

Texas Tech University Faculty Senate

2000-2001:06

March 21, 2001 Minutes #214

Statement of Concerns of OP 74.04 Resolution

Study Committee B. On behalf of Study Committee B, Committee Chair Cochran provided an update on developments since Dr. Walter Haeussler visited with the Senate in February, 2001. Among other things, Senator Cochran expressed concern that inaccurate messages were being sent by Dr. Haeussler to the administration with regard to the Senate's "approval" of proposed modifications in intellectual property rights policy O.P 74.04. Specifically, Study Committee B is concerned about the absence of faculty oversight, the right to grieve, percentage ownership of copyrightable material, and royalty distributions.

Because of the urgency in getting Senate input forwarded to the administration in a timely fashion, President Dunham asked Study Committee B to continue working on a "final" version of a resolution stating the Senate's concerns about various aspects of proposed O.P. 74.04. In the meantime, the Senate considered, discussed and voted upon a preliminary "draft" resolution and Statement of Concerns submitted by Study Committee B. The resolution passed unanimously. The "final" resolution (similar to the preliminary draft with minor modifications from Study Committee B) reads as follows:

WHEREAS, the University administration sent a copy of draft revisions of Operating Policy and Procedure 74.04 to the Faculty Senate for study and comment, and

WHEREAS, the Faculty Senate has carefully studied the drafts, including expressing concerns by its Study Committee B directly to the Director of the Office of Technology Transfer and Intellectual Property, and

WHEREAS, significant areas of disagreement still remain, even after some changes were made to the draft in an effort to respond to concerns expressed by Study Committee B, therefore

BE IT RESOLVED, by the Faculty Senate that it forward the document entitled, Statement of Concerns by the Texas Tech University Faculty Senate regarding the Draft of Revisions for O.P. 74.04 dated February 19, 2001, as an attachment to this resolution and as an expression of the differences that remain between the Faculty Senate and the administration in this matter, and

BE IT FURTHER RESOLVED, that the Faculty Senate urge the administration to adopt the recommendations of the Senate contained in the Statement of Concerns.

**STATEMENT OF CONCERNS
by the Texas Tech University Faculty Senate
regarding the Draft of Revisions for
O.P. 74.04 dated February 19, 2001**

1. *Establishment of Intellectual Property Committee* - The current draft mentions an Intellectual Property Committee, but it fails to provide any specificity with regard to the make-up of the committee. The present O.P. 74.04 is much more specific in requiring "representatives of the Provost, the Vice President for Fiscal Affairs, the General Counsel, and the Faculty Senate." Section 12(6) defines the Intellectual Property Committee, but the revised draft, like its predecessor, contains no further mention of the Committee, its composition, or its duties. The Faculty Senate recommends that a new section, numbered "7" be added, and the following sections be appropriately renumbered. The new section 7 would read as follows:

7. Oversight by Intellectual Property Committee

The TTUS Intellectual Property Committee is established. The Committee provides a forum for discussion of policies and procedures affecting Intellectual Property and the implementation of this policy by the Director of the Office of Technology Transfer & Intellectual Property and to advise the Chancellor and the Office of Technology Transfer & Intellectual Property regarding Intellectual Property. The Committee shall meet at least twice each year. The Chancellor shall appoint the members of this Committee, a majority of whom are faculty members, representing the various components of TTUS, including, but not limited to the TTU Faculty Senate and the TTU Health Sciences Center. Faculty members not satisfied with the determinations made under this policy by the Director of the Office of Technology Transfer and Intellectual Property may appeal the Director's decision to the Intellectual Property Committee which shall make a recommendation to the Chancellor concerning the resolution of the dispute.

The Director of the Office of Technology Transfer and Intellectual Property will considerable power if the revised O.P. is adopted. His decisions would be not subject to review, as are those of other administrators under O.P. 32.05. The Faculty Senate views as very serious the lack of faculty review of the Director's decisions.

If it is viewed by the Director that the Intellectual Property Committee should have an advisory function only, then provisions should be made for a grievance procedure with significant faculty input, similar to that in O.P. 32.05. The grievance procedure of O.P. 32.05 would not be suitable here because it does not apply to the TTU HSC. Since O.P. 74.04 will apply on a system-wide basis, we need a grievance procedure that is system-wide as well.

2. *Ownership of Copyrightable Works (1) Books, Articles and Similar Works* - The last sentence of ' 16(1) of the draft now provides that "TTUS shall retain a royalty-free right to use [] materials for educational purposes" for course materials that are not works for hire produced by faculty members. This appears to be a significant change from the current policy, and the phrase "for educational purposes" can be interpreted broadly. This expansion of University rights is not warranted, and the Faculty Senate recommends that the last sentence of ' 16(1) of the draft be stricken.

3. *Ownership of Copyrightable Works (2) Institutional Works or "Works for Hire"* - Section 16(2) asserts an ownership interest by TTUS in works assigned to employees, but it makes no mention of other policies that may be promulgated to grant faculty members some rights in using materials created for distance education courses. The Faculty Senate recommends that the following sentence be added at the end of the section:

Faculty members may have, under other University policies, royalty-free licenses to use for instructional purposes products that they have created as Institutional Works or "Works for Hire."

4. *Distribution of Income from Commercialization and Licensing* - The Faculty Senate continues to view with great concern the proposed royalty distribution schedule contained in ' 18(1). By significantly reducing the royalties distributed to the faculty member/creator, the draft actually dampens the very spirit that the policy seeks to encourage--the creation of new works. The Faculty Senate recommends changing the draft to increase by 10% in each bracket the amount distributed to the individual and decrease by 10% in each bracket the amount retained by TTUS, as follows:

| Net Royalty | Individual | TTUS | Dept. | College |
|---------------------|--|------|-------------------------|-------------------------|
| \$0-\$100,000 | 60% | 20% | 10% | 10% |
| \$101,000-\$500,000 | \$50,000 + 50% of amount over \$100,00 | 20% | 15% | 15% |
| \$501,000+ | \$170,000 + 40% of amount over \$500,000 | 20% | Set by Board of Regents | Set by Board of Regents |

5. *Distribution of Income from Copyrightable Works (3) Works Developed with Significant Use of Resources and Distributed by TTUS* - Section 19(3) proposes a 70-30 split for royalty distribution for works commercialized by TTUS that were developed by employees. This proposed distribution, as with that in ' 18 of the draft, would work against maximum creative effort. The Faculty Senate recommends that the royalty structure be altered to provide 50% to TTUS and 50% to the author.