To: The Senate Executive Committee

From: Kate O’Neill, Chair, Senate Committee on Planning and Budgeting  
Professor of Law  

Date: March 30, 2016  

Re: A Motion to constitute a new committee structure for reviewing revising, and reporting on UW Intellectual Property policies and management

Motion: That the Senate Executive Committee take the following actions:

1. Terminate the Special Committee on Intellectual Property and Commercialization (SCIPC), effective on the date that the President terminates the Intellectual Property Management Advisory Committee (IPMAC);

2. Authorize formation of and participation of faculty members in a new advisory committee, to take effect when SCIPC and IPMAC are terminated. A suggested name is Advisory Committee on Intellectual Property Policy and Practice: ACIPPP! The new committee will have the following characteristics:

A. The committee will have dual reporting obligations to the SEC and to the President;

B. The SEC and the President may each appoint up to six voting members; the Graduate and Professional Students may appoint one voting member; the Provost may appoint an ex-officio member to advise on budget issues.

C. The SEC may appoint up to six faculty members. The Chair of the Senate will nominate faculty members based on their expertise or significant experience regarding intellectual property policy, management, or commercialization, including previous service on IPMAC or SCIPC, and their willingness to serve. The Chair and SEC shall make every effort to ensure that faculty appointees represent diverse disciplines with diverse interests and needs regarding IP policy, management, and commercialization. To the extent possible, faculty members should represent the following disciplines or units:

i. Health Sciences  
ii. Engineering  
iii. Social Sciences  
iv. Humanities  
v. Law  
vi. Business

D. The President may appoint up to six members to represent administrative or academic units, such as:

i. The Office of Research;  
ii. Educational Outreach;  
iii. CoMotion;  
iv. UW Libraries  
v. Health Sciences/School of Medicine

E. The University of Washington Division of the Attorney General’s Office will serve as the committee’s legal counsel.
F. Except for the GPSS member, voting members’ appointment terms will be three years and are renewable. GPSS may appoint a member for a term up to three years in length.

G. The President and the Chair of the Faculty Senate will consult and jointly appoint the chair of the committee. The chair’s term will be one year and is renewable.

H. The Senate leadership with work with the Provost to secure support staff for the committee, comparable to what has been provided to IPMAC.

3. Authorize the Chair, Vice Chair, and Chair of the Senate Committee on Planning and Budgeting to consult with the President, and with the current members of SCIPC and IPMAC, among others, on the elements of and deadlines for the charge to the new committee. We anticipate that the charge should be developed no later than June 15, 2016, and may include elements such as the following.

A. A recommendation, after consultation with the Open Access Task Force, regarding an “Open Access” policy for faculty research;

B. A recommendation of policies and practices designed to lower the cost of textbooks for UW students and other course materials;

C. A recommendation for policies and management of faculty, staff, student, and university intellectual property rights involved in on-line courses, on-line programs, and third-party on–line learning management systems;

D. A recommendation for policies and practices for managing intellectual property interests generated during collaborations between or among UW faculty members, staff, and students;

E. A recommendation for policies and practices for managing faculty, staff, student, and university intellectual property rights generated during or as a result of partnerships between the University and other entities, including private for-profit and non-profit entities and academic institutions;

F. A review of, and recommendations for, policies and practices governing mandatory licensing or assignment agreements required by the UW as a condition for granting permission for outside work by faculty, staff, or students;

G. A tri-campus assessment of ongoing or emerging needs, opportunities, or impediments to efficient and equitable management of intellectual property generated by UW faculty, staff, and students, and their external partners;

H. A comprehensive review of and proposed revisions, as necessary, to Executive Order 36 – deadline TBD.

I. Recommendations of a plan and method for educating faculty, staff, and students about their intellectual property rights, responsibilities, and opportunities on an ongoing basis.

Rationale:

I have consulted with the members of SCIPC, IPMAC, the faculty senate leadership, and the President’s office concerning the desirability of establishing a joint faculty/administrative committee on intellectual property policy and management that has a refreshed charge and dual reporting obligations to the SEC and to the President. All have agreed that this is a good idea.

Novel intellectual property issues crop up regularly at the UW. Our basic IP policies, which were set forty to fifty years ago by EO 36, do not necessarily cover every issue, nor do our practices necessarily promote the UW’s collective mission as effectively and transparently as we might hope. We are all aware of technological changes that affect both research and teaching methods and materials, many of which
require faculty, staff and students to contract about and manage patents, copyrights, and trademarks in keeping with public law, university rules, and the requirements of external partners and funding sources. We are aware of increasing numbers of inter-disciplinary and collaborative research agendas. We are also aware of new funding and revenue-generating models, including partnerships with private and foreign entities, such as those involved with the Global Innovation Exchange.

Now is a good time to energize a renewed, joint, SEC and administrative focus on intellectual property rights and management. The goals of a joint effort should be to:

- Provide greater and faster public access to UW research through broader, easier open access depository and ultimately R1 depository consortia
- Join with other R1 universities in a long-term effort to reduce monopolistic publisher pricing effects on library collections cost
  - By encouraging open access policies for research and for teaching materials, and
  - By gradually reducing private publisher influence over peer review and P&T criteria
- Encourage use of lower cost teaching materials, if needed quality is available
- Encourage best practices for on-line teaching materials and programs
- Be a leader in open access policies; recognize the inroads the internet has made on traditional IP practices; acknowledge open access policies of public and major private, non-profit grantors
- Identify best business/licensing practices for private/public partnerships
- Encourage intra-UW research and teaching collaborations by providing transparent templates, adaptable to multi-disciplines
- Educate faculty about what can be done; increase transparency, and efficiency
- Recognize the implications of the shift from C4C to CoMotion
- Create policies and practices that support a culture of trust, fairness, and mutual advantage for the UW, faculty and graduate students, the business, non-profit and philanthropic communities
- Update policies to comply with changed laws in certain areas.

Why is a joint SEC/administration committee with a refreshed charge desirable now?

IPMAC has worked long and hard, first to advise prior Presidents on IP policy and commercialization, and more recently to conduct a thorough review of Executive Order 36 and to engage in university-wide dialogues about emerging issues and needs. However, no formal proposals have emerged from that body recently. Meanwhile changes that involve significant IP interests and issues continue apace. Other IP-related initiatives – such as the Open Access Task Force – were prompted by a Senate Resolution. ASUW and the state legislature are interested in lowering the costs of textbooks. C4C has been reconfigured as CoMotion with a significantly different mission and funding model. A significant new partnership – GIX – has been launched.

From a faculty perspective, it was problematic that IPMAC did not report to a faculty body. SCIPC was constituted several years ago in reaction to the perception that IP issues were not necessarily handled transparently or in a manner consistent with the UW’s public mission or the faculty’s best interests. Even though IPMAC’s recent leadership has tried valiantly to operate openly, the effect of having two bodies reviewing IP policies and practices has not been particularly efficient. IPMAC feels it must consult SCIPC; SCIPC has not developed its own agenda so much as waited for IPMAC or the administration to propose changes. To be fair, the process has been slow, not through the fault of either committee, but simply because the issues are numerous and sometimes very complex.

A joint committee could at least be more efficient. A committee with dual reporting obligations makes it more likely that the SEC will learn of important administrative initiatives that involve IP and that the administration will hear of faculty interests and concerns earlier. Now, with a (relatively new) administration, this may also be a time when a freshly charged committee can address the many and novel IP issues with a collaborative spirit and renewed energy. It is an open issue whether the committee should begin by attempting comprehensive review and revision of UW IP policies or whether it might begin by addressing specific, contemporary issues and then build toward a comprehensive review and
revision of EO 36, for example. It may also be the case that the new committee should focus less on
traditional IP ownership and licensing of patents in the context of tech transfer, and more on developing
and disseminating best practices that serve the UW’s contemporary mission and strategies across the
board.

In any event, my goal in recommending a joint committee is to commit both the faculty and the
administration to managing inevitable, novel IP issues by creating a shared governance body that can
hold institutional memory, develop relevant expertise, review existing policies and practices, and advise
on emerging issues relatively quickly and transparently.

TO: Faculty Senate Executive Committee

FROM: Sean O’Connor, Boeing International Professor and Chair, IPMAC

DATE: April 4, 2016

RE: Proposal for new combined IPMAC-SCIPC committee

Dear SEC Members:

I regret that I cannot attend today’s meeting and that I was not able to weigh in on the proposal that my
colleague Professor O’Neill is submitting today, as I have had a busy teaching and travel schedule and I
am currently overseas.

While I support the motion overall, it is critical that the SEC understand where IPMAC-SCIPC are in their
current IP Policy Review process so that any efforts to create the combined committee procedurally do
not undercut or stall that progress. The background distributed to you in advance is more reflective of
where we stood in 2013-2014 and has little connection to where we are today.

To that effect, a brief summary:

1. Before the 2013-2014 academic year, there had indeed been some friction between IPMAC and
   SCIPC, largely stemming from the debates over the revamping of the Outside Work Form to
   include new patent assignment language following the court decisions in Stanford v. Roche.
2. However, in 2013-2014 the two committees began to work together and the result was an interim
   OWF that both committees and their constituents were reasonably satisfied with, contingent on
   the then planned IP Policy Review, that would finally provide a comprehensive review and
   possible overhaul of EO 36. Thus, any move away from prioritizing the overall IP Policy Review
   will violate that agreement and trust reached between the two committees and their constituents.
3. In 2014-2015, IPMAC and SCIPC worked together to create processes to formalize their
   partnership, as well as planned and executed the first and part of the second phases of an
   ambitious, yet necessary, IP Policy Review:
   a. Phase 0: Plan the IP Policy Review with input from key stakeholders
   b. Phase I: Conduct Listening Sessions on important IP and related topics (e.g., data) open
      to the UW community and specifically targeting key stakeholder groups
   c. Phase II: Develop high level principles to guide IP policy at UW, with the authority to
      consider everything from recommending doing nothing, to making revisions, to replacing
      entirely the current policy in EO 36; adopt such principles upon notice and comment to
      the UW community
   d. Phase III: Depending upon the outcome of Phase II, draft revisions or a new IP Policy,
      again upon notice and comment from the UW community; upon any consensus that the
      same should move forward, then submit to the Faculty Senate and to the Office of the
      President as a recommendation for formal adoption
4. At the end of 2014-2015, the two committees met jointly to review the results from the Phase I
   Listening Sessions and adopted a first version of general principles to guide a new IP Policy. We
also formally voted to combine the two committees for efficiency and to request that the Faculty Senate and Office of the President begin the formal proceedings to do so.

5. During 2015-2016, our plan was to complete Phase II, by finalizing a set of high-level principles to be sent out for notice and comment to the UW community, and then begin Phase III. Note that we had also included representatives from UW Tacoma and UW Bothell in the Listening Sessions to facilitate inclusiveness across all three campuses. We also intended to plan and hold one or two other Listening Sessions whose topics had arose at the previous Listening Sessions. It is critical that a deliberate and careful process be followed to minimize the possibility of conflict such as had arise prior to 2013-2014 when well-intentioned parties tried to move too quickly on IP policy matters without enough notice and comment from the broader community.

6. However, due in part to my own work overload and to an apparent unintended side effect of our vote to combine the committees, we were unable to schedule a meeting of the joint committees until far into this academic year. The “unintended side effect” was that it appears that a number of committee members seem to have been under the impression that they should not respond to scheduling attempts pending the outcome of the formal combination process. This was unfortunate in that what was a side matter for us—the formal combination—became a roadblock that stopped our good momentum. At the same time, members of the two committees have repeatedly stated their satisfaction with the IP Policy Review process (albeit not the recent delays) and the working relationship of the committees, in light of some outside perceptions that we are still in the contentious place of 2013-2014 and stalemated until/unless some formal reworking of the committee structures is finalized. Nothing could be further from the truth: instead, the formal process of combination now seems to be jeopardizing the good progress we are making.

In summary, IPMAC and SCIPC have an excellent working relationship today and have made significant progress on the necessary comprehensive IP Policy Review we undertook jointly in 2014-2015. We welcome formal combination of our committees, but not at the expense of losing the momentum we had going into the current year. It is further important that the comprehensive review not be subsumed under a laundry list of specific issues, whose independent resolution may well result in exactly the kind of “band-aid” fragmented approach that has occurred in the past, and resulted in the convoluted and difficult-to-understand IP Policy currently codified in EO 36.

Proposal

- Create a fresh body – an advisory committee with dual reporting obligations to Senate and President. (Model is Advisory Committee on Intercollegiate Athletics).
- Reconstitute a smaller membership (than the sum of both SCIIPC and IPMAC) based on relevant knowledge, experience and expertise; attend to disciplinary diversity; ensure help from law and business, as needed, but perhaps not lead with legal considerations; consider providing graduate student researchers and staff with voice.
- Use and disseminate, as appropriate, data and analysis already done by IPMAC, SCIIPC, OR, and C4C to new committee.
- Charge deans and EFCs with gathering data on discipline-specific needs and reporting to advisory committee. (Information in.)
- Consider a fresh charge to the new committee.
- Consider charging committee to tackle particular issues rather than a global reform of IP policy across UW.
- Focus first on recommending best practices to accomplish goals rather than on allocation of IP ownership.
- Revision of EO 36 would be an outcome, not initial focus.
- Foster intellectual engagement about these issues – e.g. invite prominent speakers; encourage a symposium or two. (Information out.)
- Set firm deadlines for accomplishing certain tasks.
- Provost provides staff support.