

## Senate Ad Hoc Committee on Public Access

The Committee will

1. Investigate policies facilitating such public access at other AAU Universities.
2. Consult widely within the UO community.
3. Take into consideration UO Policy statements, OUS Internal Management Directives, and other relevant documents.
4. Draft a University Policy Statement that, if endorsed by the UO Senate and promulgated by the President, would enable the University to
  - o support wider access to UO faculty research.
  - o enhance the visibility of UO faculty research.

Committee members

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Deb Carver (Dean of the Library, ex-officio) [dcarver@uoregon.edu](mailto:dcarver@uoregon.edu)

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Documents in this packet

1. Email 23 November from JQ Johnson
2. Senate Legislation and Reports
  - a. US09/10-3 Creates the committee
  - b. US07/08-17 Initiative to protect the rights of faculty authors
  - c. Report of the UO Senate task force 5 May 2008
3. UO Libraries – Open Access at the University of Oregon
4. OUS Internal Management Directives related to Copyright
5. Romance Languages policy mandating open access



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Subject: Examples of public access policies  
 To: Peter Gilkey (gilkey@uoregon.edu)  
 From: JQ Johnson (jqj@uoregon.edu)  
 Date: Mon, 23 Nov 2009 09:42:21

Peter,

You asked for examples of public access policies. Here are 6. When possible I think we should be careful to link to the official policy rather than just make a copy. Note that a fairly good index of these policies can be found at <http://www.eprints.org/openaccess/policysignup/> and that the group may want to review all of the policies listed there, especially since some of the best-crafted are from non-US institutions. The examples here are listed in approximate chronological order of adoption: (Archival Copy 23 November 2009)

1. A. The earliest widely known public access policy (Feb 2008), and the one which most other universities have emulated, is Harvard (originally FAS, now 4 faculties). Their official policy statement is: <http://osc.hul.harvard.edu/OpenAccess/policytexts.php> (Archival Copy 23 November 2009)
2. B. MIT (Mar 2009): <http://info-libraries.mit.edu/scholarly/faculty-and-researchers/mit-faculty-open-access-policy/> (Archival Copy 23 November 2009)
3. C. University of Kansas (April 2009): [http://www.lib.ku.edu/scholcomm/OA\\_announce.shtml](http://www.lib.ku.edu/scholcomm/OA_announce.shtml) (Archival Copy 23 November 2009)
4. D. The policy adopted by the UO Department of Romance Languages (May 2009) is on line at: <http://www.eprints.org/openaccess/policysignup/fullinfo.php?inst=University%20of%20Oregon%3A%20Department%20of%20Romance%20Languages> (Archival Copy 23 November 2009)
5. E. National Center for Atmospheric Research (Sept 2009): <http://opensky.library.ucar.edu/policy> (Archival Copy 23 November 2009)
6. F. Oberlin College (Nov 2009). The authoritative statement is at: <http://www.oberlin.edu/library/programs/scholcomm/OAresolution.html> (Archival Copy 23 November 2009)

Note that a common thread is a commitment to open access to faculty journal scholarship, based on evidence that such access enhances the visibility of the research and a belief that widespread access is good public policy.

The policies all include provisions:

- (a) to make clear that by default the institution retains a (non-exclusive) license for scholarly articles that allows deposit in its institutional repository
- (b) that there is an easy opt-out for authors who are unable to grant such a license or who do not wish to allow deposit of their work

There is quite a bit of variation as to whether the policy also asks faculty members to facilitate deposit by providing a copy.

There is some variation as to exactly what works are covered, but the trend is to focus narrowly on scholarly articles. There is a somewhat separate set of resolutions aimed at dissertations.

JQ

JQ Johnson

Director, Scholarly Communications & Instructional Support

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Remark. The archival copies were not part of the original email. They have been created and added to the letter subsequently just in case one or more of the links gets broken as time passes. They are PDF files created by printing the original documents.

Web page spun on 23 November 2009 by [Peter B Gilkey](#) 202 Deady Hall, Department of [Mathematics](#) at the [University of Oregon](#), Eugene OR 97403-1222, U.S.A. Phone 1-541-346-4717 Email: [peter.gilkey.cc.67@uoregon.edu](mailto:peter.gilkey.cc.67@uoregon.edu) of [Deady Spider Enterprises](#)



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## US09/10-3 Create a Senate Ad Hoc Committee on Public Access

To be introduced by Peter Gilkey at the 11 November 2009 Senate meeting.

The UO Senate directs the UO Senate President to create a Senate Ad Hoc Committee. The members of the Committee will be appointed by the UO Senate President in consultation with the Senate Nominating Committee, with the FAC, with the Provost, and with the UO Library.

The University of Oregon has a longstanding commitment to making its research widely available, both to the scholarly community and to the general public. Technology is now enabling faculty, universities, and disciplines to adopt new ways to provide enhanced visibility and access to research, usually through digital repositories that are freely accessible. The terms "public access" or "open access" are used to describe these methods that help to remove financial and permission barriers to scholarship and readership. The Committee will

1. Investigate policies facilitating such public access at other AAU Universities.
2. Consult widely within the UO community.
3. Take into consideration UO Policy statements, OUS Internal Management Directives, and other relevant documents.
4. Draft a University Policy Statement that, if endorsed by the UO Senate and promulgated by the President, would enable the University to
  - o support wider access to UO faculty research.
  - o enhance the visibility of UO faculty research.

Financial impact: negligible - uses existing University Resources.

Passed by the 11 November 2009 UO Senate Meeting. Additional References:

- Registry of Open Access Repository Material Archiving Policies.
- The NIH public access policy <http://publicaccess.nih.gov>.
- The Harvard University Digital Access to Scholarship <http://dash.harvard.edu>
  - AAU statements on the subject:
  - [www.aau.edu/WorkArea/showcontent.aspx?id=2900](http://www.aau.edu/WorkArea/showcontent.aspx?id=2900) and <http://www.aau.edu/WorkArea/showcontent.aspx?id=2900>
  - Motion US 07/08 - 17 Initiative to protect the rights of faculty authors of scholarly publications.
  - Motion US 07/08 - 20 To endorse and implement the report of the Ad Hoc Committee on Scholarly Publishing
  - Information on Open Access Week (Oct 19-23) at the UO.
  - SPARC Open Access links
  - UO Library information on open access.
  - Report of the UO Senate task force on academic freedom and scholarly publishing (5 May 2008).

### Legislative History

- Email 3 November 2009 to Gordon Sayre and Dev Sinha about this resolution.
- Committee Web Page



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## Motion US 07/08 - 17 Initiative to protect the rights of faculty authors of scholarly publications.

Whereas, trends in scholarly publishing make it increasingly important for faculty to consider copyright issues and rights of the authors of scholarly publications

Moved, that the University of Oregon University Senate:

- A) Encourages all faculty who publish scholarly works to study the issues of copyright ownership and liability, for example as laid out by the Association for Research Libraries SPARC initiative (<http://www.arl.org/sparc/author/>)
- B) Recommends that if faculty sign a copyright transfer agreement for their work they should include an Author's Addendum as part of the transfer, retaining rights at least to archive their own work and to continue to use their own work in their teaching and research; suggested addenda include the Science Commons addenda at <http://scholars.sciencecommons.org/>
- C) Directs the President of the Senate to establish an ad hoc working committee, that shall
  - a. foster educational opportunities for UO faculty related to copyright and copyright liability during spring term 2008.
  - b. propose additional steps to implement this resolution, implement Senate Resolution US00/01-5, and protect the rights of university authors. Such proposals should include at a minimum whether a UO-specific Author's Addendum should be recommended or required.
  - c. report to the full Senate no later than 28 May 2008.

Financial impact: There is no direct financial impact to this motion. However, widespread adoption of the recommendations could protect faculty from expensive litigation, allow faculty to re-use their own works in teaching without paying royalties, and potentially make faculty publications more widely available, for example in the Scholars' Bank institutional repository.

Statement of Need: This resolution addresses trends in the use of scholarship driven by new technology; for example, it is common practice to post a copy of one's publications on a public website or extract portions for use in a class, but those practices violate the terms of most traditional copyright transfer agreements. More generally, it addresses an increasingly pressing issue, the commercialization of scholarly publishing, the increasing treatment of knowledge as property to be controlled rather than widely disseminated, and the increasing willingness of copyright holders ranging from RIAA to journal publishers to threaten to sue academics for copyright infringement.

In 2001, Senate resolution [US00/01-5](#) endorsed a University Library Committee recommendation to:

- A. Adopt a university-wide policy that all UO authors try, to the best of their ability, to retain copyright on their own work, including at the very minimum the right to:
  - 1) distribute copies of their work to classes and to individual scientists;
  - 2) publish their work on their own web sites; and
  - 3) post their work on a local UO archive.
- B. Immediately identify high-cost duplicate titles among the three research libraries in OUS and establish target amounts for cancellation, in areas in which cancellation would not harm present faculty research, with

the ultimate goal of substantially reducing duplication.

- C. Educate individual faculty and graduate students to:
    - 1) retain copyright on scholarly articles,
    - 2) discover the pricing practices of journals with whom they collaborate (as reviewer, as editorial board member, as author),
    - 3) disassociate from those with unethical pricing structures,
    - 4) lobby professional societies to put pressure on Elsevier and other publishers of inordinately costly publications, and work collaboratively with efforts such as SPARC in the development of lower-cost alternative publications, and
    - 5) encourage professional societies, where applicable, to assume more responsibility for publishing in their field.
  - D. Begin a campus discussion about adopting the Ôtempe Principles, Ó the Emerging Principles of Scholarly Publishing recently developed with the support of the AAU and the Association of Research Libraries. The principles provide a foundation for specific actions, such as those outlined above. By adopting these guiding principles, the UO would become part of a national effort to define new systems of scholarly publishing.
  - E. Ensure that promotion-and-tenure evaluation criteria favor this effort, by holding faculty harmless for declining to publish in journals with pricing structures detrimental to the free circulation of ideas. The present resolution builds on and implements that 2001 resolution, taking advantage of recent innovations such as the codification of the Science Commons author's addendum. It mirrors and supports similar resolutions recently passed at other major research universities, including the provosts of the Big-10 (Committee on Institutional Cooperation, or CIC) and numerous faculty senates.
- 
- Passed at the 13 February 2008 meeting of the UO Senate.

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Web page spun on 13 February 2008 by Peter B Gilkey, 202 Deady Hall, Department of Mathematics at the University of Oregon, Eugene OR 97403-1222, U.S.A. Phone 1-541-346-4717 Email:peter.gilkey.cc.67@aya.yale.edu of Deady Spider Enterprises

**Report of the UO Senate**  
**task force on academic freedom and scholarly publishing**

5 May 2008

This memo reports on recommendations by the Senate ad hoc working committee convened pursuant to Motion US 07/08 – 17. A task force comprised of JQ Johnson (chair), Andrew Karduna, Alexander Mathäs, Elizabeth Peterson, Dev Sinha, and Chuck Williams has been meeting regularly, discussing author's rights issues in the context of educational activities, implementation of the NIH Public Access mandate, and the use of authors' addenda. Our recommendations focus primarily on the last of these three topics.

**Summary of Recommendations**

Authors' addenda are standardized terms that authors may attach to a copyright transfer agreement, retaining additional rights for the author. We propose that the Senate strongly recommend that faculty members include an author's addendum as part of any journal article transfer they sign with publishers. An addendum should not in general be mandatory, but should be strongly encouraged. In most cases, an appropriate instrument is the Science Commons "Delayed Access" addendum. Faculty members with tenure are particularly encouraged to consider rights retained as they choose venues for publication. Because what rights are most likely and desirable to retain vary greatly from field to field, we recommend that each department, in possible consultation with their library subject specialist, develop their own guidelines for faculty authors. We also recommend a number of related steps.

**Elaboration**

Authors' addenda have emerged as a favored mechanism for insuring that faculty authors retain necessary rights to their own work. However academic freedom and differences among disciplines both suggest that it is not timely to mandate the use of any particular addendum. Similarly, the question of what to do when a publisher insists on their terms, rather than those of an addendum, should be left entirely up to faculty.

1. We generally recommend that UO authors use the Science Commons "Delayed Access" addendum, which strikes a reasonable balance between the rights authors are likely to need and the rights publishers are likely to be willing to grant.

In some circumstances a different addendum may be required. For example, in some cases the university may have a legal interest that mandates a particular addendum. Compliance with the NIH Public Access mandate by faculty who receive NIH funding through the UO may be an example of this.

Authors who attach an addendum can expect that in some cases the publisher will reject some of the terms of the addendum, and that the author may need to negotiate or accede to the publisher's terms. In such cases the author should consider carefully what rights he or she needs most. We believe that most UO faculty members will minimally want to insure that

- the work is published in timely fashion;
- they preserve integrity and attribution of the work, for instance that the publisher not republish the work under a different byline or modify it without permission from the original authors;

- they can reuse their work in their own teaching and research, for example posting a copy of their work to Blackboard for their students to read, displaying tables or figures from a work in a conference presentation, or creating a textbook that reuses portions of the copyrighted work;
  - they retain the right to comply with distribution and dissemination obligations of grant or research funding;
  - they retain the right to deposit a copy of the author's final version of the article in the UO's institutional repository (Scholars' Bank), perhaps after a publisher-mandated embargo period.
2. Author's rights issues and publishing practices vary greatly among publishers and disciplines. We also strongly recommend that academic departments discuss the additional rights that are typically most needed in their own disciplines and develop local guidelines for faculty authors.

These guidelines might include a specific recommended author's addendum, and should include suggestions for tactics that are appropriate both for graduate students and faculty in retaining the rights they most need. It may be appropriate for some departments to include this discussion in guidelines for tenure and promotion. Faculty with tenure may be in a particularly strong position to choose venues for publication considering rights retained as well as factors such as subscription costs, and to consider open access publishing rather than traditional limited-access journals. In addition to increasing consensus, the discussion of such guidelines will also greatly increase awareness of authors' rights.

In addition to recommending the use of authors' addenda, the committee recommends several related steps to support UO authors and foster further discussion of scholarly communications issues, notably:

3. The Office of the VP for Research and the library should systematically collect data on UO author journal submissions and their use of authors' addenda. To what extent are UO faculty authors actually successful in negotiating rights?
4. The library should take steps to make the process of creating an author's addendum as easy as possible, for example by placing a copy of the Science Commons author's addendum engine on a UO library scholarly communications web site and providing training in the use of addenda.
5. The library's Scholarly Communications and Instructional Support department and the Office of the VP for Research should provide assistance to authors who have questions about the terms of a copyright transfer that they are asked to sign, and attempt to identify legal resources that can provide limited pro bono legal advice to UO scholars on academic publication copyright issues.
6. The library should significantly expand Scholars' Bank, with the expectation that it will contain copies of most peer-reviewed publications by UO authors.
7. The library should provide data to faculty on publisher policies, allowing faculty to make informed decisions about particular publishers when submitting manuscripts and



making it easier for instructors to identify open access works suitable for use in classes.

8. Academic units and the library should organize a series of educational activities in the area of scholarly publishing. Since faculty needs in this area are largely discipline-specific, the primary channel should be librarian presentations at departmental events such as faculty meetings. In addition, the library should arrange for at least one guest speaker to present a public lecture in fall 2008, and should continue its existing educational efforts such as recent presentations to faculty on PubMed Central compliance.
9. The university, perhaps through the Senate, should initiate a broader discussion of rights that the institution itself needs to retain beyond the rights of individual authors. For example, should the university retain the right to re-use instructional materials authored by UO faculty after the faculty member has left the institution? It should also consider the recent decision by Harvard University faculty to grant a nonexclusive license to the university to use any faculty-authored work, and how attribution and currency for this type of use would best be managed consistent with academic standards.
10. The University Library Committee should during 2008-09 assess progress on implementing these recommendations and report to the Senate.

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## Open Access at the University of Oregon



"Open Access" is generally defined as web-based publication where the material is free for all users to read and use. In academic scholarship, peer reviewed open access publishing is rapidly growing in popularity as an alternative or supplement to traditional venues for scholarship. The [Directory of Open Access Journals](#) lists more than 4000 scholarly open access publications, where the content is quality controlled (usually via anonymous peer review) and represents "scholarship" of the sort that might be considered for tenure and promotion. Many additional journals offer open access for subsets of their articles or limited open access (for example, after an embargo period). Many libraries and researchers provide supplemental open access to peer reviewed publications through deposit of copies of their work in an institutional repository or web site, perhaps after an embargo period.

Open Access is alive and well at UO. This page lists some of the activities of UO people in support of open access publishing.

### UO Authors

Many UO authors publish in open access journals or make their work available on [Scholars' Bank](#), the UO's institutional repository. Many deposit preprints of their work in other discipline-specific open access repositories such as arXiv and REPeC, as well.

### UO Open Access journals

Several departments at the University of Oregon sponsor Open Access journals. The following list is incomplete. If you know of additional scholarly OA journals that are either sponsored by a UO department, hosted on UO servers, or edited by a UO faculty member, please let us know:

Journal name	UO affiliation	Status
<a href="#">Chapman Journal</a> (title varies)	Published and hosted by the Clark Honors College	open access anonymously reviewed student-edited ejournal
<a href="#">CultureWork</a>	Published by the UO Department of Arts & Administration Editor: Julie Voelker-Morris; Robert Voelker-Morris (UO)	open access electronic magazine
<a href="#">Ecotone: Journal of Environmental Studies</a>	Published by the UO Environmental Studies Program	open access student-edited ejournal
<a href="#">Etude: New Voices in Literary Nonfiction</a>	Published and hosted by the Literary Nonfiction program at the UO School of Journalism and Communication Editors: Lauren Kessler <i>et al.</i> (UO, Journalism & Communication)	open access quality controlled literary magazine
<a href="#">InterNationality</a>	Published by the Oregon Consortium for International and Area Studies. Editors: Carlos Aguirre, Dennis Galvan. managing Editor: Clayton J. Cleveland	open access peer-reviewed scholarly journal
<a href="#">Journal of Environmental Law and Litigation</a>	Published and hosted by the UO School of Law	subscription + open access quality controlled scholarly student-edited journal
<a href="#">Jump Cut: A Review of Contemporary Media</a>	Co-editor: Julia Lesage (UO, English) "Jump Cut ... is not affiliated with or supported by any institution."	open access peer-reviewed scholarly journal
<a href="#">Konturen</a>	Published and hosted by the UO Department of Germanic Languages & Literatures Editor: Jeffrey S. Librett (UO, German)	open access peer-reviewed scholarly journal
<a href="#">Oregon Law Review</a>	Published and hosted by the UO Law School	subscription + open access quality controlled student-edited scholarly journal
<a href="#">Oregon Quarterly</a>	Published by the UO Office of Communications Editor: Guy Maynard, UO	subscription + open access general-interest magazine
<a href="#">Oregon Review of International Law</a>	Published and hosted by the UO Law School	not open access

### Funds supporting UO authors

Although many open access journals are free both to readers and to authors, others operate with an "author pays" business model. In such cases, author fees can be a significant impediment to open access publication. The UO is developing initiatives to assist UO authors with page charges, and to provide other support that reduces the barriers to open access publication.

Starting Spring term 2009, the UO Libraries is experimenting with a grant program, the "[Open Access Publishing Support Fund](#)," to pay author fees in open access publications.

### Institutional Commitments to Open Access Publishing

The UO has a history of formal commitments to open access publishing.

Maintained by: JQ Johnson, [jm@uoregon.edu](mailto:jm@uoregon.edu)

Last

Two UO Senate resolutions encourage UO authors to use authors' addenda when publishing. Such addenda clarify copyright transfer agreements, and reserve sufficient rights to the author to allow him or her to distribute the author's own work after publication through means such as Scholars' Bank. [Resolution US 0708-17](#) was passed at the Senate Meeting on February 13, 2008. The Senate then revisited the issue, and as followup, on May 28, 2008 the senate also passed [US 0708-20](#), which "strongly" recommended the use of an author's addendum.

In addition, two UO departments, the UO Libraries and Romance Languages, have resolved to mandate deposit of all scholarly journal articles from their departments into Scholars' Bank.

- text of the [Romance Languages faculty resolution](#).
- text of the [UO Libraries faculty resolution](#). library policy:

**Additional Information**

**Open Access News**

Readers interested in following developments in Open Access may also want to track Peter Suber's Open Access News blog, <http://www.earlham.edu/~peters/fos/atom.xml>

Open Access News

Open access roundup  
by Gavin Baker - Dec 07, 2009  
SPARC Europe's David Prosser is moving to Research Libraries UK. Revues.org's OA and delayed OA journals are now indexed by ...

Open access roundup  
Report: access still a barrier  
U. Ottawa adopts OA strategy, joins COPE  
Open access roundup

[More news...](#)

**Open Access Directory**

Simmons College maintains a popular wiki with information about open access, the [Open Access Directory](#). Examples of information maintained there include:

- [Timeline of the Open Access movement](#)
- [Bibliography of Open Access](#)
- [Events celebrating UO Open Access Week 2009](#)
- [Conferences and workshops related to Open Access](#)

Another very useful resource is the [Open Access Scholarly Information Sourcebook \(OASIS\)](#).

Modified: 10/13/2009



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## OUS Internal Management Directives related to Copyright

The two most relevant selections are given below -- the full IMD is presented subsequently. See [www.ous.edu/about/polipro/files/IMD%2012-04.pdf](http://www.ous.edu/about/polipro/files/IMD%2012-04.pdf) for the full IMD -- as of December 2004. (Archival copy). The normative version is the version on the OUS website.

### IMD 6.215 (6)

Except as provided above, the ownership rights to all forms of educational and professional material in the form of books, musical or dramatic composition, architectural designs, paintings, sculptures, or other works of comparable type developed by institution and Board employees, either in conjunction with or aside from their employment, shall accrue to the author, unless the material is prepared in compliance with contractual provisions or as a specific work assignment, or significant institutional and Board resources were utilized. An academic staff person's general obligation to produce scholarly works does not constitute such a specific institution or Board assignment.

### IMD 6.255 (4)

Educational and professional materials developed solely by individual effort shall be registered for copyright, if at all, in the name of the author. All rights, including those to royalties, reside with the author.

Oregon State Board of Higher Education Page 46 (updated December 2004) Licensing, Patent, Educational, and Professional Materials Development, and Copyright Policies and Procedures

• **6.205 Application of Policies and Procedures** The policies for licensing, patents, educational and professional materials development, and registration of copyrights apply to all Department of Higher Education employees whose work-related assignments, regardless of location, might enable them to develop new knowledge which was conceived purposely or fortuitously. The policies also apply to other persons using institutional facilities, personnel, or other resources.

#### • **6.210 Definitions**

- (1) Inventions or technological improvements to which these policies apply include any new and useful process, machine, device, manufacture, or composition of matter, and any new and useful improvements.
- (2) Educational and professional materials to which these policies and procedures apply are those used or distributed primarily for the formal or informal instruction or education of professional or general Section 6 Finance and Business Affairs Oregon State Board of Higher Education students. Such materials may result from the instructional, research, or public service activities of employees.
- (3) Materials to which these policies and procedures apply are exemplified by:
  - (a) Writings, lectures, study guides, books, textbooks, journal articles, glossaries, laboratory manuals, proposals, musical or dramatic compositions, listings, tables, charts, graphs, figures, manuals, codes, software, unpublished scripts, and programmed instructional materials.
  - (b) Video and audio recordings, live video and audio broadcasts, cassettes, tapes, films, filmstrips, slides, transparencies, and other reproductions and visual aids.
  - (c) Computer programs and computer-assisted courseware.
- (4) Inventor(s) means the individual(s) who first conceived the idea, invention, or technological improvement.
- (5) Author(s) means the individual(s) responsible for primary subjectmatter guidance and development of educational and professional materials.

- (6) Material is said to be in the public domain if it is not protected by common law or statutory copyright and, therefore, is available for copying without infringement.
- (7) Publication occurs when by consent of the copyright owner, the original or tangible copies or phonorecords of a work are sold, leased, loaned, given away, or otherwise made available to the general public, or when an authorized offer is made to dispose of the work in any such manner, even if a sale or other disposition does not in fact occur.
- (8) The term "owner" refers to the party who owns or controls the copyright and who has the right to sell, assign, distribute, or license the use of such material.
- (9) Board- and institution-assisted effort is individual effort that involves institution and Board support in the form of significant personnel time, facilities, or other resources.
- (10) Sponsored effort is institution-assigned effort, and assignment, among others, to conduct research and to develop materials, with substantial or all of the personnel time, facilities, or other resources for the assignment being provided by the institution and Board, or an outside sponsor such as a federal agency or private corporation.

• **6.215 Rights to Inventions, Technological Improvements, Educational, and Professional Materials**

- (1) The Board reserves the ownership rights to all institutional work-related inventions, and to educational and professional materials developed with institutional resources, including the right to a free and irrevocable license for usage, and if desired, the licensing for use by others. The foregoing does not preclude an institution employee from granting copyright privileges to the publisher of a scholarly or professional journal when no compensation or royalty is involved.
- (2) Educational and professional materials shall be considered as having been developed in the course of employment in those cases when the individual was employed for the specific purpose of preparing or producing the material, or was specifically directed to develop the material as part of general employment duties and responsibilities.
- (3) Lecture notes and other materials prepared by academic staff in connection with a teaching assignment and with only incidental use of institutional facilities, funds, staff, and other resources normally shall be viewed as flowing from individual effort and initiative and shall not be construed as having been produced in the course of discharging the obligations of employment.
- (4) Funds and facilities provided by governmental, commercial, industrial, or other public or private organizations, but administered and controlled by the institution and Board, shall be considered to be funds and facilities provided by or through the institution and Board.
- (5) If it is determined that inventions or materials developed are not related to work or to an assigned project and that development involved no or minimal use of institutional funds or facilities, or that the material developed is incidental to the individual's work assignment, or that the institution and Board have no right, vested interest, or claim in an invention, and the institution decides to forego the licensing or patenting of an invention or the publishing and copyrighting of the material, the president or designee may recommend to the Vice Chancellor for Finance and Administration or a designee that the Board's interest and rights be waived, and Section 6 Finance and Business Affairs that a statement be issued which waives any institution or Board claim. Such a waiver may be granted only if pre-existing commitments to sponsoring agencies have been cleared. Upon receipt of such waiver, the inventor or author shall be free to take such further steps as desired. In the case of an invention, however, the institution has usually provided substantial laboratory, supply and equipment support. Therefore, the president or designee will normally recommend the execution of a limited release only after the institution has exhausted efforts to license or patent the invention. This release enables the inventor to exploit the invention and recover reasonable exploitation, licensing, and patenting costs related thereto and a sum up to \$10,000 out of the royalty income receipts, with the inventor and the Board sharing equally in the balance of the net royalty income.
- (6) Except as provided above, the ownership rights to all forms of educational and professional material in the form of books, musical or dramatic composition, architectural designs, paintings, sculptures, or other works of comparable type developed by institution and Board employees, either in conjunction with or aside from their employment, shall accrue to the author, unless the material is prepared in compliance with contractual

provisions or as a specific work assignment, or significant institutional and Board resources were utilized. An academic staff person's general obligation to produce scholarly works does not constitute such a specific institution or Board assignment.

• **6.220 Research and Development of Inventions and Materials with Outside Organizations**

- (1) In accepting grant and research funds from governmental, nonprofit and commercial agencies, the institution and researcher shall agree to the conditions in the agreement with the sponsoring agency pertaining to licensing, patent policies, and ownership of all copyrightable material conceived and developed in the course of work required by the agreement. Such agreements shall normally include provisions enabling the institution to publish the findings of research and rights to take title to patentable inventions, discoveries, and educational and professional materials arising from the work performed. In the absence of such agreement or terms, the products shall be the property of the institution and Board.
- (2) At the time any sponsored assignment is made and when inventions, new technology, or materials subject to copyright may be expected to be produced, affected institutional staff are to be advised of copyright limitations and rights to inventions imposed by extramural sponsors as well as institutional and Board policies and procedures regarding the same.
- (3) In cases where it appears in the interest of the Board, institution, inventor, and sponsor, and upon the recommendation of the president or designated administrator, the Vice Chancellor for Finance and Administration or designee may grant rights to the sponsor, including the right to acquire a proprietary interest in and to any invention or patent developed during the sponsored research project.
- (4) When an invention is developed in the course of sponsored research, the sponsor may be granted a non-exclusive license for its own use and, only if appropriate, an option to acquire a limited term, royalty-bearing, exclusive license to such invention.

• **6.225 Disclosure of Inventions and Copyrightable Materials**

- (1) Employees and any other persons who conceive or develop inventions or technological improvements while engaged in activities utilizing institutional resources shall report the findings on a Department of Higher Education standard disclosure form to, and confer with, the institutional committee, or person designated by the president to administer licensing, patent, educational and professional materials development and copyright policies and procedures. The purpose of the disclosure of an invention or materials developed is to enable the institution to determine potential for licensing, patenting, publishing, and registering of copyright, and the equities of the inventor, author, institution, and Board. Disclosure of details of an invention that might jeopardize the licensing or patent potential may be delayed until the committee or president designee has acted.
- (2) If it is determined that the Board and institution have vested interest and claim in an invention, the inventor shall enter into a standard Department of Higher Education Licensing and Patent Assignment Agreement. The agreement shall be prepared initially at the institution.

• **6.230 Agreement To Assign Rights**

- (1) As part of the acceptance of the Notice of Appointment, each academic employee is obligated to comply with conditions of employment including agreement to assign rights to inventions conceived and materials developed while employed by the institution.
- (2) In cases where a Notice of Appointment is not used, and the employee's work involves potential for discovery or invention, the employee shall execute a standard Department of Higher Education Agreement to Assign Invention, Licensing, and Patent Rights prepared at the institution.

• **6.235 Administration of Policies and Procedures**

- (1) The Board delegates to the Vice Chancellor for Finance and Administration or designee authority to work with each president or designated administrator to obtain licensing, production, and publishing agreements

and patents, develop and approve forms used in administering licensing and patent policies, and execute all types of agreements, waivers, releases, and net royalty distribution agreements.

- (2) Each institution and the Board reserve the sole right to make agreements with sponsoring agencies and to include therein provisions regarding ownership and disposition of rights in inventions and materials deemed to be in the interest of the institution, Board, and public.
  - (3) The president is responsible for informing employees regarding Board licensing, patent, educational, and professional materials development, and copyright policies and procedures. The president may delegate this responsibility to a committee or an administrator.
  - (4) The duties of the president, committee or a designated administrator shall be:
    - (a) To protect confidentiality of the inventor's or author's disclosure.
    - (b) To counsel with the inventor or author, examine the invention or materials disclosure, and appraise the equities of all concerned parties. If it is determined that the institution and Board have no rights, vested interest, or claim, the committee or administrator shall recommend that the president seek a release or waiver for the inventor or author.
    - (c) To counsel with the inventor or author concerning Board policies and procedures applicable to the invention or material, and with policies of sponsoring agencies, if any, and to assist with compliance.
    - (d) To recommend to the president options for maximizing public, Board, institution, and inventor or author benefits when seeking licenses, patents, and publishing agreements. Such action shall be preceded by the execution by an inventor of a Licensing and Patent Assignment Agreement initiated at the institution.
    - (e) To recommend to the president appropriate action pertaining to the invention or material within 60 days after its disclosure.
  - (5) When institutional facilities are utilized on a reimbursable basis to develop educational or professional materials or to conduct research on an invention, an agreement shall be prepared and recommended by the president or designee to the Vice Chancellor for Finance and Administration or designee. Such agreement shall be executed in advance of use of the facilities and shall set forth the understanding regarding the use of facilities, ownership rights, and financial arrangements.
- **6.240 Determination of Equities** In determining equities relating to ownership rights in an invention or material, institutional personnel and the Vice Chancellor for Finance and Administration or designee shall follow these guidelines:
- (1) Consideration shall be given to the equity of all parties in light of circumstances surrounding the development of the new knowledge.
  - (2) If an invention or material is deemed to be the result of joint efforts, an agreement shall be reached among the inventors or authors, institution, and Board for distribution of any royalties. The total of net royalty income paid to all inventors or authors shall not exceed the maximum percentage of net royalty income that Board policy allows to be distributed to a single inventor or author.
  - (3) In the event an agreement cannot be reached regarding the amount of equity of each party and subsequent distribution of net royalty income, the president shall recommend resolution to the Vice Chancellor for Finance and Administration after having taken affirmative steps to assure thorough consideration of the equities of all parties.

• **6.245 Commercialization of Inventions**

- (1) The Board encourages the president to assist the invention commercialization process to the extent that the invention contributes toward fulfillment of the institution's mission. Resource allocation for licensing, patenting, and technology transfer, however, is the responsibility of the president.
- (2) The president, designee, or appointed committee shall counsel with inventors to determine how to make the invention available to industry and the public in an effective and non-discriminatory manner, to obtain reasonable royalties for use in furthering institutional education and research objectives, and to reward the inventor through participation in net royalty income received.

- (3) When feasible, the president or designated administrator shall recommend that the Vice Chancellor for Finance and Administration grant non-exclusive, royalty-bearing licenses to all qualified organizations. Exclusive licenses may be recommended if it is determined that such a license is required in the best interest of the public, Board, institution, and inventor in order to encourage marketing and eventual public use of the invention.
- (4) Before granting an exclusive license, a bona fide effort shall be made by the institution to apprise qualified organizations known to be interested in the subject matter of the invention and in developing the invention through a non-exclusive license.
- (5) When it is deemed appropriate to grant an exclusive license, the length of exclusivity shall be limited to that time deemed necessary to provide the licensee with the necessary incentive and opportunity to market the product and recover developmental costs, usually not more than five years from the date of first commercialization of the invention, or the issuance of a patent, whichever comes first, and a non-exclusive license for the life of the patent. Exclusive licenses may include the right of the licensee to sublicense others. The Vice Chancellor for Finance and Administration and the Chancellor may approve exceptions to the length of exclusivity, when justified and recommended by the institution.
- (6) Licensing and sponsored research agreements shall include provisions:
  - (a) Prohibiting the use of the name of the researcher, institution, and Board, either directly or implied, in any advertising relating to the commercialization of the product or process or in supporting evidence provided in prospectus literature, and the use of any statements which imply approval of the licensee's or sponsoring agency's marketing techniques, business objectives, or relationships with wholesalers, retailers, or consumers. Exceptions to this policy require Board approval.
  - (b) Indemnifying the institution against any and all claims, demands, damages, costs, and other related items arising from the manufacture, use, or sale of the licensed invention or process, and, whenever possible, from any liability for damages resulting from a final judicial determination that such commercial utilization of the invention constitutes an infringement of any third party patent.
  - (c) Allowing the institution to produce and use the invention or process for its own educational or research purposes.
  - (d) Allowing the institution and inventor to publish the findings of research and to continue with research related to the process or invention including publication of future findings.
  - (e) For receiving or examining accounting records maintained by the licensee and any sub-licensees.
  - (f) For removing licensing rights and terminating the agreement should the licensee fail to develop and market the product within a reasonable time.

#### • 6.250 Distribution of Royalties

- (1) The Vice Chancellor for Finance and Administration or designee, upon the recommendation of the president, shall act on behalf of the Board to conclude agreements to share net royalty income accruing to the Board from licensing and patent agreements, and from the sale, lease, or licensing of materials outside the institution.
- (2) Agreements involving the sharing of net royalty income shall be initiated in writing at the institution and recommended by the president or designee to the Vice Chancellor for Finance and Administration or designee for review and approval. In determining disposition of income, due consideration shall be given to the equity of all parties in the light of all circumstances surrounding the development of the invention or material.
- (3) Prior to distribution of any royalty income, the Vice Chancellor for Finance and Administration or designee shall require deduction from gross royalty income, of all institutional expenses and reasonable costs incurred in developing the invention or material, expenses incurred in enforcing or defending any patent, copyright litigation, licensing, interference, and marketing costs attributable to the invention or material, as well as any other expenses deemed necessary to recoup. Gross royalty income minus all such costs and expenses constitutes net royalty income.



- (4) The maximum net royalty income that may be distributed to the inventor shall be 40 percent of the first \$50,000 of net royalty income received by the Board, 35 percent of the next \$50,000, and 30 percent of all additional net royalty income.
- (5) The maximum net royalty income that may be distributed to the author shall be 50 percent of the net royalty income received by the Board.
- (6) Net royalty income received by the Board, less the amount distributed, if any, shall be dedicated to the institution of the inventor, or author, subject to the limitation of ORS 351.250. The use made of such net income shall be at the discretion of the president, subject to Board-established budget policy.
- (7) If the originator and developer of an invention or author of material cannot be determined, or if the inventor or author waives any claim to net royalty income, the percent share of royalties intended for such person may be distributed, upon recommendation of the president or designee, to the originating department, laboratory, or center at the institution.

• **6.255 Copyright Registration Procedures** In establishing copyright registration procedures, institutional personnel and the Vice Chancellor for Finance and Administration or designee shall follow these guidelines:

- (1) All educational and professional materials developed with significant Board and institution-assisted effort shall be registered for copyright, at the option of the institution and Board, in the name of the institution and Board. The institution and Board shall provide for disclosure of appropriate credits and shall counsel with participating employees regarding presentation of materials.
- (2) Educational and professional materials developed with minimal Board- or institution-assisted effort should be registered for copyright, if at all, in the name of the author. The author and the president or his designated representative will agree upon the cost of institutional support for such effort, and the author will reimburse the institution for such costs out of royalties received from the registered materials.
- (3) Materials developed under sponsored assignments should be registered for copyright, if at all, in the name of the institution and the Board, with appropriate acknowledgment to the author. The institution and author are obligated to adhere to any publication rights included in agreements made with grant or contract sponsors.
- (4) Educational and professional materials developed solely by individual effort shall be registered for copyright, if at all, in the name of the author. All rights, including those to royalties, reside with the author.

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## Romance Languages, UO Libraries Enact Open Access Publishing Policies

July 7, 2009

Faculty members in the UO's [Department of Romance Languages](#) and the [UO Libraries](#) have voted to adopt an open access mandate, which directs all faculty in those units to archive open access versions of published research in the UO's institutional repository [Scholars' Bank](#).

The policy makes scholarship from these units available, free of charge, to anyone with an Internet connection, including high school students and teachers, university researchers and students in the developing world, and the general public.

Similar mandates have been adopted by other major universities or units within them, including MIT (university-wide), Harvard (Faculty of Arts and Sciences, School of Government), and Stanford (School of Education), as well as several other universities in Europe and Asia.

The UO's Department of Romance Languages is the first humanities department worldwide to adopt an open access mandate. Open access policies have typically been more commonly adopted in university science departments.

For more information on open access issues and opportunities for UO faculty members to receive financial support for publishing in open access journals, visit the library's Scholarly Communications web page on the topic at <http://libweb.uoregon.edu/scis/sc/oaps.html>, or contact JQ Johnson, director of scholarly communications, at [jqj@uoregon.edu](mailto:jqj@uoregon.edu), 346-1746.

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