

VIA EMAIL AND PDF ATTACHMENT

Date: May 15, 2017

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From: Phil Lesch, Executive Director

CC: Jose Padin, President jose.aaup@gmail.com

David Hansen, Vice President Collective Bargaining, <a href="hansend@pdx.edu">hansend@pdx.edu</a> Amanda Byron, Vice President Grievances and Academic Freedom,

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Wim Wiewel, PSU President via US Mail pursuant to CBA Article 39

Re: Comments and Demand to Bargain:

PSU COPYRIGHT OWNERSHIP POLICY

The University has provided PSU-AAUP with notice of its intent to promulgate the above policy. Aspects of this policy clearly fall within the definition of "Employment Relations" in ORS 243.650 (7) (a), and may already covered by Article 8 and/or Article 20 and or other areas of the collective bargaining agreement. As such, PSU-AAUP Demands to Bargain the decision and/or the effects of the decision to promulgate this policy. PSU-AAUP, further, reserves the right to make proposals beyond what is expressed in Appendix 1 about the policy based on input from AAUP members that has not yet been received.

We are mindful that as an interested party we have been invited to provide input to this policy as a draft. Our decision to provide input should not be interpreted by the University as a waiver of the party's obligation to bargain, nor shall it obviate our right to file grievances on the final policies.

Our issues of concern are detailed in Appendix 1. I look forward to hearing from you to schedule a time to discuss our concerns with the policy.

## Appendix 1 PSU-AAUP Comments on Proposed Copyright Ownership Policy

- 1. We believe this policy falls squarely within AAUP's scope of bargaining, and any policy negotiated should become addendum to the CBA and incorporated in Article 20 as the parties determine appropriate at the time of re-printing of the CBA after completion of successor agreement negotiations.
- 2. We believe faculty will struggle with understanding how the policy applies to themselves. We recommend that the policy include examples from real situations about how the copyright policy would be applied.
- 3. Article IV Definitions, "Separate Agreement."
  - a. We find it problematic that an email exchange could constitute a contract, and we would not agree to allow an email to be interpreted as a contract when the Waiver of Work for Hire Rule is at stake. We want any Separate Agreement for Work For hire to be clearly articulated as a contract where both parties sign.
  - b. University resources needs to be defined. For the purposes of this policy and the MOU we contemplate, University Resources should not include release time for members. We believe faculty members should retain the copyright for the work they do on University release time, or on time provided by a faculty development grant.
- 4. Article IV Definitions, "Staff" are University employees who are not academically ranked. Article V, Section 1.4 designates as policy that Staff are subject to the Work for Hire rule, and Copyright Materials authored or created by Staff within the scope and course of their employment are PSU Copyright Materials.

"Staff" would, thus, include academic professionals. There is a population of Academic Professionals that provide instruction on occasion as part of their regular duties. There is also a population of Academic Professionals that create copyrighted material regarding their work at Portland State and submit that work for publication and to present at conferences and they may have been directed to do so during working hours. These academic professionals would not consider this work to fall under the Work for Hire rule; this policy would harm their intellectual property interests and would provide a disincentive for them to continue to create intellectual property.

PSU-AAUP would prefer to Academic Professionals receive intellectual property rights as ranked faculty in those circumstances where the provisions of 1.1 are more appropriate for the member. We propose the following changes:

**1.4 University Ownership of Copyright Materials created by Staff.** Staff are subject to the Work for Hire Rule, and Copyright Materials authored or created by Staff within the course and scope of their employment are PSU Copyright Materials <u>except as follows:</u>

- **1.4.1** Academic Professionals who occasionally serve as instructors and produce "Course Materials" shall enjoy the same copyright provisions for those materials as Faculty.
- **1.4.2** Academic Professionals who produce "Scholarly Work" regarding or as part of their pedagogical role shall enjoy the same copyright provisions for that work as Faculty.
- 5. The Dispute resolution in Article VI Section 1.2 is not acceptable:
  - a. The Copyright Advisory Committee is too top heavy with Administrators and it is so large that scheduling advisory committee meetings will be unwieldy. We prefer to see a committee of five (5), with the chair being the specific designee of the President, and two administrators appointed by the President and two faculty members appointed by the Faculty Senate President.
  - b. The dispute resolution system for CBA Article 20 Intellectual Property is CBA Article 28, the contractual grievance procedure. This section would replace the grievance procedure, and that is not acceptable. We propose the following:
    - 1.2 If informal procedures and consultation do not provide resolution of a dispute or policy issue, University stakeholders may request that the President convene a Copyright Advisory Committee to recommend resolution to the President. The Copyright Advisory Committee will be composed of no fewer than nine five (5) individuals. The committee shall be chaired by the Director of Innovation & Intellectual Property, or the President or alternate designee, and have as administrative members representatives from the Office of General Counsel, the Office of Academic Affairs, and when the dispute involves a Sponsored Project, the Sponsored Projects Administration shall have two administrators appointed by the President's designee, with the remainder of the committee being filled by Faculty as designated and two faculty members appointed by the president of the Faculty Senate PSU-AAUP. The committee shall be convened and meet to hear the case within fifteen (15) working days of the declaration of any stakeholder in Section 1.1 that an informal resolution is not possible. The committee will generate a written report with findings and rationale for their decision. The President or designee will make a final decision regarding the dispute or policy issue within 20 working days after receipt and review of the Copyright Advisory Committee's recommendations. If the stakeholder is not represented by the PSU Chapter of the American Association of University Professors (AAUP bargaining unit member), the President's decision will be binding.
    - 1.3 If the stakeholder is an AAUP bargaining unit member and is not satisfied with the decision in 1.2, PSU-AAUP may initiate a grievance at Step Three of the grievance procedure in Article 28 Division B within 15 working days of receiving the President or designee's decision. The Step Three review of the decision will be a request for reconsideration of the decision. If, upon reconsideration, the member is still not satisfied with the decision, PSU-AAUP can appeal the decision to arbitration pursuant to Article 28 Division C.

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- 1.4 Representation by Counsel- Stakeholders may be assisted by legal counsel, lay counsel, or a union official throughout this process, and may choose to have counsel advocate at any step of the process in their behalf.
- 6. Article VI, Section 2 Revenue as an initial proposal is received. We do not have a counter proposal at this time. PSU-AAUP will prepare a counter proposal for revenue.