

## **NOVEMBER MEETING, 2002**

*The University of Michigan  
Ann Arbor  
Thursday, November 14, 2002*

The Regents convened at 2:10 p.m. in the Regents' Room. Present were President Coleman and Regents Brandon, Maynard, McGowan, Newman, Taylor, and White. Also present were Provost Courant, Interim Executive Vice President Greenfield, Vice President Harper, Vice President and General Counsel Krislov, Chancellor Little, Chancellor Mestas, Vice President Rudgers, Interim Chief Financial Officer Slottow, Vice President and Secretary Tedesco, Vice President Ulaby, and Vice President Wilbanks. Regents Deitch and Horning were absent.

### **President's Opening Remarks**

President Coleman called the meeting to order. She cited a number of noteworthy faculty accomplishments, national recognition received by the University of Michigan Health System and other units, and large grants received by University units during the past month. She noted that the Center for Research on Learning and Teaching is celebrating its 40th anniversary, and was the first teaching center of its kind in the country.

President Coleman introduced two new staff members: Sue Gott, University planner, and Deanna Mabry, assistant director-plant extension.

### **Annual Operating Request to the State, Ann Arbor Campus**

Provost Courant presented an overview of the request to the state and of the budgetary outlook for the coming fiscal year. He noted that the University has more

students and a larger research volume than ever before. This reflects widespread recognition that education and knowledge are the most productive investments available; but just when it is most difficult to find resources necessary to sustain investment in higher education, the payoff for those investments is highest.

Provost Courant noted that budgetary stringency does not change the University's mission, but changes its practices, accelerating the process of innovation by substitution and slowing the rate at which faculty can be replaced. In addition, there is deferral of some maintenance and curtailing of staff training and travel. Budgetary stringency also places pressure on other revenue sources, including tuition. He noted that the University's obligation to be prudent stewards of its resources and to take the long-term view causes it to continually reallocate funds from administration to its core academic mission through cost savings.

He highlighted several examples where significant cost savings have been achieved, including \$7.5 million per year saved through reforms in the purchasing system; nearly \$6 million per year saved through energy conservation programs (\$10 million per year will eventually be saved when all energy-saving programs are in place); a new prescription drug program that is predicted to save between \$1-2 million per year. Numerous other small cost savings are being achieved throughout the more than 2000 University units, which taken together add up to significant sums.

Provost Courant commented that should there be cuts in the state budget allocation, a planning process is in place to reduce the rate of expenditures. However, implementing those plans will cause reductions in what the University is able to accomplish. He noted that the budget request reflects three possible scenarios. If this were an

“ordinary” year, an increase of 4% in state appropriation would be requested. But as a practical matter, the University understands that an increase will not be possible, so the amount being requested is the same as last year. This will mean that the University will be less able to carry on as before without putting pressure on tuition. However, he noted that plans are also in place to deal with the likelihood of a decrease in the University’s appropriation. The consequences would be increased pressure on tuition and reduction in programs, in some combination.

Provost Courant observed that the University is grateful for K-12 and higher education having been exempted from the budget cuts of the past year, which indicates that legislative leaders recognize the value of higher education, especially during times of weak economic conditions. The economic returns to education and to the development of new knowledge, he noted, are as high as they have ever been, and few investments yield a higher private and social return, such as will be provided, for example, by the investment in the Life Sciences Corridor. A flat or reduced state appropriation, he observed, will lead to slowing of progress in undergraduate education and increased pressure on tuition.

### **Annual Operating Request to the State, University of Michigan-Dearborn**

Chancellor Little commented that preparation of the annual operating request presents an opportunity for the campus to formulate and express its priorities and needs, around which a budget can be built. Although an increase of about 2.5% is requested, the campus recognizes that no increase is likely to be received, and plans are in place to deal with that reality. Nevertheless, the expression of educational priorities is a valuable exercise; all of these priorities involve undergraduate education. He noted that the

campus excels at providing undergraduate education to commuting students, and a lot of planning is undertaken to make liberal arts oriented core education as effective as possible. Half of the request is intended to enhance faculty resources required to carry out the campus's mission; the other half is aimed at increasing institutional funding available for student financial aid to keep education as affordable as possible.

### **Annual Operating Request to the State, University of Michigan-Flint**

Chancellor Mestas commented that preparing the annual budget request presents a difficult challenge of balancing the realities of decreasing resources, from the state and from the limited amount by which tuition can be increased, with the increasing needs of the campus. These needs and expectations remain regardless of diminished state resources. Thus, he observed, the challenge is to “give nothing less in terms of education while receiving much less in terms of resources.” In addition to maintaining the University's educational mission, the Flint campus also must continue its responsibility to the community it serves.

The current budget request attempts to minimize the impact of diminished resources while leaving the campus in a position to resume its plans as soon as budget pressures are eased. The campus's top priority is technology, because it impacts almost every core function of the University, and because it is indispensable to achievement of the campus's mission and goals. The remainder of the request is directed toward maintaining and improving the quality of education. He noted that it is somewhat early in the process to prepare a realistic budget that is adjusted to the resources it is assumed will be available, while also considering the institution's needs.

Regent McGowan commented that Chancellor Mestas had done a good job in expressing the campus's approach to the budget preparation process.

### **Annual Report of the Senate Advisory Committee on University Affairs (SACUA)**

Professor Charles Koopmann, Jr., chair of the Senate Advisory Committee on University Affairs (SACUA) presented the committee's annual report. He noted that during his tenure as chair, relationships with administration leaders have been excellent and supportive. He reviewed the group's activities during the past year, and noted that the chairs of the CESF committees from each campus are planning to coordinate their annual reports so as to make them easier to compare and evaluate.

Dr. Koopmann also described some of the projects SACUA is currently engaged in. These include adoption of documents regarding faculty governance and tenure guidelines, evaluation of the proposed new copyright policy and of Grievance Review Board procedures, evaluation and monitoring of the new prescription drug benefit plan and other benefits issues, and the Regents' Bylaws regarding the Advisory Board of Intercollegiate Athletics, among other concerns.

He noted that SACUA is looking forward to continuing its positive relationship with President Coleman and her administration, and to improving communications with the Board of Regents.

### **Consent Agenda**

**Minutes.** Vice President Tedesco submitted for approval the minutes of the meeting of October 17, 2002.

**Reports.** Interim Chief Financial Officer Slottow submitted reports on investment and plant extension. Provost Courant submitted the Human Resources and

Affirmative Action Report, noting that a tentative agreement had been reached with the Police Officers Association.

**Litigation Report.** Vice President Krislov submitted the Litigation Report.

**Research Report.** Vice President Ulaby submitted the report of Projects Established, October 1 - October 31, 2002.

**University of Michigan Health System.** Interim Executive Vice President Greenfield reported that nursing leadership had mounted an aggressive campaign to recruit 100 nurses in 100 days, and had successfully recruited 106 nurses after 67 days. He also noted that the Health System has created the first collaborative program among the services of Obstetrics/Gynecology, Urology, and the Cancer Center, the “Gamete Cryopreservation Program,” which allows youth and young adults to preserve their fertility before beginning cancer chemotherapy. President Coleman commented about how impressed she had been by what she had seen on the medical campus during recent visits.

**Division of Student Affairs.** Vice President Harper had no additional report.

**University of Michigan-Dearborn.** Chancellor Little reported on “Global Fest,” a recently held, student-organized event, and announced that a research team involving the Dearborn and Ann Arbor campuses had recently received a \$750,000 grant to pursue a study of the Arab American community of greater Detroit, titled the “Detroit Arab American Study.”

**University of Michigan-Flint.** Chancellor Mestas had no additional report.

**Michigan Student Assembly Report.** MSA President Sarah Boot reported on MSA activities and accomplishments over the past two months. She noted that MSA had been working with student groups representing diverse points of view in support of

“University Dialogs of Understanding.” She also reported that MSA had worked with a local transportation vendor on a pilot project to provide inexpensive airport transportation for the Thanksgiving break, and it is hoped that this effort can be institutionalized. Finally, she commented that in an effort to make faculty aware of how important a diverse faculty is for minority and women students and for the student body as a whole, MSA is planning to send a letter to all faculty members.

**Voluntary Support.** Interim Vice President Wilbanks submitted the report of voluntary support for October 2002.

**Personnel Actions.** Provost Courant submitted a number of personnel actions for approval.

**Department of Physiology Name Change.** Provost Courant called attention to a recommendation to rename the Department of Physiology as the Department of Molecular and Integrative Physiology. Concurrent with the request for approval of the department name change would be a request to rename the affected faculty members affiliated with the Department of Physiology.

**Personnel Reports.** Provost Courant submitted a number of personnel reports.

**Retirement Memoirs.** Vice President Tedesco submitted memoirs for three retiring faculty members.

**Memorials.** No deaths of active faculty members were reported to the Regents this month.

**Degrees.** President Coleman submitted recommendations for approval of three honorary degree recipients: Roy Hamlin Johnson, Carillonneur and composer for the

carillon (Doctor of Music); Philip Levine, poet (Doctor of Humane Letters); and Nellie McKay (Doctor of Humane Letters).

Provost Courant submitted for approval the Doctoral Degree List for the December 2002 commencement.

**Approval of Consent Agenda.** On a motion by Regent Newman, seconded by Regent McGowan, the Regents unanimously approved the Consent Agenda.

### **Six Month Report on University Audits**

Robert Moenart, executive director of University audits, submitted the six-month report on University Audits activities for the period April 1, 2002 through September 30, 2002.

### **Alternative Asset Commitment**

The Regents were informed that a follow-on investment of \$30.0 million from the Long Term Portfolio had been made to MHR Institutional Partners II, L.P. Regent Newman stated for the record that she has a personal relationship with this fund and was not involved in the transaction in any way.

### **State Building Authority Financing of UM-Dearborn University Mall Renovation**

On a motion by Regent Newman, seconded by Regent White, the Regents unanimously approved the following Resolution and authorized the appropriate officers to:

- On or prior to the SBA's issuance of commercial paper notes, execute the Construction and Completion Assurance Agreement and Bill of Sale for the project;
- At or near completion of the project and prior to the issuance of the SBA's bonds, execute the respective Lease, convey title to the property, and execute any necessary easement agreements.
- Execute any other documentation required for the financing of the project by the SBA.



**RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF MICHIGAN  
APPROVING A CONSTRUCTION AND COMPLETION  
ASSURANCE AGREEMENT, A CONVEYANCE OF PROPERTY, A LEASE  
AND AN EASEMENT AGREEMENT, IF NECESSARY, FOR THE UNIVERSITY  
OF MICHIGAN - DEARBORN GENERAL CAMPUS CLASSROOM RENOVATIONS  
(PHASE III) UNIVERSITY MALL**

A RESOLUTION of the Regents of the University of Michigan (i) approving (a) a form of construction and completion assurance agreement (the "Construction and Completion Assurance Agreement"), by and among the State Building Authority (the "Authority"), the State of Michigan (the "State") and the Regents of the University of Michigan, a Michigan constitutional body corporate (the "Educational Institution"), providing for the rights, duties and obligations of the Authority, the State and the Educational Institution with respect to the Educational Institution's Dearborn General Campus Classroom Renovations (Phase III) University Mall and the site therefor (the "Facility") during the construction, renovation and/or equipping of the Facility and prior to the conveyance of the Facility to the Authority, (b) the conveyance of the Facility to the Authority, (c) a lease (the "Lease"), by and among the Authority, the Educational Institution and the State, for the purpose of leasing the Facility to the State and the Educational Institution and (d) an easement and/or other agreement (the "Easement Agreement") between the Authority and the Educational Institution, if necessary and/or desirable in connection with access, parking, utilities, pedestrians, encroachments, and/or other matters pertaining to the interactions between the Facility and real property owned by the Educational Institution, and (ii) providing for other matters related thereto.

WHEREAS, the Authority has been incorporated under and pursuant to the provisions of Act No. 183, Public Acts of Michigan, 1964, as amended ("Act 183"), for the purpose of acquiring, constructing, furnishing, equipping, owning, improving, enlarging, operating, mortgaging and maintaining buildings, necessary parking structures or lots and facilities, and sites therefor, for the use of the State, including institutions of higher education created pursuant to Section 4, 5, 6 or 7 of Article 8 of the Michigan Constitution of 1963 (the "State Constitution"), or any of its agencies; and

WHEREAS, the Educational Institution has been maintained and created pursuant to Sections 4 and 5 of Article 8 of the State Constitution; and

WHEREAS, the State and the Educational Institution desire that the Authority finance the acquisition, construction, renovation and/or equipping of the Facility in consideration of (i) the Educational Institution granting a license to the Authority to enter upon the site of the Facility (the "Site") in order to undertake such construction, renovation and/or equipping, (ii) the Educational Institution undertaking on behalf of the Authority the oversight of such construction, renovation and/or equipping and (iii) the Educational Institution conveying the Facility to the Authority on or prior to the date of its completion, and the Authority is willing to provide such financing in consideration of the items described above; and

WHEREAS, in accordance with the Construction and Completion Assurance Agreement, the State and the Educational Institution desire that the Authority acquire the Facility on or prior to the date of its completion, and lease the same to the State and the Educational Institution, and the Authority is willing to acquire the Facility and lease the same to the State and the Educational Institution; and

WHEREAS, the Site is presently owned by the Educational Institution, the Facility will be constructed by the Educational Institution on behalf of the Authority, and it is intended that the Site and the Facility be conveyed to the Authority by the Educational Institution; and

WHEREAS, the acquisition of the Facility by the Authority for use by and lease to the Educational Institution and the State is necessary in order for the State and the Educational Institution to carry out necessary governmental functions and to provide necessary services to the people of the State as mandated or permitted by constitution and law, and the use of Act 183 to accomplish such acquisition represents the most practical means to that end at the lowest cost to the State and the Educational Institution; and

WHEREAS, Section 7 of Act 183 provides that the Lease shall be approved by the Authority, by the State Administrative Board of the State and by concurrent resolution of the Legislature of the State

concurrent in by a majority of the members elected to and serving in each house and if the Lease is for an institution of higher education existing or created pursuant to Section 4, 5, 6 or 7 of Article 8 of the State Constitution, then in addition, the Lease shall be authorized by the institution of higher education and signed by its authorized officer and, accordingly, it is necessary that the Educational Institution authorize and approve the Lease; and

WHEREAS, if it is determined that (i) the Authority will require an easement from a public road to the Facility over real property owned by the Educational Institution so that the Authority has access to the Facility, (ii) the Educational Institution will require for future use certain easements through the Facility, (iii) the Authority and the Educational Institution will require an agreement to share a common structural wall, (iv) the Authority will require an easement over real property owned by the Educational Institution so that the Authority has sufficient parking available in connection with the reasonable use of the Facility, and/or (v) the Authority and/or the Educational Institution will require other easements and/or agreements pertaining to the Facility and/or real property owned by the Educational Institution (such as, but without limitation, easements and/or agreements pertaining to pedestrian traffic, utility lines, and/or encroachments), then in order to meet any such requirement, it may be necessary for an authorized officer of the Educational Institution to approve an Easement Agreement or Easement Agreements to provide for such easements and/or agreements;

NOW, THEREFORE, BE IT RESOLVED BY THE REGENTS OF THE UNIVERSITY OF MICHIGAN THAT:

1. The plans for the Facility, as filed with the Educational Institution, are hereby approved.
2. The Educational Institution hereby authorizes and approves the Construction and Completion Assurance Agreement in substantially the form attached as Exhibit A, and the Executive Vice President and Chief Financial Officer of the Educational Institution is hereby authorized and directed to execute and deliver, at the appropriate time, the Construction and Completion Assurance Agreement in substantially the form attached as Exhibit A for and on behalf of the Educational Institution. Such officer is hereby authorized to approve such changes in and modifications to the Construction and Completion Assurance Agreement as do not materially adversely affect the Educational Institution.
3. The conveyance of the Site and the Facility to the Authority in accordance with the Construction and Completion Assurance Agreement is hereby approved, and the then seated President and the Executive Vice President and Chief Financial Officer of the Educational Institution are hereby authorized and directed to execute and deliver a warranty deed in substantially the form attached as Exhibit B and bills of sale to accomplish such conveyance in such form as may be from time to time approved by such officers.
4. The Educational Institution hereby authorizes and approves the Lease in substantially the form attached as Exhibit C, and the Executive Vice President and Chief Financial Officer of the Educational Institution is hereby authorized and directed to execute and deliver the Lease in accordance with the Construction and Completion Assurance Agreement and in substantially the form attached as Exhibit C for and on behalf of the Educational Institution and such officer is hereby designated as an authorized officer of the Educational Institution for purposes of Section 7 of Act 183. Such officer is hereby authorized to approve such changes in and modifications to the Lease as do not materially alter the substance and intent thereof as expressed in the Lease and the request for action submitted to the Regents in connection therewith; provided such officer is not hereby authorized to approve a change in the Lease with respect to the range of rental, the description of the Facility or the material financial obligations of the Educational Institution contained in the Lease approved herein. The Educational Institution hereby determines that the maximum rental in the amount described below is reasonable and the authorized officer is hereby authorized to approve in the Lease, as executed, rental in annual amounts determined by the final appraisal of "True Rental," but not exceeding \$970,000 in any 12-month period and a lease term of not exceeding 40 years.
5. If in connection with the entering into of the Lease, and if the Executive Vice President and Chief Financial Officer of the Educational Institution determines that (i) the Authority will require an easement from a public road to the Facility over real property owned by the Educational Institution so that

the Authority has access to the Facility, (ii) the Educational Institution will require for future use certain easements through the Facility, (iii) the Authority and the Educational Institution will require an agreement to share a common structural wall, (iv) the Authority will require an easement over real property owned by the Educational Institution so that the Authority has sufficient parking available in connection with the reasonable use of the Facility, and/or (v) the Authority and/or the Educational Institution will require other easements and/or agreements pertaining to the Facility and/or real property owned by the Educational Institution (such as, but without limitation, easements and/or agreements pertaining to pedestrian traffic, utility lines, and/or encroachments), then such officer is hereby authorized and directed to execute and deliver an Easement Agreement or Easement Agreements if necessary in order to meet any such requirement.

6. The Executive Vice President and Chief Financial Officer of the Educational Institution is hereby authorized and directed to take or cause to be taken all other actions, including, without limitation, making requests of and approving requests from the Authority and the State and signing certificates, documents or other instruments, on behalf of the Educational Institution, as he deems necessary or desirable under the circumstances to accomplish the purposes of the transactions authorized in this Resolution.

7. The Educational Institution further confirms its obligations to perform the duties and obligations specified in the Construction and Completion Assurance Agreement (only upon its execution by the authorized officer of the Educational Institution) and the Lease (only upon its execution by the authorized officer of the Educational Institution) and acknowledges that such obligations do not depend upon passage of title to the Facility to the Educational Institution without consideration upon termination of the Lease. The Educational Institution hereby recognizes that it would execute and deliver the Lease even if title to the Facility would not pass upon termination of the Lease.

8. The Educational Institution recognizes that the Authority shall pay for costs of the Facility in an amount not in excess of \$9,778,500.

9. All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

10. This Resolution shall be effective immediately upon its adoption.

### **International Equity Management**

On a motion by Regent McGowan, seconded by Regent Brandon, the Regents unanimously approved the appointment of Morgan Stanley Investment Management as an investment manager for two international equity assignments, as described in the Regents Communication.

### **Undergraduate Science Building**

On a motion by Regent Maynard, seconded by Regent Taylor, the Regents unanimously authorized issuing the Undergraduate Science Building Project (formerly known as the Science Instruction Center) for bids and awarding construction contracts providing that bids are within the approved budget.

### **Athletic Department - Football Stadium Team Locker Room Expansion and Addition**

It was noted that the original document in the agenda had been replaced by a revised document. Regent Taylor commented that he would like to see a long range plan developed for Athletic Department facilities. Mr. Bill Martin, athletic director, replied that the department is working on a long range plan that will integrate the functional obsolescence of its facilities with plans for budgeting for and funding new and renovated facilities.

Regent Brandon moved approval of the Athletic Department Football Stadium Team Locker Room Expansion Project as described in the revised Regents Communication, and authorized issuing the project for bids and awarding construction contracts providing that bids are within the approved budget. Regent Maynard seconded the motion and it was approved unanimously.

Mr. Martin observed that this project is being funded through private donations from donors who would not otherwise contribute to the planned academic support facility, which is the department's number one priority. He said that department personnel will be touring academic support facilities around the country. Regent Newman recommended that the tour also include an examination of the academic support programs themselves, in addition to the physical facilities, and that the programmatic aspect of the facility be included at the time it is brought forward for consideration.

### **Purchasing Contract with Weadock Software, LLC**

On a motion by Regent Brandon, seconded by Regent Taylor, all six Regents present unanimously approved a purchasing contract with Weadock Software, LLC. Because the owner of Weadock Software, William Weadock, is also a University of

Michigan employee, this contract falls under the State of Michigan Conflict of Interest Statute. The following information is provided in compliance with statutory requirements:

1. Parties to the contract are the Regents of the University of Michigan and its Department of Radiology, and Weadock Software, LLC.
2. The product to be provided is a software site license and upgrades, at a total cost of \$20,000.00.
3. The pecuniary interest arises from the fact the William Weadock, a University of Michigan employee, is primary owner of Weadock Software, LLC.

**Agreement between the University of Michigan and the Institute for Materials Research and Engineering (IMRE)**

On a motion by Regent Taylor, seconded by Regent White, the Regents unanimously approved modification of an agreement between the University of Michigan and the Institute for Materials Research and Engineering (IMRE), for a project that involves collaboration with Dr. Albert Yee at IMRE. Because Dr. Albert Yee is director of IMRE and is also a University of Michigan faculty member on unpaid personal leave, this agreement falls under the State of Michigan Conflict of Interest Statute. The following information is provided in compliance with statutory requirements.

1. Parties to the agreement are the University of Michigan and IMRE.
2. Prior to this modification, IMRE has approved funding of \$165,770. It is anticipated that the total performance period of this project will be from August 1, 2001 to July 31, 2004 at an estimated funding of \$317,402. This modification is an addendum to a current University negotiated agreement with IMRE.
3. Dr. Yee's pecuniary interest arises from his position as director of IMRE.

**Research Agreements between the University of Michigan and IntraLase Corporation**

On a motion by Regent Maynard, seconded by Regent White, all six Regents present unanimously approved research agreements between the University of Michigan and IntraLase Corporation ("Company") for the purpose of providing additional funding

for a previously approved project. Because Ronald Kurtz and Tibor Juhasz are University of Michigan employees and owners of the Company, this agreement falls under the State of Michigan Conflict of Interest Statute. The following information is provided in compliance with statutory requirements:

1. Parties to the agreement are the University of Michigan and IntraLase Corporation.
2. The terms of the proposed agreements conform to University policy. The extended period of performance for the project is two (2) years at an additional cost of \$50,000 (mathematical models) and \$40,000 (laser-tissue interaction) respectively. With this additional funding, total funding for the Project will be \$185,000. The University's effort in this project will be directed by Dr. Matthew O'Donnell in the Department of Bioengineering of the College of Engineering.
3. Ronald Kurtz's and Tibor Juhasz's pecuniary interest arises from their ownership of the Company.

**Annual Operating Request to the State for the University of Michigan-Ann Arbor Campus for FY 2004**

On a motion by Regent Brandon, seconded by Regent Maynard, the Regents unanimously approved the annual operating request to the state for the University of Michigan-Ann Arbor campus for FY 2004.

**Annual Operating Request to the State for the University of Michigan-Dearborn Campus for FY 2004**

On a motion by Regent Taylor, seconded by Regent Brandon, the Regents unanimously approved the annual operating request to the state for the University of Michigan-Dearborn Campus for FY 2004.

**Annual Operating Request to the State for the University of Michigan-Flint Campus for FY 2004**

On a motion by Regent Maynard, seconded by Regent White, the Regents unanimously approved the annual operating request to the state for the University of Michigan-Flint Campus for FY 2004.

## **Copyright Ownership Policy**

Provost Courant reviewed the history of development of the proposed copyright ownership policy, noting that the initial Copyright Ownership Committee had been formed two years ago. It was charged with reviewing the University's intellectual property policies, specifically as they apply to ownership of copyrighted works in light of recent changes in law and technology. He described the major features of the policy, which sets the default presumption for works of this kind to individual ownership. It also establishes that for work that is specifically commissioned, has to do with administration, or involves unusual University resources, the University will retain ownership interest. It also introduces the idea that individuals should not use copyrighted work to compete with the University ("conflict of commitment").

On a motion by Regent White, seconded by Regent McGowan, the Regents unanimously approved the proposed policy, "Ownership of Copyrighted Works Created at or in Affiliation with the University of Michigan."

### **OWNERSHIP OF COPYRIGHTED WORKS CREATED AT OR IN AFFILIATION WITH THE UNIVERSITY OF MICHIGAN**

#### **Preamble**

The University of Michigan's central mission is the creation, preservation, and dissemination of knowledge through teaching, research, and public service. Changes in information technology and copyright law require clarification of the rights and responsibilities that accrue from the creation of works of authorship (hereinafter "works") (1) in the University context in order for individuals who create, use, and disseminate intellectual property to fulfill their respective functions in and outside the academy.

Copyright includes a bundle of rights—including rights to ownership, reproduction or copying, preparation of derivative works, distribution, public display, and public performance. General principles regarding this bundle of rights in the University context are set forth below. In particular instances, written agreements may be necessary to modify the rights outlined below, or to clarify the rights and responsibilities of interested parties to a greater level of specificity.

This policy applies to works produced by University faculty, staff, students, other members of the University community, and contractors.

## POLICY

Ownership principles and other interests applicable to general categories of works (based on the context of the creation of works and the identity of their creators) are identified below (section I). The policy also sets forth other relevant considerations involving use of the University's name, seal, or marks (section II); administration and implementation (section III); and policy interpretation and dispute resolution (section IV).

### I. Categories of Works

#### A. Faculty Works

##### 1. Ownership Principles

Consistent with academic freedom and tradition, all faculty (2) (including full-time, part-time, adjunct, and emeritus faculty) own and control instructional materials and scholarly works created at their own initiative with usual University resources. "Usual University resources" are those resources commonly provided or made available to similarly situated faculty. They include, for example, ordinary use of resources such as the libraries; one's office, computer and University computer facilities; secretarial and administrative support staff; and supplies. For any given department, unit, or individual, what constitutes a usual resource will depend upon the functions and responsibilities of that department, unit, or individual. For example, access to a chemistry laboratory may be a usual resource in chemistry, but would probably be considered an unusual resource in English literature.

Examples of faculty-owned works created at faculty members' own initiative with usual University resources may include, but are not limited to: lecture notes, transparencies, case examples, textbooks, interactive textbooks, other works of nonfiction or novels, software, CD-ROMs, articles, books, literary works, poems, musical compositions, visual works of art, and other artistic creations regardless of the media in which the works are produced or the forms of dissemination (e.g., print or electronic).

##### 2. University Community Interests

Even though individual faculty own the works described in (I)(A)(1) above, the University community as a whole has interests in being able to use such works for educational and administrative purposes, consistent with the University's educational mission and academic norms. Faculty members should keep these purposes in mind in creating and disseminating instructional materials and scholarly works.

The University shall be permitted to use materials created for ordinary teaching use in the classroom and in department programs (such as syllabi, assignments, and tests) for administrative purposes, including satisfying requests of accreditation agencies for faculty-authored syllabi and course descriptions.

Faculty members are encouraged to share their instructional materials and courseware with their University colleagues for internal instructional, educational, and administrative purposes. When publishing scholarly works, faculty creators are encouraged to provide rights for use for the University community.

The University also has an interest in ensuring that works created by its own faculty are not used to compete with or undermine the University's educational mission or activities. Consistent with conflict of interest and commitment principles, faculty with full-time appointments at the University should not use (or permit others to use) their works in ways that compete with the University's courses, or its educational programs or activities-unless prior written permission is obtained from the appropriate dean, unit director, or executive officer, or their designee(s). This provision applies to works developed for compensation at other educational institutions, including for-profit and online institutions. It does not apply to works created in conjunction with professional



activities in conformance with University norms such as, but not limited to: sharing syllabi or other course materials with colleagues at other non-profit educational institutions; ordinary outside consulting; participation in professional or scholarly organizations; scholarly presentations and publications; pursuit of future employment opportunities; and public service.

B. Staff Works

1. Ownership Principles

Although the University owns works created by staff within the scope of their employment duties or with unusual University resources (as discussed in section I(C) below), the University does not claim ownership of works created by staff members at their own initiative, outside the scope of their employment, and without unusual University resources (e.g., scholarly or artistic works).

C. University Works

1. Ownership Principles

Consistent with its legal and fiduciary responsibilities, the University owns particular works that are:

- a. created in whole or in part by faculty members, when creation of those works is dependent upon the provision of unusual University resources as specially authorized by University administrators such as deans, department chairs, unit directors, or their designees. “Unusual University resources” are resources such as financial, technical, personnel, or other forms of support beyond the type or level of resources commonly provided to similarly situated faculty. Unusual University resources may include, for example, an extraordinary quantity or quality of media development, significant research assistance, or access to or use of other special, limited University facilities or resources.

Pursuant to agreements with the creators, the University may decide to forego or modify its rights to such works.

- b. created as a specific requirement of employment or pursuant to an assigned institutional duty that may, for example, be included in a written job description or an employment agreement so as to qualify as works made for hire. Such works may include those whose creation is instigated or facilitated by a unit of the University for the express purpose of making such works available to individuals or entities other than, or in addition to, the creator(s) for use in teaching, research, patient care, public information, or other University activities.

The University does not, however, claim ownership of faculty-created instructional materials or courseware merely because it requires faculty members to teach courses as part of their regular responsibilities. The University may claim ownership of certain instructional materials or courseware, including online course materials, when the University has specifically requested such materials and either invested unusual University resources in them as described in (a) above, or specifically compensated faculty-creators (e.g., with additional financial compensation, release time, etc.) for the development of the materials.

Similarly, the University does not claim ownership of faculty-initiated scholarly works based merely on general expectations that faculty members will publish such works.

- c. created in the course of an administrative assignment (e.g., a report for a university committee).

- d. created as part of sponsored projects, pursuant to the terms of the governing contracts (see I.F).

The University retains the rights to commercialize such works, as well as all other rights under copyright law.

## 2. Faculty and Staff Interests

Even though the University owns the works described in (I)(C)(1) above, individual faculty and staff may have interests in using them or receiving credit for their participation in such works, particularly works which they created or to which they contributed.

In the absence of contractual or other legal restrictions to the contrary, the University grants faculty non-exclusive rights to use and distribute University-owned works they created for non-commercial purposes. Accordingly, faculty members who leave the University may continue to use at another nonprofit institution or organization for teaching, research, and other non-commercial purposes, all University-owned works they created.

Faculty creators of University-owned instructional materials who are still employed by the University have the right of “first refusal” in making new versions. The creators of University-owned instructional materials who have left the University have the right to be consulted in good faith on reuse and revisions (e.g., for online instructional materials or courseware). In order to protect academic integrity, the creators may request that such works be withdrawn from use in University activities if they become obsolete or are otherwise deemed inappropriate for further educational use. Creators also have the right to have their names removed from such works if they so desire.

In accordance with academic tradition and any applicable legal considerations, the University will acknowledge creators and developers (including faculty, staff, and students) who have made a substantial contribution to University-owned works-unless those individuals request otherwise. For example, the members of a University committee would ordinarily be acknowledged in a committee report.

Creators and developers of University-owned works shall not undermine the University's efforts to commercialize those works.

Creators and developers of University-owned works may, however, share in the revenues in appropriate circumstances pursuant to written agreements with the University.

## D. Student Works

### 1. Ownership Principles

Students who create academic works while at the University (e.g., dissertations, theses, student projects) own the copyright to such works, unless: (1) the works qualify as works made for hire in the course of employment at the University; or (2) a written transfer of copyright is obtained.

### 2. University Community Interests

Students are frequently involved in the creation of works in consultation with, or under the supervision of, University faculty and staff. Such works may be related to course-work, research, extracurricular activities, or other University projects. In some circumstances, it is difficult to determine whether and to what extent students are acting as agents or employees of the institution. Accordingly, written agreements with students regarding copyright should be executed whenever the University or its representatives have any doubt about copyright ownership of student-created works in which the University believes it has ownership or other interests.

## E. Collaborative Works

Works created collaboratively by students, staff, faculty, and/or others present special challenges with regard to copyright. Such works may be owned in whole or in part by the University if they fall within one of the categories described in (I)(B) above. When works are created collaboratively with other entities or institutions, the University's interests and rights in such works shall be recognized and protected as consistent with this policy. If the parties intend for a work to be jointly owned for purposes of copyright, such an intent should be set forth clearly in writing at the beginning stages of such a project.

Even if ownership is held by a single entity (such as the University), the rights to use such works can often be divided and shared so as to meet the needs of each party. For example, multiple parties may have non-exclusive rights to copy, display, or distribute a particular work.

In the case of some collaborative works, especially those involving members of different categories within the University community (e.g., faculty and students; staff and students), the parties involved may decide to assign copyright to the University in order to coordinate distribution, use, and (when appropriate) revenue sharing.

#### F. Sponsored Works

Works created in the course of sponsored projects are governed by the terms of the sponsor agreements, when applicable.

#### G. Works by Non-Employees/Contractors

Generally, the University requires copyright as well as physical ownership of works prepared expressly for the University by non-employees, such as consultants or contractors retained by the University, or students who are compensated for such work. In order to claim copyright ownership, a written agreement should be executed in which the non-employee and the University both acknowledge University copyright ownership.

#### II. Use of the University's Name, Seal, or Marks

Use of the University's name, seal, or marks in connection with works, other than by way of identification of the creators as faculty members, researchers, other employees or students at the University, is itself use of a significant University resource, thus triggering an interest on the part of the University. Additionally, use of the University's name, seal, or marks can affect the reputation and academic standing of the institution. Faculty members, researchers, other employees, and students (as well as their respective departments and schools) may not participate in the creation or use of works that might give the impression of University sponsorship when there is none. Any use of the University name, seal, or marks (other than to identify creators by their titles or affiliations with the University) in connection with works created by faculty members, researchers, other employees, or students must be approved in advance by the University in accordance with University policies.

Similarly, the University must approve in advance the use of its name, seal, or marks in connection with any works created under collaborative agreements with outside entities (other than to identify creators by their titles or affiliations with the University).

#### III. Administration and Implementation

Copyright to all University-owned works shall be held (and registered, when appropriate) in the name of the Regents of the University of Michigan.

Within the University, the individual departments, schools, or units in which works are created will ordinarily have primary responsibilities for the administration of copyright rights and permissions. Any commercial sale or licensing of University-owned, copyrightable works shall follow normal University procedures.

Copyrights may also be held separately by entities that are affiliated with the University, but legally independent or autonomous.

#### IV. Policy Interpretation and Dispute Resolution

This copyright policy and its implementation may require interpretation and review. Every attempt should be made to resolve disputes informally, with the assistance of one or more of the support services provided by the University as discussed below.

**Policy Information:** Information about this policy and its application is available from the following sources: the Offices of the Provost at the Ann Arbor, Dearborn, or Flint campuses (for policy clarification), the Office of the General Counsel (for legal clarification), and the Office of Technology Transfer (for matters regarding patents and commercialization of intellectual property).

**Informal Resolution:** If an issue arises with regard to the interpretation of this policy and cannot be resolved by the parties themselves, one or more of the parties may go to the appropriate supervisor, department chair or unit head (or his or her designee(s)). If the matter cannot be resolved at the departmental or unit level, or if the parties involved are from different departments or units, it may be necessary to bring the matter to the attention of a dean or director. At any time during this process, informal consultation regarding interpretation of this policy is available from the offices listed above under "Policy Information."

**Formal Resolution:** If informal procedures and consultation do not provide resolution of a dispute or policy issue, it may be necessary to resort to formal procedures for policy interpretation and dispute resolution. Any member of the University community may file a request for formal dispute resolution or policy interpretation with the Offices of the Provost at the Ann Arbor, Dearborn, or Flint campuses. The Provost will appoint an ad hoc committee and designate a chair. The committee will consist of a combination of administrators, faculty, staff and/or students as appropriate given the nature of the complaint and the respective roles of the parties involved. Members of the committee will be selected from a pool of candidates nominated by the Senate Advisory Committee on University Affairs (SACUA) and by other appropriate governing and administrative bodies.

The decisions of the committee may be appealed to the President (or his or her designee). The decisions of the President (or designee) shall be final.

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Footnotes

1.As defined in federal copyright law, a copyrighted work is an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship (including some computer programs) include the following categories: literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works (photographs, prints, diagrams, models, and technical drawings); motion pictures and other audiovisual works; sound recordings; and architectural works.

Copyright protection does not “extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”

See 17 U.S.C. §102.

2.As defined in Regents Bylaw 5.01 and in the Faculty Handbook, “faculty” at the University includes members of the teaching and research staff; the executive officers; the directors of various teaching, research and library units; librarians, curators, and archivists.

**Approval of Academic Calendars for Summer 2003; 2003-2004; 2004-2005; and 2005-2006 for the University of Michigan-Dearborn Campus**

On a motion by Regent Maynard, seconded by Regent Newman, the Regents unanimously approved academic calendars for Summer 2003; 2003-2004; 2004-2005; and 2005-2006 for the University of Michigan-Dearborn Campus, as described in the Regents Communication.

The meeting recessed for 35 minutes and reconvened at 4:00 p.m. for Public Comments.

**Public Comments**

The Regents heard comments from the following individuals, on the topics indicated: Terrence T. Griffin, student, on the University's commitment to community; Amer Zahr and Salah Dean Hussein, students, in favor of divestment from Israel; and David Wolkinson, Richard Dorfman, Brad Sugar, Danny Aghion, and Rachel Roth, students, opposed to divestment from Israel.

There being no further business, the meeting was adjourned at 4:40 p.m. The next meeting will take place December 12, 2002.