

Brown Faculty Forum: Intellectual Property Policy  
December 14, 2004

The forum was opened by the Chair, Professor Thomas Banchoff at 4:00 PM who noted that the sponsor of the forum is the FEC. It is a mechanism to allow faculty to voice their concerns and offer comments.

The Provost made some remarks placing the issue in context. When he arrived he reviewed matters that would place Brown amongst its peers as a research institution. Issues of royalties, ownership and compensation needed clarification. He noted that this is a policy of the Corporation. The Provost and President will make recommendations to Corporation who will make the final decision. We already have an intellectual property policy and that this is a proposed revision. Some individuals feel that commercialization is in conflict with the very nature of a university. However others hold the opposite view that commercialization can be used to disseminate information developed during the academic process.

Similar to the last Forum the Chair requested the faculty to present issues to frame the discussion. The following issues were offered from the floor:

1. Fairness – physical and life scientists are treated differently in the proposal. Why are we changes
2. The policy does not address Hospital-based faculty.
3. Collaboration
4. Incentives
5. Applicability e.g. how will work done on sabbatical leaves be treated?
6. The policy does not address Different tracts – research tracts are on grant time, grant funding. What is defined as University time?
7. How are university duties considered in this policy?
8. Contracts
9. Implementation
10. Grandfathering. Will certain categories of staff be allowed to continue to function under the old (present) policy? Will inclusion under the new proposed policy be voluntary?
11. Open source vs. patent, copyright
12. Tax issues
13. Appeals process.
14. Patents vs. commercialization.
15. Student work
16. What is the effect of the Baye-Dole law - A federal act passed in 1980 giving Universities commercial rights to discoveries made with federal funding.

Applicability: Provost – this is a fairly standard way in which universities articulate questions of ownership of intellectual property rights. There are areas that are blurry. These could be taken up in the appeals process. The critical question is how relevant to an employee's duties does an invention have to be to be the property of Brown. All universities struggle with where to draw the line. This policy creates a process to grapple with these issues. A committee with five faculty members will be appointed to make recommendations.

Royalty and copyrights: An important issue was raised concerning open source software that gives the rights to all developers without requiring royalties. The intention of open source software is to promote further innovation and greater utilization among other developers. Yet it would be inconsistent with this philosophy if Brown held the copyright. While not addressing the issue specifically, the Provost replied that there are many universities dealing with this and we can adopt the best solution.

Regarding Hospital Based faculty, it was pointed out that many are not paid by the university or are working under grants. Yet they might be using University facilities. The Provost acknowledged that this topic needs to be clarified.

Grandfathering. Document doesn't make distinction between research and tenure track. The research employees receive much less support from university. Should the "cut" the university takes be prorated in some way? Reply – Research tract staff receive a lot of University support e.g., libraries, IT services etc.

There was a spirited discussion on why the University needed a new policy. It was pointed out that there are already a number of individual unofficial agreements between the University and departments. The question was asked whether faculty have an option of going into the new agreement. Beverly Ledbetter, Vice President and General Council replying to the issue of Grandfathering, whether the University should grandfather the person or the patent. She pointed out that when the faculty were hired and signed their compliance with the old policy, it was not intended that that policy would remain unchanged. Among the faculty speaking to this point, there was a strong sentiment for allowing grandfathering to the old policy.

The issue of fairness was addressed next. A number of the scientific faculty expressed their displeasure that the humanities exempted? In reply, it was pointed out that faculty in the humanities make very little money on their books and the vast majority are not making any money at all. There are a few who are allegedly making a lot of money. Books are traditionally treated differently – this goes beyond our university. The publisher owns the copyright the usual royalty is 15% on a hard cover and 10% on a paperback book. The university does not put any money into the commercialization of a publication. Copyrights cannot be compared to patents in this regard. Another sentiment expressed was that the individual faculty member makes a choice whether to work on an invention or to write a book.

There was considerable discussion around the issue of Applicability. For example leave is generally not paid – how should commercialization of intellectual property developed during leave be addressed in the policy? How about the University policy that one-day a week is ones “own time”. The Provost noted that the decision as to how leave will be handled in the policy will be made by the committee. Sabbaticals are sticky. There is not uniformity as to whether it is covered amongst our peer institutions. Some institutions felt that the sabbaticals have costs to the department. How about summer work? The faculty is really not being paid at this time. If you are not being paid does brown have a claim?

Tax implications – It was pointed out that the new policy may have significant tax implications in certain circumstances, i.e., when “royalties” are paid out with company shares. When the company goes public, under the proposed policy the shares belong to the University, yet the recipient would still be responsible for the tax consequences.

It was suggested that there would be more incentive to develop commercial uses of intellectual property if the faculty member would receive “up front money” as opposed to delayed payments. This could support the writing of proposals and encourage innovation.

A faculty member raised the question of whether the old policy failed in its implementation. If this were the case the new policy should be made more specific as to who and what is covered and under what circumstances the University believes that work being done is under its auspices.

Finally, there was a plea to have a point by point comparison between the old and new policy.

The Chair adjourned the Forum at 5:43 PM.

Respectfully submitted,

Fredric J. Silverblatt, M.D.  
Secretary of the Faculty Forum