University Senate

October 7, 2015

Members Present

Members present at the meeting:

Call to Order

Senate Chair Brown called the meeting to order at 3:18 p.m.

Special Order: Presidential Briefing

Brown noted that the Senate leadership had developed several new procedures to engage the administration and the Senate. One of those is a new agenda item where the President has an opportunity to provide a briefing at each Senate meeting. Senators were asked to suggest topics, and President Loh would address some of those topics. Brown invited President Loh to present his briefing.

President Loh provided a briefing on two suggested topics provided by senators. <u>The Administration's view of the role of the Senate on campus.</u>
President Loh stated that shared governance is academic democracy. He said that the administration is committed to a vibrant and strong shared governance model at the university. He encouraged senators to improve shared governance by enhancing social capital such as communication, trust, and respect and through education. He noted that shared governance is working together in the governance of the university but is not equal decision making authority.

<u>The concern that adding sports to the primary mission of research and education is inappropriate.</u>
President Loh noted that Athletics is not part of the mission of the University but is the most visible part of the University. He suggested that it was the "front porch" to the University, serving as a starting point for conversations that lead to donations in the academic arena.

Approval of the September 10, 2015 Senate Minutes (Action)

Chair Brown asked for additions or corrections to the minutes of the September 10, 2015, meeting; hearing none, he declared the minutes approved as distributed.

Report of the Chair

Nominations Committee
Brown stated that outgoing senators should have received a message from the Senate Office requesting volunteers to serve on the Nominations Committee. This important committee is charged with soliciting nominations from the membership of the Senate for the Executive Committee, Chair-Elect, the Committee on Committees, and other University-wide committees and councils whose members will be elected at the annual transition of the Senate in May. The committee serves a very important purpose yet meets only a few times during the period of late-January through March. The Senate relies on the good judgment of the members of the Nominations Committee to present candidates that reflect the quality and diversity of our campus community. Brown encouraged any outgoing senators to consider serving on this important committee. Those interested can send an email to senate-admin@umd.edu. The Senate will vote on the Nominations Committee slate at its December meeting.

Next Meeting
Brown announced that the next Senate meeting would be held on Tuesday, November 10, 2015. President Loh will be presenting his State of the Campus Address. This meeting will be held in the Colony Ballroom of the Union to accommodate the larger audience that is anticipated.

Senate Legislation
Brown noted that the SEC charged the ERG Committee with considering whether a representative of the Division of Information Technology should be added to the University Library Council. He also noted that additional information about issues within Senate committees this year can be found by going to:
http://senate.umd.edu/sms/index.cfm?event=currentBills

PCC Proposal to Establish a New Area of Concentration in International Relations for the Bachelor of Arts in Government and Politics (Senate Doc. No. 15-16-06) (Action)

Andrew Harris, Chair of the PCC Committee, presented the PCC Proposal to Establish a New Area of Concentration in International Relations for the Bachelor of Arts in Government and Politics and provided background information.

Brown opened the floor to discussion of the proposal.

Senator Alexander, emeritus faculty, read a message from a colleague, Martin Hisler, who stated that the proposal was well constructed and the program is well designed. He stated that he would support this proposal in the strongest terms possible.

Hearing no further discussion, Brown called for a vote on the proposal. The result was 89 in favor, 2 opposed, and 2 abstentions. **The motion to approve the**

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proposal passed.

Review of the Policy on Intellectual Property (Senate Doc. No. 10-11-36) (Action)

Robert Dooling, Chair of the IP Subcommittee of the University Research Council presented the revised Policy on Intellectual Property Policy and provided background information on the history of the policy and the rationale for the revisions.

Brown opened the floor to discussion of the revised policy.

Senator Cleveland, faculty, College of Computer, Mathematical, and Natural Sciences, thanked the committee for its work. He stated that the computer science faculty met to discuss the revised policy. They raised two key issues with the revised policy: there is a well-established common law exception to the "works made for hire" doctrine and the treatment of software in the policy. Computer science faculty expect to be able to share software freely with collaborators. He noted that if you write a paper on the software, you have to make the software available to reviewers in order to verify results. He suggested that there is a strong feeling that software should be considered copyright and not be included in inventions or patents.

Dooling responded that those were valid concerns and that the committee structured it this way to make the policy more understandable. He noted that he spoke with other colleagues about how to treat software, and other institutions are struggling with this as well. We believe that the way the committee did it works. He stated that this is a valid concern, and we did not dismiss it but made a judgment call.

Senator St. Jean, faculty, College of Information Studies, stated that her faculty colleagues had raised questions about the requirement by many funding agencies that software be made open source. She inquired what would happen if UMD owns the software? Would faculty be able to make it open source? Is there guidance on open source databases?

Dooling stated that there is a mechanism for open sourcing software through the Office of Technology Commercialization (OTC).

Anne Bowden, Member of the IP Subcommittee and representative of the Office of General Counsel, stated that in that situation the contract would take precedence over the policy. We have to comply with contractual obligations. Currently, software can be made open source. You must seek a waiver either through ORAA or through OTC. There are not any provisions for databases, but you can do that if you have the labor.

Gayathri Varma, Executive Director, OTC, stated that her office has never said no to open sourcing information, and some of business models require that software be open source. We need to have a handle on what goes out of the University. We are trying to protect us from implications on the backend related to open source licenses.

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Senator Bengfort, graduate student, College of Computer, Mathematical, and Natural Sciences, stated that research assistants feel that the new policy does concern them, particularly with open source and creative commons of software. Can we open source, and how do we do that? He noted that a waiver might be too onerous, particularly when we are dealing with software that comes with other licenses. If we use another piece of software in our research that has an open source license, we are required by that license to also make our software open source. Typically, we use the MIT license, but the copyright section of this document should express that more clearly.

Dooling stated that the waiver request process goes pretty smoothly but that the other complications that he noted could slow things down.

Bengfort stated that graduate students already have to go through additional hoops with advisors and supervisors, so it is not as straightforward for research graduate students as it might be for faculty.

Bowden stated that software has to be disclosed to the University because most of our research is federally funded, so we have an obligation to disclose the software to the government. There needs to be some mechanism, but maybe the waiver process needs to be improved, or a blanket waiver should be provided for some categories. She noted that that could be discussed. She stated that software in coursework does not have to be disclosed because students own it.

Senator Montas, faculty, A. James Clark School of Engineering, stated that his colleagues are not happy with elements in the software and revenue sharing sections of the revised policy. The current policy is more generous to people developing software. He noted that many faculty choose academia in part because of the balance with benefits of IP Policy ownership rights. He stated that the past policy had some options to retain ownership, while the new policy does not provide that benefit. The ownership rights offset the lower salaries in academia over industry. He also noted that the current policy has at least one case where the ownership of the software remains with the developer, but the revised policy does not have any provision for that. In the current policy, the creator gets 50% of licensing revenue, but in the proposed policy the creator only gets 25%.

Dooling responded that universities are being more aggressive in saying what they own, but they are not in the business of taking your stuff. He stated that the revenue sharing has changed so OTC can be paid and so we can incentivize units to help faculty and students commercialize products. He noted that we could also consider a tiered structure for categories that generate significant revenue.

Gayathri Varma, Executive Director, OTC, noted that the change is not that significant, because the current policy really only gives inventors about 34%. The University's cut has been decreased in the current policy. If you do the calculation, the departments are getting more in order to incentivize support for commercialization. She clarified that the current policy gives the inventor the first 10% up to a threshold set by the System but after that, the University takes

expenses of 30%, and anything remaining is taken 50/50 between the inventor and the University. 85% of the University's 50/50 cut goes back to the departments. So the bottom line gives inventors only about 34%. He offered to meet with the senator directly to discuss the calculations.
Montas noted that he could not encourage anyone to support the revised policy without clarification in this area.

Brown noted that he was willing to entertain a motion to recommit following some additional discussion of concerns with the revised policy.

Senator Goodman, Chair-Elect, introduced George Bailey. He stated that he was a researcher in the area of technology transfer and a scholar in patent policy and that trade secret policy should be incorporated into the policy. Because we are an open academic community, we need to take trade secrets seriously, or we will lose patent rights and discourage scholarly exchange. He noted that faculty are not adequately protected and dealt with at the university.
Dooling thanked Bailey for his comments.

Senator Englehart, part-time grad student, inquired whether the 5% revenue share went directly to the Dean.
Dooling stated that the funds go to the Dean's Office.
Englehart stated that he worked with Goddard Space Flight Center on software that has turned into a good commercial success. Goddard does take it seriously and has made a lot of strides with commercialization. The Tech Transfer Office can be seen as a burden, but there is precedent for success there. He also echoed Bengfort's comments about graduate students retaining IP rights if they are working on research.
Dooling stated that students own their work unless they are doing funded research.

Senator Soltan, faculty, College of Behavioral and Social Sciences stated that we should not be a rubber stamp. If faculty have not had an opportunity to discuss this thoroughly, we should recommit the policy. He also made a motion to recommit the policy back to the committee for further consideration. The motion was seconded.

Brown opened the floor to discussion of the motion to recommit.

Senator McKinney, full-time instructor, stated that he supported the motion to recommit because of how we treat traditional scholarly works. Most teaching faculty are affected by this section of the policy. Under the old policy, traditional scholarly works are retained by faculty but the revised policy allows the University to keep it for its own use. Professional Track faculty who are not eligible for tenure can be taken advantage of. This revised provision allows for the possibility that a faculty member who develops a course on their own could be fired and their work/course can still used by the University through a cheaper

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instructor. He stated that recapturing university costs should be defined more clearly.

Senator Campbell, faculty, College of Education, supported the motion to recommit and requested that future documents include a simplified comparison between the proposed revenue sharing plan and the current plan. She stated that the largest revenue generator is not software but math textbooks for 6th, 7th, and 8th grade students. She noted that getting a share of the royalties from the textbook is very lucrative. There were no costs associated with the University because the work was funded by a grant. The royalties have been used towards fellowships. The new formula takes money from the creator. She asked for clarity on the old and new percentages of revenue sharing and the rationale.

Senator St. Jean, faculty, College of Information Studies, stated that there seems to be a mismatch in the document because the Q&A states that students own the rights from their scholastic work but there is also a section in the policy that states that if a student is being advised by a university employee the work is the University's property. She asked for clarification on that issue.

Dean Banavar, College of Computer, Mathematical, and Natural Sciences, stated that he was grateful to the committee for its work but suggested that we recommit in order to get additional feedback from faculty. He noted that many faculty have not had a chance to look at the new guidelines, so it would be nice to get feedback and then move forward in an expeditious manner.

Senator Witzleben, faculty, College of Arts and Humanities, stated that the committee should consider several types of items produced by people in music and other performing arts, especially related to audio and video recordings. He provided examples such as a composer who creates an album of his/her own work; or a piano faculty member who puts together an album of piano works that they did not author or create but is a part of the tradition of that field; or in ethnomusicology where the norm in a scholarly book is that you have a cd, dvd, or a publisher's website, which includes audio and video recordings made in the course of the author's research. The final example combines traditional written scholarly work, but the audiovisual materials would be tangible research materials that are treated very differently. He requested that the committee include these types of works in the policy.

Hearing no further discussion, Brown called for a vote on the motion to recommit the policy to the committee for further consideration. **The result was 88 in favor, 0 opposed, 0 abstentions. The motion passed.**

Brown asked senators to send additional concerns to senate-admin@umd.edu so that they can be compiled and forwarded to the committee.

New Business

Jordan Goodman, Chair-Elect of the Senate, made a motion to charge the SEC with reviewing the recommendations for shared governance outlined in the Chair's Report from September 10, 2015, and report back to the Senate on their findings no later than the April 2016 Senate meeting. Specifically, the SEC should be charged with determining:

- Is there improved engagement with the President and Provost?
- Is there improved opportunity to provide informed input and feedback for substantive issues that impact faculty, staff, and students?
- Is there is an improvement in awareness and communication within the campus, colleges, schools, and units regarding the activities of the Senate? Has this led to increased engagement?

The motion was seconded.

Brown opened the floor to discussion of the motion.

Goodman commented that we have outlined a path to move forward and we are just asking whether it has worked.

Hearing no further discussion, Brown called for a vote on the motion to charge the SEC. **The result was 72 in favor, 3 opposed, 12 abstentions. The motion passed.**

Adjournment

Senate Chair Brown declared the meeting adjourned at 4:47 p.m.