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*Assembly of the Academic Senate, Academic Council
University of California
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December 5, 2003

ROBERT C. DYNES, PRESIDENT

Re: Academic Council Resolution on SUTI: Recommendations Regarding Sensitive but Unclassified Technical Information

Dear Bob:

I am pleased to transmit to you the Academic Council Resolution on SUTI: Recommendations Regarding Sensitive but Unclassified Technical Information, which was adopted by the Council at its November 24, 2003 meeting.

As you are aware, increasing numbers of federal agencies are attaching language to sponsored research contracts that require prepublication review of research results, which could lead either to the blocking of publication material found to be “sensitive” or to a restriction on the distribution of research results. Since the freedom to publish and disseminate results is fundamental to a University, the Academic Council believes that the University of California and its faculty should be deeply concerned by these developments. In that context, and in accordance with the positions taken by other prominent universities and academic organizations against this policy, the Academic Council has adopted this Resolution in support of the University’s current practice not to accept research grants that come with any restrictions on publishing. In doing so, the Council recognizes that a few faculty members who do research in some of the SUTI areas may be impacted by any action the University may choose to take with respect to this policy. The Council therefore encourages you to continue the work begun by former President Atkinson and other university presidents to urge the federal government to return to its former “classified” – “unclassified” research designations, and not to impose the SUTI restrictions.

Cordially yours,

Lawrence Pitts, Chair
Academic Council

encl: Academic Council Resolution on SUTI
cc: Academic Council

The Academic Council Resolution on SUTI: Recommendations Regarding Sensitive but Unclassified Technical Information

This Resolution was conceived and drafted by the 2002/03 University Committee on Research Policy (UCORP) and adopted by the Academic Council on November 24, 2003

PREAMBLE

In 1970, a resolution of the Regents reaffirmed the importance of research at the University of California, citing its “vital contribution to the defense of the United States; the social and community needs of the State of California, and its people; and the health and well-being of all mankind.” These benefits are derived directly from the open exchange of ideas between faculty and their colleagues at UC and elsewhere; between faculty and their students in classrooms and laboratories; and between the University and society.

Of course, research does not always lead to enhanced security and well-being. For example, nuclear weapons introduced heightened dangers of mass destruction, and especially since September 11, 2001, fears have grown that terrorists or enemy states might obtain and use chemical or biological weapons. A fundamental tension exists between free scientific exchange and control of potentially dangerous information.

The US government and UC each have established policies for handling this conflict. For fifty years, government policy has been classification of sensitive research materials. This was most recently codified in National Security Decision Directive 189, issued by President Reagan in 1985:

It is the policy of this Administration that, to the maximum extent possible, the products of fundamental research remain unrestricted. It is also the policy of this Administration that, where the national security requires control, the mechanism for control of information generated during federally funded fundamental research in science, technology and engineering at colleges, universities and laboratories is classification.

UC practice, in turn, has been to refuse to perform classified research on our campuses. This stems from UC’s longstanding policy that faculty research should be publishable. A contract or grant for research to be conducted on a UC campus normally is unacceptable to the University if it limits the freedom to publish or disseminate results. (See UC’s “Publication Policy and Guidelines on Rights to Results of Extramural Projects or Programs”.) The University does, however, maintain its ability to contribute directly to defense research: classified research is carried out at Los Alamos and Lawrence Livermore National Labs and at one part of the Scripps Institution of Oceanography at its Point Loma facility.

In addition, UC’s publication policy allows for exceptions to be made in cases involving national security interest. The policy is currently being modified to clarify that the ultimate authority for approving such an exception lies with the UC President. Such an exception could be used to allow classified research on a UC campus. To our knowledge this has never occurred.

The bright-line distinction between classified and unclassified research is now being challenged. A new category of “sensitive” but unclassified information related to homeland security was introduced on March 19, 2002, by White House Chief of Staff Andrew Card in a memorandum distributed to the heads of executive departments and agencies. Although it might not meet the standards for classification, “the need to protect such sensitive information from inappropriate disclosure should be carefully considered, on a case-by-case basis, together with the benefits that result from the open and efficient exchange of scientific, technical, and like information.”

Anecdotal evidence suggests that increasing numbers of federal agencies are attaching language to sponsored research contracts that require prepublication review of research results, blocking publication of material found to be “sensitive” or limiting promulgation of research results or materials to US citizens only. A related issue is the designation, under the USA Patriot Act, of a growing list of “select agents” with heightened physical security requirements and access restrictions that prevent some non-citizens and even some citizens, such as those with dishonorable discharges from the armed forces, illegal drug users, or the mentally ill, from research access. It is not clear to the Academic Council who determines what is “sensitive” or who is an illegal drug user (as opposed to a former user) or who is formally “mentally ill.”

The Academic Council takes the position that the University of California and its faculty should be deeply concerned by these developments. We believe such requirements and restrictions are inconsistent with UC policies on openness in research and equal access to educational facilities. Faculty with a sponsored research contract containing prepublication review requirements that limit the freedom to publish or disseminate results would have to take particular care before involving graduate students or postdoctoral scholars in the research, since a decision at publication time to label research results as “sensitive” and to restrict or block dissemination would put the student or postdoctoral careers at risk. Indeed, the faculty member will also suffer from such *ex post facto* classification of research results, thus harming opportunities for promotions or promulgation to colleagues of scholarly conclusions.

Also the new security and reporting requirements, still being developed, could be expensive and burdensome, and will require new monitoring by UC of its faculty and students. The expense and burden is likely to be borne by a “tax” on research grants and by the requirement for added supervisory staff. UC employees will face possible new criminal liability for campus security failures.

In short, research on “sensitive but unclassified” projects or with select agents brings essentially all of the disadvantages to the campuses that classified research would bring. Indeed, distinguishing between “sensitive” and classified is so difficult that we seriously doubt one can do it in an objective and rational fashion. It is, therefore, our recommendation, expressed in the attached resolution, that UC actively work to preserve the clarity and other benefits of the existing policies on classified research, while discouraging the introduction of ambiguous categories of research that are neither fully open nor fully restricted. Where this is not possible, we believe that the only action fully consistent with University policies on openness, publication of research results, and equal access, is to treat such research activities as if they were fully

classified, and under normal circumstances to bar such research from our campuses, though not from the national labs.

Of course, UC is not alone in facing these issues. An ad hoc faculty committee at MIT, led by former Air Force Secretary and Professor Sheila Widnall, issued a widely distributed report “In the Public Interest” that made recommendations very similar to ours. On October 18, 2002, the Presidents of the National Academies issued a joint statement cautioning about the dangers of poorly defined categories such as “sensitive but unclassified” research.

We recognize that there are risks associated with deciding not to accept sponsored research contracts from agencies that require unacceptable restrictions. Individual faculty, who may feel that their own research is unlikely to trigger publication restraints or whose labs currently have no proscribed individuals, may perceive such policy as a violation of their own freedom. Nevertheless, we believe that it is in UC’s interest, and the public interest, to establish a uniform policy and to negotiate with federal agencies on behalf of all UC investigators, rather than on a case-by-case basis.

Further, the University of California shares this interest in open research with other prominent American universities, and we strongly encourage UC to work to build support for this position within organizations such as the AAU.

RESOLUTION

Whereas, The Regents have affirmed the vital contribution of research at the University of California to the defense of the United States; the social and community needs of the State of California, and its people; and the health and well-being of all mankind;

Whereas, The free exchange of ideas between faculty and their colleagues is essential to ensure the progress of high quality research; the free interaction of faculty and their students in classrooms and laboratories is essential to ensure high quality training for the next generation of researchers; and the free publication of research results is essential to accrue the benefits of research to society;

Whereas, It is longstanding University of California policy that access to employment in research projects and to all educational facilities be, to the greatest extent possible by law, independent of citizenship, national origin, or ancestry;

Whereas, Conflicts between the freedom of research and the safety and security of the people of the United States do occur, and there are legitimate reasons to restrict access to certain fundamental and applied research;

Whereas, Longstanding United States policy has been for federal agencies to manage the conflict between freedom and security through a clear division of classified and unclassified research;

Whereas, UC's longstanding practice has been to decline to perform classified research on campuses, but allow University personnel to serve the defense of the United States through work at the national laboratories, and to make allowances for exceptions - in cases involving national security interests; and,

Whereas, New and proposed restrictions on publication of sensitive but unclassified research, and on research access to select agents by certain citizens and non-citizens, threaten the distinction between classified and unclassified research, may burden the University with new reporting and security requirements, may expose the University and its faculty to criminal liability for security failures, and are antithetical to the atmosphere of free inquiry now present on our campuses; therefore, be it

Resolved, That the University of California, University Committee on Research Policy desires the President to express to the public, to policy-making and advisory bodies, and to elected officials, the importance of freedom of research and the importance of clarity in policies on classified research;

Resolved, That the University of California should, when possible, seek to renegotiate any sponsored research awards that include requirements such as prepublication review for sensitive but unclassified information, or that forbid access to research activities or research results by any University of California student or employee for reasons of citizenship, national origin, or ancestry; and

Resolved, That the University of California should treat research awards containing prepublication review by federal agencies, or restrictions on research personnel or publication of research results in the open literature, as if they were for classified research, and should accept such awards only under the existing University policies governing classified research.