OFFICE OF THE FACULTY COUNCIL
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December 7, 2016

Provost Maurie McInnis
The University of Texas at Austin
MAI 4005
Campus Mail Code: G3400

RE: Correction to Transmittal Letter dated December 6, 2016

Dear Provost McInnis:

Enclosed for your consideration is a proposal from the Technology-Enhanced Education Oversight Committee proposing policies on polling technologies and copyright ownership of educational content. (D 14903-14905) that was considered by the Faculty Council at its meeting on December 5, 2016. The proposal was unanimously approved by the Faculty Council by voice vote.

Please provide your recommendation for approval or disapproval to President Fenves. Final approval resides with his office.

Let me know if you have questions or if I can provide other information concerning this legislation.

Sincerely,

Alan W. Friedman, Secretary
General Faculty and Faculty Council
The University of Texas at Austin
Arthur J. Thaman and Wilhelmina Doré Thaman Professor of English and Comparative Literature

AWF:dlr

Enclosure

ec: Michelle George, Administrative Manager for Faculty Affairs, Provost's Office
Lydia Cornell, Administrative Program Coordinator, Provost's Office
Jennifer Moon, Committee Chair, 2016-17 Technology-Enhanced Education Oversight Committee
Robert Crosnoe, Committee Chair, 2015-2016 Technology-Enhanced Education Oversight Committee
Patricia A. Ohlendorf, Vice President for Legal Affairs

DOCUMENTS OF THE GENERAL FACULTY

TECHNOLOGY-ENHANCED EDUCATION OVERSIGHT COMMITTEE PROPOSAL TO CREATE POLICIES ON POLLING TECHNOLOGIES AND COPYRIGHT OWNERSHIP OF EDUCATIONAL CONTENT

On behalf of the Technology-Enhanced Education Oversight Committee, Drs. Robert Crosnoe (2015-16 Committee Chair and Professor, Department of Sociology) and Jen Moon (2016-17 Committee Chair and Senior Lecturer, Instructional Biology Office) submitted the following proposal to create a polling technologies policy. The committee members unanimously approved the changes in spring 2016. The Secretary has classified this as legislation of *general* interest to more than one college or school. It will be considered by the Faculty Council at its meeting on December 5, 2016.

Alan W. Friedman, Secretary
General Faculty and Faculty Council
The University of Texas at Austin
Arthur J. Thaman and Wilhelmina Doré Thaman Professor of English and Comparative Literature

Distributed through the Faculty Council Wiki site https://wikis.utexas.edu/display/facultycouncil/Wiki+Home on November 21, 2016.

TECHNOLOGY-ENHANCED EDUCATION OVERSIGHT COMMITTEE PROPOSAL TO CREATE POLICIES ON POLLING TECHNOLOGIES AND COPYRIGHT OWNERSHIP OF EDUCATIONAL CONTENT

POLLING TECHNOLOGIES

Background

At the end of the 2014-15 academic year, the Technology-Enhanced Education Oversight Committee (C-14 Committee) received several inquiries from faculty and administrators about whether the widespread use of polling technologies (more colloquially referred to as 'clickers') in UT classrooms was compliant with University and UT System rules. The concerns were that

A) many polling technologies have not passed through the University's procurement process, may not have ISO security clearance, including FERPA compliance certification and ADA compliance certification. This security issue was especially important considering that most polling technologies now take the form of apps that students download on their smart phones. Moreover, UT Austin cannot support technologies that are not compliant.

B) the fees associated with student purchasing of polling technologies may not be permissible, as argued by attorneys in the Office of the Vice President for Legal Affairs. The relevant UT Systems Rule is *31004: Rights and Responsibilities of Faculty Members*. Within this rule, *Section 6: Textbook and Course Materials, Section 6.1: Choice of Materials*. This rule reads: "The policy of the Board of Regents concerning textbooks and other materials prescribed for the use of students is as follows: Individual faculty members or the department should have discretion in the choice of materials to be used in the courses offered by the department."

Proposed Policy Language

1. Digital polling technologies should be included in the category of "other course materials" over which faculty have discretion in *Section 6.1: Choice of Materials* of UT System *Regents' Rule 31004: Rights and Responsibilities of Faculty Members*.
2. Any polling technology to be used in the classroom must have been approved by the university after a vetting for FERPA and ADA compliance and ISO security clearance.

We recommend that

a. Until a final decision about this issue has been made, announcements about what faculty members can or cannot do with polling technology would be premature.
b. Given how widespread polling technology is on campus, the Faculty Council and Faculty Innovation Center (FIC) should partner in an information campaign to clarify rules about polling technologies and to alert faculty about which technologies have ISO clearance and are FERPA compliant.

COPYRIGHT OWNERSHIP OF EDUCATIONAL CONTENT

Background

At the end of the 2014-15 academic year, the C-14 Committee made recommendations to the Faculty Council about updating the "Grant Form" capturing use rights of educational content and technologies for the University and for instructors. Of particular concern was the interpretation of how the educational content created by UT Austin faculty would be defined in terms of intellectual property. Currently, the UT System differentiates between intellectual property associated with potential discovery commercialization by UT Austin faculty (e.g., invented devices) and other scholarship created by UT Austin faculty (e.g., textbooks, articles, art). Where educational content (e.g. online courses and digital technologies created for instruction) fits in this dichotomy is unclear. One potential consequence is the stifling of creative instruction-related work among UT Austin faculty out of concerns of ownership, licensing, and commercialization.

The relevant **Regents' Rule is *90101**: Intellectual Property: Preamble, Scope, Authority*. ***Section 2**: Ownership of Intellectual Property* reads:

> "Except as set forth in Section 5, the Board of Regents automatically owns the intellectual property created by individuals subject to this Rule, yet recognizes the importance of discovery commercialization. In appropriate circumstances concerning intellectual property resulting from research supported by (a) an entirely private, nongovernmental grant or contract with a nonprofit or for-profit entity, or (b) an entirely private gift or grant to the U. T. System or any U. T. System institution, as set forth in Section 12.1, the U. T. System or a U. T. System institution may enter into an agreement to transfer the Board of Regents' rights in intellectual property to third parties. For purposes of this Rule, intellectual property includes, but is not limited to, any invention, discovery, creation, know-how, trade secret, technology, scientific or technological development, research data, work of authorship and software, regardless of whether subject to protection under patent, trademark, copyright, or other laws."

Furthermore, ***Section 7****: Interest in Certain Copyrights* of this rule reads:

> "Notwithstanding Section 2 but subject to Section 12, the Board of Regents will not assert an ownership interest in the copyright of scholarly or educational materials, artworks, musical compositions, and literary works related to the author's academic or professional field, regardless of the medium of expression. Such creators are encouraged to manage their copyrights in accordance with the guidelines concerning management and marketing of copyrighted works consistent with applicable institutional policies. As the Board of Regents has done historically, as reasonably required for the limited purpose of continuing an institution's scheduled course offerings, the Board of Regents retains for one year following the loss of a course instructor's services a fully paid-up, royalty-free, nonexclusive worldwide license to use, copy, distribute, display, perform, and create derivative works of materials prepared by the instructor (including lectures, lecture notes, syllabi, study guides, bibliographies, visual aids, images, diagrams, multimedia presentations, examinations, web-ready content, and educational software) for use in teaching a course."

The purpose of this set of principles is to clarify that educational content—defined as course content and digital software developed by UT Austin professors, lecturers, and instructors for their classes with any university investment, broadly conceived—will be treated as scholarly or educational materials as opposed to discovery commercialization, as defined by UT System Regents' *Rule 90101*.

Proposed Policy Language

1. As author of the educational materials, the faculty member has ownership of them and retains full copyright protections.
2. The University has the right to use the educational materials for non-commercial academic purposes while the faculty member is a UT Austin employee plus one year (or, as negotiated).
3. If the University wants to use the educational materials for commercial purposes (defined as selling it into a new market for a fee), it must negotiate an agreement with the faculty member using the Educational Content License Agreement for Faculty and Instructors.
    a. The faculty member may use the educational materials for commercial purposes but must formally disclose any affiliation with the business entity involved in the commercial transaction with the University.