

Tuesday, September 20, 2016, 3:00-5:00pm, Goodwin Forum (NHE 102)

Chair Julie Alderson called the meeting to order at 3:02pm on Tuesday, September 20, 2016 Goodwin Forum, Nelson Hall East, Room 102; a quorum was present.

### **Members Present**

Abel, Alderson, Avitia, Blake, Camann, Creadon, Dunk, Flynn, Frye, Guillen, Karadjova, Le, Maguire, K. Malloy, Meyer, Oliver, Ortega, Pence, Platt, Rizzardi, Sadeghzadeh, Thobaben, Virnoche, Wilson, Wrenn

### **Members Absent**

Enyedi, Eschker, Lopes, N. Malloy, O'Neill, Rossbacher

### **Guests**

Stephanie Burkhalter, Alex Hwu, Cyril Oberlander, Noah Zerbe

### **Announcement of Proxies**

Creadon for Eschker, K. Malloy for N. Malloy, Maguire for O'Neill

### **Approval of and Adoption of Agenda**

M/S (Thobaben/Abell) to add to the agenda as a discussion item the following item:

3:45pm Time Certain Faculty Session to discuss President Rossbacher's September 13, 2016 response to the University Senate Resolution 02-16/17-Abell/Thobaben and Chancellor Timothy White's September 19, 2016 response to the Intellectual Property Policy discussion with him at the September 16, 2016 ASCSU Plenary

Motion to add the agenda item **failed**

Ayes: Thobaben, Abell, Dunk, Wilson, O'Neill, Maguire, Avitia, Sadeghzadeh

Nays: Blake, Le, Ortega, Meyer, Pence, Virnoche, Wrenn, Creadon, Flynn, Eschker, Oliver, Rizzardi, K. Malloy, N. Malloy, Frye

Abstentions: Karadjova

M/S (Thobaben/Abell) to add to the agenda as a discussion item the following item:

Canvas and the uncertainty of the protection of Intellectual Property, tabled from the September 6, 2016 Senate meeting

Motion to approve the agenda with an amendment adding the agenda item listed above **passed**

Ayes: Thobaben, Abell, Blake, Dunk, Ortega, Meyer, Pence, Virnoche, Wrenn, Creadon, Wilson, Eschker, Oliver, K. Malloy, N. Malloy, Avitia, Frye

Nays: O'Neill, Maguire, Rizzardi, Sadeghzadeh

Abstentions: Le, Flynn, Karadjova

M/S (Abell/Dunk) to add the following item to the agenda for discussion:

Open discussion of President Rossbacher's September 13, 2016 response to the University Senate Resolution 02-16/17-Abell/Thobaben and Chancellor Timothy White's September 19, 2016 response to the Intellectual Property Policy discussion with him at the September 16, 2016 ASCSU Plenary

Motion to add the agenda item listed above **passed**

Ayes: Thobaben, Abell, Blake, Dunk, Le, Ortega, Meyer, Pence, Wrenn, Creadon, Wilson, O'Neill, Maguire, Eschker, Oliver, Karadjova, Rizzardi, K. Malloy, N. Malloy, Avitia, Frye, Sadeghzadeh

Nays: Virnoche

Abstentions: Flynn

**Approval of Minutes from the September 6, 2016 Meeting**

M/S (Thobaben/Virnoche) to approve the Minutes of the September 6, 2016 meeting with the following amendments to be included following the addition to the Chair's report:

Senator Thobaben moved that the HSU University Senate recommends that the General Faculty President/University Senate Chair and CFA President send a letter to the faculty informing them of the uncertainty of the protection of their Intellectual Property, encouraging them not to post any original works or fair use copyrighted material to the Canvas servers until related IP issues are resolved.

The following error will also be corrected:

The Quantitative Reasoning Task Force Report which was submitted as an attachment to the ASCSU's 9/6 written report was listed in error as an attachment to FAC's 9/6 written report.

Motion carried unanimously

Ayes: Thobaben, Abell, Blake, Dunk, Le, Ortega, Platt, Meyer, Pence, Virnoche, Wrenn, Creadon, Wilson, Flynn, O'Neill, Maguire, Eschker, Oliver, Karadjova, Rizzardi, K. Malloy, N. Malloy, Avitia, Frye, Sadeghzadeh

### **Reports, Announcements and Communications of the Chair**

Written Report Attached

Chair Alderson added that in respect to staff members attending Senate meetings, and the labor laws concerning their eight hour workday, she would be strictly adhering to ending Senate meetings by 5:00pm.

### **Reports of Standing Committees, Statewide Senators, and Ex-officio Members**

#### **Academic Policies:**

- Written Report Attached
- APC Chair further noted that the committee will be examining and addressing a projected eLearning policy

#### **Appointments and Elections:**

- Written Report Attached
- Senate Chair noted that there are still two faculty vacancies – one on the ICC's subcommittee on Academic Master Planning (AMP) and one on the URPC

#### **Constitution and Bylaws:**

- Written Report Attached

#### **Faculty Affairs:**

- Written Report Attached
- FAC Chair noted that the committee is very much looking forward to President Rossbacher meeting with the committee on October 12 to discuss the possibility of developing guidelines on the rights and protections governing Intellectual Property at HSU

#### **Integrated Curriculum Committee:**

- The ICC's September 13<sup>th</sup> workshop with guest presenter Lisa Castellino was a success

#### **University Policies:**

- Written Report Attached

**University Resources and Planning:**

- Written Report Attached

**Academic Senate CSU Statewide Senate:**

- Written Report Attached

**Associated Students:**

- AS is currently working on a definition for shared governance
- AS President explained the process by which students are appointed to serve on campus committees
- AS remains committed to addressing student vacancies on committees

**Labor Council:**

- Representatives met with President Rossbacher to discuss campus anti-bullying efforts
- Progress is underway to identify members within CSUEU facing issues related to inequitable pay

**Student Affairs:**

Vice President Blake shared the following news and information:

- She attended two outstanding events offered by the Equity Alliance of the North Coast. The first event was a public talk, Advancing Equity through a Racial Lens: Putting Theory in to Action; the second event was the first of a six part series of workshops geared toward advancing racial equity and inclusiveness.
- She is looking forward to attending and discussing goals for improving graduation rates at the Graduation Initiative 2025 in Long Beach.
- Vice President Blake shared that she is very inspired by the dedication and enthusiasm from the students who are currently involved in Associated Student Government and asked that everyone encourage more students to get involved and apply for appointments to serve on campus committees.

**Consent Calendar from the Integrated Curriculum Committee (ICC)**

The attached ICC Consent Calendar was approved.

**It was noted that there were no guests signed-up to speak during the Open Forum for the Campus Community**

**Resolution to Amend the Bylaws of the University Senate to Clarify Quorum Requirements for**

**Standing and Ad Hoc Committees (01-16/17-CBC – September 20, 2016) First Reading**

M/S (Abell/Ortega) to move the resolution

CBC Chair Abell explained that the current quorum for committees requires a majority of members to be in attendance during meetings without taking vacancies into account thus placing committees in danger of not meeting quorum requirements. The resolution which proposes to exclude vacancies from quorum calculations and allow proxies to count toward quorum requirements will allow committees to conduct business. Chair Abell notes that due to the makeup of committee membership for Faculty Affairs, an exception from the proposed amendments has been included in the resolution.

After a brief discussion, it was decided that the resolution will return to Senate for a second reading.

**Discussion Item: Process of Approving Resolutions**

M/S (Thobaben/Wilson) to defer the *Process of Approving Resolutions* discussion item to the next meeting

Motion passed unanimously

**Discussion Item: Tabled Motion from 9/6/16 Senate Meeting – Canvas and the Uncertainty of the Protection of Intellectual Property**

Discussion ensued regarding notification to faculty regarding the uncertain protection of their Intellectual Property if they post materials to Canvas servers before issues related to IP are resolved. The following questions were deliberated:

- At what point in time should notification to faculty be provided?
  - Should notification be limited just to the faculty involved with Canvas or to all faculty?
- Who should appropriately be providing the notification to faculty?
- What language is contained in the Master Subscription Services Agreement (MSSA) pilot contract?
  - A copy of the MSSA is attached

M/S (Abell/Thobaben) to table the discussion until the October 4 Senate meeting when more information regarding a signed contract with Canvas will be available

Motion passed unanimously

**Discussion Item: President Rossbacher's September 13, 2016 Response to the University**

**Senate Regarding Resolution 02-16/17-Abell/Thobaben and Chancellor White's September 19, 2016 Response to the Intellectual Property Policy Discussion with him at the September 16, 2016 ASCSU Plenary**

Conversation pertaining to the following points ensued:

- The impression of some is that the IP matter has morphed into an issue of shared governance
- The sense of uncertainty among some as to whether the 2009 IP policy is and will remain in effect until a new policy is signed
- That further clarification on questions relating to IP may be necessary before President Rossbacher can successfully meet with FAC
- The skepticism and concern of finding a way to effectively move forward with a tangible solution to the IP issue
- The possibility, as stated in the CBA, of approving a set of campus guidelines which would define extraordinary support
- It was noted that the Senate fulfilled their obligation to collectively make a recommendation for an IP Policy – final approval, is not the role of Senate

Chair Alderson moved to adjourn as it was 5:00pm

---

**Meeting adjourned at 5:01pm**

Senators,

I received the President's response to the "Sense of the Senate" resolution approved on 6 September 2016 (02-16/17-Abell/Thobaben, *Resolution Demanding President Rossbacher Approve the University Senate Recommended Intellectual Property Policy for HSU*). Please see that letter attached.

SenEx discussed the IP issue and the President's letter at our 13 September meeting. We've charged Faculty Affairs with figuring out how to move forward on campus with the issue. The President will be attending FAC's October 12th meeting to discuss.

In the meantime, the issue was a major concern at last week's ASCSU meeting (See Mary Ann and Erick's written report), and my query to the other Senate Chairs regarding IP issues on their campuses has inspired a movement to discuss and possibly send forward a resolution on the issue from that body at our October 20th meeting. (See attached, my email and the responses I have received thus far.)

# HUMBOLDT STATE UNIVERSITY

Lisa A. Rossbacher, Ph.D. President

13 September 2016

To: Julie Alderson  
Chair, University Senate and Professor, Department of Art

Cc: Alex Enyedi, Provost and Vice President for Academic Affairs

From: Lisa A. Rossbacher **LAR**  
President

Re: Sense of the Senate resolution

I am responding to the “Sense of the Senate” resolution that was approved by the University Senate on 6 September 2016.

Since that meeting, I have consulted with the California State University’s Office of General Counsel, and I have two follow-up items.

One is to reiterate that I cannot sign the proposed policy that was recommended by the University Senate last spring. All campuses have been asked to refrain from revising or enacting new policies regarding intellectual property while a system-wide policy on this topic is developed. The system-wide policy has been drafted and is undergoing the standard review process.

The other item is to note that, despite what last week’s resolution states, HSU does have an intellectual policy at the moment. The 2009 policy that is posted on the HSU website remains in effect until it is superseded.

I share the Senate’s concern about protecting the rights of all involved parties regarding intellectual property, and I join you in looking forward to the system-wide resolution of this question.



Dear Senate Chair colleagues,

Greetings from Humboldt! I've been tasked by our Senate to reach out and gather information re: the status of intellectual property policies at the other CSU campuses. Our body passed a new IP policy at the final Senate meeting of last year. It was sent along to our President, but she did not sign it - she was instructed not to by the CO, as she was told that a system-wide IP policy is apparently being crafted as we speak.

Members of our Senate are concerned that our IP policy is woefully out of date - in fact many argue that it's actually expired and that we're currently operating without an IP policy in place. In our conversation on the Senate floor, the President indicated that it might help her make a case to the CO that she should be allowed to OK our new policy as at least "interim" if we are an outlier in this regard - if other campuses have their IP rights protected and that we are unusual in having, at best, a terribly ineffective policy, and at worst, no policy at all.

I would love to hear from you all about the status of IP policies on your respective campuses. Do your faculty feel as if their IP is protected? Any information would be greatly appreciated.

Thanks!

Julie

Julia Alderson  
Chair, University Senate  
Associate Professor of Art History  
Humboldt State University  
1 Harpst St  
Arcata, CA 95521  
(707) 826-3421  
julia.alderson@humboldt.edu

Hi Julia — Ours was updated in 2011. I'm no expert in the area, but our senate committees were pretty careful with drafting this, so I hope it's in good shape. [https://www.sonoma.edu/UAffairs/policies/intellectual\\_property.htm](https://www.sonoma.edu/UAffairs/policies/intellectual_property.htm)

Ben

--

Ben Ford  
Mathematics and Statistics  
Sonoma State University  
Chair of the Faculty 2016-17

Hi Julia,

Our current IP policy, from 2007 (ugh), is online here: <https://www.csustan.edu/sites/default/files/FacultyHandbook/Publications/Polices/Fac/17-AS-07-FAC--Intell.%20Prop.%20Rights%20Policy-final.rtf.pdf>

While it's a decent policy, the issue we will soon be addressing is in Section III—specifically that, with the new four-year graduation rate initiative(s), there is likely going to be a fair amount of extra pay to compensate faculty for development of additional online courses to alleviate schedule stress (etc.). As that pay is outside of normal compensation and work duties, the faculty member does not retain full ownership of that IP, and must negotiate rights with the university. It is also unclear what happens to those IP rights if no agreement between the content creator and the university is signed before work commences. So we have some revision to do here, too.

Hope this helps.

all best,  
Stuart

**Dr. Stuart Sims**

Chair, Department of Music  
Speaker of the Faculty & Chair, Academic Senate

**CALIFORNIA STATE UNIVERSITY, STANISLAUS**  
ssims@csustan.edu - [www.csustan.edu/music](http://www.csustan.edu/music)

Hi Julia,

Here's the link to the SJSU policy on the books since 1998. Didn't know the the CO was working on a system-wide document.

<http://www.sjsu.edu/senate/docs/F98-3.pdf>

Michael

Michael L. Kimbarow, Ph.D., BC-ANCDS F-ASHA  
Chair, Academic Senate  
Professor, Dept. of Communicative Disorders and Sciences  
Lurie College of Education  
San Jose State University  
One Washington Square  
San Jose, CA 95192-0079  
michael.kimbarow@sjsu.edu  
408-924-2442 Senate Office  
408-924-3691 Dept.  
408-924-3706 Fax

At SDSU, we cover IP issues in several areas of our policy file:

[https://newscenter.sdsu.edu/universitysenate/files/06941-FNL2policy\\_file\\_accessible\\_8\\_11\\_16\\_\(1\).pdf](https://newscenter.sdsu.edu/universitysenate/files/06941-FNL2policy_file_accessible_8_11_16_(1).pdf)

- Intellectual Property / University Policies: Academics -- p. 57 (very brief)
- Copyrights, Trademarks, and Trade Secrets / University Policies: Codes -- p. 79 (quite lengthy)
- Patents / University Policies: Codes -- p. 95 (3 or 4 pages)
- Copyrights and Patents Committee / University Policies: Committees and Councils -- p. 112 (very brief)

Hope this helps!

Marcie Bober-Michel, PhD

Hi Julia,

Here is Pomona's IP policy, last revised 2008:

[http://www.cpp.edu/~policies/university/administrative/intellectual\\_property.shtml](http://www.cpp.edu/~policies/university/administrative/intellectual_property.shtml) . I am not aware of any concerns with our policy, but we just hired a new Associate Vice President for Research, Innovation, and Economic Development, so it might be time to reexamine it.

Best regards,

Julie

Julie Shen  
Acting Chair, Academic Senate  
Head of Reference, University Library  
Business & Computer Science Librarian  
Cal Poly Pomona University  
[jshen@cpp.edu](mailto:jshen@cpp.edu)  
(909) 869-4330  
<http://www.cpp.edu/~jshen>

Hi Julia,

Fresno's policy is at

<http://www.fresnostate.edu/academics/facultyaffairs/documents/apm/540.pdf>

It is a relatively newly revised policy, and to date I have not heard any concerns or complaints about it.

Kevin

Kevin J. Macy-Ayotte, Ph.D.  
Chair, Academic Senate  
Professor, Department of Communication  
California State University, Fresno  
5201 N. Maple Avenue, M/S SA 46  
Fresno, CA 93740-8027  
Phone: 559-278-4086  
Fax: 559-278-4113

Here is East Bay's policy, approved in 2015:

<http://www.csueastbay.edu/faculty/senate/files/docs/policies/12-13-new-policy-page/intellectual-prop-policy-14-15-fac-11.pdf>

Mark Karplus

Hi All,

At SFSU, we have two policies regarding IP.

<http://senate.sfsu.edu/content/intellectual-property-policy-and-procedures>

<http://senate.sfsu.edu/content/scope>

Hope this is of use.

Best, Troi  
Troi Carleton, SF State University Academic Senate Chair  
Professor of Linguistics and Linguistics Program Coordinator  
Department of English  
San Francisco State University  
San Francisco, CA 94132

G'day,

Sacramento State has a rather old policy on copyright and patent, which you can find here:

<http://www.csus.edu/umannual/acad/umc02750.htm>

Section 11 of our e-learning policy, which is more recent, refers to this policy, as well as E.O. 999:

<http://www.csus.edu/umannual/acadaff/fsd00010.htm>

Regards

Julian

---

Julian Heather  
Chair, Faculty Senate  
Professor, English Department  
CSU Sacramento  
(916) 278-5394

Hi Julie,

Here is a link to our 2012 IP  
policy: [http://www.csusm.edu/policies/active/documents/Intellectual\\_Policy.html](http://www.csusm.edu/policies/active/documents/Intellectual_Policy.html)

Generally speaking, as far as I can tell, our faculty seem content with the policy, and we do feel that our IP is protected under it. I hope your campus discussion is fruitful.

Best,

Michael McDuffie, Ph.D.  
Associate Professor of Philosophy  
Chair, Academic Senate  
California State University San Marcos

Hi Julia et al.,

Here is the IP policy at San Bernardino:

[http://senate.csusb.edu/fam/Policy/\(FSD00-11.R1\)Intellectual\\_Property.pdf](http://senate.csusb.edu/fam/Policy/(FSD00-11.R1)Intellectual_Property.pdf)

It was last revised in 2013. I haven't heard of any faculty complaints about the policy, but one faculty member here did file a statutory grievance about an IP issue a couple of years ago. The faculty hearing committee found in the faculty member's favor, but then the President rejected the committee's recommendation.

Karen

Karen Kolehmainen  
Professor of Physics  
Faculty Senate Chair  
California State University, San Bernardino  
5500 University Parkway  
San Bernardino, CA 92404  
(909)-537-5401  
karen@csusb.edu

Julia,

Great to hear from you! I hope your year is off to a good start.

We started discussing a new IP policy last year, but tabled the topic when we were told that the CO was already working on it. Many questions have arisen, and there is an immediate need for clarity. We have not had a clear answer on how long the CO might take to handle its work.

Our campus has an "Intellectual Property Review Committee" listed in our handbook, but I can find no evidence that they have met. Our handbook mentions intellectual property in passing, but does not contain an appropriate policy. When we developed our distributed learning policy in 2013, it was addressed by the following statement:

*Ownership of all intellectual property shall be governed by the Collective Bargaining Agreement (Article 39) and the "Academic Senate of the CSU Policy on Intellectual Property, Fair Use, and the Unbundling of Ownership Rights". It is assumed that faculty members have ownership of their work products unless a prior written agreement exists.*

Here is the link to the 2003 ASCSU policy that our statement refers to:

[http://www.calstate.edu/AcadSen/Records/reports/Intellectual\\_Prop\\_Final.pdf](http://www.calstate.edu/AcadSen/Records/reports/Intellectual_Prop_Final.pdf)

The following passage is from a 2012 white paper on online education (ASCSU subcommittee)

([https://www.calstate.edu/AcadSen/Records/Reports/documents/Online\\_Education\\_White\\_Paper.pdf](https://www.calstate.edu/AcadSen/Records/Reports/documents/Online_Education_White_Paper.pdf)):

*Ten campus policies (BA, EB, FU, HU, SA, SB, SD, SJ, SLO, and ST) reference intellectual property issues. Representative statements are contained in the policies of EB and SA. EB's policy states "Faculty shall have the same control and ownership of the substantive and intellectual content of their online instruction course-related materials that faculty have with respect to classes offered in classroom format, at the time of production, at any time during their use, and thereafter, in accordance with the provisions of the CSU/CFA Collective Bargaining Agreement and CSU and CSUEB policies." SA's policy states "Ownership of materials, faculty compensation, copyright issues, and the utilization of revenue derived from the creation and production of software, telecourses, or other media products shall be agreed upon by the faculty and the University in accordance with the University's Copyright and Patent Policy and guidelines." HU's policy gives details as to how revenues will be allocated. It states "The University will not sell, rent, or otherwise knowingly permit another organization to use a distance learning class without a written agreement with the originator to that effect. In the case of an agreement to exploit the course through outside sales, the proceeds of a course created at HSU without extraordinary support will belong solely to the originator. For courses that received*

*extraordinary support the net profits will be distributed as follows until such time as the institution is fully compensated for its investment. After that, the proceeds will be the property of the originator.*

*i. 50% to the originator of the course*

*ii. 25% to the originator's college, department, or University division*

*iii. 25% to the university."*

*Additional faculty rights are delineated in several policies. The DH policy states that each instructor is free to choose any approved mode of instruction for a course and "no institution or person shall sell, retransmit, modify, or otherwise reuse course related materials produced by a member of the faculty for any purpose without the written consent of the faculty member." The right to teach the class is spelled out in the HU policy, which states "The originator of the distance learning course material will have a 'right of first refusal' to teach the DL course provided that the instructor is still employed by the University in the department where the course was developed. If the instructor chooses not to teach the course, the department will be free to choose another instructor to teach the course. This condition exists as long as the course remains substantially the intellectual work of the originator as it is delivered."*

Deborah Boschini, EdD, MSN, RN

Associate Professor, Department of Nursing

Chair, Academic Senate

California State University, Bakersfield

Dear colleagues-

We do not have an IP policy currently in place. We have a patent policy passed in 1976 so more than out of date. We have drafted an IP policy but confronted the same stone wall that you have because the CO insists there will be a system-wide policy. So far as I know we have been told this for the last four years. I would very much favor a resolution by the system chairs on this issue at our October meeting and would be happy to draft one and send it out in advance.

Best

Emily

**Emily Miller Bonney**

Professor Liberal Studies  
Chair CSUF Academic Senate  
PLN 120  
(657)278-7421

Dear colleagues,

Greetings from Long Beach! It seems we're in the same position as Julia at Humboldt. We passed the attached IP policy back in March, but our President has not signed it. She didn't specifically say that the Chancellor had instructed her either way, but she said she was taking the policy under advisement as the Chancellor's office works on their policy. We were disappointed, if not particularly surprised, since our policy is friendly to faculty. Some of the issues we dealt with were:

- How do we balance the right for faculty to teach hybrid/online classes they have developed with the university's interest to offer classes regularly?
- How do we give faculty an incentive to develop hybrid/online classes but also give the university and students a way to benefit from those classes?
- What are "traditional academic copyrightable works"—specifically, how do lecture notes fit in, as what do online assignments count, are Standard Course Outlines and/or syllabi the intellectual property of faculty or of the university?
- Where are the distinctions between "university resources customarily provided," "extraordinary support," and "work for hire/commissioned work"? At CSULB, we had massive discussions around art (is the intellectual property in a work of art produced in the context of a class belong to the university or to the artist?) and around our College of Continuing and



Professional Education (i.e., open university), which has been pushing conversion to hybrid and online classes with \$5,000 stipends—which include (usually) giving CCPE the intellectual property for the class.

We spent something like two years working on the policy—with various task forces, working groups, expert consultations, and discussions on the floor—and ultimately (I think) produced a good policy. Too bad it's not in effect (yet)!

BTW, has anybody seen the draft supposedly produced by the Chancellor's office and circulated among University presidents in the system???

Cheers,

Norbert.

---

Norbert Schürer  
English Department, CSULB  
1250 Bellflower Blvd.  
Long Beach, CA 90814

## INTELLECTUAL PROPERTY

(This policy supersedes PS 07-05, and PS 03-11)

This policy was recommended by the Academic Senate on \_\_\_\_\_ and approved by the president on \_\_\_\_\_.

### 1.0 OBJECTIVES

- 1.1 This policy articulates the allocation of intellectual property rights and usage rights at the California State University, Long Beach (University) so as to optimally support the mutual interests of the University, faculty, staff and students.
- 1.2 This policy, as applied to University faculty is intended to be consistent with the provisions of Article 39 *Intellectual Property Rights* in the collective bargaining agreement between the California Faculty Association and the California State University effective September 18, 2012-June 30, 2014 and subsequent mutually agreed revisions thereto (CBA). Any provisions that are found to be inconsistent shall be superseded by CBA Article 39 *Intellectual Property Rights*.
- 1.3 This policy recognizes the intellectual property interests of creators, the University, and external sponsors that support instruction, research, scholarly and creative activity.
- 1.4 The University makes no claim of ownership or use rights, or obligation between the university and creator(s), regarding any intellectual property except:
  - Course catalog descriptions and standard course outlines submitted and approved via the university curriculum process;
  - Intellectual property created with “extraordinary support” as defined in section 2.5, and only when, in advance of the creation of the materials, the creator(s) and the university have entered into a written contractual agreement detailing the specifics of the materials under contract, the terms of ownership and use, and the scope of extraordinary support;
  - Intellectual property created in a “work for hire” or “commissioned work” situation as defined in section 2.6, and only when, in advance of the creation of the materials, the creator(s) and the university have entered into a written contractual agreement detailing the specifics of the materials under contract, the terms of ownership and use, and the terms of the commission;
  - Intellectual property created under the terms of other contractual agreements only when, in advance of the creation of the materials, the creator(s) and the university have entered into a written contractual agreement detailing the specifics of the materials under contract, the terms of ownership and use, and the terms of the commission;

- Intellectual property created as a specific requirement of employment or as an assigned University duty that may be specified, for example, in a written job description or an employment agreement;

## 2.0 DEFINITIONS

- 2.1 Creator: "Creator" means an individual, or group of individuals, who makes, conceives, reduces to practice, authors, or otherwise makes a substantive intellectual contribution to the creation of intellectual property. "Creator" includes the definition of "inventor" used in U.S. patent law for patentable inventions and the definition of "author" used in the U.S. Copyright Act for copy written works of authorship.
- 2.2 Intellectual Property: "Intellectual Property" means intangible rights protecting the products of human intelligence and creation, such as copyrightable works, patented inventions, trademarks, and trade secrets. It includes Traditional Academic Copyrightable Works (see Section 2.3 below), inventions, discoveries, registered or unregistered copyrighted works, registered or unregistered trademarks, service marks, trade secrets, mask works, and plant variety protection certificates.

Intellectual Property also includes the physical embodiments of intellectual effort (for example: models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, other compositions of matter, plants, and records of research and experimental results).

Intellectual Property is not restricted to inventions that are first conceived, but can also apply to existing inventions or concepts that are first actually reduced to practice, and other creative or artistic works that have value.

Intellectual Property includes both tangible work and work created in the electronic and internet environment.

- 2.3 Traditional Academic Copyrightable Works: "Traditional Academic Copyrightable Works" means a subset of copyrightable works created independently and at the Creator's initiative for academic purposes. Examples include, but are not limited to, lecture notes and materials, course syllabi, instructional texts and manuscripts, software, or plans, patterns, and works of art or design or educational software (also known as courseware or lesson ware) that the Creators may design for courses taught in the CSU, and specifically for students who matriculate at CSULB.
- 2.4 University Resources Customarily Provided: When determining ownership and license rights in copyrightable works, the term "University Resources Customarily Provided" includes office space, library facilities, student and staff support, ordinary access to laboratories, media studios, computers and networks, and salary. Additional forms shall include subventions provided by the University to some faculty members, such as sabbatical and reassigned time. Customarily provided resources also includes facilities and resources used in the creation of works of art or design such as studios, performance spaces and equipment.

- 2.5 Extraordinary Support: No support shall be considered extraordinary a priori. Extraordinary support must be established through the contractual process outlined in section 1.4.
- 2.6 Work for Hire or Commissioned Work: “Work for Hire” or “Commissioned Work” means work performed outside the normal scope of the Creator's University employment or for which there is additional remuneration, including without limitation stipends, incentives, and other remuneration to create course materials and other Intellectual Property outside the normal scope of work.

### **3.0 OWNERSHIP OF INTELLECTUAL PROPERTY IN COPYRIGHTABLE WORKS**

#### **3.1 Creator Ownership**

##### **3.1.1 Traditional Academic Copyrightable Works**

All intellectual property rights and usage rights in Traditional Academic Copyrightable Works are owned by the Creator(s) unless otherwise specified in an agreement with the University.

The University shall be entitled to a royalty-free, perpetual, non-exclusive, and non-transferable license to use Creator-owned Traditional Academic Copyrightable Works, limited only to course catalog descriptions and standard course outlines submitted and approved via the university curriculum process, for the purpose of continuing to teach the course of instruction for which the works were prepared, with the non-exclusive right to revise and update them as required for this purpose.

The university shall make no claim of ownership or financial interest in course materials prepared under the direction of a faculty member unless the university and faculty member have so agreed in a separate, voluntary agreement. Payment of a financial stipend, use of university resources, or reassigned time to develop course materials shall not be construed by the university as creating a basis for a claim of institutional ownership of such materials, nor shall it be assumed that a work-for-hire relationship exists between the university and the faculty member with regard to the preparation of any such materials.

In the event that the Creator or the University wishes to commercialize Traditional Academic Copyrightable Works, revenue distribution shall be determined by a negotiated written agreement and subject to review by the University Intellectual Property Committee (See Section 4.2 below).

Faculty members who are no longer employed as such by the University retain their intellectual property and usage rights.

##### **3.1.2 Copyrightable Works Created with Extraordinary Support**

Creators of copyrightable works created with use of University Extraordinary Support shall own intellectual property and use rights for that work. The University shall be entitled to no rights to Copyrightable Works Created with Extraordinary Support beyond

those agreed upon in a separate voluntary agreement between the Creator(s) and the university. This includes any creative and/or scholarly work created during assigned-time and sabbaticals.

### 3.2 University Ownership

The University shall own the Intellectual Property rights to copyrightable works as follows:

- 3.2.1 Works created pursuant to the terms of a written agreement between the University and the Creator(s) only when the agreement specifically grants ownership to the University.
- 3.2.2 Work for Hire created as a specific requirement of employment or as an assigned University duty that may be specified, for example, in a written job description or an employment agreement. Such specification may define the full scope or content of the Creator's University employment duties comprehensively or may be limited to terms applicable to a single copyrightable work. Any future creative work or course content that the University may claim as its own must be negotiated and specified in the employment contract.
- 3.2.3 Commissioned Work prepared under an agreement between the University and the Creator when:
  - 3.2.3.1 The creator is not a University employee, or
  - 3.2.3.2 The creator is a University employee but the work to be performed falls outside the normal scope of the Creator's University employment or for which there is additional remuneration (see Section 2.6. above), or
  - 3.2.3.3 The creator has specified in an agreement that the attendant Intellectual Property rights be assigned to the University.
  - 3.2.3.4 In all cases of paragraph 3.2, such Commissioned Work shall be negotiated between the University and the Creator(s), and documented in a written agreement.
- 3.2.4 The University reserve the right to pursue multiple forms of legal protection of its Intellectual Property concomitantly if available. (e.g. computer software may be protected by copyright and patent).
- 3.2.5 University-owned copyrightable work shall be protected by copyright notice in the name of the Board of Trustees of the California State University. Such copyright notice shall be composed and affixed in accordance with the United States Copyright Law. Registration of the copyright for University-owned works shall be in accordance with the operational guidelines and procedures established by the Provost or designee. The University may also decide to release a work to the public domain and if so, should so indicate.

3.2.6 Creators of Intellectual Property, regardless of whether patented or not, which produce a taxable income, must repay the State of California for any expenses incurred by the University, including but not limited to expenses incurred in support of the research leading to the creation of the Intellectual Property, to obtain patent or similar protection, or in furtherance of production, marketing, or sales of products incorporating the Intellectual Property.

3.3 Student Copyrightable Works

Unless subject to the provisions of Section 2.4 above or provided otherwise by written agreement, copyrightable works created by a student as part of the requirements for a University degree program are the property of the student. Unless otherwise agreed upon, research records for graduate theses or dissertations are the property of the University, but the student Creator may retain a copy of the work.

3.4 Intellectual Property subject to legal protection other than by Copyright

Except as otherwise specified in this policy or by the University in a written agreement, Intellectual property subject to legal protection other than by copyright (ex: patents, trademarks) shall belong to the University if made: (1) by a University employee as a result of the employee's duties, or (2) through the use of University resources such as facilities, equipment, or funds under the control of or administered by the University or its research foundation. The extent of University ownership in the property shall be in proportion to the value of the resources used consistent with applicable law.

**4.0 PROCEDURE**

4.1 Administrative Responsibility

The President has ultimate authority for the stewardship of Intellectual Property developed at the University. The Provost or designee, in consultation with the University Intellectual Property Committee, shall administer this policy. This includes, but is not limited to, determination of ownership, assignment, protection, licensing, marketing, maintenance of records, oversight of allocation of any net revenue, approval of exceptions, and resolution of disputes.

Detailed operational procedures for the administration of this policy shall be prepared by the Associate Vice President for Office of Research and Sponsored Programs.

4.2 University Intellectual Property Committee

The University Intellectual Property Committee shall make recommendations to the Provost regarding procedures for the administration of this policy and such other matters as the Provost shall determine.

4.2.1 The charge of this committee may include but is not limited to recommendations to the Provost as to:

- Interpretation, implementation and proposal of changes to this policy;
- Review and evaluation of disclosures submitted under section 4.4 of this policy; and, for each disclosure, make a recommendation to the Provost regarding the University's ownership interest in the Intellectual Property based on the Creator's use of University resources;
- Where appropriate, regarding waiver of University ownership;
- Where appropriate, regarding whether patent or copyright protection should be sought by the University;
- The allocation of net revenue, if any, from Intellectual Property;
- Upon request by the Provost, review and comment on material transfer agreements;
- Upon request by the Provost, investigate alleged conflicts of interest and disputes between Creators and submit findings to the Provost; and
- requests for exceptions to this policy.

4.2.2 Committee Membership shall consist of the following:

- Associate Vice President, Office of Research and Sponsored Programs, or designee
- Dean of the Library or designee (ex officio, non-voting);
- Director of Instructional Technology or designee (ex officio, non-voting); and,
- Six tenured faculty members elected by the Academic Senate, serving staggered two-year terms.
- One lecturer representative
- One student representative

4.3 Questions Related to University Ownership

In the event there is a question as to whether the University has a valid ownership interest in Intellectual Property, the Creator(s) shall disclose such Intellectual Property in writing to the University in accordance with Section 4.4 below. Such disclosure is without prejudice to the Creator's ownership claim. The University will provide the Creator with a statement as to the University's ownership interest.

4.4 Disclosure

The Creator of Intellectual Property shall promptly disclose to the Provost and the University Intellectual Property Committee the existence and nature of Intellectual Property when:

- 4.4.1 The Intellectual Property was developed using University resources or funded or developed wholly, or in part, by the Creator during the course of normal University duties and activities;
- 4.4.2 The University has an ownership interest under the provisions of this policy;
- 4.4.3 The disclosure is required by law; or
- 4.4.4 The Intellectual Property was created as a result of federal government or external sponsor funded research.

The disclosure shall consist of a full and complete description of the discovery or creation and identify all persons participating in the creation of the property. The Creator(s) shall furnish such additional information and execute such documents from time to time as may be reasonably requested.

#### 4.5 Statement by Creators

The Creators of University-owned Intellectual Property may be required to state that, to the best of their knowledge, the Intellectual Property does not infringe on any existing patent, copyright or other legal rights of third parties; that, if the work is not the original expression or creation of the Creators, the necessary permission for use has been obtained from the owner; and that the work contains no libelous material nor material that invades the privacy of others.

#### 4.6 University Review

Upon receipt of a disclosure and statement by Creator(s), the Provost, in consultation with the Associate Vice President for Research and Sponsored Programs and with due consideration of the recommendations provided by the University Intellectual Property Committee, will make a determination as to the Creator(s)' and the University's interest in the Intellectual Property.

The Provost will inform principal Creators of material decisions regarding Intellectual Property which they have disclosed.

#### 4.7 University Rights

The University may enter into agreements to license rights to use its Intellectual Property on an exclusive or non-exclusive basis, may release its rights to the sponsor of the research under which it was created (if contractually obligated to do so), may release it to the Creator(s) if permitted by law and current University policy, or may take such other actions considered to be in the University's best interest. The licensee must demonstrate technical and business capability to commercialize the Intellectual Property. The license may include clear performance milestones with a provision for recapture of Intellectual Property if milestones are not achieved. The licensee may be required to assume the cost of statutory protection of the Intellectual Property.

The University is not obligated to protect the Intellectual Property rights through acts such as filing for patent protection, registering the copyright, or securing plant variety certification, but may do so at its discretion. All agreements regarding Intellectual Property in which the University owns an interest must be executed by the Provost or designee

#### 4.8 University's Acceptance of Intellectual Property

The University may accept assignment of Intellectual Property from other parties provided that such action is determined to be in the best interest of CSU. Intellectual Property so accepted shall be administered in a manner consistent with the administration of other University-owned Intellectual Property.



#### 4.9 University Abandonment of Intellectual Property

Should the University decide to abandon development or protection of University-owned Intellectual Property, the University may assign its rights to the Creator(s), subject to the rights of sponsors and to the retention by the University of the right to use the Intellectual Property for University and educational purposes on a perpetual, royalty-free, non-exclusive basis. The University may retain more than the minimum license rights, and the assignment or license may be subject to additional terms and conditions, such as revenue sharing with the University or reimbursement of the costs of statutory protection, when justified by the circumstances of development.

### 5.0 **EXTERNAL SPONSOR FUNDING AGENCIES**

#### 5.1 U.S. Government Funded Grants and Contracts

All Federal grants and contracts require disclosure of inventions and discoveries to the funding agency and convey a restricted right to use the invention or discovery to the U.S. government. The University must have written agreements with persons performing the research, requiring prompt disclosure of inventions and assignment of rights to any disclosed invention conceived or first actually reduced to practice in the performance of work funded in whole or in part by the federal government. To assure the University's ability to comply with obligations arising under federal laws or in other external sponsor agreements imposed by state, and other public grant and contract funding sponsors, University employees must, as a condition of funding, agree to assign inventions to the University or to the funding sponsor in conformance with the sponsor's policy and execute documents necessary to establish the federal government's or other sponsor's rights.

#### 5.2 Sponsored Research Agreement

5.2.1 Unless otherwise specified in the written sponsored research grant or agreement, the sponsored research agreement shall provide that all Intellectual Property developed as a result of the sponsored research shall belong to the University. The University may determine, on a case-by-case basis and only if allowed by law that it is in the University's best interest to assign ownership of resulting Intellectual Property to the sponsor when circumstances warrant such action.

5.2.2 In the event that the sponsor agrees to University ownership of Intellectual Property resulting from the sponsored research, the University may grant to sponsor an option to license the resulting Intellectual Property on terms to be negotiated, with the option to be exercised by the sponsor within a specified period following the disclosure to sponsor of the Intellectual Property. The specific terms of licenses and rights to commercial development shall be negotiated between the sponsor and the University at the time the option is executed by the sponsor and shall depend on the nature of the Intellectual Property and its application, the relative contributions of the University and the sponsor to the work, and the conditions deemed most likely to advance the commercial development and acceptance of the Intellectual Property.

5.2.3 In all cases where exclusive licensing is appropriate, such license agreements shall be executed apart from the sponsored research agreement and shall require diligent commercial development of the Intellectual Property by the licensee.

5.3 Agreements by Sponsored Research Program Participants

University employees participating in a sponsored research project administered by the University or its research foundation and making significant use of University resources are governed by this policy unless an exception is approved in writing by the University. University employees who create intellectual property shall execute appropriate assignment or other documents required to determine ownership rights in accord with this policy.

5.4 Other External Sponsor Funded Grants and Contracts

Funding from external sponsors for research shall be used to conduct research that serves the educational mission of the University or extends the boundaries of knowledge.

In agreements between sponsors and the University covering work not of a predominately research nature in which the sponsoring firm bears a major portion of the cost, the Intellectual Property policy of the University shall apply.

**6.0 EXCEPTIONS TO POLICY**

Requests for exceptions to this policy may be made to the University Intellectual Property Committee. Recommendations for exceptions to the provisions of this policy shall be made by the University Intellectual Property Committee to the Provost or designee for final approval.

**7.0 COMPLIANCE**

Compliance with this policy is expected and works in conjunction with Senate Policy 00-07 (Policy on Faculty Professional Responsibility).

**HUMBOLDT STATE UNIVERSITY**  
**University Senate Written Reports**  
**Standing Committees, Statewide Senators and Ex-officio Members**  
**September 20, 2016 Meeting**

---

**Academic Policies Committee:**

Submitted by Mary Virnoche, APC Chair

Members:

<http://www2.humboldt.edu/senate/academic-policies-committee>

Present: Joice Chang, Mary Glenn, Michael Goodman, Michael Le, Mary Virnoche (chair)

Absent: Paul Cummings, Heather Madar, Clint Rebik

Outcomes/Decisions

1. We have rescheduled our meeting time to (some) **Tuesdays, Noon-1 in BSS 508**. Most everyone currently assigned to the committee is available at that time: Heather Madar will join us occasionally and will provide Mary with the specific dates she can meet.
2. **Early tenure:** Mary shared the information that she had with Faculty Affairs and the item is off the APC docket.
3. **Thesis embargo** policy/language: Resources: Justus Ortega & George Wrenn. On the question of whether Digital Scholar, soon to be B Press, is a publication or not, all APC members concurred that regardless of what HSU says, any journal can decide content is a publication and deny consideration of student/alumni/faculty work. Therefore, the embargo policy remains a concern. Mary Glenn said that Graduate Council would take up the issue, prepare a revised policy that allowed for embargo extension beyond the current 2 year option policy, align forms with the policy and send the revised policy to the Senate for review and approval. This item will be considered off the APC docket unless Graduate Council cannot move a resolution to the Senate by late October.
4. **ADA furniture.** The SDRC is concerned about the existence/maintenance of ADA furniture in each classroom and its availability to students who need it. The SDRC sent a request to the Vice Provost to require language in the syllabus to this effect. All committee members concurred that furniture availability is important. Most, but not all, APC committee members felt the syllabus was neither the appropriate nor the best mechanism to accomplish this goal. The APC asked Mary Glenn to investigate: 1) Is all the furniture appropriately tagged (ADA furniture and room number); 2) Who should

faculty members contact when furniture is missing and needed? Mary Glenn will likely send out an email reminding faculty to note the presence of furniture and make it available to students who need it. Mary V. asked that this type of announcement be part of the regular announcements to faculty members as we kick off each new term. We will return to discuss the outcomes of this item at a later date.

Agenda Items, September 20, 2016 Meeting

1. ADA Furniture Update (Mary Glenn)
2. Discussion: Potential APC actions/items needed to support strategic plan (Mary V.)

Please review and have available resources from:

<http://strategicplan.humboldt.edu/>

And the “BluePrint” linked to that page

Possible Future Agenda Items

1. Changes to the Common Rule (IRB) - (Mary Virnoche)
2. Thesis Embargo (If not resolved by Graduate Council)

---

## **Appointments and Elections Committee:**

Submitted by Jennifer Corgiat, AEC Chair

The Appointments and Elections Committee received nominations for the following vacant faculty positions and made the following appointments:

**Committee on Faculty RTP Criteria and Standards** - *Michelle Lane*

**GEAR Curriculum and Assessment** - *John Steele*

**International Advisory Committee** - *Paola Rodriguez Hidalgo*

**International Programs Screening Committee** - *Tyler Stumpf*

**University Naming Committee** - *Eugene Novotney*

**University Policies Committee** - *Andrea Achilli and Justus Ortega*

There are still the following vacant faculty seats:

**University Resources and Planning Committee (URPC) - 1 faculty member, 1 year term ending Spring 17 (Preference given to faculty delegates serving on the Senate)**

### **Duties:**

The Committee shall make recommendations to the Senate and, within the policy guidelines established by the Senate, advise the President and appropriate administrative officers concerning the allocation of university resources and general budget policy.

**ICC Subcommittee on Academic Master Planning (AMP) – 1 At-large faculty member, 3 year term ending Spring 19**

**Scope of Work:**

- Evaluate and respond to assigned course and degree change proposals, including GEAR (General Education and All-University Requirements) course approval requests, using specific decision making criteria (i.e. 120 unit limit; plans for appropriate course rotation; and comparative data on similar programs)
- Develop and update as needed a template for reporting out of Subcommittee to the ICC the evaluation criteria and related recommendations on a proposal Subcommittee on Academic Master Planning (AMP) Membership

**Upcoming AEC Business:**

**Spring General Faculty Elections will take place near the beginning of the Spring term.**

---

**Constitutions and Bylaws Committee:**

Submitted by Jeff Abell, CBC Chair

- I. Report from Mon August 29, 2016 Meeting
  - A. Meeting called to order at 16:00 in NHE 116 with Abell (Chair), Chang, Guzman, Watson. Shellhase was absent. Guzman was proxy for Shellhase.
  - B. Prioritized the following list of business items for the upcoming semester
    1. Develop an amendment to the Senate Constitution which specifies deadline for electorates to ratify Senate Constitution amendments.
    2. Discuss whether committees should have agenda notification and document posting deadlines. Propose bylaws amendments if necessary.
    3. Discuss whether CBC is appropriate body to interpret constitutionality of Senate actions. Propose constitution/bylaws amendments if necessary.
    4. Determine whether posting of vote tallies with election results is mandated by our governing docs. Recommend appropriate practice to AEC or Senate Office or propose bylaws amendments if necessary.
  - C. Discussed and drafted amendments to Senate Bylaws Section **10.7 Committee Operation** as they relate to quorum requirements for standing committees. CBC unanimously agreed that quorum requirements should not include vacancies, that committee members should be allowed to appoint one proxy (or a designee in the case of ex-officio members), and that at least two electorates should be represented at any meeting.
  - D. Meeting adjourned at 16:45.
- II. Report from Mon September 6, 2016 Meeting

- A. Meeting called to order at 16:10 in NHE 116 with Abell (Chair), Chang, Shellhase. Absent: Guzman, Watson. Proxies: Shellhase for Guzman; Abell for Watson.
  - B. Edited amendments to Senate Bylaws Section **10.7 Committee Operation** as they relate to quorum requirements for standing committees. This resolution comes to the Senate as a first-reading at today's meeting.
  - C. Discussed amendments to Senate Constitution Section **9.0 Amendments** which relate to a timeline for electorates to vote on ratification of Constitution amendments. CBC unanimously agreed that a timeline should specify that: 1) ratification votes must take place before the end of each semester; 2) if an electorate does not vote on ratification by the end of the semester, that electorate will have abstained; 3) Senate recommended amendments must be brought to Associated Students and Staff Council so that they will have at least two meetings to deliberate and vote to ratify; 4) a "hard" deadline be established for the Senate each semester for recommending proposed amendments. These points will be incorporated into a first reading resolution for deliberation at the next Senate meeting on October 4.
  - D. Meeting adjourned at 17:10.
- 

## Faculty Affairs Committee:

Submitted by George Wrenn, FAC Chair

The Committee held its second bi-weekly meeting on Wednesday, September 14 at 8 a.m.

Meetings this semester are scheduled for: September 21 (extra), 28, October 12, 26, November 9, 30 and December 14. Meetings are open to the campus community. The Committee currently meets in Library 118.

The Faculty Affairs Committee addresses matters involving the individual or collective relationship of faculty to the University. The Committee can be reached through the Senate's Faculty Affairs web page: <https://www2.humboldt.edu/senate/faculty-affairs-committee>.

Agenda for September 14:

- 1) Lab Evaluations (with guest Bob Zoellner)
  - 2) I.P. updates: Canvas contract and President's response to Sept. 6 Senate Resolution
  - 3) Early Tenure and Promotion (brought to committee by Mary Virnoche)
- 

- 1) Lab Evaluations (with guest Bob Zoellner)

Professor Zoellner outlined his concerns with the current lab evaluation process. In his department (Chemistry), a lab is not automatically evaluated if the professor also

teaches the associated lecture, although it can be evaluated upon request. Lab evaluation occurs automatically if the lab instructor is not also the lecturer. Thus, in some cases, the full teaching portfolio is not being evaluated. CBA 15.15 requires all classes to have student evaluations. This would include labs, which have distinct course numbers (CRNs). Zoellner also indicated that the current instrument is not adequate for labs. It lacks questions addressing lab-specific aspects of teaching, such as lab safety and one-on-one assistance to students. Administration of the same instrument for a lecture and lab taught by the same professor has the potential to confuse students.

The Committee concurred with Zoellner's assessment that lab evaluation ought to occur in all cases (the exception being cases where small class size does not protect student anonymity, per CBA 15.17).

The Committee also agreed that a separate instrument would improve the evaluation process and prevent some of the confusion that now exists when the same instrument is used for lectures and labs.

The Committee plans to propose and support the development of a separate lab instrument within CNRS, to be vetted by Faculty Affairs. Lab evaluation practices elsewhere in the CSU will be researched. The 2008 CSU [Academic Report on Student Evaluation of Teaching](#) notes that "some campuses have developed several variant evaluation forms designed to be used in classes with specific modes of instruction (laboratories, fieldwork, etc.)" (p. 7). These campuses will be identified and contacted for information.

## 2) I.P. Updates

Canvas: Michael Camann reported on his meeting with Anna Kircher regarding Canvas and shared information on the Internet2 Service Agreement with Instructure, which indicates that all rights to data remain the exclusive property of the Enterprise Customer. The terms of this agreement differ dramatically from those in the Terms of Use proposed in the Canvas license. CFA has requested a meet and confer with the CO at the end of the month.

I.P. Policy: committee discussion focused on options for moving forward following the Sense of the Senate Resolution passed on September 6. Wrenn reported that President Rossbacher (in a letter the Senate Chair Alderson on September 13) considers the current I.P. policy to remain in effect. On September 13, Senate Executive asked Faculty Affairs to consider the possibility of developing "guidelines" on the rights and protections governing the intellectual property of HSU faculty. After discussion, the Committee deemed it best to consult with the President prior to taking any further action on I.P. policy. Therefore, Faculty Affairs has asked for a meeting with the President to seek a mutual way forward on I.P. policy at the campus level [this has been scheduled for October 12<sup>th</sup>].

## 3) Early Tenure and Promotion

Professor Virnoche has asked the Committee to develop clarifying language on Early Tenure and Promotion, for inclusion in Appendix J.

Due to time constraints, discussion of this item was deferred until the next meeting.

---

## **University Policies Committee:**

Submitted by John Meyer, UPC Chair

Committee met on Wednesday, September 7<sup>th</sup>. Next meeting scheduled for Monday, September 26<sup>th</sup>.

- Made revisions to proposed “Policy on Policies”; will hold for committee quorum review on 26<sup>th</sup> and then bring to Senate.
- Reviewed 2010 committee chair survey; preparing to revise instrument and update survey in October
- Received and reviewed letter signed by 19 faculty requesting an Academic Information Technology Committee; currently gathering further information.
- Agreed to create an updated committee inventory based upon existing, partial resources.
- Received and began initial review of proposed elearning policy. [Note: this has subsequently been re-directed to the Academic Policies Committee]

At our next meeting we will welcome two new faculty appointees, Justus Ortega and Andrea Achilli. John will meet with them in advance to bring them up to date on committee’s charge and work.

---

## **University Resources and Planning Committee:**

Submitted by Mark Rizzardi and Alex Enyedi, URPC Co-Chairs

The University Resources and Planning Committee (URPC) met on Friday, September 16. Primary discussion concerned implementation of the following charge from the President to the URPC: *“Asking all divisions to develop a budget scenario and describe the impact of a 5% increase in the budget and a 5% decrease in 2017-18, as a tool for understanding strategic priorities and planning.”* A subgroup of the URPC is drafting a template that will be used by the divisions when presenting their ±5% budget decisions. The template will almost certainly include how the ±5% budget decisions will be connected to the general strategic plan, student success, WASC, and the Graduation Initiative 2025, in addition to the timeline for implementing the budgetary decisions.



The URPC also discussed the importance of having a strategic enrollment plan. Vice President Blake is currently leading a working group that is developing a model/template for such a plan. URPC members agreed that the recruitment process should be double-checked to ensure that we maximize the number of qualified incoming students for the spring 2017 and fall 2017 semesters; Provost Enyedi agreed to communicate with appropriate campus staff.

---

## **ASCSU Statewide Senator Report:**

Submitted by ASCSU representatives, Mary Ann Creadon and Erick Eschker

The ASCSU held its first plenary meetings of the 2016-17 academic year on Sept. 15 and 16. Two prominent topics were general education, and the status of both the intellectual property policy and the academic freedom policy. The latter two policies are analogous, in that the CSU administration says they are governed by the collective bargaining agreement, and therefore can't be developed outside of that context. The Senate Executive Committee met with Executive Vice Chancellor Loren Blanchard on Wednesday of last week, and he said that the conversation about IP policy is complicated because of the involvement of both the administration and CFA. He was then asked why a tripartite task force model of CSU administration, ASCSU representatives, and CFA representatives, used quite recently for developing a tenure-density policy, could not be used for IP policy. EVC Blanchard said that the administration would only meet in that way if CFA was willing to waive its bargaining rights, which CFA refused to do. Jennifer Eagan, CFA President, visited the plenary, and said that the task force model can work without CFA having to waive its bargaining rights. She said, "People should be able to talk. Task forces are what they are. They produce reports. Sometimes they produce interesting reports, sometimes not." The implication is that any task force report can be useful or not useful, and does not bind any party to its conclusions. However, ASCSU was told, as has been President Rossbacher and President Conoley at CSU Long Beach, where they also have a recently passed policy that is unsigned, that the administration is drafting a policy itself. When asked why, if the policy is part of collective bargaining, a policy is being drafted at all, President Eagan said she did not know why. President Eagan emphasized repeatedly that because both academic freedom and intellectual property are issues of shared governance, those policies should be developed by the administration and ASCSU jointly. CFA, she said, could review the policy after it is developed, and say what they thought about it.

Three possible solutions emerged: if the Chancellor's office won't meet with all three groups on these two policies, then the ASCSU and CFA should meet to discuss the policies and develop some informal principles or goals for each policy; or, we could have AAUP conduct workshops on academic freedom and intellectual property policies hosted by the ASCSU and CFA; or, we can find out if the Chancellor's office is willing to have a tripartite meeting if we said we were discussing *goals* rather than *policies*. The Executive Committee will consider these possibilities, and try to move the Chancellor's office in some way. If nothing happens, we learned to our dismay that we may have to wait until the end of this calendar year for an IP policy to emerge from the Chancellor's office, which the ASCSU can then review. This was told to us by Leo Van

Cleve, the Chancellor's office representative to the ASCSU plenary meetings. Finally, Senator Eschker asked Chancellor White directly, when he visited us, if he could tell General Counsel to allow us to use our newly passed policy to stand as the interim policy until the new system-wide policy is approved. He said we should send him the details of our issue here at HSU, and he would respond as soon as he could.

General education is an issue that is emerging as a result of pressure from a number of fronts. Some of this is WASC-driven on campuses, some of it comes from the Board of Trustees, and some of it comes from the legislature. The Chancellor's office is encouraging ASCSU and faculty in general to take the lead in making sure that campus GE programs are rational and easily comprehensible by students, and in explaining the goals and function of general education in the undergraduate degree. To this end, two first reading resolutions were drafted and should be passed at our November plenary: one responds to a concurrent resolution passed last spring in the legislature, ACR 158, which asked higher education systems in California to make GE transfer seamless across the three segments. Our response will detail the ways in which GE transferability is already highly efficient in ways that the legislature appears not to be aware. The other resolution is to establish an ASCSU Faculty Workgroup to study general education, and develop ways to make its processes more clear on campuses, its purpose better articulated to the public, the BOT, and to faculty and students themselves, and to re-emphasize its necessity to the undergraduate education of CSU students.

The ASCSU unanimously passed a resolution endorsing the recommendations of the Quantitative Reasoning Task Force, which, when implemented, will alter substantially the vision of the CSU with regard to the teaching of quantitative reasoning in our system. The report is available for review in the last written reports section from the University Senate's Sept. 6 meeting.

Finally, we passed unanimously a resolution in support of Prop 55 on the November 2016 ballot, which proposes a tax extension to fund education and healthcare.

ICC Consent Calendar for 9/20/16 Senate

14-297 and 16-005

Program changes for Environmental Science were already approved through the Senate, but now the department is proposing to revise the energy and climate concentration by swapping out one course for another (ENVS 375 out, ENGR 305 in). The original approved changes were scheduled to be implemented in Fall 2017.

-----

15-170

ES 320: African American History COURSE CHANGE FORM

Change course number to ES 305 and make the course an UD Area C course. Change course title to African American Cultural History to better reflect course content. The proposal includes an Area C GE assignment inventory that demonstrates that the course includes activities and assignments that should enable students to meet the Area C GE SLOs.

-----

15-232

JMC 330: International Mass Communication COURSE CHANGE FORM

Change the course number to JMC 305 and make the course an UD Area D GE course. Also slightly revise the course description to better align with the Area D SLOs.

-----

15-272

POLITICS PROGRAM CHANGE FORM

The department proposes to form three concentrations--Law and Policy, Politics of Environment and Sustainability, and Global Politics--of 12 units each. This will not change the overall major units. While students are not required to take a concentration, the concentrations will aid in course demand planning and help guide students. Course changes 15-273 through 278 go with this program change.

-----

15-273

PSCI 306M: Environmental Politics--Majors Research Seminar NEW COURSE PROPOSAL

This one unit C-5 course will serve as a co-requisite of PSCI 306 in which students conduct independent research on environmental politics and present their findings. It will be part of the Politics of Environment and Sustainability concentration. The course requires no additional faculty and will be offered every semester.

-----

15-274

PSCI 413: Moot Court NEW COURSE PROPOSAL

This C-5 three unit course has a prerequisite of PSCI 110 (or equivalent) OR PSCI 412 AND upper division standing of 60 units or more. The course is designed for students to work in two person teams to prepare appellate arguments for hypothetical cases to be argued in front of the Supreme Court. The course will be offered annually in the fall. The course becomes one of several options in the experiential requirement of the major.

-----

15-275

PSCI 317: Topics in Public Policy COURSE CHANGE FORM

The course title will be changed to Public Policy Process and the description now reads "The course addresses the policy process and contemporary policy issues and at national and/or state level." The changes reflect the manner in which the course has been taught recently. It will also become a key

course within the law and policy concentration. These changes affect a course which is also taken by ENV5 majors but the ENV5 department has voiced approval.

-----

15-276

PSCI 350 The President and Congress COURSE CHANGE FORM

The course title will be changed to U.S. National Politics and the description will read "The course addresses how the legislative, executive, and judicial branches operate and the current governing challenges facing the national government in the United States." The changes extend the present course to cover more than the executive and legislative branches by embracing the courts and other institutions. It is a required element of the proposed law and policy concentration.

-----

15-277

PSCI 358 Political Advocacy COURSE CHANGE FORM

The course description will change to "This course addresses the role of interest groups, political parties, and social movements in the American political system and how each advocates for political change." The classification will shift from a c-5 three unit/c-78 one unit course to a C-5 four unit course. The changes reflect a reassessment of the content which was not meeting intended objectives. The revised course also will fit in the law and policy concentration.. The course is also taken by ENV5 majors and the ENV5 department approves the changes.

-----

15-278

PSCI 410: Constitutional Law COURSE CHANGE FORM

Change the title to U.S. Constitutional Law in order to make it clear that the course covers the United States and not other countries in the Americas.

-----

15-283

ANTH 111: Lab in Physical Anthropology COURSE CHANGE FORM

Delete ANTH 111. Course has not been offered for several years and material once covered in this class is now covered in other courses (ANTH 103, 330).

-----

15-355

Ethnic Studies Minor PROGRAM CHANGE FORM

Change the title of the minor to Comparative Ethnic Studies (which is a more accurate description of the minor, and typical of titles of the programs at other schools). The proposed revision to the minor also adds structure, requiring 3 courses from all students:

ES 105: Intro to Ethnic Studies

ES 308: Multi-Ethnic Resistance in the US

ES 326: Media and the Politics of Representation

In addition, students choose 6 units from a list of 9 courses.

## Master Subscription Services Agreement

This agreement is between Instructure, Inc., a Delaware corporation (**Instructure**), and the entity or individual agreeing to these terms (**Customer**). It is effective as of the date of the last signature.

**LEARNING MANAGEMENT SYSTEM SOFTWARE SERVICE.** With a signed order, Instructure will provide its learning management system software as a service through a URL within a hosted server environment under the terms below (**Service**). This agreement contemplates one or more orders for the Service, which are governed by the terms of this agreement. **User** means a student, teacher, or administrator of Customer's educational institution, who is authorized by Customer to use the Service with an assigned login credential.

### (1) USE OF SERVICE.

- a). **Customer Owned Content.** All information, data, results, plans, sketches, texts, files, links, images, photos, videos, audio files, notes, or other materials uploaded under Customer's account in the Service remains the sole property of Customer, as between Instructure and Customer (**Customer Content**). Customer grants Instructure the right to use the Customer Content solely for purposes of performing under this agreement. During the term of this agreement and for 3 months after expiration or termination, Customer may export the Customer Content through the API or by using the export feature within the Service. Instructure has no obligation to maintain the Customer Content 3 months after expiration or termination.
- b). **API Access.** Instructure provides access to its application-programming interface (**API**) as part of the Service for no additional fee. Subject to the other terms of this agreement, Instructure grants Customer a non-exclusive, nontransferable, terminable license to operate the API only for purposes of interfacing Customer's technology applications or services with the Service as allowed by the API. The Instructure **API Policy** is located at <http://www.instructure.com/policies/api-policy>
  - i. Customer may not use the API in a manner, as reasonably determined by Instructure, that exceeds reasonable request volume, constitutes excessive or abusive usage, or fails to comply with the API Policy or with any part of the API. If any of these occur, Instructure can suspend or terminate Customer's access to the API on a temporary or permanent basis.
  - ii. Instructure may change or remove existing endpoints or fields in API results upon at least 30 days notice to Customer, but Instructure will use commercially reasonable efforts to support the previous version of the API for at least 6 months. Instructure may add new endpoints or fields in API results without prior notice to Customer.
  - iii. Instructure will maintain and provide access to an API, unless it terminates the API for all customers with notice, as it is not technically feasible or economically viable to continue granting access to the API.
  - iv. The API is provided on an 'AS IS' and 'WHEN AVAILABLE' basis. Instructure has no liability to Customer as a result of any change, temporary unavailability, suspension, or termination of access to the API.
- c). **Customer Responsibilities.** Customer (i) is solely responsible for Customer Content (defined below), and User activity in its account in the Service, (ii) must keep its passwords secure and confidential, and notify Instructure promptly of any known unauthorized access, and (iii) may use the Service only in accordance with applicable law.
- d). **Customer Restrictions.** Customer may not, and will use reasonable means to ensure that each User does not,
  - i. sell, resell, rent or lease the Service or API (defined above);
  - ii. use the Service, for non-Customer educational purposes, to store or transmit infringing, unsolicited marketing emails, libelous, obscene, deceptive, defamatory, pornographic, racist, sexual, hateful, or otherwise objectionable, unlawful or tortious material, or any other material in violation of a third-party right;
  - iii. use the Service to harm or impersonate any person, or for any commercial purpose;
  - iv. interfere with or disrupt the integrity or performance of the Service; or
  - v. attempt to gain unauthorized access to the Service or their related systems or networks.
- e). **Disclosure of User Information.** Instructure may access, preserve, and disclose User's registration and any other information if required to do so by law or based on Instructure's good faith belief that such access preservation or disclosure is necessary to: (i) enforce this agreement; (ii) respond to claims of a violation of the rights of third parties, whether or not the third party is a User, individual, or government agency; (iii) respond to customer service inquiries; or (iv) protect the rights, property, or personal safety of Instructure, other users or the public.
- f). **Customer Support.** Instructure must provide customer support for the Service under the terms of Instructure's Customer Support (**Support**), which are located at <http://www.instructure.com/policies/support-terms>, and are incorporated into this agreement for all purposes.

## (2) PAYMENT TERMS.

Customer must pay all fees as specified on the order, but if not specified then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use and other similar taxes. All orders are non-cancelable and the fees are non-refundable (except as expressly provided below).

## (3) WARRANTY/SERVICE LEVEL AGREEMENT AND REMEDY.

- a). **Compliance with Laws.** Each party represents and warrants to the other party that it will comply with all applicable provisions of the Family Educational Rights and Privacy Act, as amended (FERPA), and other laws with respect to its activities under this agreement. Instructure will implement reasonable and typical administrative, technical, and physical safeguards to secure its facilities and systems from unauthorized access, and to secure the Customer Confidential Information (defined below) and data. Instructure agrees: to not use or disclose education records created or received from, by, or on behalf of Customer or its students for any purpose other than the purpose than providing the Services to students, except that Instructure may create, use, and disclose de-identified and aggregated data based upon education records; and to not use or disclose such education records except as permitted by this agreement, as required by law, or as authorized by Customer in writing.
- b). **Service Availability Warranty.** Instructure warrants to Customer, (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum availability in a trailing 365-day period as provided below (excluding scheduled outages, force majeure, and outages that result from any Customer or User technology issue), (ii) the functionality or features of the Service may change but will not materially decrease during a paid term, and (iii) that Support may change but will not materially degrade during any paid term.

Annual Availability Warranty: 99.9% availability percentage

- If Customer has been using the Service for less than 365 days, the preceding 365 days will be used but any days prior to Customer's use of the Service will be deemed to have had 100% availability.
- Any unavailability occurring prior to a successful credit claim cannot be used for any future claims.

A Customer is eligible for a service credit if the annual availability percentage drops below 99.9% for the preceding 365 days from the date of a service credit claim. The maximum amount of the credit is 1/12 of the annual subscription fee for a twelve (12) month period. This service credit is calculated by taking the number of hours that the Service was unavailable below the warranty, and multiplying it by 3% of 1/12 the annual subscription fee. Customer's exclusive remedy and Instructure's sole obligation for breach of the warranty in b(i) will be for Instructure to provide a credit as provided above; provided that Customer notifies Instructure in writing of such claim within the applicable month Customer becomes eligible or 30 days after.

- c). **Third Party Links/Service Disclaimer.** The Service may contain links to third party web sites (including without limitation, links provided by instructors) or access third-party services (including without limitation, turnitin.com and Google docs). Such sites and services are not under the control of Instructure, and Instructure is not responsible for the content or any link on such sites or for the temporary or permanent unavailability of such third party sites or services.
- d). **Warranty Disclaimer.** INSTRUMENT DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. THE SERVICE MAY BE INTERRUPTED OR CONTAIN AN ERROR. WHILE INSTRUMENT TAKES REASONABLE MEASURES TO SECURE THE SERVICE, INSTRUMENT DOES NOT GUARANTY THAT THE SERVICE CANNOT BE COMPROMISED.

## (4) MUTUAL CONFIDENTIALITY.

- a). **Definition of Confidential Information.** Confidential Information means all confidential information disclosed by a party (Discloser) to the other party (Recipient), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (Confidential Information).
- b). **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own Confidential Information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c). **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

#### (5) PROPRIETARY RIGHTS.

- a). **Reservation of Rights by Instructure.** The software, workflow processes, user interface, designs, know-how, API information, third party technology and other technologies provided by Instructure as part of the Service are the proprietary property of Instructure and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Instructure. Instructure reserves all rights unless expressly granted in this agreement.
- b). **Customer Restrictions.** Customer *may not*:
  - i. reverse engineer the Service or the API;
  - ii. remove or modify any proprietary marking or restrictive legends in the Service; or
  - iii. access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- c). **Feedback.** Instructure may contact each User (no more than once each year) for the *sole purpose* of seeking aggregate anonymous feedback regarding performance of the Service and suggestions for improvements. Customer, and each User (to the extent Customer has such right), hereby grants Instructure an irrevocable, royalty-free perpetual license to all feedback and suggestions regarding the Service.

#### (6) EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY.

- a). **EXCLUSION OF CERTAIN DAMAGES.** INSTRUMENT IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF DATA, RECORDS OR INFORMATION, AND ANY FAILURE OF DELIVERY OF THE SERVICE).
- b). **LIMITATION OF LIABILITY.** EXCEPT FOR INSTRUMENT'S INDEMNITY OBLIGATIONS, INSTRUMENT'S LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE PRECEDING 12 MONTHS UNDER THIS AGREEMENT.

#### (7) TERM, TERMINATION, AND SUSPENSION OF SERVICE.

- a). **Term.** This agreement continues for the duration specified on the order (**Term**).
- b). **Mutual Termination for Material Breach.** If either party is in material breach of this agreement (including without limitation non-payment of any amounts owed Instructure), the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- c). **Return or Destroy Upon Termination.** Upon termination or expiration of this agreement for any reason, Customer must pay Instructure all amounts owed, and destroy or return all property of Instructure. Customer will confirm this destruction or return requirement in writing upon request of Instructure.
- d). **Suspension of Service and Removal of Customer Content for Violations of Law or Policy.** Instructure may immediately suspend the Service and remove applicable Customer Content if it in good faith believes that, as part of using the Service, Customer may have violated a law or a restriction in this agreement. Instructure may try to contact Customer in advance, but it is not required to do so.

#### (8) GOVERNING LAW AND FORUM.

This agreement is governed by the laws of the State of Utah, without regard to conflict of law principles. Any dispute arising out of or related to this agreement may only be brought in the state and federal courts for Salt Lake County, UT. Both parties consent to the personal jurisdiction of such courts and waive any claim that it is an inconvenient forum. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

#### (9) INDEMNITY.

- a). **By Instructure for Infringement.** If a third-party claims that the Service (other than related to any Customer Content) infringes that party's patent, copyright or other proprietary right, Instructure will defend Customer against that claim at Instructure's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Instructure, provided that Customer:
  - i. promptly notifies Instructure in writing of the claim; and
  - ii. allows Instructure to control, and cooperates with Instructure in, the defense and any related settlement.

If such a claim is made, Instructure could continue to enable Customer to use the Service or to modify it. If Instructure determines that these alternatives are not reasonably available, Instructure may terminate the Service without any liability to Customer upon notice to Customer and with the return of any prepaid and unused fees. This indemnity does not apply to the extent of any technology not provided by Instructure, if the Service is used other than in accordance with this agreement, or with third party technology it is not designed to operate with.

- b). **By Customer.** If a third-party claims against Instructure that any part of the Customer Content infringes or violates a patent, copyright or other right, Customer will defend Instructure against that claim at Customer's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Customer, provided that Instructure:
  - i. promptly notifies Customer in writing of the claim; and
  - ii. allows Customer to control, and cooperates with Customer in, the defense and any related settlement.

**(10) MISCELLANEOUS OTHER TERMS.**

- a). **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- b). **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties, and supersede all prior or contemporaneous negotiations, agreements and representations, whether oral or written, related to this subject matter. No modification or waiver of any term of this agreement is effective unless both parties sign it.
- c). **Publicity.** Customer agrees to act as a reference account that will, upon Instructure's reasonable request, provide Service-related comments to the press, potential investors, and current or prospective customers and participate in Service-related case studies. Customer agrees to issue joint press releases with Instructure regarding the Service, *as approved by Instructure*. Customer agrees to allow Instructure to use its name, logo and non-competitive use details in both text and pictures in its various marketing communications and materials, in accordance with Customer's trademark guidelines and policies.
- d). **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned as part of a merger, or sale of all or substantially all of the business or assets, of a party.
- e). **Independent Contractors.** The parties are independent contractors with respect to each other.
- f). **Enforceability.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect.
- g). **No Additional Terms.** Instructure rejects additional or conflicting terms of any Customer form-purchasing document.
- h). **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- i). **Survival of Terms.** Any terms that by their nature survive termination or expiration of this agreement, will survive.
- j). **Notices.** For purposes of service messages and notices about the Service, Instructure may place a banner notice or send an email to an email address associated with an account.
- k). **CISG.** The Convention on Contracts for the International Sale of Goods does not apply.
- l). **Force Majeure.** Neither party is liable for force majeure events.

**Humboldt University**

Ann C. Diaz  
Signature

Carlos Diaz  
Name

BUYER II  
Title

5/23/14  
Date

1 HARDST ST ARCATA CA  
Address

**Instructure, Inc.**

Matthew Seabrook  
Signature

Matthew Seabrook  
Name

Sr. BI Analyst  
Title

5/23/14  
Date

6330 South 3000 East, Suite 700  
Salt Lake City, UT 84121