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April 1, 2008

REPORT of the ACADEMIC POLICY COUNCIL  
to the UNIVERSITY of FLORIDA FACULTY SENATE  
on CONFLICTS OF INTEREST in the ASSIGNMENT OF COURSE MATERIAL  
DATED April 1, 2008

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## REPORT

### **I. Charge to the Council:**

On May 25, 2007, the Academic Policy Council (APC or Council) was charged by the Chair of the Faculty Senate with:

1. Reviewing the UF Conflict of Interest policy (see Appendix B) in regard to the assignment of faculty-authored course materials, and
2. Offering recommendations on how the current policy should be updated to address electronic course materials and electronic publishing.

In doing so, we were to seek input and assistance from faculty, the Provost's Office, the General Counsel's Office, student government, the UF Libraries, and the Office of Academic Technology. We were also to review how other institutions across the country address this situation and what the most appropriate practices would be for UF. We were asked to consider availability of free materials and how students opting to use those free materials could participate fully in all course opportunities (including extra credit). We were also to address specifically policy for handling royalty income that faculty authors may generate for materials used at UF, while assuring that faculty retain their right under academic freedom to select the instructional materials they will use in their courses (see Charge in Appendix A).

### **II. Proceedings of the Council:**

The Council held monthly meetings to discuss the issue. It reviewed the policies at other AAU institutions (see Appendix G) and the guidelines provided by the University Counsel's office on Conflicts of Interest (see Appendix C). The Council also met with many colleagues and reviewed memoranda submitted by the following:

- Bob Jerry, Dean of the College of Law (see Appendix D)
- Martin McMahon, Professor of Law (see Appendix E)
- Paul Ciesielski, Professor of Geology (see Appendix F)

We met with Dean Russell and other members of the Library faculty about the issues of access. A small subset of the Council initially met with Interim Associate Provost Angel Kwolek-Folland and Jaime Lewis Keith and Barbara Wingo of the General Counsel's office to draft a preliminary report for the Council's consideration. The Council also considered the position being taken by the United Faculty of Florida in its collective bargaining negotiations currently underway (see Appendix H).

In drafting its final recommendation, the Council was guided by two important considerations:

1. A commitment to affirm and respect the integrity and professionalism of the faculty and its academic freedom, and
2. A concern not to overreact to unsubstantiated rumors of abuses or to craft a new policy that imposes unfair burdens on faculty because of perceived problems with a small minority of classes.

The Council also considered at length three different options. One was to adopt a policy like that in the University of California system that would declare there was no

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conflict inherent in the assignment of course materials for which a faculty member had a financial incentive and therefore no disclosure requirement. This was deemed problematic for a number of reasons, not least of which was Florida state law that requires disclosure in situations like those considered here. The second was to continue with our current policy, which prohibits receiving royalties for materials developed solely for use at UF, but allows, with disclosure, receipt of royalties for assignment of course materials when those materials are published by a national publisher. This latter caveat is an unwritten rule of thumb that provides very little guidance in the current market. The third, as detailed below, was to continue the current policy that faculty may not benefit from course materials developed solely for use at UF, but to create a clear bright line rule for which royalties may be appropriately received with no real questions asked (when 50% of the royalties come from non-UF sources). Disclosure and decanal or chair approval is all that is required in this second category. The Council then recommends that for faculty whose course materials fall between the two bright-line rules (solely UF and 50% outside UF), royalties may be received with appropriate disclosure and approval but more oversight is offered at this level.

Additionally, the Council recognized that its discussion of royalties and financial interests was often tied to ancillary issues around bundling of exams and syllabi with course materials, new electronic delivery formats, unique problems with large classes and web-based teaching methods, and other factors that dovetailed with some of the issues raised with conflicts of interest. Thus, the Council makes a few recommendations in regard to these matters.

Finally, the Council felt that it was important that faculty be brought into the process for evaluating whether course materials were assigned for academic or financial reasons and for assisting administrators with guidelines for interpreting appropriate levels of entrepreneurial activities by UF faculty. To that end the Council recommends the creation of a faculty/student/administration committee to provide guidance on these matters when requested by faculty or administrators.

### **III. Council's Recommendation**

The Council hereby recommends the following policies for adoption by the Faculty Senate.

In choosing any course materials, whether the employee has a financial interest in their assignment or not, the Council recommends that the Senate:

- **Reiterate that the University is committed to academic freedom in the choice of course materials as reflected in our current policy.**
- **Recommend that faculty consider price and availability in relation to reasonable access for students in financial need in choosing or making available course materials.**

Where an employee has a financial interest in the choice of particular course materials, the Council recommends that the University:

- **Continue to require that financial interests of an employee<sup>1</sup> in assigned course materials be disclosed to the chair/dean/director for their approval as per our current policy. This would be done on an updated and clarified disclosure form that is being developed independently by the General Counsel's office in consultation with the Provost.**
- **Require that all disclosure of financial interests in assigned course materials be reported to the provost's office and in cases as provided below, approved by the provost.**
- **Require that faculty with financial interests in assigned course materials disclose that interest to students in standard language on the course syllabus, which language is to be set forth in the revised regulation.**
- **Create a faculty/student/administration advisory board to offer advice and guidance to the chair/dean/director/provost when requested on a particular case. The board will advise on the existence of, and ways to resolve, such conflicts. The board will be advisory. Disagreements about applications of the policies, or particular grievances will proceed through the appropriate grievance procedure. Decisions regarding the implementation of the conflict of interest policy shall rest solely with the provost.**

With regard to course materials authored by University employees, or materials in which the employee has a financial interest, the Council suggests creating three categories with different rules for each:

1. **Faculty whose materials are developed solely for courses at UF and are not adopted at any other institution may not receive financial remuneration for those materials.**
2. **Faculty whose materials generate royalties, a majority of which comes from outside UF, shall disclose that financial interest to, and obtain prior approval by, their chair/dean/director and shall disclose their interest to the students in standard language provided in the regulation. Where jointly authored materials are involved, this rule will apply when a majority of royalties come from outside UF and all other institutions with which any of the authors have their primary academic appointment.**
3. **Faculty who are developing materials for a wider audience, but do not meet the criteria of number 2 above, may receive financial remuneration only upon disclosure to students and disclosure and prior approval by their chair/dean/director and approval by the provost. They must show a reasonable likelihood of success in achieving a wider audience in the foreseeable future (no more than two years). For the provost's consideration, evidence should be provided regarding the likelihood of reaching the targeted "50% outside UF" threshold, and evidence like the following could be helpful:**

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<sup>1</sup> Consistent with the current policy, we recognize that conflicts of interest may arise when the employee's relatives or perhaps even close friends benefit from the assignment of particular course materials. For purposes of this report we simply refer to the employee, but it should be understood to include relatives or others consistent with the rest of our regulations.

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- **Evidence that the material has been reviewed by academic peers and determined to be satisfactory in both academic quality and fairness of price, taking into account other available material, and**
- **Proof that the employee has no financial interest in the publishing company (a letter from the publisher can serve to meet this requirement).**

In dealing with some of the special problems associated with electronic delivery of course materials:

- **The APC recommends that where syllabi, exams, quizzes, required or extra credit assignments, and other general course information and evaluative materials are included or bundled into electronic or printed formats that are purchased by students, these general informative and evaluative components must be made available free of charge to students, in the same format as that provided at cost.**
- **We also recommend that syllabi be provided free of charge to all students and potential students with an accurate description of the course materials required for the course as well as details about exams and other assignments, how grades will be assigned, and any attendance policy.**

Respectfully submitted this 1<sup>st</sup> day of April, 2008