


April 27, 2020

TO: Dylan Rodriguez, Chair
Academic Senate

FROM: Philip Brisk, Chair 
BCOE Executive Committee

RE: BCOE Response to Proposed UCR Online Course ILTI Agreement

Dear Dylan,

The BCOE Executive Committee reviewed the proposed UCR Online Course ILTI Agreement. We consulted with BCOE Faculty who have experience teaching online, especially undergraduate courses.

The feedback that we received was mixed. At least one faculty member said that the revised agreement was perfectly acceptable. Others expressed a mix of skepticism and confusion.

First and foremost, BCOE faculty are not lawyers; a general sentiment was that an independent legal review would be helpful; as non-lawyers, BCOE faculty who review the proposed agreement are likely to miss or misinterpret key differences between the original and the proposed agreement that seem small, but have substantial legal ramifications.

Second, there was concern that no rationale for the changes were provided. While it is unfortunate that the UCR Division of the Academic Senate did not approve the original ILTI agreement, it is unclear how or why a revision to the 2014 UCOP template is warranted or needed. A justification for the revision written in non-legal language would be helpful.

Third, the key differences to the revision, involving (1) derivative works and modifications, (2) the term of the agreement, and (3) the indemnification clause, seem to tilt the balance of the agreement further in favor of the UC/Regents, to the detriment of the interests of the Contributor. There is some concern that this could disincentivize potential Contributors from participating in the ILTI program.

Specific to (3) the indemnification agreement, our lay interpretation is that the UC/Regents seek indemnification in the event that the Contributor violates copyright law. As written, it also could mean that disputes between the Contributor and the University regarding interpretation of the agreement itself may not be allowed, as it covers "any claim... of any nature." It is possible that these types of disputes could be automatically exempt. An independent legal review of the document would help to clarify these, and potentially other, confusing points.

Another request was to clarify Sections 1.1.1 and 1.1.2 of the agreement. If a Contributor was to develop a lecture and the University records the lecture in their studio using University equipment, it is not immediately clear who "created" the content. While this clause was not changed in the revised agreement, we think it is valuable to point out another aspect of the agreement that is unclear to us.