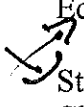


UNIVERSITY OF
Miami
FACULTY SENATE
MEMORANDUM

CDFHI

To: Edward T. Foote II, President

From:  Steven Green
Chair, Faculty Senate

Date: 5 February 2001

Subject: Faculty Senate Legislation #2000-15(B) – Amendment to section IV-Copyrightable Material – in the Patent and Copyright Policy portion of the Faculty Manual

The Faculty Senate, at its 31 January 2001 meeting, voted to approve the following changes to section IV – Copyrightable Material in the Patent and Copyright Policy portion of the Faculty Manual. The changes are shown as underline addition and ~~strikethrough~~ deletions.

IV COPYRIGHTABLE MATERIAL

4.1 Rights of Authors.

In accordance with custom in institutions of higher learning, and except as provided ~~in paragraph 4.2~~ below, 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.

4.2 Rights of the University.

Copyrightable material resulting from a project assigned to members of the faculty ~~or the staff~~ as a part of their regular duties shall inure to the University only if so specified at the time of assignment by an instrument of specific detail and agreement signed by the faculty ~~or staff~~ member, by the department chair or director, and by the school or college dean.

4.3 Authority and Responsibility of Committee with Respect to Copyrightable Material.

The Committee shall have the same authority and responsibility with respect to copyrightable material authored by a faculty member, a staff member, or student as it has in respect to discoveries or inventions made by such persons and dealt with in part III. The specific authority and responsibilities of the Committee with respect to discoveries and inventions, described in paragraph 3.2, shall apply with equal force to copyrightable material except as context does not permit or require change.

4.4 Notice to Committee.

Department chairs, deans and directors, shall notify the Committee in writing of any work assigned in accordance with paragraph 3.2 of this Policy that might result in a manuscript or other property for which copyright may be obtainable.

4.5 Software.

For individuals who are staff members, software developed as part of their normal or assigned duties at the University shall be deemed "works-for-hire" and shall be the property of the University. Software that is developed by a staff member that is unrelated to the staff member's duties at the University and is developed without the use of University resources, shall be the property of the staff member.

Faculty, students, and research associates or postdoctoral researchers working under faculty guidance on funded research, who develop software will normally be deemed to own the software. Exceptions are 1) when a prior, written agreement between the individual and the University exists, as described in paragraph 4.2, above; 2) when the individual is engaged in a research grant or contract, where software ownership is specified by the grant or contract (If such a grant or contract leaves ownership with the grant recipient, that shall be interpreted to mean the creator(s), subject to this policy.); 3) when the software is an integral part of a patentable invention or machine developed at the University, in which case ownership and rights will be the same as for a patentable device, as described above; 4) when the University has committed substantial resources (University funds, facilities, equipment, or other resources significantly in excess of the norm for educational and research purposes in the department or unit in which the creator holds his or her primary appointment) to the development of the software, in which case ownership and rights shall be the same as described above for patentable devices. Faculty or student use of an office and desktop computer, or use of limited time on the mainframe computer, is, alone, not considered to be a "substantial" use of University resources; 5) software created by students who have also been hired by the University in a staff position not directly related to their education as a student, and who create software as part of their regular job responsibilities, shall be the property of the University.

4.6 Courseware.

Syllabi, lecture notes, class handouts, and other such materials, whether on paper or posted on the web, are considered the property of the faculty member who creates such documents. Lectures at the University of Miami are a public performance of the lecturer's intellectual property, and thus the property of the speaker under federal copyright law. Unless otherwise provided in an agreement with a faculty member, faculty own the rights to their web-based courses, courseware, and to the representation in any medium of teaching which forms part of their ordinary duties.

4.6.1 Unless a faculty member specifically objects, the University may use

photographs and reasonable audio and/or video recordings of classroom or other teaching for publicity purposes.

4.6.2 Faculty members must obtain permission from the Provost or Provost's designee before offering for sale audio or video products produced in University classrooms or University facilities.

4.6.3 If the University has committed substantial University resources (as defined in paragraph 4.5, above), any further use of such courseware is subject to an agreement between the faculty member and the University, as described below. Also, faculty participation in the preparation of distance learning materials, or of other materials, which the University will sell or re-use beyond the initial class or session, must be the subject of an agreement with the faculty member before such sale or reuse. In forming such agreements, both the University and the faculty member should strive to conform to the following principles:

- (a) Equitable division of the revenues in a manner proportionate to the value of the efforts contributed by the persons and institutions involved in the preparation and marketing of the materials;
- (b) Regard for the intellectual property rights of third parties who are not parties to the agreement;
- (c) The University's rights to use the product produced may be exclusive, but the faculty must retain the right to use information and ideas contained in it in all forms other than those directly competitive with the product;
- (d) Agreements should be for a definite period of time, ordinarily not to exceed five years, after which ownership of the intellectual property would revert to the faculty member(s) who created it;
- (e) Provisions must be made to safeguard the "moral rights" of the author(s). For example the authors must have a right to include corrections or updates in a form accessible to purchasers of the original courseware or other product, especially in circumstances where the professional reputation of the author might otherwise be affected;
- (f) The agreement should specify what happens to the courseware or other product in the event that the author(s) are no longer employed by the University;
- (g) Written consent of students whose voice or image will be captured as part of distance learning or other products for sale or re-use should be obtained in advance of the recording.

4.6.4 A copy of each agreement between a faculty member and the University and/or a department or unit made pursuant to this clause (after removal of the faculty member's name and replacement of any specified dollar payments with either percent of royalties or percent of faculty member's salary, as appropriate) will be deposited with the Faculty Senate and kept on file for review of any interested faculty member. Experience with this process will be reviewed after 5 years.

This legislation is now forwarded to you for your action.

SG/kl

cc: Luis Glaser, Provost

CAPSULE: Faculty Senate Legislation #2000-15(B)–Amendment to section IV-Copyrightable Material – in the Patent and Copyright Policy portion of the Faculty Manual

RESPONSE BY THE PRESIDENT: Approve DATE: 2/10/01

OFFICE OR INDIVIDUAL TO IMPLEMENT: _____

APPROVED: [Signature]

EFFECTIVE DATE OF LEGISLATION: _____

NOT APPROVED AND REFERRED TO: _____

REMARKS (IF NOT APPROVED): _____