

MEMORANDUM

TO: President Edward T. Foote II

FROM: Steven Green
Chair, Faculty Senate



DATE: 6 October 1999

SUBJECT: Faculty Senate Legislation #99006(D) - Revision of Business Conduct and Ethical Standards Handbook

The Faculty Senate, at its 27 September 1999 meeting, voted unanimously to receive, accept, and adopt the attached report on recommended revisions to the Business Conduct and Ethical Standards Handbook.

This legislation is in the form of a resolution and requires no approval action.

SG/kl

cc: Luis Glaser, Provost
David Wilson
John Knoblock
Michael Froomkin

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[UM Home](#) > [Faculty Senate Home page](#) > **9-27-99 Faculty Senate Meeting Agenda Item B5**

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Report from Ad Hoc Committee to Examine the "Business Conduct and Ethical Standards" Handbook

Members of committee:

Michael Froomkin

John Knoblock

David Wilson,
chair

The "Business Conduct and Ethical Standards" handbook for faculty and staff at the University of Miami was recently prepared and distributed by the administration, after development by a committee, including faculty and staff, appointed by the administration.

We have examined the handbook and find a number of errors or misstatements in need of correction, as listed below. These are serious enough that we recommend replacement of the Handbook with a corrected version. At the least, corrective statements should be added to all existing copies and distributed to all who have received the Handbook. Since the Handbook is not a document that has passed the normal approval processes for new policies and procedures involving faculty, we also recommend adding a general disclaimer to the handbook.

1. General disclaimer to be added to the handbook: **"Nothing in this booklet is meant to alter, change, or modify the existing conduct standards and rights of faculty members, staff, or students."**

2. Errors

a. On page 14 it is stated that "All University employees and students are obligated to assign ownership of all intellectual property in their field to the University..." Also on page 14 it states that "Intellectual property is an invention, discovery, trade secret, or knowhow and includes novel materials, utility, devices,... or software."

We recommend that the term "intellectual property" be replaced by something like "invention." "Intellectual property," except as narrowly defined in this document, would normally include such copyrightable works as books and papers, which, as clearly stated in the Faculty Manual, are owned by the individual faculty or staff member or student.

More significantly, "software" should not be in the handbook's list of items owned by the University. While the University does own discoveries and inventions, subject to the conditions specified in the Faculty Manual, software is copyrightable. There is a special section of the Faculty Manual that covers copyrightable material (p. 78), which states that "...the right of first publication and of statutory copyright in any book, manuscript, television or motion picture script or film, educational material, or other copyrightable work whose author is a faculty member or staff member or student, shall be the property of the author." The only exception is when the copyrightable material results from a project assigned to an individual, and only if specified at the time of the assignment in a written, signed agreement between the University and the individual.

Also on p. 14, **the penultimate Q&A is erroneous**, since there are many types of intellectual property that faculty own without intervention of any committee.

b. Concerning computing and network facilities at the University, item g., on page 16, indicates that one must not use the facilities "to circumvent system security schemes." **We recommend that the statement be changed to "to circumvent system security schemes without authorization."**

c. Also on p. 16, **in item k, we suggest eliminating the phrase " or pornographic"** as the restriction could interfere with certain appropriate, scholarly studies. We have no objection to the banning of "obscene" material, which is illegal in any case, but it is not illegal to transmit non-obscene pornography, and this should not be banned since it is very difficult to know what constitutes pornography.

d. On the same page, it states that the University electronic mail system shall not be used to send or receive copyrighted materials, etc. There is no way that a user can control what people send to her or him. Therefore, it should not be a violation of the policy to "receive" material one did not solicit. This is a recipe for entrapment. Rather, **the rule should prohibit the sending or storage of copyrighted material without authorization, unless the usage falls within the "fair use" provisions of the copyright act.**

e. In item i on page 16, the term "violate" is not a term with a defined meaning in this context and should be replaced.

f. On page 17, the assertion that "passwords should be changed every month" diverges from university practice in many departments. Leaving this in when no one does it invites negligence claims against the university. **It would be safer to remove it.**

g. The first Q&A on page 18 misstates the policy on personal web pages. **No prior approval is required.**

h. On page 20, the second question, at the bottom of the page, **"Can I sign a consulting agreement..." and its answer should be deleted as it is incorrect.** At the least, "software" needs to be deleted from the statement.

The use of "intellectual property, again, is too broad, and could be misconstrued to include book contracts.

i. On page 21, **the Committee to Investigate Research Fraud and its procedures need to be approved by the Faculty Senate or this section needs to be deleted.**

j. On page 4, the President's **statement about the University having "adopted" the handbook needs to be revised.** The handbook may attempt to describe, in summary form, what has been adopted through the accepted, normal procedures, but the handbook should not be taken as presenting new standards or altering existing ones.

k. On page 6, the first Q & A is misleading. The term "chemistry" is too broad and conflicts with p. 76 of the Faculty Manual, which more narrowly restricts the University's ownership interests. **The Q&A should be revised or eliminated.**

Return to Agenda

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