



Innovative Learning Technology Initiative

Office of the Provost
Academic Senate

October 14, 2014

EXECUTIVE VICE CHANCELLORS/PROVOSTS

Dear Colleagues:

We write to provide information on agreements relating to online courses developed through the Innovative Learning Technology Initiative (ILTI). You requested sample agreements at the July COVC meeting. As we collected them, we also learned from the Office of General Council (OGC) that changes in the documents were likely to be needed.

As you know, each campus is handling its own agreements for ILTI-funded online courses as it chooses, within the limits of existing policy and other requirements. We would like to remind you of the following requirements as OGC has explained them to us. First, in accordance with the 2003 Policy on Ownership of Course Materials, a written agreement must be in place with the “Designated Instructional Appointee” if “Exceptional University Resources” (as those terms are defined in the attached 2003 Policy and the attached Memo re Unit 18 Lecturers) are used. Second, the online course agreements must ensure that the ILTI-funded courses will be offered multiple times (at least four for semester-based campuses; at least six for quarter-based campuses) during the academic year for at least three years. Third, pursuant to the Unit 18 Lecturers’ collective bargaining agreement, the University policies that apply to all faculty, including Senate Faculty, in the areas of intellectual property and online education must apply to Unit 18 Lecturers.

We are attaching an updated ILTI course agreement template prepared by OGC that references these items. If you are interested in finding out more about course agreements from other campuses, please consult the attached spreadsheet of campus counsel contacts. Given the new information we received (attached), we decided not to send any completed campus agreements.

The Academic Senate leadership will also share this information, including the sample agreements and the OGC template, with the Divisional Senate Chairs on each campus.

If you have any questions, please contact ILTI Coordinator Ellen Osmundson, 510-987-9274, ellen.osmundson@ucop.edu, who has been collecting information about agreements from OGC and the campuses.

Cordially,



Aimée Dorr, Provost
Executive Vice President for
Academic Affairs



Mary Gilly, Chair
Academic Senate



Dan Hare, Vice Chair
Academic Senate

Attachments (5)

1. PDF of this letter
2. Spreadsheet of Campus Counsel Contacts
3. OP OGC Sample Online Course Agreement
4. Memo re Unit 18 Lecturers and the Ownership of Course Materials under University Copyright Policy
5. UC 2003 Policy on Ownership of Course Materials
6. September 18, 2014 letter from OGC explaining modifications to advice and sample online course agreement

Cc: Executive Director Baxter
ILTI Project Coordinator Osmundson
Event Planner Ching Wong

The following document is a sample online education agreement between each UC campus and its “Designated Instructional Appointees” as that term is defined in UC’s 2003 Policy on Ownership of Course Materials (and is further clarified in the June 26, 2012 Memo re “Unit 18 Lecturers and the Ownership of Course Materials under University Copyright Policy.”). Please note that pursuant to the Unit 18 Lecturers’ collective bargaining agreement, the same University policies that apply to all faculty, including Senate Faculty, in the areas of intellectual property and online education must apply to Unit 18 Lecturers.

This template is provided only as a sample for an ILTI-funded course, and each UC campus is free to develop its own template online course agreement for ILTI-funded courses, as some campuses have done already. Per the 2003 Policy on Ownership of Course Materials, a written agreement must be in place with the Designated Instructional Appointee if “Exceptional University Resources” (as defined in the 2003 Policy) is used.

As referenced below, the relevant online course agreements should ensure that the ILTI-funded courses will be offered multiple times – i.e., at least four for semester-based campuses; at least six for quarter-based campuses – during the relevant term (which must be at least three years) without additional costs to students. The agreements for ILTI-funded courses also should include provisions that ensure that this obligation to offer the courses a certain amount of times over three academic years will be met even if the faculty member or lecturer who developed the course can no longer teach it.

Provisions highlighted in yellow (below) reflect specific items about which campuses may wish to discuss further.

Online Course Agreement

The Regents of the University of California, across its ten campuses, is developing course programs for online education (individually, a “Course”) and wishes to obtain the expertise and experience of the faculty in designing and refining the online academic experience for the students.

The Regents recognizes the value to the University of California of having online course content available for use during the regular term and summer sessions in credit-bearing instruction of University of California undergraduate students and non-University of California students, and also recognizes the value to non-UC students of having access to online course content created by the preeminent members of our University of California faculty.

The Regents is required as a condition of UC policy and U.S. law to obtain a license from participating faculty members for the use of any intellectual property developed or used in the development of these Courses. In determining the best approach to obtaining such license, The Regents affirms that it greatly values the unique expertise and contributions of the participating faculty members in designing the Course content, and thus wishes to share control of the dissemination of the Course content with these faculty members in accordance with applicable Regents’ policy.

Accordingly, interested faculty and The Regents have agreed to work together to enter into agreements with each other to obtain the necessary licenses for presenting the Course, as well as separate agreements with the individual campuses offering the classes at issue to develop the faculty members' Course which shall include timelines, educational objectives, and pedagogical requirements and shall also include a statement which defines what will be included in the Course materials.

The Regents will also pay participants a sum acknowledging the faculty members' valuable time and effort in developing Courses.

Under the 2003 UC Policy on Ownership of Course Materials, the terms of this Course Agreement must be set forth in writing, and it is set forth below.

ONLINE COURSE AGREEMENT

This Online Course Agreement (“Agreement”) is made between The Regents of the University of California, a California corporation having its corporate offices located at 1111 Franklin Street, Oakland, California 94607-5200 (“The Regents”), and <Faculty PI>, an employee of The Regents with offices located at <UC campus> (“Contributor”), and the parties agree as follows:

1. Intellectual Property Ownership

1.1 To the extent that the Course under this Agreement includes any work of authorship entitled to protection under the copyright laws, the parties agree to the following provisions:

1.1.1 The Contributor owns the portions of the Course created by him/her, in accordance with U.S. copyright law, the 1992 University Policy on Copyright Ownership and the 2003 University Policy on Ownership of Course Materials.

1.1.2 The Regents owns the portions of the Course created by it, in accordance with U.S. copyright law, the 1992 University Policy on Copyright Ownership, and the 2003 University Policy on Ownership of Course Materials. Each campus has the discretion to transfer to the Contributor ownership of materials that are owned by The Regents and created on its campus.

1.1.3 As permitted under the 2003 University Policy on Ownership of Course Materials, Contributor hereby grants to The Regents a non-exclusive, perpetual, royalty free, fully paid-up, license to copy, distribute, perform, display, and create derivative works of the Course in all mediums either now known or developed in the future. Any modifications or supplementation of Course content by The Regents will be made only after (a) reasonable notice to the Contributor or his/her department, and (b) the absence of a timely objection from the faculty member. Any additional conditions governing modification or supplementation of the Course content by The Regents will be governed by the agreement entered into between the Contributor and the campus offering the Course.

2. Payment

2.1 As full consideration for all services provided by the Contributor and for the rights granted to The Regents, including the granting of a license of the Course to The Regents on the terms set forth in Section 3, The Regents shall pay the Contributor an amount that will be determined between the Contributor and the offering campus.

2.2 Contributor shall also be entitled to a royalty share each time the Course is used for online credit bearing instruction in a manner that generates commercial revenues for The Regents, the amount of which will be determined between the Contributor and the offering campus.

3. Term

3.1 This Agreement shall remain in effect for [three to] six (6) years, with an option to renew on one-year terms, if both parties agree.

4. Frequency of Course Offering

4.1 Contributor agrees that The Regents is permitted to offer the Course multiple times during the academic year for at least three years, as follows:

- for semester-based campuses, The Regents is permitted to offer the Course at least four times within the first three academic years of this Agreement's term; and
- for quarter-based campuses, The Regents is permitted to offer the Course at least six times within the first three academic years of this Agreement's term.

Contributor also agrees The Regents is permitted to offer the Course multiple times during this Agreement's term even if Contributor is no longer employed by The Regents or for other reasons.

5. Copyright Permissions

5.1 Contributor will comply with the copyright clearance policies and practices of his/her academic department and campus in preparing the Course, and The Regents and the Contributor shall work together, in good faith, to ensure compliance to the best of their ability with all applicable copyright laws, including the TEACH ACT and requirements for obtaining permissions with respect to copyright clearance.

6. ADA Compliance

6.1 In designing the Course, Contributor will make good faith efforts, in cooperation with The Regents, to comply with all ADA requirements, including but not limited to those relating to Course accessibility.

7. Contributor Warranty

7.1 Contributor represents and warrants that in performing the services under this Agreement: (a) the Course will be Contributor's original work and that the Contributor has secured any necessary permissions to use any third party work; (b) the Course will not violate the right of privacy or publicity or infringe upon any copyright or other proprietary rights of any other person or entity; (c) the Course shall not contain libelous, defamatory or other unlawful material; and (d) the Contributor has the full right, power, and authority to grant the license to The Regents.

[7.2 Only to the extent permitted by law and UC policy, Contributor agrees to hold harmless and indemnify The Regents against any claim, demand, suit, action, proceeding, recovery, or expense of any nature whatsoever arising under this Agreement, including (a) claims of infringement of copyrights or proprietary rights resulting from The Regents' publication and

distribution of the Course; (b) claims of libel, obscenity, unlawfulness, or invasion of privacy based on or arising out of any matter or thing contained in the Course as furnished by the Contributor; or (c) any breach of the warranties set forth above.]

8. Governing Law and Dispute Resolution

[SECTION INTENTIONALLY DELETED.]

CONTRIBUTOR

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

By: _____
Signature

By: _____
Signature

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Preamble

The University of California established in 2013 the Innovative Learning Technology Initiative (ILTI) for the purpose of supporting and enhancing the online course availability for UC undergraduate students¹. This initiative was created as a response to the Governor's earmark of \$10 million from UC core funding to enhance access to high-demand courses. A significant part of this budget is dedicated to a competitive granting program for UC faculty interested in fulfilling the goals of ILTI.

One of the award conditions of an ILTI-supported course grant is for the recipient to sign a license agreement that will specify ownership of the course materials, the extent to which the University can use these materials, and the rights and responsibilities of both the recipient and the University in connection with the intellectual property contained in the course. It is this licensing agreement that is contained in the present document.

This licensing agreement applies not only to courses offered under the auspices of ILTI, but also to online and other technology-enhanced (often referred to as "hybrid-online") courses that are developed using Exceptional University Resources as defined by the 2003 UC Policy on Ownership of Course Materials. That policy states:

"Ownership of the rights to Course Materials created, in whole or in part, by Designated Instructional Appointees with the use of Exceptional University Resources shall be governed by a written agreement entered into between the Originator(s) and the University. The agreement shall specify how rights will be owned and controlled and how any revenues will be divided if the materials are commercialized."

This licensing agreement serves as the written agreement required by policy, and in no manner affects the Senate approval process to which all UC courses must be subjected before they are offered to matriculated students.

In addition, ILTI requires a course-specific written agreement with the host campus. This second agreement will specify the number of times a course will be offered, and mechanisms for inter-campus enrollment within the UC; it will be signed by all parties involved (e.g., individual faculty members, department chair, dean, provost). Precise terms of the agreement will be determined in the process of developing budgets and work plans for proposals best aligned with ILTI priorities. This second agreement is *not* contained in the present document

¹ For a full description see <http://www.ucop.edu/innovative-learning-technology-initiative/>

UCR Online Course License Agreement

The Regents of the University of California (“The Regents”) wishes to obtain the expertise and experience of the faculty in designing and refining the online academic experience for students.

The Regents recognizes the value to the University of California of having online course content (individually a “Course”, and plural “Courses”) available for use during the regular term and summer sessions in credit-bearing instruction of University of California students, and also recognizes the value to non-UC students of having access to online course content created by the preeminent members of the UC faculty.

The Regents is required as a condition of UC policy and U.S. law to obtain a license from participating faculty members for the use of any intellectual property developed or used in the development of these Courses. In determining the best approach to obtaining such license, The Regents affirms that it greatly values the unique expertise and contributions of the participating faculty members in designing the Course content, and thus wishes to share control of the dissemination of the Course content with these faculty members in accordance with applicable Regents’ policy.

Accordingly, interested faculty and The Regents will work together to enter into agreements with each other to obtain the necessary licenses for developing and presenting the Courses. These agreements shall include timelines, educational objectives, and pedagogical requirements and shall also include a statement which defines what will be included in the Course Materials. For Courses funded through ILTI, The Regents also will enter into separate agreements with the individual campuses offering the classes at issue.

The Regents will also pay participants a sum acknowledging the faculty members’ valuable time and effort in developing Courses (“Faculty Remuneration”).

Under the 2003 UC Policy on Ownership of Course Materials, the terms of this UC Online Course Agreement (“Agreement”) must be set forth in writing, and it is set forth below.

LICENSE

This UCR Online Course License Agreement is made between The Regents of the University of California (“The Regents”), a California corporation having its corporate offices located at 1111 Franklin Street, Oakland, California 94607-5200 (“**The Regents**”), and <Faculty PI>, an employee of The Regents with offices located at 900 University Avenue, Riverside, California 92521 (“**Contributor**”), and the parties agree as follows:

1. Intellectual Property Ownership:

1.1 To the extent that the Course under this Agreement includes any work of authorship entitled to protection under the copyright laws, the parties agree to the following provisions:

1.1.1 Unless otherwise agreed in writing, the Contributor owns the portions of the Course created by him/her, in accordance with U.S. copyright law and the 1992 University Policy on Copyright Ownership.

1.1.2 Unless otherwise agreed in writing, the Regents own the portions of the Course created by it, in accordance with U.S. copyright law and the 1992 University Policy on Copyright Ownership. Each campus has the discretion to transfer to the Contributor ownership of materials that are owned by The Regents and created on its campus.

1.1.3 As permitted under the 2003 University Policy on Ownership of Course Materials, the Contributor hereby grants to The Regents a non-exclusive, license to copy, distribute, perform, display, and create derivative works of the Course in all mediums either now known or developed in the future for the term of this Agreement only, upon payment of the remuneration identified herein only.

1.1.4 Any modifications, supplementation of Course content, or creation of derivative works by The Regents will be made only after a) reasonable notice to the Contributor or his/her department and b) the express written consent of the Contributor. Any additional or differing conditions governing modification or supplementation of Course content by The Regents will be governed by the agreement entered into between the Contributor and UC Riverside.

2. Payment:

2.1 As full consideration for all services provided by the Contributor and for the rights granted to The Regents, including the granting of a license of the Course to The Regents on the terms set forth in section 3, The Regents shall pay the Contributor remuneration, the amount of which will be determined between the Contributor and UC Riverside. Remuneration may

include, but is not limited to, a stipend, research support, course release time, and a share of gross revenue derived from enrollment of non-matriculated (i.e. non-degree seeking) students in the course. Matriculation status is judged relative to the UC system for ILTI Courses, and to UC Riverside for other Courses.

2.2 Contributor shall also be entitled to a royalty share each time the Course or a derivative thereof is used other than at UCR (or, for ILTI Courses, other than at UC) in a manner that generates commercial revenues for The Regents, the amount of which will be determined between the Contributor and the offering campus as specified in the agreement entered into between the Contributor and the campus offering the Course, but which shall be not less than 10% of the gross income.

3. Term

3. This Agreement shall remain in effect for no fewer than three (3) years and no more six (6) years, with an option to renew on one-year terms, if both parties agree. The specific term of this Agreement will be determined by Contributor and UC Riverside.

4. Copyright Permissions:

4.1 Contributor will comply with the copyright clearance policies and practices of his/her academic department and campus, if any exist, in preparing the Course, and The Regents and the Contributor shall work together, in good faith, to ensure compliance to the best of their ability with all applicable copyright laws, including the TEACH ACT and requirements for obtaining permissions with respect to copyright clearance.

5. ADA Compliance:

5.1 In designing the Course, Contributor will make good faith efforts, in cooperation with The Regents, to comply with all ADA requirements, including but not limited to those relating to Course accessibility.

6. Contributor Warranty:

6.1 The Regents and the Contributor shall work together, in good faith, to ensure that in performing the services under this Agreement, a) the Course will be the Contributor's original work or that the Contributor has secured any necessary permissions to use any third party work, and b) the Course will not violate the right of privacy or publicity or infringe upon any copyright or other proprietary rights of any other person or entity, c) the Course shall not contain libelous, defamatory or other unlawful material, and d) the Contributor has the full right, power, and authority to grant the license to The Regents. It is recommended that Contributor require that any guest lecturer or other person providing content for the Course agree to be bound by this provision.

6.2 The Regents shall Indemnify Contributor in accordance with The Regents' obligations to Contributor based on the Contributors' status as an employee of The Regents, but only for

actions or failures to act within the scope of said employment.

7. Governing Law and Dispute Resolution

7.1 THIS AGREEMENT IS TO BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

CONTRIBUTOR

By _____

Signature

Name: _____

Title _____

Date _____

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

By _____

Signature

Name: _____

Title _____

Date _____