

## **Policy 6-316.4 Appendix: (Policy 6-316, Section 4)**

**Academic Senate - April 7, 2008**

**Executive Committee - March 24, 2008**

**Senate Executive Committee April 21, 2008**

**For the proposal to adopt a University Policy regarding course instructors assigning as required reading any materials authored by the instructors**

(Faculty Financial Interest in Selection of Course Materials-- PPM 8-12.4, Sec. B. 10. (Duties to Students))---

The proposal developed by the Academic Policy Advisory Committee was first presented to the Senate in April and is scheduled for debate on May 5. During this comment period, members of the University community have come forward with a suggestion that the new policy should be broader than initially proposed, in one respect: it should apply not only to situations in which the course instructor is an author of the materials--- but also to situations in which an instructor is assigning course materials that were authored by (and royalties are paid to) another member of the faculty within the same department (or single-department college).

The effect then would be that whenever any instructor within a department adopts course materials authored by another member of that department, the instructor and author must eliminate the appearance of financial motive, by donating to a charity a dollar amount equivalent to the royalties the author would receive from the purchase of the materials by students in that course.

A full description of the thinking behind this suggestion (and the pros and cons) should be developed before the May Senate meeting. For the immediate attention of the Executive Committee, two points should be mentioned.

- A. The main argument for broadening the policy to encompass an entire department is that junior faculty who are selecting course materials may be directly or

indirectly pressured to adopt materials authored by a more senior faculty member within the department, with the end result being that that the adoption of the materials by a colleague is of financial benefit to the senior faculty.

- B. The Academic Policy Advisory Committee did consider such a broader scope for the policy, and decided against formulating its proposal in that way. The committee weighed competing arguments---and its analysis will likely be described at the April Executive Committee meeting and possibly at the May Senate meeting.

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## **Memorandum**

**To: Senior Vice Presidents David W. Pershing and A. Lorris Betz**

**From: Susan M. Olson, Associate Vice President for Faculty**

**Richard J. Sperry, Associate Vice President for Health Sciences**

**RE: Proposed Policy on Faculty Financial Interest in Selection of Course Materials**

**DATE: MARCH 11, 2008**

In response to a complaint arising in 2005-06 from a faculty member's charging a royalty fee on self-authored materials assigned to students, the administration asked the Academic Policy Advisory Committee (APAC) to consider whether the University needs a policy addressing this situation. After considerable discussion in 2006 and 2007, APAC recommends adoption of proposed Policy PPM 8-12.4 (B)(10) governing faculty financial interest in selection of course materials. The current chair of APAC is Professor William Lockhart of the College of Law. Prior committee chairs Davar Khoshnevisan, Department of Mathematics, and Linda Stephenson, Quinney Law Library, also led the discussion of this issue.

Because this policy is proposed as an amendment to the Faculty Code of Rights and Responsibilities (PPM 8-12), it must also be reviewed by the Academic Freedom and

Faculty Rights Committee. That committee met and approved this policy on February 15, 2008. The committee is currently chaired by Paul Mogren, Marriott Library.

Rationale: Faculty members in many academic fields author books or other materials that are used in the courses that those faculty members teach. This is a fundamental scholarly enterprise, understandably accompanied by faculty preference for assigning these materials in their courses.. However, the receipt by faculty members of royalties or other compensation in connection with these required purchases can create the appearance of an inappropriate motive for choosing the faculty member's materials rather than other available materials in the eyes of students who are not well informed about the size of most faculty royalties. In addition, the practice could arguably be seen as violating Utah state law that prohibits a public employee

( including a University faculty member) from “us[ing] or attempt[ing] to use his official position to . . . further substantially the officer's or employee's personal economic interest.” Utah Code Annotated § 67-16-4(1)(c).

Proposed Policy PPM 8-12.4(B)(10) addresses this issue by affirming faculty members' right to assign self-authored materials but requiring faculty members to contribute any royalties or other compensation generated by students' required purchases for the authors' classes to a tax exempt organization. The policy also provides a simple and fair way to calculate the contribution that does not over-estimate the amount of the royalty-- by assessing it only on purchases of new books, while excluding used books from the calculation.

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**From: Bill Lockhart, Chair, Academic Policy Advisory Committee**

**To: Penny Brooke, Nancy Lines**

**cc: Susan Olson, John Morris**

Re: Submission for Faculty Senate consideration of a proposed addition to the University's Policy & Procedure Manual regarding faculty financial interest in selection and assignment of course materials

Following is a proposed amendment of the PPM prescribing requirements intended to avoid any implication of financial motivation in faculty assignment of self-authored text or materials. On the advice of University counsel, it is also intended to avert any risk to faculty members that could arise from enforcement of the provision of the Utah Code which makes it a criminal offence for any public employee to “use or attempt to use his official position to: . . . further substantially the officer's or employee's personal economic interest.” (Utah Code Annotated, section 67-16-4.)

It should be emphasized that this proposal does not question - indeed endorses - the propriety of faculty members' assignment for their classes of books or materials they have authored. It deals only with potential financial benefit from those assignments.

The proposed amendment was prepared and approved last Spring by the Academic Policy Advisory Committee. It has recently been reviewed and approved by the Academic Freedom and Faculty Rights Committee; and on 3/24/08 the Executive Committee of the Senate reviewed the proposal and recommended Senate approval.

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**For addition as PPM 8-12.4, Sec. B. 10. (Duties to Students):  
Faculty Financial Interest in Selection of Course Materials**

10. Any faculty member or employee of the University of Utah with authority to assign or recommend course materials for any course offered by the university shall do so based on sound academic values, without any prospect of personal financial gain.

- A. Self-authored course materials are encouraged and may be assigned; but, except for reimbursement of out-of-pocket costs, faculty may not accept or retain royalties or any other personal compensation or material benefit from the sale or furnishing of self-authored course materials to students in their own classes, or in any classes in their department or single-department college for which they have authority to assign or recommend course materials.
- B. Prior to completion of any course or teaching unit for which a faculty member has assigned or recommended self-authored materials that may generate any royalty

or other author's compensation, the faculty member shall request, from all students subject to that assignment or recommendation, an anonymous statement of the number of new copies of such materials purchased by each student. This requirement can be satisfied by a form used for student course evaluations that includes the above inquiry, or by a separate survey submitted for anonymous student response before the end of the course or teaching unit. Upon completion of the survey, the faculty member shall file with his/her department chair or dean a brief statement of the number of new materials purchased as reported in the above survey and the rate of royalty or compensation last paid or contracted by the publisher to be paid. The obligation to avoid prospect of personal financial gain shall be satisfied by including with the above report a written commitment to contribute a sum, equal to the number of new books purchased by students multiplied by the reported royalty or compensation rate, to a tax exempt organization (which may include the University of Utah) not later than six months following completion of the course. Alternatively, the requirement can be satisfied by reporting an arrangement under which the author professor's royalty is deducted as a discount from the price of the new book.

- C. For purposes of this policy, the term “course materials” shall be interpreted to include not only books or similar traditional format of bound printed pages typically used in university courses at the time of adoption of this policy, but also materials, information, teaching instruments or data collections distributed in any media form, including but not limited to audio and videotapes, digital storage media such as optical or magnetic disks, and internet or similar transmittal for which fees are typically charged and author compensation provided.
- D. (d) authored course materials were not recommended or assigned for purposes of personal financial gain.

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**From: Bill Lockhart, Chair, Academic Policy Advisory Committee**

**To: Penny Brooke, Robert Flores, Nancy Lines**

**cc: Susan Olson, John Morris**

Re: Executive committee referral to Faculty Senate of alternative versions of a proposed addition to the University's Policy & Procedure Manual regarding faculty financial interest in selection and assignment of course materials

Accompanying this memo are two alternative versions of the proposed addition to the PPM that seeks to avoid implications of faculty financial interest in the selection or assignment of course materials. Alternative #1 is the "notice" version that was supplied for the Senate meeting on April 7, 2008, which applies only to self-authored course materials assigned in the authors' own classes. Alternative #2 is a modified version of Alternative #1, prepared at the request of the Executive Committee (but without a recommendation), to anticipate possible floor amendments that might seek to expand the policy to apply to course materials authored by any faculty in a department or single-department college that are assigned or recommended for courses in their department or college. Thus, Alternative #2 follows the same design as Alternative #1, though modified to achieve that expanded purpose.

The original Alternative #1 proposal was developed by the Academic Policy Advisory Committee partly on the advice of University counsel in order to avert any risk that a faculty member who assigns or recommends self-authored materials in her/his own classes might be subject to prosecution under the Utah Public Employees Ethics Act. That law makes it a criminal offence for any public employee to "use or attempt to use his official position to: . . . further substantially the officer's or employee's personal economic interest." (Utah Code Annotated, section 67-16-4.) While the limited royalties usually involved may not seem "substantial," certain interpretations of the act suggest the possibility that comparatively small royalties might raise legal questions.

The proposed policy also responds to concerns that the academic integrity of a course could be undermined by students' perceptions - however uninformed - that financial considerations motivated assignment of self-authored materials. Alternative #2 seeks to avoid possibly similar perceptions that course materials may be assigned because of actual or implicit pressure by one faculty member on another faculty member.

It should be emphasized that this proposal does not question - indeed endorses - the propriety of faculty members' assignment for their classes of books or materials they have authored. It deals only with potential financial benefit from those assignments.

Alternative #1 was recommended by the Academic Policy Advisory Committee and further approved by both the Academic Freedom and Faculty Rights Committee and the Executive Committee of the Senate (3/24/08). The expanded concept in Alternative #2 was not favored by the Policy Committee, and was not considered by the Academic Freedom and Faculty Rights committee. Although Alternative #2 was not considered on the merits by the Executive Committee, it was drafted at Executive Committee recommendation in order to facilitate efficient consideration of possible proposals for amendment of the original Alternative #1 version.

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**Alternative #1 (This version was approved by the Senate and Board of Trustees.)  
For addition as PPM 8-12.4, Sec. B. 10. (Duties to Students):  
Faculty Financial Interest in Selection of Course Materials**

10. Any faculty member or employee of the University of Utah with authority to assign or recommend course materials for any course offered by the university shall do so based on sound academic values, without any prospect of personal financial gain.

- A. Self-authored course materials are encouraged and may be assigned; but, except for reimbursement of out-of-pocket costs, faculty may not accept or retain royalties or any other personal compensation or material benefit from the sale or furnishing of self-authored course materials to students in their own classes, or in any classes in their department or single-department college for which they have authority to assign or recommend course materials.
- B. Prior to completion of any course or teaching unit for which a faculty member has assigned or recommended self-authored materials that may generate any royalty or other author's compensation, the faculty member shall request, from all

students subject to that assignment or recommendation, an anonymous statement of the number of new copies of such materials purchased by each student. This requirement can be satisfied by a form used for student course evaluations that includes the above inquiry, or by a separate survey submitted for anonymous student response before the end of the course or teaching unit. Upon completion of the survey, the faculty member shall file with his/her department chair or dean a brief statement of the number of new materials purchased as reported in the above survey and the rate of royalty or compensation last paid or contracted by the publisher to be paid. The obligation to avoid prospect of personal financial gain shall be satisfied by including with the above report a written commitment to contribute a sum, equal to the number of new books purchased by students multiplied by the reported royalty or compensation rate, to a tax exempt organization (which may include the University of Utah) not later than six months following completion of the course. Alternatively, the requirement can be satisfied by reporting an arrangement under which the author professor's royalty is deducted as a discount from the price of the new book.

- C. For purposes of this policy, the term “course materials” shall be interpreted to include not only books or similar traditional format of bound printed pages typically used in university courses at the time of adoption of this policy, but also materials, information, teaching instruments or data collections distributed in any media form, including but not limited to audio and videotapes, digital storage media such as optical or magnetic disks, and internet or similar transmittal for which fees are typically charged and author compensation provided.
- D. Faculty compliance with the above procedures shall constitute complete and satisfactory demonstration that any self-authored course materials were not recommended or assigned for purposes of personal financial gain.

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**Alternative #2 (This version was not approved.)**

**[Significant modifications of Alternative #1 underlined.]**

**For addition as PPM 8-12.4, Sec. B. 10. (Duties to Students):  
Faculty Financial Interest in Selection of Course Materials**

10. Any faculty member or employee of the University of Utah with authority to assign or recommend course materials for any course offered by the university shall do so based on sound academic values, without any prospect of personal financial gain.

- A. Self-authored course materials are encouraged and may be assigned; but, except for reimbursement of out-of-pocket costs, no faculty member in any department or single-department college may accept or retain royalties or any other personal compensation or material benefit from the sale or furnishing of any course materials to students in any classes in the same department or single-department college.
- B. Prior to completion of any course or teaching unit in any department or single-department college in which assigned or recommended course materials that may generate any royalty or other author's compensation were authored by any faculty member in that department or college, the faculty member responsible for that course or teaching unit shall request, from all students subject to that assignment or recommendation an anonymous statement of the number of new copies of such materials purchased by each student.

This requirement can be satisfied by a form used for student course evaluations that includes the above inquiry, or by a separate survey submitted for anonymous student response before the end of the course or teaching unit. Upon completion of the survey, a copy shall be provided to the faculty author of the course materials, who shall file with his/her department chair or dean a brief statement of the number of new materials purchased as reported in the above survey and the rate of royalty or compensation last paid or contracted by the publisher to be paid. The obligation to avoid prospect of personal financial gain shall be satisfied by including with the above report a written commitment to contribute a sum, equal to the number of new books purchased by students multiplied by the reported royalty or compensation rate, to a tax exempt

organization (which may include the University of Utah) not later than six months following completion of the course. Alternatively, the requirement can be satisfied by reporting an arrangement under which the author professor's royalty is deducted as a discount from the price of the new book.

- C. For purposes of this policy, the term “course materials” shall be interpreted to include not only books or similar traditional format of bound printed pages typically used in university courses at the time of adoption of this policy, but also materials, information, teaching instruments or data collections distributed in any media form, including but not limited to audio and videotapes, digital storage media such as optical or magnetic disks, and internet or similar transmittal for which fees are typically charged and author compensation provided.
- D. Faculty compliance with the above procedures shall constitute complete and satisfactory demonstration that any self-authored course materials were not recommended or assigned for purposes of personal financial gain.