University of Idaho
2015-2016 FACULTY SENATE AGENDA

Meeting #10

3:30 p.m. - Tuesday, November 3, 2015
Brink Hall Faculty-Staff Lounge & Scopia

Order of Business

I. Call to Order.

II. Minutes.
   • Minutes of the 2015-16 Faculty Senate Meeting #9, October 27, 2015 (vote)

III. Chair’s Report.

IV. Provost’s Report.

V. Other Announcements and Communications.

VI. Committee Reports.
   
   Ombuds Search (Corry)
   Spread Pay (Tallent)

VII. Special Orders.
   • FS-16-013- FSH 5300 – Copyrights, Protectable Discoveries and Other Intellectual Property Rights (Inge)(intro)

VIII. Unfinished Business and General Orders.

IX. New Business.

X. Adjournment.

Professor Randall Teal, Chair 2015-2016, Faculty Senate

Attachments: Minutes of 2015-2016 FS Meeting #9
FS-16-013
University of Idaho  
Faculty Senate Meeting Minutes  
2015-2016 Meeting #9, Tuesday, October 27, 2015

Present: Anderson, Brown, Caplan, Chung, Couture (Boise), Crowley (w/o vote), Flores, Folwell, Godfrey (Coeur d’Alene), Hiromoto (Idaho Falls), Hrdlicka, Jeffery, LaPrath, Latrell, Mahoney, Murphy, Nicotra, Royer, St. Claire, Stoll, Teal, Wiencek (w/o vote),Absent: Adams, Barbour, Boschetti, Brewick, Foster, Perret, Wolf. Guests: 5.

The Chair called meeting #9 of the Faculty Senate to order at 3:31 p.m. A motion (Stoll/Folwell) to approve the minutes for the October 20, 2015 meeting of the Faculty Senate passed without objection.

Chair’s Report: Chair Teal announced that members should expect an email from the Faculty Secretary’s Office in the near future seeking volunteers for the task force on compliance with conflict of interest policies. He also asked for a person to serve as the Senate’s representative to the classroom work group. This committee meets on the 1st and 3rd Thursdays of the month at 3:45 p.m. A former member of this committee noted that some of the issues dealt with by this committee required someone interested in interior design, but other issues dealt with pedagogical questions and the use of technology in the classroom. No one volunteered. Anyone interested should contact Senate Leadership.

Provost’s Report: Before turning to his retrospective report on Focus for the Future, Provost Wiencek wanted to call everyone’s attention to the use of “Yellow Dig” and “Sli.Do” which will be used during the strategic planning process. We will be piloting “Yellow Dig” for a year. It can be used for classroom discussion and it will be integrated with Blackboard. He also noted that there is a link off of his web page which allows faculty to look up the salary of those in their discipline at peer institutions. This will allow faculty to know how their salary compares to market.

The rest of his report focused on Focus for the Future. In part he was replying to a request made last summer by Faculty Senate Leadership to show what savings had resulted from the process and how those funds were reallocated. He also wanted to emphasize that there is a whole new leadership team at the University who were not here during the process. This summary reflects his “outsider” attempt to piece together what occurred during the FFF process.

The Provost began by noting that the FFF process is now over and there will not be an attempt to reach back and redo any of that data and analysis. The SBOE does expect the University to have an ongoing program prioritization process and our future efforts will play a significant part in future budget decisions. The FFF process began after Governor Otter mandated that state agencies justify all their spending before making future budget requests (generally known as zero based budgeting). In response the SBOE requested that state universities engage in a process of program prioritization. The Board expected each institution to specify a set of outcomes that they wished to prioritize along with the specific reallocation of resources to be used in support of those outcomes.

Provost Wiencek suggested that perhaps we (the UI) had not framed our process as carefully as we might have and thus what we were trying to accomplish became rather murky. He did feel that we have learned a great deal from the process and will be able to improve how we respond to the SBOE’s requests in the future.

The process we followed involved self-assessment of programs as well as the extensive accumulation of quantitative data. As summarized by then President Burnett “our process did not produce a quintile
ranking of programs; however, it did identify programs that were strong, those in need of improvement in order to be sustained, and those to be closed or consolidated. “The Board wanted programs placed into quintiles, while our original attempt did not sort programs into five equal groups. In response, Provost Aiken spent considerable effort trying to sort programs into quintiles, although Provost Wiencek wasn’t sure exactly how this had been done. The SBOE never asked to see the actual rankings of programs. However, the Provost noted that when making proposals for new investments the Board will want to know that these requests are for high priority programs.

The FFF process resulted in moving or restructuring six programs, changing or consolidating five programs, and discontinuing nineteen programs. This resulted in a savings of $460,000. These savings were reallocated to a variety of programs. The specific list of where these funds were spent can be found in the packet for today’s Senate meeting.

In summarizing his general observations Provost Wiencek noted that:

- There was a lot of narrative although it wasn’t always clear how these narratives factored into the overall result.
- The process involves a lot of effort and isn’t the type of process we can afford to engage in on a continuing basis.
- The process isn’t sustainable in its current form.
- He believes that we fulfilled what the Board wanted, despite the fact that there were some misunderstandings along the way.
- The measurements of non-academic programs were uneven and will have to be changed in the future. Some administrative offices were not assessed.
- The Board will expect future budget requests to be directed at high priority programs.
- The Board expects program prioritization to be incorporated into the universities annual budgeting and program review process.
- We need to create a more automated process in some areas, although he acknowledged that some things can’t be automated.
- Quality is a hard thing to assess and we must make sure that there is appropriate space for qualitative analysis.

Provost Wiencek emphasized the need for a fresh start. In particular we need to develop a clearer understanding of why we are engaging in program prioritization and what the likely effects are. While we will be investing in our top priority programs, we need to build into the process a method to allow programs in the lowest quintile to move to the center. Program prioritization folds into our accreditation process although there does need to be a better alignment between the two. He noted that NWCCU stated that program prioritization was a useful assessment tool, but was “not a holistic process designed to assess mission fulfillment.” We can’t fulfill our mission by continually cutting.

Looking forward the Provost stated that we needed to align this process with our goals to increase enrollment. We need to attract out-of-state students who want to come here because we are excellent in something. He noted that we do a lot of things well, but we don’t have a nationally ranked #1 program. Nationally ranked programs create a “halo effect” which helps to make the whole system thrive. To do this we will need to be innovative and look for places where we can be excellent. He see’s growing the institution as consistent with developing quality programs of distinction. Integrated planning will be an important part of our success. We will need to think about vacant lines and moving funds into high priority areas. He is proposing a new “Program Prioritization Executive Committee” that he will Chair. He expects this committee to be broadly representative of the university. This committee will define how results of
future prioritization processes will be used. The scoring or rankings of these future results should be available for all to see.

The Provost was asked what the other state universities did that seemed to receive a better reception from the SBOE. The Provost suggested that both ISU and BSU had a clearer “dashboard” that seemed to be more cut and dried by showing whether particular programs were profitable. Our process did not yield similar results since we didn’t rely totally on quantitative data. The reality is that now both ISU and BSU are having problems knowing what to do with their data and how to deal with low quintile programs. Another Senator asked about the difficulty of assessing non-academic programs and whether the same criteria can be used. The Provost acknowledged that we can’t use a “one-size fits all approach.”

The Provost ended his review by asking if the quintile results of the previous FFF process should be published realizing that we weren’t going to be using these rankings in the future. The quintiles had not previously been shared although he had just made the results available to the Deans. There were various responses to this question.

- Several Senators stated that the results of the previously flawed process should not be published. That labeling programs could be very destructive and we already had reasons to suspect the integrity of some of the data.
- Programs should be able to know where they ranked, but broader publication might create other problems especially since there was no intent to use these rankings.
- What we did wasn’t really a prioritization process, but more of an assessment process. Some programs might be poorly ranked, but should be a high priority because universities need those programs.
- Concerns were raised about circular results. Those units with resources that looked better would then use their relatively higher ranking to request more resources.
- Some Senators stated that they struggled with this question because the results were part of our collective history and those in lower ranked programs needed to know so they could react accordingly.
- There was also the concern that the past results might drive future decisions.

The Provost responded to some of these concerns by stating that he understood that some programs that were ranked lower were central to the university and this is why we need to be sensitive to various non-quantitative considerations. He also stated that the programs that were in the lowest quintile already knew that they were. He had already shared the results with the Deans and they could decide what information to share with the units in their college. He understood that all programs wanted to be treated fairly and wanted to be evaluated in a transparent way. He felt that at times the prior process had struggled with this.

Various Senators expressed their pleasure with the straight-forward and honest presentation and thanked the Provost for providing this clear overview. They felt that the changes he had outlined were positive and that we shouldn’t get too bogged down in a retroactive analysis of what happened in the past. It can be very damaging and time consuming to continually have to go through these processes.

**Adjournment:** With time getting short Chair Teal thanked the Provost for his presentation and requested a motion (Stoll/Mahoney) to adjourn. The motion passed unanimously at 5:01 p.m.

Don Crowley, Faculty Secretary and Secretary to the Faculty Senate
**Search Committee Members:**

Shauna Corry, Search Chair
Yunhyung Chung
Max Cowan
Lisa Miller
Inna Popova
Ellen Schreiber, Ex-Officio
Anthony St. Claire
Jeanne Stevenson

(on behalf of Provost Wiencek)

Greg Walters
John Wiencek
Nichole Vietz, Search Coordinator

**Associate Professor and Chair, Interior Design Program**
**Associate Professor, Business**
**Undergrad Rep/ASUI President**
**Accountant, Auxiliary Services/Vice Chair Staff Council**
**Analytical Instrument Manager, PSES/Staff Council**
**Ombuds**
**Graduate Student Rep/GPSA President**
**Vice Provost for Academic Affairs**
**Executive Director of Human Resources**
**Provost and Executive Vice President**
**Fiscal Management Assistant and AAC, Office of the President**

**Number of Applicants as of Nov. 3:** 21
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nov. 7</td>
<td>Position Closes</td>
</tr>
<tr>
<td>Nov. 13</td>
<td>Applications reviewed and rankings due to Search Coordinator for compilation</td>
</tr>
<tr>
<td>Nov. 17</td>
<td>Committee Meeting</td>
</tr>
<tr>
<td></td>
<td>Discuss applicant ranking and identify viable candidates for interview</td>
</tr>
<tr>
<td></td>
<td>Finalize interview questions</td>
</tr>
<tr>
<td></td>
<td>Identify dates for interviews</td>
</tr>
<tr>
<td>Nov. 30/Dec. 11</td>
<td>Interviews (in-person or Skype); extended if needed</td>
</tr>
<tr>
<td>Dec. 12/Dec. 18</td>
<td>Confidential Feedback from Faculty Senate, Staff Affairs and ASUI to President Staben</td>
</tr>
<tr>
<td>Dec. 14</td>
<td>Committee Meeting to draft recommendations for President Staben</td>
</tr>
<tr>
<td>Dec. 17</td>
<td>Committee Meeting to finalize recommendation to President Staben</td>
</tr>
</tbody>
</table>
Issues with Spread Pay

**Crux of the Issue for the Task Force:**

There are multiple other concerns from HR, but the primary one is the process of pre-paying employees prior to the start of the academic year. Under Idaho state law, UI should not be paying employees in advance (which happens between July 1 and Aug. 18; this is different from other state schools which are allowed spread pay without the advance component.) As Jack Miller explained after his conversation with Kent Nelson, “The other school’s payrolls are managed by the state controller’s office. Apparently UI’s constitutional status causes us to be independent of the controller’s office.”

The Task Force is considering eight options, ranging from no change to significant structural changes. The simplest action would be to move the pay start date to August rather than the current July 1 and provide an option within the UI HR system for employees to check if they want spread pay or not.

Currently, the Task Force is developing a series of Town Hall meetings for faculty and staff to gather comments/opinions. We are also still considering a brief survey as well as one-on-one in-depth interviews with faculty. The next meeting is Nov. 9. This is where we will take the time to discuss how to collect feedback and narrow some of the alternatives.

**Background Information from UI Human Resources (Thanks to Brandi Terwilliger)**

**History:** The University has historically allowed employees on less than 12-month contracts, for example academic-year faculty, to “spread” their pay over 12 months. At some point, a decision was made to pay faculty and some staff following the fiscal year calendar (7/1 through 6/30) rather than the performance period of their contract (approximately 8/15 through 5/15). This results in a pre-payment to the employee for approximately six (6) weeks prior to fall semester start and a post-payment for the weeks following the end of spring semester. Prior to 7/1/10, the salary expense was charged to budgets on a cash basis (the amount paid) rather than on the appropriate accrual basis (the amount earned). This practice not only caused significant issues with federal effort certification guidelines, but resulted in under-billing of external sponsors, causing the University to cover the difference in salary and fringe. This previous practice also did not follow generally accepted accounting principles.

Federal regulations for sponsored projects include the requirement that employees regularly certify that the effort they put forth on a project matches when the salaries were charged to the project. Prior to the Banner deferred pay being implementation, this effort certification was incorrect and confusing to faculty who were certifying to effort not expended during the period. The non-compliance occurs both when the sponsor is billed for salary when no effort is expended, and when the faculty member certifies to effort not expended during the reporting period.

**Changeover to Banner deferred pay:** During FY10 the University went through a reboot of its payroll system back to “vanilla” Banner. As part of this implementation, the University also
elected to add the functionality of Banner deferred pay. We had deferred pay in the legacy system before Banner. We went live with Banner Payroll using deferred pay. In 1999 we quit using it and moved to the spread pay method because of difficulties in using deferred pay.

The discussion around the elimination of deferred/spread pay has been ongoing for a number of years. This is the second time in recent history that the University has tried to eliminate it.

**Specific HR Issues**
There are multiple issues with Spread Pay following at the top concerns from HR –

- Used for Classified employees only.
  - Deferred pay will not work with hourly employees because wages paid must be paid for hours worked each pay period.
- Exempt employees working less than the full year have their pay spread over the full year.
  - Actual earned hourly rate is reduced to pay over the longer period of time**
    - This creates a couple of problems
      - Additional time worked is calculated at the spread pay rate by Banner; a manual adjustment needs to be processed to pay the difference in rates as Banner doesn’t know how to handle this situation that we have created
      - The reduced hourly rate could potentially be less than minimum wage in the system, manual intervention is needed as Banner is programmed to pay minimum wage or higher
  - While not working, they enter LWA (leave without accrual) on their timesheets. This is necessary in order to ensure that fringe benefits and workers compensation are properly charged. This is a manual monitoring process to ensure that leave is entered correctly.
  - Pay is not correctly charged out during the time that the employee is working and causes OSP problem with compliance (A-21)
  - This practice results in additional months of credited service by PERSI. We may have to discontinue due to the new PERSI reporting tool which captures payroll data.

Currently all employees working fewer than 12 months are defaulted into deferred/spread pay rather than given a choice. When changes occur to an appointment like an employee’s FTE or salary, it creates a need for manual and complex calculations to occur to assure the individual receives proper pay and accounts are properly billed. This is a very labor intensive collaborative effort and can involve personnel from multiple departments/areas such as budget, payroll, HR, benefits and others.
Overview of Revision to University of Idaho Intellectual Property Policy (FSH5300): SBOE-Required Changes and Changes Resulting from Discussion with the IPC

In July, 2014, the University of Idaho submitted a revised version of FSH 5300, Copyrights, Protectable Discoveries, and Other Intellectual Property to the State Board of Education (SBOE), and this revised version of the policy was approved by the SBOE at its August 13-14, 2014 meeting. The majority of the included changes, intended to make the University policy consistent with changes to the SBOE intellectual property policy, made in 2010 and 2013, were previously the subject of discussion between the Office of General Counsel (OGC) and the University of Idaho Intellectual Property Committee (IPC). After this discussion with the IPC, but before submission of the University policy in July 2014, the SBOE requested and the University made additional but non-substantive changes or clarifications.

In 2015, OGC reviewed the SBOE-approved version of the policy with the IPC. As a result of this review, OGC further revised the policy, clarifying scope and application of Section B-2(a)(2) of the revised policy; these revisions were endorsed by the IPC. The substantive changes required by the SBOE and the clarifications resulting from points raised by the IPC are described below.

- With respect to claims by the University to intellectual property arising from use of University resources, the University increased the scope of such claims, for copyrightable works and protectable discoveries, to be consistent with SBOE policy changes made in 2010 (See SBOE Policy V.M. Sections 2(b)(i), 2(b)(ii), 2(c)(ii), and 3(a) and (b)) These changes were shared with the IPC in December 2013 and further revised after comment by the IPC in February and March of 2015.
  - Claims of ownership arising from any work performed by an employee of any institution during the course of their duties to the institution, excluding traditional scholarly or creative works.
    - FSH 5300 B-2 (b)(1): Materials are “UI-Sponsored Materials” within the meaning of this policy, and shall be and are assigned to UI consistent with Subsection G, if the natural person or persons... prepared the work as part of his or her employment duties at UI, excluding those works identified in B-2-a.
  - FSH 5300 B-2 (a): Retention of Rights by University Faculty. Except as otherwise provided in Subsection B-2, above, the natural person or persons retain the rights to (1) copyrightable works produced while on sabbatical leave; (2) course materials, study guides, and similar works prepared by University Faculty in the furtherance of their instructional responsibilities at UI. See FSH 1565 D; and (3) works prepared by University Faculty as part of the general obligation to produce scholarly or other creative works, such as, but not limited to articles, books, musical compositions, and works of art. See FSH 1565 C-2.
  - Claims of ownership based upon use of University resources:
    - FSH 5300 B-2(b)(5): Materials are “UI-Sponsored Materials” within the meaning of this policy, and shall be assigned to UI consistent with Subsection G., if the natural person or persons: ... made “substantial use” of UI resources in the creation or development of the specific materials, provided however that the use of UI resources openly available to the public shall not be considered “substantial use” of UI resources.
    - FSH 5300 C. “Absent a valid written agreement to the contrary, any Protectable Discoveries made by UI employees, students, or such other natural person or
persons identified above with the use of facilities (other than library resources) owned by UI or made available to it for project or research purposes are deemed to have been made in the course of working on a research program or project of UI” and FSH 5300 C-1: A Protectable Discovery made by a natural person or persons wholly on his or her own time outside of his or her duties at UI and without the use of UI facilities (other than library resources) belongs to that natural person or persons, even though it falls within the field of competence relating to the person’s UI position.

- **With respect to the transfer to the University of intellectual property rights claimed by the University and/or Board**, the University policy now reflects the SBOE “requirement that institution employees and other persons subject to this Board policy make a present assignment to the institution of rights, including future rights, in intellectual property to which the Board claims ownership by this policy and/or the institution claims ownership by its institutional policy…” (SBOE Policy V.M. Section 4(b)(iv). These changes were shared with the IPC in December 2013; the language of FSH 5300 has been revised since to be more consistent with the language required, under Stanford v. Roche, to effect a present assignment of rights (i.e. “do hereby assign”).
  - FSH 5300 (G): PRESENT ASSIGNMENT OF RIGHTS IN INTELLECTUAL PROPERTY. All intellectual property to which UI claims ownership by this policy shall belong to UI, and UI employees, students, and other persons subject to this policy do hereby assign to UI all rights, including future rights, in intellectual property to which UI claims ownership by this policy or as otherwise required by policy of the UI Board of Regents, and in any related application for legal protection of such intellectual property. Any person assigning intellectual property to UI subject to this Section G. shall cooperate fully with UI in in preserving, perfecting, and protecting legal rights associated with such assigned intellectual property. Such cooperation may include, but is not limited to the execution, of confirmatory assignment to the University of particular intellectual property.
    - This language does not alter the obligation, under the prior versions the policy, of employees to assign such rights to the University; it affects the timing of the assignment.

- **The SBOE policy required further clarification regarding institutional responsibility for the protection and commercialization of University-owned intellectual property and the distribution of royalties generated from commercialization of University-owned intellectual property.** These changes were made after the initial discussion of the policy with the IPC.
  - These clarifications are found in:
    - FSH5300A-1(d). Definition of “designated agent” added at the request of the SBOE.
    - FSH5300B-4(b) and (c). Clarification of royalty distribution for commercialized copyrighted works owned by the University.
    - FSH5300C-2. Identification of unit (Office of Technology Transfer [OTT]) responsible for securing legal protection of “Protectable Discoveries,” as required by SBOE policy.
    - FSH 5300C-2(d). Clarification of the activities in which OTT may engage, with respect to “Protectable Discoveries,” as required by SBOE policy.
COPYRIGHTS, PROTECTABLE DISCOVERIES AND OTHER INTELLECTUAL PROPERTY RIGHTS

PREAMBLE: This section outlines UI policy concerning copyrights, as they arise from university research. Particularly this section discusses the assignment of ownership to such copyrights. This section was part of the 1979 Handbook but was revised in a significant way 1) in July of 1992 to reflect changes in applicable federal law, 2) in January of 1995 by the addition of subsection C-5 to reflect the change in the Regents’ intellectual property and conflict of interest rule (former IDAPA 08.01.09.101.03c), and 3) in 2007 to update terminology and add clarity to the rights and obligations of the University and of its employees and students in dealing with intellectual property, and in 2008 edited to reflect the restructuring of technology transfer functions from Idaho Research Foundation to the Office of Technology Transfer. In 2009 revisions were made to B-2 to comply with federal law. Unless otherwise noted, the text is as of July 1996. This policy was revised in November 2015 for consistency with the revised intellectual property policy of the Board of Regents of the University of Idaho. For more information, contact the Research Office (208-885-6651).

CONTENTS:

A. Introduction
B. Copyrights
C. Protectable Discoveries
D. Dispute Resolution
E. Special Arrangements for Federal, State, and Private Grants
F. Record-Keeping

G. Present Assignment of Rights in Intellectual Property

A. INTRODUCTION. The UI encourages the creation of scholarly works as an integral part of its mission. UI participation in the development, marketing, and dissemination of educational materials has as its aim the improvement of the quality, effectiveness, and efficiency of student learning and of faculty and staff development. The UI recognizes its obligation to transfer technology and useful discoveries to society. With respect to all types of intellectual property, the rights and obligations of UI, its employees and students and other third parties shall be governed by this policy. To the extent permitted by this policy, individuals may enter into contracts with UI to address intellectual property, in which case the contract terms shall control, provided that the contract was entered into in a manner consistent with this policy.

A-1. DEFINITIONS. For purposes of this Section 5300 and Section 5400, the following terms shall have the following meanings:

a. “electronic” shall mean relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

b. “written” or “in writing” shall include information created, generated, sent, communicated, received, or stored by electronic means, including without limitation email, telecopy, and facsimile transmissions.

c. “natural person or persons” means natural person or persons involved in the creation or development of intellectual property.

d. “designated agent” means the person or entity acting on behalf of the UI, within the scope of and under authorization through a written agreement between the person or entity and UI, to protect, commercialize, otherwise transfer rights in intellectual property subject to this policy and to, as authorized by the UI, to enforce rights in such intellectual property. A designated agent of the University may include, by way of example and not limitation, a UI-affiliated foundation approved by the Regents of the University of Idaho and acting under an operating agreement between UI and the foundation.
B. COPYRIGHTS. UI participation in the development of copyrightable works raises questions concerning the ownership and use of materials in which UI has become an active and intentional partner through substantial investment of resources. This policy is established to clarify the rights of the natural person or persons and the UI regarding ownership and use of copyrightable materials in the absence of a valid written agreement between the natural person or persons and UI. The UI acknowledges the right of faculty and staff members and students to prepare and publish certain materials that are copyrightable in the name of the natural person or persons and that may generate royalty income for the natural person or persons. (In this policy, “the natural person or persons” is to be construed broadly as including producers of creative works in the arts and sciences and creators of literary or scholarly writing.)

B-1. Coverage. The types of materials to which this policy applies include:

a. Study guides, tests, syllabi, bibliographies, texts, books, and articles.

b. Films, filmstrips, photographs, slides, charts, transparencies, illustrations, and other visual aids.

c. Programmed instructional materials.

d. Audio and video recordings.

e. Simultaneously recorded live audio and video broadcasts.

f. Dramatic, choreographic, and musical compositions.

g. Pictorial, graphic, and sculptural works.

h. Computer software, including computer programs, procedural design documents, program documents, and databases as defined below: [ed. 7-00]

(1) “Computer program” means a set of instructions that direct a computer to perform a sequence of tasks.

(2) “Procedural design document” refers to material that describes the procedural steps involved in the creation of a computer program.

(3) “Program document” refers to material created for the purpose of aiding the use, maintenance, or other interaction with a computer program.

(4) “Data base” means a collection of data elements grouped together in an accessible format.

i. Other copyrightable materials, including materials generated in the production of any of the above works.

B-2. Assignment of Ownership. Faculty, staff members, UI employees and students retain all rights in the copyrightable materials they create except in the cases of “UI-Sponsored Materials” as defined in Subsection B-2-b below, materials subject to grant of a non-exclusive license to UI for public access as described in Subsection B-2-c below, materials covered by a Grant or Contract as discussed in Subsection E below, and materials covered by a valid written agreement between the natural person or persons and the UI as discussed in Subsection B-5 below. Faculty members, staff members, and students shall, consistent with Subsection G, assign rights in copyrightable materials claimed by UI under the above-identified exceptions and shall co-operate with reasonable requests from UI for the creation of any documents and records needed to vest and memorialize UI’s rights, if any. [rev. 7-09]

a. Retention of Rights by University Faculty. Except as otherwise provided in Subsection B-2-b and B-2-c above, the natural person or persons retain the rights to: (1) copyrightable works produced while on sabbatical leave; (2) course materials, study guides, and similar materials prepared by University Faculty in the
furtherance of their instructional responsibilities at UI, See FSH 1565 D; and (3) works prepared by University Faculty as part of the general obligation to produce scholarly or other creative works of the natural person or persons, such as, but not limited to, articles, books, musical compositions, and works of art. See FSH 1565 C-2. [rev. 7-09]

b. UI-Sponsored Materials. Materials are “UI-Sponsored Materials” within the meaning of this policy, and shall be assigned to UI consistent with Subsection G, if the natural person or persons: (1) was commissioned specifically prepared the work as part of his or her employment duties at UI, excluding those works identified in B-2-a; (2) was specially ordered or commissioned in writing by UI or one of its distinct units to develop the material as part of his or her employment duties and the writing states that the resulting works would be considered “UI Sponsored”; (2) received extra pay from UI to prepare the specific materials pursuant to a valid written agreement providing that the extra pay is consideration for the preparation of the specific materials; (3) received release time from regular duties, not including sabbatical leave, to produce the specific materials; or (4) made “substantial use” of UI resources in the creation or development of the specific materials, provided however that the use of UI resources regularly and customarily available to him/her as part of his/her regular employment or as part of his/her regular academic enterprise shall not be considered “substantial use” of UI resources.

c. University Non-exclusive License for Public Access. In order to permit UI to comply with public access mandates established by federal law or federal agency or university policy (e.g., the National Institutes of Health Public Access Policy, Division G, Title II, Section 218 of PL 110-161 [Consolidated Appropriations Act, 2008]) and related terms and conditions of research agreements, faculty, staff, UI employees and students accepting research grants or contracts from, and conducting research from United States federal agencies shall hereby grant UI an irrevocable, non-exclusive, non-transferable, non-commercial, royalty-free license in copyrightable materials produced as a result of such research, such license to be used solely to comply with public access mandates. This grant of non-exclusive license is deemed by UI to be a special arrangement for federal grants and contracts, per Subsection E below, and is not subject to the disposition of rights described in B-2-b or to negotiation under Section B-5 below. [add. 7-09]

B-3. Registration of Copyrightable Materials. Absent a valid written agreement otherwise, UI Sponsored Materials are to be registered in the name of the Regents of the University of Idaho or its’ assignee. UI, through the provost or his or her designee, has the right to file registrations of UI sponsored copyrightable works. Additionally, UI, through the provost or the provost’s designee, may market, protect, transfer, convey, license, or otherwise derive income from University-Sponsored Materials. The provost, or designee, shall undertake evaluation, protection, transfer, and commercialization of UI Sponsored Materials consistent with this policy and the policies of the Board of Regents of the University of Idaho, including but not limited to Idaho State Board of Education Policy Section V. Financial Affairs, Subsection M, Intellectual Property and the related Idaho State Board of Education Institution Technology Licensing Guidelines. In light of the university’s educational mission and its role in the creation of the copyrightable materials, when entering into agreements to transfer, convey, or license the copyrightable works, the university may retain an irrevocable, non-exclusive, non-transferable, royalty-free license in University-Sponsored Materials.

B-4. Royalties and Income.

a. Out of the gross receipts from royalties and other income from sale or licensing of UI Sponsored Materials, the UI, college, department, other unit, or UI’s designated agent may recover reasonable expenses that it incurred in the development, marketing, or dissemination of the materials.

b. Absent a valid written agreement to the contrary, the net proceeds are distributed as follows: 40 percent to the natural person or persons, 40 percent to UI or its designated agent, and 20 percent to the college or service unit of the natural person or persons. In the event that any UI Sponsored Material is a jointly authored work, the portion of the net proceeds allocated to the natural person or persons, 40 percent, shall be divided among the original authors of the UI Sponsored Material and the portion of the net proceeds allocated to the college or
service unit of the natural person or persons, 20 percent, shall be divided among the appropriate colleges and/or service units. At least half of the share allocated to the college or other unit is given to the department of the natural person or persons for use in furtherance of its goals.

c. UI retains a right to royalty-free internal use of any materials designated UI Sponsored under this policy. Allocation and distribution of any royalties or other income from a jointly authored work constituting UI Sponsored Material and to which ownership vests in UI and another third party shall be made in accordance with a written agreement between UI and the third party. UI’s portion of royalties or other income distributed to UI pursuant to such an agreement shall be distributed within UI following the schedule set forth in Section B-4(b), unless subject to a prior agreement between UI and the UI original author(s) of such works.

B-5. Written Agreements.

a. The provost, or designee, represents UI in negotiating agreements with the natural person or persons pursuant to this policy. The natural person or persons of who authored the copyrightable material may negotiate with the provost and arrive at a mutually agreeable contract. The provost consults with the dean or departmental administrator of the department of the natural person or persons in drafting these agreements. (For purposes of this policy, “dean” includes persons with equivalent administrative capacities.)

b. Valid written agreements concerning copyright ownership, use of copyrighted materials, and distribution of royalties and income from copyrightable works which are entered into by one or more natural person or persons and the provost, or designee, supersede the provisions of this Section 5300. To be valid, such agreements must (1) comply with the terms of any relevant Grants or Contracts as discussed in Subsection E below, (2) comply with the policies of the UI Board of Regents, and 3) comply with Idaho state and federal law. [rev. 4-08]

c. The provost, or designee, represents UI in negotiating and exercising agreements with third parties with respect to the transfer and/or commercialization of UI Sponsored Materials.

B-6. Use of UI-Sponsored Materials. Use of UI Sponsored Materials under this policy is subject to the following conditions:

a. Internal Use. Internal use is use by anyone employed by UI, or attending the UI as a student, while acting within the scope of his or her employ or academic enterprise, or any agent of UI acting within the scope of his or her agency, either directly or through a grant or contract, or by any UI unit. Internal use of UI Sponsored Materials for the same general purpose for which they were developed, and revision of such materials, do not require the prior approval or notification of any of the natural person or persons. However, as long as any natural person or persons involved in the creation or development of UI Sponsored Materials remains a UI employee or student, such natural person or persons may, in a professionally appropriate manner, propose revisions of the material.

b. External Use. External use is any use other than that defined in Subsection B-6-a. above. Licensing or sale of UI Sponsored Materials for external use must be preceded by a valid written agreement between the natural person or persons and UI or the UI’s designated agent specifying the conditions of use, and including provisions concerning updating or revision of the materials.

B-7. Protection.

a. Allegations of unauthorized use or copyright infringement of UI Sponsored Materials should be made to the Intellectual Property Committee for investigation. The committee will recommend appropriate action to the provost.
b. If such action is initiated by UI alone or in concert with the natural person or persons, the costs are borne by UI or UI’s agent. Proceeds from the action in excess of costs are shared as provided in Subsection B-4-b.

c. If the natural person or persons involved in the creation or development of the allegedly infringed intellectual property desires to institute a suit and UI decides not to act, UI will co-operate either by assigning to the natural person or persons such rights as are necessary for the natural person or persons to pursue redress or by some other reasonable method acceptable to UI. The costs of the suit will be born by the natural person or persons desiring to sue, who will also obtain any monetary relief obtained from the alleged infringer due to the prosecution of the suit.

B-8. Liability. When either UI or the natural person or persons involved in the creation or development of materials copyrighted by UI or its assignee is alleged to have violated personal or property rights, UI or its designated agent assumes responsibility for the defense against such allegation and the satisfaction of any judgment rendered against UI or the natural person or persons except insofar as liability of governmental entities is limited by Idaho Code 6-903 as currently written or later amended. Defense of claims against UI employees arising from creation, development or use will be governed by the Idaho Tort Claims Act.

B-9. Waiver. Any person involved in the development of copyrightable materials governed by Section 5300 B waives any claim that otherwise legal use of the material by UI, its agents, employees, or distinct units, creates legal liability by UI, its agents, employees, or distinct units on any theory of indirect liability for allegedly infringing actions of third parties. [ed. 4-08]

C. PROTECTABLE DISCOVERIES. “Protectable Discoveries,” for purposes of this Section 5300 is defined to include anything which might be protected by utility patent, plant patent, design patent, plant variety protection certificate, maskwork, or trade secret. All Protectable Discoveries made by UI employees or students at any of its facilities in the course of programs carried on by UI or made by persons in the course of working on such programs or projects under contracts or agreements with UI belong to UI. The natural person or persons involved in the creation or development of such Protectable Discoveries shall and do(es) hereby assign to UI, as required by Subsection G., all such (1) Protectable Discoveries, (2) applications for legal protection of such Protectable Discoveries, and (3) utility patents, plant patents, design patents, and plant variety protection certificates resulting from such Protectable Discoveries. Absent a valid written agreement to the contrary, any Protectable Discoveries made by UI employees or students, or such other natural person or persons identified above with the use of facilities (other than library resources, normal office use, incidental use of the UI internet network consistent with UI internet use policy, and other facilities for which the person has paid use fees; those resources openly available to the public) owned by UI or made available to it for project or research purposes are deemed to have been made in the course of working on a research program or project of UI.

C-1. Ownership by Other Than UI. A Protectable Discovery made by a natural person or persons wholly on his or her own time outside of his or her duties at UI and without the use of UI facilities (other than library resources, normal office use, incidental use of the UI internet network consistent with UI internet use policy, and other facilities for which the person has paid use fees; those resources openly available to the public) belongs to that natural person or persons, even though it falls within the field of competence relating to the person’s UI position. This provision also allows any Protectable Discovery made by a natural person or persons in the course of private consulting services carried out by the person in conformance with the UI’s policy on professional consulting and additional workload [see 3260] to be assigned to the consulting sponsor.

C-2. UI Processes. All Protectable Discoveries made by a natural person or persons in the course of working on a UI research program or project must be submitted to the Office of Technology Transfer (OTT). If a Protectable Discovery is accepted by OTT for development, management, marketing, licensing, or assignment in any manner for the purposes of this policy, OTT must ensure that such property is conveyed, assigned, or transferred to UI. OTT shall have full power to manage such rights and to enter into contracts and licenses concerning such rights, including the right to join in agreements with other nonprofit intellectual property-management entities. At its
discretion, UI shall, through OTT, initiate and control the prosecution of patents on or otherwise secure the legal protection of Protectable Discoveries subject to assignment to UI under this policy. OTT shall be responsible for financing associated with such Protectable Discoveries, including but not limited to the payment of legal fees associated with the prosecution and/or protection of such Protectable Discoveries. In those circumstances in which OTT decides to seek legal protection for Protectable Discoveries, OTT shall provide direction to and shall be responsible for payment of legal counsel engaged by UI. OTT may, however, enter into alternate arrangements for legal protection of Protectable Discoveries by third parties, through written agreement with such third parties. OTT shall undertake protection and commercialization of Protectable Discoveries consistent with this policy and the policies of the Board of Regents of the University of Idaho, including but not limited to Idaho State Board of Education Policy Section V. Financial Affairs, Subsection M. Intellectual Property and the related Idaho State Board of Education Institution Technology Licensing Guidelines. [rev. 7-97, 7-06, 4-08]

a. Upon submission of intellectual property to OTT, OTT must make a formal written decision to pursue commercialization for that property within three months. If OTT does not file for protection of the intellectual property within eighteen months of the date the disclosure was submitted, the rights shall be evaluated for return to the inventors. If OTT submits a provisional patent application for intellectual property protection, a “full” and non-provisional patent application must be submitted within nine months of the date of the submission of the provisional patent. [add. 7-97; ed. 7-98, rev. 4-08]

b. The OTT shall submit semi-annual reports, as long as UI owns the property, to both the inventor/natural person or persons of and to the college or center where the inventor(s) are located. The report will include on 1) the status of the application until such time that protection is granted, 2) the marketing activities for the property being serviced, and 3) an accounting for funds received from the property. In the event that OTT has been unsuccessful in transferring a property or filing a patent application within three years after its first acceptance, OTT must notify the college or center and inventor(s) in writing. [add. 7-97, rev. 7-06, 4-08]

c. If OTT determines not to pursue commercialization of a Protectable Discovery, the University may elect, subject to controlling federal law, including but not limited to 37 CFR 401 (“Bayh-Dole”), to reconvey, assign and transfer the Protectable Discovery to the natural person or persons (inventors) involved in the creation of the intellectual property. [rev. 4-08]

d. OTT may, in furtherance of the dissemination, use, or commercialization of UI Protectable Discoveries, engage in a range of activities including but not limited to: granting exclusive or non-exclusive licenses; assigning rights to Protectable Discoveries; entering into contracts with third parties to provide controlled access to information concerning Protectable Discoveries, materials closely related to Protectable Discoveries, or Protectable Discoveries; negotiating for acceptance of an equity interest by the Idaho Research Foundation in a company licensing a Protectable Discovery; offering guidance with respect to business planning; or making University facilities available for further development of licensed UI Protectable Discoveries or business incubation, subject to contract.

C-3. Proceeds. OTT will make provision to share the net proceeds, management, and licensing of any Protectable Discovery as follows: [ed. 4-08]

a. Legal and development expenses incurred by OTT will be reimbursed first out of the net proceeds, prior to any distributions. [rev. 4-08]

b. Absent a valid written agreement to the contrary, the net proceeds in excess of legal and development expenses shall be distributed as follows: 40 percent to the natural person or persons; 40 percent to OTT; and 20 percent to the college or service unit of the natural person or persons. At least half of the share allocated to the college or other unit is given to the department of the natural person or persons for use in furthering its goals. [rev. 4-08]
C-4. Ownership Questions. Questions as to the ownership of a Protectable Discovery or division of proceeds between persons involved in development of such discoveries and departments are referred in the first instance to the Intellectual Property Dispute Committee. The disputes will be decided in accordance with Section 5300(D).

D. DISPUTE RESOLUTION. From time to time, disputes will inevitably occur concerning ownership of the intellectual property (copyrights and Protectable Discoveries) contemplated in this Section 5300. Resolution of such disputes shall be achieved by the following procedure:

D-1. Intellectual Property Dispute Committee. The Intellectual Property Dispute Committee (IPD Committee) shall be an Ad Hoc Committee formed when necessary by appointments made by the Provost, in consultation with the Chair of Faculty Council Senate and the President of the Graduate and Professional Student Association (GPSA). Normally the IPD Committee shall be composed of five faculty members and two graduate students. The Provost shall appoint the chair from among the faculty members. In the event the GPSA shall fail to appoint one or more student members, the IPD Committee may nonetheless be formed by the Provost and conduct business without the GPSA student representatives.

D-2. Recommendation by the Intellectual Property Dispute Committee. The IPD Committee considers, investigates, and makes recommendations toward resolution of disputes concerning (1) ownership of copyrightable materials and Protectable Discoveries, and (2) allegations or unauthorized use or copyright infringement of UI Sponsored Materials. It reviews all relevant evidence submitted to it before making its recommendation to the provost. The IPD Committee’s recommendation is to be made no later than 60 days after receiving the matter for consideration. The IPD Committee’s recommendation is determined by a majority of all its members voting by secret ballot at a meeting at which over one-half its appointed members are present. No member may participate in any matter in which his or her ownership rights are being determined.

D-3. Decision by the Provost. After receiving the recommendation of the IPD Committee, the provost makes a decision concerning ownership or infringement. The provost’s decision is made no later than 30 days after receiving the IPD Committee’s recommendation. That decision is transmitted in writing to the natural person or persons and to his or her departmental administrator and dean.

D-4. Appeal of the Decision of the Provost. The decision of the Provost may be appealed to the President of the University. Further appeals shall be made as from any other decision of an administrative body under the laws of the State of Idaho in effect from time to time.

E. SPECIAL ARRANGEMENTS FOR FEDERAL, STATE, AND PRIVATE GRANTS. Nothing in this policy shall prevent UI from accepting research grants from, and conducting research for, agencies of the United States upon terms and conditions under applicable provisions of federal law or regulations that require a different disposition of rights in any form of intellectual property. Moreover, nothing herein shall prevent cooperative arrangements with other agencies of the state of Idaho for research. Where receipt of a grant in support of research from any nonprofit agency or group may be dependent upon acceptance of terms and conditions of the established intellectual property policy of the grantor that differ from those stated herein, UI may specifically authorize acceptance of such grant upon such terms and conditions. UI may also specifically authorize contractual arrangements with an industrial sponsor for different disposition of rights in any form of intellectual property resulting from its sponsored research. UI may assign and license intellectual property rights to any third party, regardless of whether that third party is a research sponsor.

F. RECORD-KEEPING. See Section 5500 for record-keeping procedures that are recommended in order to safeguard the property rights of UI or the faculty member in research and potentially patentable results.

G. PRESENT ASSIGNMENT OF RIGHTS IN INTELLECTUAL PROPERTY. All intellectual property to which UI claims ownership by this policy shall belong to UI, and UI employees, students, and other persons subject to this policy do hereby assign to UI all rights, including future rights, in intellectual property to which UI claims ownership by this policy or as otherwise required by policy of the UI Board of Regents, and in any related application for legal protection of such intellectual property. Any person assigning intellectual property to UI subject to this Section G. shall cooperate fully with UI in preserving, perfecting, and protecting legal rights associated with such
assigned intellectual property. Such cooperation may include but is not limited to the execution of confirmatory assignment to the University of particular intellectual property.

[For form of employment agreement concerning patents, see 5400.]
Document comparison by Workshare Compare on Tuesday, October 27, 2015 8:31:08 AM

<table>
<thead>
<tr>
<th>Input:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Document 1 ID</strong></td>
<td>file://S:\GC\GeneralCounsel\2006 SEPT TO PRESENT\06 SHARED GOVERNANCE\03 FAC SECY\01 FSH\FSH 5300 2007-0350sk\2009_July_5300public-access.doc</td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>2009_July_5300public-access</td>
</tr>
<tr>
<td><strong>Document 2 ID</strong></td>
<td>file://S:\GC\GeneralCounsel\2006 SEPT TO PRESENT\06 SHARED GOVERNANCE\03 FAC SECY\01 FSH\FSH 5300 2007-0350sk\FSH_5300_SBOE_7-16-14_clean Faculty Senate 11.2015.doc</td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>FSH_5300_SBOE_7-16-14_clean Faculty Senate 11.2015</td>
</tr>
<tr>
<td><strong>Rendering set</strong></td>
<td>Standard</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Legend:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Insertion</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Deletion</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Moved from</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Moved to</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Style change</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Format change</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Moved deletion</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Inserted cell</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Deleted cell</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Moved cell</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Split/Merged cell</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Padding cell</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Statistics:</strong></th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insertions</td>
<td>59</td>
</tr>
<tr>
<td>Deletions</td>
<td>37</td>
</tr>
<tr>
<td>Moved from</td>
<td>1</td>
</tr>
<tr>
<td>Moved to</td>
<td>1</td>
</tr>
<tr>
<td>Style change</td>
<td>0</td>
</tr>
<tr>
<td>Format changed</td>
<td>0</td>
</tr>
<tr>
<td>Total changes</td>
<td>98</td>
</tr>
</tbody>
</table>