercialization of a work could be made until the creator compiled and transmitted through the "normal administrative chain" a disclosure document to the responsible University official (the Vice Provost for Research Administration) and the official decided whether to retain the work for the University or release it to the creator. The loss of time might well cause loss of opportunities for commercialization or make it necessary to accept less favorable terms. It would also frequently require updating or other revision of the work.

Under the proposed Directives of the Vice Provost for Research Administration, creators are to disclose to the University, which may then keep the work or release it to the creator, any "Copyrightable

material which is University Work and which the originator determines or believes or has cause to believe has potential commercial value". Because of the uncertainties concerning what works are "Personal Works" and what has "potential commercial value", creators will frequently be uncertain whether a work must be disclosed. What is to be the position if a faculty or staff member makes arrangements for the publication, production or licensing of a work, without disclosing it to the Vice Provost and awaiting his decision, and the Vice Provost subsequently decides that the work should be owned by the University? Litigation involving the University, the creator, the publisher or producer, licensees, or another employer of the creator, is a real possibility.

Creators of copyrightable works should be encouraged to take advantage of any expertise in commercialization that the University should develop, but the ultimate decisions on publication, production and use of a work, as well as its content, must be made by the author, not a member of the University administration. Works created by members of the University community (other than works created for internal University purposes pursuant to specific job assignments) are their own works in a most fundamental sense. It is they who decided to create the work and what its contents would be, and it is they whom the academic community identifies as the authors. To take from faculty and staff ownership of what they have created would breed resentment and needless friction between creators and the University administration. The ad hoc committee considers that to vest ownership of copyrightable works in the University is inappropriate and largely unworkable. Accordingly, it recommends rejection of this aspect of the proposed copyright policy and retention of the present policy that "Copyrighted works produced by University faculty and staff are the property of the creator" (Faculty Handbook § 3.27.3(c)).

#### DIVISION OF INCOME FROM COPYRIGHTABLE WORKS

The issue of whether the University should receive proceeds from the sale or licensing of copyrighted works is separate from the issue of whether the University should own the copyright. The copyright policy can provide that the University receive proceeds from sale or licensing. The University could receive its share direct from the purchaser or licensee, without having to claim payment from the author. The proposed policy was drafted because Regents wanted income from commercialization--there is no indication that Regents would want ownership of copyright for any other reason--and there are compelling reasons not to take from faculty and staff ownership of works they have created. Therefore, if the University's copyright policy is to have the University derive revenue from commercialization of faculty and staff works, it should provide for division of income between the creator and the University, not for University ownership of the copyright.

The proposed policy does not have the University receive revenue from all commercially successful works created at the University, or all commercialized works created with substantial use of University resources and facilities. It has the University receive revenue from a certain category of works--"University Works" which are not "Personal Works". Although the object was to have the University derive revenue from commercialization of computer software, any work created "with more than insignificant use of funds, facilities or other resources provided by or through the University" (Proposal Part IV.4(c)) can be included.

The proposed Directives of the Vice Provost for Research Administration provide for a division of income in which the "originator" receives not less than 35%, the originator's department receives 15%, and the University receives the remainder (to be used "in furtherance of the University's research or other scholarly or creative activity"). The 35%-15%-50% division is taken from the patent policy. The ad hoc committee considers the 35% share for the "originator" unreasonably low. Only extraordinary circumstances would warrant the creator of a work receiving less income than the University (including the department) and the University will not have borne the substantial expenses for development of the work and securing a patent for it, as it will have for inventions governed by the patent policy.

This report has already examined the question of whether the University's copyright policy should be

different for computer programs than for other types of copyrightable works. The ad hoc committee believes that to have a policy on receipt of income that is different for computer programs than for other works is no more justifiable than a policy on copyrightable ownership that differentiates computer programs. The committee also believes that "more than insignificant use" or even "substantial use" of University facilities or resources should not "trigger" a requirement that revenue from copyrighted works be allocated to the University.

If there is to be such a "trigger", it should be the one implied in § 3.27.4(a)(4) of the present copyright policy: that the University has incurred "specific and unusual University expenses"--"unusual" in the sense that they are not expenses for operations and equipment regularly funded in departmental and University budgets. If the University has made a special investment, such as a grant or provision of equipment, for a project in which development of software (or another copyrightable work) is a principal goal, the University has some claim to recover the "proceeds" of this investment through revenue from commercialization. Use of facilities and resources that are generally available to members of a department does not justify a requirement that income be divided with the University. It should be obvious that production of a work in a "sponsored program" funded by an outside agency or organization does not justify a requirement that income be divided with the University.

One must also consider whether the proposed copyright policy, in its original form or as modified as suggested in this report, is likely to bring substantial revenue to the University. The ad hoc committee expects that the amount of money the University will receive from commercialization of "University Works" will be small. When the substantial administrative costs of implementing such a policy are taken into account, its contribution to University funding will probably be negligible. There are also substantial non-economic costs, including discouragement of and interference with the development and dissemination of copyrightable works by faculty and professional staff. The ad hoc committee concludes that the present copyright policy should not be changed for the purpose of having the University obtain income from works created by faculty and staff.

#### ADMINISTRATION: THE VICE PROVOST'S DIRECTIVES AND THE UNIVERSITY COPYRIGHT COMMITTEE

The proposed policy maintains a University Copyright committee, gives the Vice Provost for Research Administration responsibility for administration of the policy, and empowers the Vice Provost, with the approval of the President, to make directives "necessary for the orderly administration of this policy" (Proposal Part VI). A draft set of Vice Provost's Directives is attached to the proposed new copyright policy.

The charge given to the University Copyright Committee in the proposed policy is an appropriate one. The language is an improvement over the language in the present policy (Faculty Handbook § 3.27.4). However, it ought to be made explicit that disputes concerning commercialization decisions and methods are within the jurisdiction of the committee. With respect to the Directives, apart from the proposed division of royalties, discussed earlier, the ad hoc committee's principal concerns are, first, that an administrative process like that set forth in the Directives is made necessary by the copyright policy being proposed and, second, that matters are included in the Vice Provost's Directives that ought to be in the main policy.

The present policy requires little administration. There are few occasions for disputes to be resolved by the University Copyright Committee. There is no need to have a process by which a University official makes decisions on whether and how to commercialize copyrightable works that have been disclosed to him after the matter has been passed up the "normal administrative chain". The proposed policy makes this type of process necessary. It will also generate numerous disputes concerning copyright ownership, division of income and commercialization. Administering the process will not be inexpensive. (If it is inexpensive, it can only be because so there are so few "University Works" with apparent "commercial value" as to make adoption of the proposed policy pointless.) Having to

deal with the administrative process and the resulting delays in publication or production of the works will add a new element of frustration for productive faculty and professional staff. More importantly, it will deter production of the types of works that must go through the process or, when such works are produced, make it less likely that they will be successfully and expeditiously disseminated.

Of the matters that are included in the Vice Provost's Directives that should be in the main policy, the principal one is the composition of the University Copyright Committee. It would be extraordinary if the membership of this important committee, unlike all other major University committees and councils, could be altered solely by a Vice Provost (with the President's approval) instead of being subject to the usual process involving the Faculty Senates, Employee Executive Council, high administrative officials and the Regents. The constitution of the University Copyright Committee is, of course, part of the present copyright policy (Faculty Handbook § 3.27.4(b)). What is now in proposed Directive No. 6 should be transferred to Part VI of the proposed policy. In addition, the requirement that "University Works" with "potential commercial value" be disclosed, and the division of income among the creator, the creator's department and the University, are of such importance that they should be provided for in general terms in the main policy, although the details can be left to the Directives.

The proposed Directives would increase the membership of the University Copyright Committee by adding a second member appointed by and serving at the pleasure of the President. There would not be a faculty majority on the committee, as there now is. This was done in order to accommodate the President's desire to make an appointment from each campus. The ad hoc committee recommends that if an additional presidential appointee is added to the membership of the University Copyright Committee, a faculty member from each campus be added also, both to maintain the faculty majority and to facilitate the appointment of subcommittees to adjudicate disputes.

Since amendments and additions to the Vice Provost's Directives will not be subject to plenary review by the Faculty Senates, etc., they should be subject to review by and approval of the University Copyright Committee. A provision to this effect should be added to Part VI.C of the proposed copyright policy.

#### POLICIES OF OTHER UNIVERSITIES

The ad hoc committee was not in a position to conduct a survey of the copyright policies of other universities. Policies from other universities were collected when the proposed policy was drafted and the ad hoc committee has obtained copies of a number of policies, mostly from state universities. There is no consistent pattern among these policies other than that no effort is made to take for the university ownership of works of "traditional scholarship" that fall within the "Personal Works" category of the proposed policy for the University of Oklahoma. Some of the policies of other institutions are quite brief, others are quite complex. Some have a basic policy that copyright belongs to the creator, as in the present O.U. policy, with the exception that works created for university purposes under a specific job assignment are the property of the university. Other policies have additional exceptions. There are policies that provide for sharing of income with the university or reimbursement of costs in the case of works created with substantial use of university resources or facilities. Some universities have distinct policies for computer software. If the policies seen by the ad hoc committee are representative of other policies, numerous university policies were drafted with the premise that faculty works were not considered "works made for hire" and consequently were not subject to university ownership.

If the proposed policy were adopted, it would not stand out as a uniquely disadvantageous policy for faculty, but it would be distinctly disadvantageous by comparison with the policies of such peer institutions as the University of Illinois, University of Iowa and University of Wisconsin. It could be expected to have a negative effect on recruitment and retention of faculty and professional staff, especially those who would be innovative and productive in the creation of computer programs and

other works classified as "University Works".

#### SUMMARY OF FACULTY CONCERNS

Numerous concerns about the proposed copyright policy have been communicated to members of the ad hoc committee or have otherwise been identified. Most of these concerns are reflected in the analysis of the proposal and the recommendations that are made in other sections of this report. Among the concerns are:

- \* adoption of a policy to utilize works created by faculty members as a source of University revenues
- \* the effects of attempts to commercialize copyrightable works on the content and dissemination of the works
- \* the definition of "University Works", to be owned by the University, to include almost every work created by faculty members related to their "field"
- \* the lack of clarity in the definition of "Personal Works"
- \* loss of control by creators over the content, publication/production and distribution of "University Works", and the effects this may have on faculty reputation
- \* loss of income from works created solely by faculty efforts
- \* the unfairness of the University taking ownership or income when a work was created without substantial University efforts or resources
- \* differential treatment of computer programs and possibly other forms of copyrightable works, such as data bases
- \* differential treatment of works created in sponsored programs and discouragement of sponsored research
- \* the policy's going beyond the one category of work it was supposedly intended to affect--commercially valuable computer software created with substantial use of University facilities or resources--to take ownership of and revenue from other types of works
- \* the possibility that the policy will eventually be extended so that the University will take ownership of or revenue from other works, such as "commercially valuable" texts
- \* the administrative process required for disclosure of and determination of University "interest" in "University Works", including the attendant delays in arranging for and accomplishing the publication/production and distribution of copyrighted works
- \* the University's releasing works after their creation instead of ensuring that creators have undisputed ownership of "Personal Works" from the time of creation, so that the works can be published, produced or licensed without difficulty or delay
- \* serious problems (for which there is no guidance in the proposed policy) created when works are partially developed or revised while the author is not employed at the University of Oklahoma, as when the author began development of the work before joining the O.U. faculty or completed development or prepared a revision after leaving O.U.
- \* the University would be responsible, for purposes of public opinion and legal liability, for the contents of "University Works"
- \* faculty members would be deterred from creating computer software or other "University Works" and from the type of research/creative activity whose "output" consists of such works
- \* the policy would have negative effects on the recruitment and retention of productive faculty and professional staff
- \* the policy would be unlikely to generate income for the University sufficient to justify its direct and indirect costs

These concerns are likely to be shared by professional staff members as well as faculty members.

## CONCLUSIONS AND RECOMMENDATIONS

The ad hoc committee concludes that the University would be much better served by continuation of the present copyright policy than by adoption of the proposed policy, even with the clarifications and other drafting changes recommended in this report. The present policy could use some "fine tuning", especially in order to remove doubt that the "written instrument signed" requirement of the Copyright Act is complied with. But this policy is generally satisfactory, and leaving it as it is would be far preferable to adoption of anything resembling the proposed new policy. The objectives set forth in the present policy are sound ones. Maintenance of a policy of the type adopted in 1980 is in the best interests of the University.

There should be no category of works, such as "commercially valuable" computer programs, in which the creator cannot own the copyright and receive the income from sale or licensing of the work. If, nevertheless, the Regents decide that income from certain types of works, such as computer software, must be divided between the creator and the University, this should be done by adding a specific provision for division of income to the present copyright policy, not by divesting the creator of ownership and control over the contents and exploitation of the work.

The ad hoc committee recommends that the Faculty Senate resolve that:

- (1) the report of the ad hoc committee be adopted;
- (2) the proposed new copyright policy and Vice Provost for Research Administration Directives not be adopted by the University;
- (3) the University Copyright Committee be requested to reexamine the matter in light of the contents and conclusions of the ad hoc committee's report;
- (4) the Faculty Senate consider any recommendation made by the University Copyright Committee after the committee has completed the reexamination requested.

Respectfully submitted,

Peter Kutner (Law) (Chairman)  
Sherril Christian (Chemistry)  
Ted Herstand (Drama)  
Kenneth Wedel (Social Work)