Publication Restriction Policies

Policy Guidelines Governing Openness and Freedom to Publish

Guidelines on University-Industry Relations

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Policy Guidelines Governing Openness and Freedom to Publish

Date: 05/06/91
To: DEANS, DIRECTORS, DEPARTMENT CHAIRS, AND ADMINISTRATIVE OFFICERS
From: Joseph Cerny Provost for Research
Subject: Policy Guidelines Governing Openness and Freedom to Publish

The formal policy for the Berkeley campus on research openness and freedom to publish dates back nearly 25 years and was most recently updated in 1985. Although the fundamental core of Berkeley's policy in these areas has not changed since then, the current environment suggests the need to reiterate the policy and bring it up to date. Therefore, attached to this memo are the policy guidelines which supersede those of May 10, 1985, effective immediately.

The new guidelines, which have the concurrence of the Academic Senate, reflect current practices and are consistent with the 1989 “Guidelines on University-Industry Relations” issued by the Office of the President, which were distributed to the Berkeley campus on June 5, 1989.

Specifically, the new guidelines make the following changes:

- The policy of not accepting classified research projects is clarified as applicable to all classified contracts, not just those funded by the Department of Defense.
- The conditions under which a sponsor's proprietary data can be accepted are expanded to specify limitations on legal liability and the need for prior labeling of the sponsor's material.
- Acceptable restrictions on dissemination of tangible and intangible research results are rewritten to better explain the University's position that publication and non-commercial dissemination of research results must not be limited.
The problem of publication restrictions occurs both inside and outside formal contract and grant agreements. Although the policy guidelines can only address the former, I wish to reiterate that any fundamental limitation on the freedom to publish is unacceptable, whether or not it is part of a written agreement. Sponsors may attempt to convey such restrictions orally or via letters to principal investigators, even implying that future support depends on a willingness to comply. I urge the Berkeley faculty to be aware of such pressures and to avoid any pre-publication review or screening that would be unacceptable to the University if incorporated into a formal contract or grant agreement.

The Sponsored Projects Office staff is available for consultation and guidance on the policy guidelines and on issues relating to informal restrictions.

Joseph Cerny
Provost for Research

ATTACHMENT:

POLICY GUIDELINES GOVERNING OPENNESS AND FREEDOM TO PUBLISH

The University of California at Berkeley is committed to maintaining a teaching and research environment that is open for the free exchange of ideas among faculty and students in all forums—classrooms, laboratories, seminars, meetings, and elsewhere. Such an environment contributes to the progress of research in all disciplines. There can be no fundamental limitation on the freedom to publish as the result of accepting extramural research support.

The freedom to publish is, of course, not an obligation to publish. Under the Faculty Code of Conduct, a faculty member "...accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge..." The exercise of this self-discipline and judgment, not external factors, should determine the content and timing of publication.

Classified Research
The Berkeley campus does not accept classified research projects from any sponsor, even if such classification is intended only to permit project personnel access to classified information and/or entry into classified research sites. The principal reasons that classified projects are unacceptable are (1) the resultant requirement for a campus facility clearance and (2) the inherent publication restrictions. In general, classified projects are not consistent with the teaching, research, and public service missions of the Berkeley campus.

Use of Sponsor’s Proprietary Data
Sponsored projects allowing access to and/or use of the sponsor’s proprietary data or materials will be accepted only if regulations regarding access, use, and protection of such data or materials do not restrict the full dissemination of scholarly findings made under the grant or contract or put the University in a position of assuming financial liability. Proprietary data or
materials must be labeled as such by the sponsor before release to University researchers. Sponsor requirements should not prescribe citation of the sponsor name in publications.

Publishing and Disseminating Research Results
The University of California cannot accept any fundamental limitation on the freedom to publish and therefore cannot accept publication restrictions which convey veto or censorship authority to extramural sponsors of University projects. Publication delays not exceeding sixty (60) days are acceptable so that a sponsor may review publications and (1) offer comments or suggestions and/or (2) determine that its proprietary data are not inadvertently disclosed. In either case, the final decision on content must rest with the author. Delays not exceeding ninety (90) days also are permitted so that the University and/or the sponsor may screen proposed publications for possibly patentable ideas. If both sixty- and ninety-day delays are applicable, the total period of delay should not exceed ninety (90) days.

Tangible Research Results
The Berkeley campus does not accept sponsored project agreements in which results and/or data generated by the University are owned by the sponsor and are not available for the University’s scholarly purposes, including the sharing of information with other researchers. Restrictions on the University’s right to commercially disseminate tangible research results and products (such as biological materials, chemical compounds, computer software, mechanical specifications, drawings, and schematics) are acceptable only if (1) they apply to a tangible deliverable item specified in a grant or contract, and (2) there is no restriction on publication or noncommercial dissemination of the central research findings, including distribution of the results to other researchers for scholarly purposes.

May 1991

GUIDELINES ON UNIVERSITY-INDUSTRY RELATIONS

University of California Office of the President
May 1989

2. Freedom to Publish

Freedom to publish and disseminate results is a major criterion of the appropriateness of any research project. University policy precludes assigning to extramural sources the right to keep or make final decisions about what may be published. A sponsor may seek a short delay, however, in order to comment upon and to review publications for disclosure of its proprietary data or for potentially patentable inventions. Such a delay in publication should normally be no more than 60 to 90 days. Chancellors, and Vice Presidents, in their areas of responsibility, may make exceptions to this policy under a few limited conditions. This is outlined in full in the
Contract and Grant Manual. If any doubt remains concerning an exception, the Chancellor may resolve it by further referring the matter to the Office of the President.

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Guideline: Freedom to publish is fundamental to the University and is a major criterion of the appropriateness of a research project.