

To: Members of the Faculty Senate

From: Ad hoc Committee on Strategic Corporate Alliances

The attached statement of proposed principles and best practices regarding strategic corporate alliances represents several months of information gathering and thoughtful discussion by our committee. We have had the benefit of informal consultation with knowledgeable people in the administration, which has revealed much common ground and some areas in which we may ultimately have to agree to disagree.

This draft -- with the exception of one section, A.4. Licensing -- represents the consensus of all the members who have taken active part the committee's discussions (listed below). (The committee has not completed its discussions on Licensing, but is generally agreed that something on the topic should be included for your discussion.) We believe the appropriate next step is broader vetting of the draft through discussion by the Senate, to be followed by more formal consultation with appropriate administration officials.

So far as we can determine, no other university faculty has attempted to examine so comprehensively the implications of these arrangements, and to specify in advance a set of guiding principles and best practices. It is to Cornell's credit that both the administration and the Board of Trustees have already issued statements addressing some of the questions raised by strategic corporate alliances. This Statement continues, and extends, the process of institutional engagement with these important questions.

Elizabeth Earle, Plant Breeding, Faculty Trustee
John Guckenheimer, Mathematics
Risa Lieberwitz . Industrial Labor Relations
David Levitsky, Nutritional Science
David Pelletier, Nutritional Science
Peter Stein, Physics, Faculty Trustee
Elaine Wethington, Human Development
Steven Wolf, Natural Resources

Charles Walcott , Neurobiology & Behavior, Dean of the Faculty
Cynthia Farina, Law, Associate Dean of the Faculty, Chair of the Ad Hoc Committee

FACULTY STATEMENT OF PRINCIPLES & BEST PRACTICES CONCERNING STRATEGIC CORPORATE ALLIANCES

INTRODUCTION

Historically, research universities and for-profit corporations have had very different goals, and very different ways of organizing to achieve those goals. The goals of the research university have characteristically included the creation of new knowledge and its broad dissemination. The university typically pursues these goals by affording faculty the freedom to define their own research agendas, and by protecting unrestricted access to the results of scholarship and research. The primary goal of the for-profit corporation has characteristically been to generate a return on investment for its shareholders. The corporation typically pursues this goal by channeling the efforts of its employees towards the objectives defined by corporate leadership, and by utilizing the intellectual property its employees produce for commercial purposes.

While acknowledging these distinctive characteristics, we also acknowledge that harnessing the methods of universities and corporations to work in tandem towards a single purpose could yield great social benefit. Indeed, Cornell is well-attuned to the possibilities of such collaboration. Whether expressed in Andrew Dixon White's revolutionary commitment to pairing technological with classical education, or in the land grant mission to couple research with the practical education of society, Cornell has a rich history of working with both public and private research sponsors. But it is equally part of Cornell's history to guard academic values jealously. For example, it has refused to sacrifice public access to new knowledge by permitting classified research on campus^[1]. It has been a strong proponent of peer review in allocation of research funds, declining offers of earmarked funding from Congress that lacked this hallmark of academic integrity. In each instance, Cornell has refused to compromise the values of open access and research autonomy in exchange for financial support.

Against this background, the faculty has considered the Strategic Corporate Alliance Plan. As modes of funding for scientific research change, the faculty both appreciates the need to find new sources of support for the research mission of Cornell and applauds the creativity and initiative the administration has shown in pursuing this idea. Faculty opinion is divided as to whether, in the end, Strategic Corporate Alliances (SCAs) will benefit the university.^[2] Some fear that the corporate and university cultures are too incommensurate for true partnership. Others are more optimistic and believe that mutually beneficial collaborations are possible without compromising Cornell's academic values and mission. In any event, there is broad agreement that Alliances must be carefully managed at all stages: negotiation, initial implementation, ongoing oversight, post-hoc assessment and, if warranted, policy and practice modification. Attention to the following principles and practices will help ensure that Cornell retains its academic integrity as it enters into these new collaborations.

It will be noted that many of these principles and practices are germane to sponsored research other than SCAs – and, in some instances, to all research. Indeed, study of this topic has suggested areas in which the faculty might be well advised to examine the adequacy of existing university policies and/or to formulate new ones.^[3]

Nevertheless, the fact that the administration is actively pursuing SCAs makes it imperative that faculty guidance on corporate alliances not be delayed pending possible broader policy review.

Perhaps more important, good reasons exist for concluding that concerns about academic freedom and responsibility, conflicts of interest, etc. – although present in many research settings – are heightened in the context of SCAs. These reasons include: the potential scale and comprehensiveness of SCAs; the role of the corporate partner in management of the alliance and allocation of research funding through it; and the contemplated presence of the corporate partner’s employees in the participating department/program on a day-to-day basis. Thus it is important that those responsible for negotiating, approving, and monitoring SCAs focus specifically on such values as academic freedom and avoiding conflicts of interest, and be more than usually sensitive to protecting them within the context of each alliance.

Several of the principles and practices called for here are also endorsed in the following documents:

- C Trustee Document: Considerations & Principles Regarding Strategic Corporate Alliances (May 22, 2003), issued by the Research Subcommittee of the Board of Trustees
- C Cornell Document: Current Cornell Principles to Guide Development of Strategic Corporate Alliances (undated)
- C Cornell University Strategic Corporate Alliance Plan (7/30/03)

To the extent that the trustees, the faculty, and the administration have arrived at similar understandings of the important considerations in assessing any potential SCA, the faculty is encouraged by this degree of consensus. This Statement, however, addresses several issues that are not addressed in any of the above documents. Moreover, in a small but significant number of instances, this Statement takes a position that is, or may be, at variance with the position taken in the Cornell University Strategic Corporate Alliance Plan (7/30/03).^[4]

It is hoped that this Statement will form the basis for even broader consensus about applicable principles and practices among those responsible for targeting potential corporate partners, negotiating the terms of SCAs, giving final approval to the agreements, and overseeing their implementation. As paragraph V of the Trustee Document appropriately recognizes:

Faculty should be deeply involved in the planning, execution, and monitoring of any plan for a specific strategic alliance, as well as being involved in and committed to the creation of the plan.

SCOPE OF THE STATEMENT

Because the Cornell Strategic Alliance Plan (7/30/03 version) defines SCAs as “*comprehensive*” agreements centered around “*major, multi-year financial commitment[s]*,” it is the intent of this Statement that its Principles and Practices apply to all SCAs.

If, however, experience reveals that some alliances are in fact less comprehensive in their scope and/or sweeping in their impact, it may be appropriate for LAC to suggest a threshold for triggering the full procedural review required here. In that event, careful review of this Statement will be necessary to identify provisions that apply irrespective of size of the alliance.

By the same token, the Principles and Practices called for by this Statement should not be avoided merely because a private research support arrangement is not formally labeled a corporate strategic alliance.

**PRINCIPLES & BEST PRACTICES
TO BE CONSIDERED DURING THE
TARGETING, NEGOTIATION, APPROVAL, IMPLEMENTATION, AND OVERSIGHT
OF STRATEGIC CORPORATE ALLIANCES**

A. THE POWER TO CHOOSE RESEARCH TOPICS FREELY AND THE ABILITY TO PUBLISH RESULTS PROMPTLY AT THE TIME OF ONE'S CHOOSING, WITHOUT REGARD TO OUTCOME, ARE BASIC ELEMENTS OF ACADEMIC FREEDOM.

1. Research Autonomy Should Be Safeguarded.^[5]

Autonomy in selecting the topics and direction of research is a defining distinction between holding a faculty appointment, and working as a non-academic employee or as a consultant for hire. Obviously, no faculty member or graduate student should be coerced into participating in any project funded by an SCA.^[6] But research autonomy will not be preserved merely by prohibiting direct coercion. Rather, the entire circumstances of the department/program must be evaluated to ensure that there remain sufficient institutional resources and support to allow the flourishing of research not allied with the SCA.

To be sure, constriction of research freedom by the pressure of donor preferences is not unique to SCAs. Unless a gift is unrestricted, sponsored research (public and private) always forces the researcher to choose a project of interest to the sponsor. However, the potential magnitude and comprehensiveness of SCAs substantially enhances the threat. Therefore, the key question is whether the SCA occupies so much of the department's/program's potential research capacity that it crowds out non-conforming research agendas.

An SCA should be approved only if faculty within the department/program will, as a practical as well as theoretical matter, retain a sphere of freedom to pursue research topics of their own choosing – either within the SCA or by seeking alternative support for such projects. Factors relevant to this assessment include:

- (a) the proportion of department/program faculty expected to receive all or most of their funding through the SCA;
- (b) the magnitude of any unrestricted funds available within and outside the SCA;
- (c) the proportion of department/program physical, administrative, support, and other resources devoted to SCA projects;
- (d) the narrowness or breadth of the type of projects fundable through the SCA;
- (e) departmental/ program commitments to funding diversity of research beyond the SCA;
- (f) whether the success of the SCA has been identified as one of the strategic goals of the department, thereby putting undue pressure on faculty to take part in it;
- (g) likely effect of the SCA on projects/programs traditionally conducted in the public interest.

Particularly in light of these concerns, the faculty commends the administration's commitment to obtaining, in the SCA agreement, both full recovery of overhead costs and a philanthropic portion of funding.^[7]

The former is essential to ensure that other Cornell resources are not covertly underwriting the SCA and so exacerbating the problem of crowding out. The latter can affirmatively expand the sphere of research freedom if it is channeled to support meritorious projects that do not readily attract sponsors..

2. RESTRICTIONS ON RELATIONSHIPS BETWEEN FACULTY OR STUDENTS AND “COMPETITORS” OF THE CORPORATE PARTNER SHOULD BE MINIMIZED.

Agreeing to restrict faculty or student relationships with “competitors” of the corporate partner both shrinks the sphere of potential alternative research support and inhibits the public dissemination of knowledge that is a central part of the university’s traditional mission. Therefore, such promises should be made only sparingly, and should be very narrowly drawn.^[8] In particular:

- (a) The group of “competitors” should be *defined in advance* at the time of entering into the SCA, should be *as limited as possible*, and should in any event include *only for-profit* entities.
- (b) The “when” should be very clear, covering only work done *simultaneously* for the corporate partner and the competitor.
- (c) The “who” should be very clear, covering only the *same* faculty member or graduate student.
- (d) The “what” should be very clear, covering only *similar* work as defined in advance at the time the faculty member’s project is funded through the SCA.

Legally justified claims to protect trade secrets or similar proprietary data from competitors can be more broadly recognized, but the scope of claimed protected material should be clearly identified in advance whenever possible.

In a related but more subtle area, it is important that commitments in an SCA to “facilitate” access by the corporate partner to Cornell faculty and students^[9] not become the effective equivalent of discouraging such access to the partner’s competitors. A properly conceptualized SCA is a collaboration supporting academic research of interest to the corporate sponsor – it is not a joint venture in which a Cornell department/program becomes a remote research facility “belonging” to the sponsor.

3. INTERFERENCE WITH PUBLICATION SHOULD BE MINIMIZED.

Any censorship of the content of publication by the corporate partner (beyond legally justified claims to protect trade secrets or similar proprietary data) is obviously unacceptable. However, even “first look” rights can threaten academic freedom and inhibit public dissemination of knowledge. In some fields or sub-fields, timing is so critical that an enforced delay of even 30 days can be significant, and 90 days can be disastrous. Moreover, the right of delay is susceptible of being misused to waylay undesirable results.

Therefore, granting “first look” rights should be understood as undesirable from the University’s perspective.^[10] Rather than being routinely offered as part of an SCA,^[11] they should be regarded by University negotiators as a *significant* concession that will be made only for good and sufficient reason. Moreover,

- (a) To minimize disputes over publishability and to protect graduate students, the scope of claimed proprietary or other protected material should be clearly identified in advance whenever possible.^[12]

(b) If first look rights are given, they must be accompanied by conditions and safeguards that should, at a minimum,^[13] include:

(i) separately identifying each medium (journal publications, external presentations, dissertations, etc.) included in first-look review;

(ii) such rights should never extend to work beyond that funded directly through the SCA;

(iii) the corporate partner should be urged to develop a rapid clearance procedure (i.e., considerably shorter than 30 days) for time-sensitive material and circumstances such as external presentations;

(iv) the right to delay beyond 30 days should in no event extend beyond 90 days;^[14]

(v) the corporate partner should give explicit written assurances in the SCA agreement that the right to delay will not be invoked for the purpose of temporarily suppressing undesirable results;

(vi) exercise of the right to delay beyond 30 days should be justified in writing by the corporate partner^[15] and monitored by the Joint Steering Committee (see Section C) to ensure that it is not being used as a means of censoring results.

4. LICENSING OF INVENTIONS DERIVED FROM SCA-FUNDED WORK [N.B. THIS SECTION IS STILL UNDER DISCUSSION BY THE AD HOC COMMITTEE ON SCAS AND DOES NOT REPRESENT A CONSENSUS VIEW OF THAT COMMITTEE]

Cornell has repeatedly reaffirmed its fundamental commitment to faculty “shar[ing] openly and fully their findings and knowledge with colleagues and the public,”^[16] and has recognized that “the University's primary obligation in conducting research is the pursuit of knowledge for the benefit and use of society.”^[17] Moreover, it has acknowledged its obligation “to seek assurance that any patent right be administered consistent with the public interest.”^[18]

In light of these commitments and obligations, licensing of inventions derived from SCA-funded work should, whenever possible, take the form of non-exclusive licenses to the corporate partner to use university-owned patents. By giving the licensor a monopoly over use of the patented invention, exclusive licensing inevitably interferes with full and open sharing of the results of academic research. Moreover, it may, unless circumstances are very carefully assessed, allow the principal beneficiary of the patent right to become the private, rather than the public, interest.^[19]

In the event that exclusive licensing rights are given to the corporate partner, such rights should be as narrowly drawn as possible. For example, they should cover the fewest number of patents, for the shortest period of time that can be negotiated.

Most important, all SCA agreements should include a provision protecting Cornell's right freely to use and distribute research methods and results to academic researchers at Cornell and other academic settings. Even if an exclusive license is granted, these rights to use and distribute methods and results for academic research must be retained.^[20]

5. ANY INTERFERENCE WITH ACADEMIC FREEDOM SHOULD BE REPORTED TO THE DEAN OF FACULTY, WHO IN ADDITION TO COUNSELING ORDINARY REMEDIES WILL ENSURE THAT SUCH REPORTS ARE TRACKED.

Any faculty member who experiences interference with academic freedom in connection with an SCA should seek the assistance of the Dean of the Faculty.^[21] Moreover, “[i]ndividual faculty members are encouraged to speak out on behalf of a fellow faculty member's academic freedom, either individually or through the Faculty Senate and its committees”^[22] or by seeking the assistance of the Dean of the Faculty.

In such circumstances, the Dean of the Faculty should counsel the faculty member as to the range of remedies ordinarily available for such interference. In addition, he/she should (1) report the complaint to the Local Advisory Council (LAC), who should take such complaints into consideration as part of its periodic review of the operation of the alliance (see Section E.2); and (2) ensure that a database is being maintained of such complaints, in order that they may be appropriately considered in assessing the experience under particular alliances and SCAs in general.

B. ACADEMIC FREEDOM ENTAILS THE RESPONSIBILITY TO UNDERTAKE AND PRESENT RESEARCH WITH OPENNESS AND INTEGRITY, AND CONDITIONS MUST BE MAINTAINED IN WHICH FACULTY CAN FULFILL THIS RESPONSIBILITY.

Academic freedom brings with it the responsibility of disinterested integrity in the conduct of research and the publication of results. While this responsibility attends all research, sponsored or not, the comprehensiveness and scale of an SCA and the pervasive influence of the corporate partner may make it particularly difficult to maintain the conditions in which faculty are able, and motivated, to fulfill their responsibility.

1. NO RESTRICTIONS ON REVEALING THE SPONSORSHIP RELATIONSHIP ARE PERMISSIBLE.

No SCA should contain any provision that permits, or even implies, that the corporate partner has the right to forbid faculty or graduate students from disclosing SCA sponsorship of research. Oversight of SCA implementation should be sensitive to any evidence that the corporate partner (or its on-site employees) is exerting pressure on faculty or graduate students not to disclose sponsorship.

Forthright disclosure of the sponsorship of particular research is one of the simplest, and best, antidotes for the suspicion that the quality of work has been compromised by the interests of its sponsor. Increasingly, external review organizations, top journals, and even entire disciplines are adopting norms that require disclosure of sponsorship relationships as a matter of course. It may be that Cornell ought consider adopting a university-wide rule in this area, as a way to safeguard the integrity of research that is so essential to the academic mission. Such a norm would protect faculty from pressure not to reveal sponsorship affiliation when publishing results that are counterproductive, embarrassing, or otherwise undesirable from the sponsor's perspective.

2. MULTIPLE SIMULTANEOUS RELATIONSHIPS WITH THE CORPORATE PARTNER SHOULD BE CAREFULLY MANAGED.

SCAs pose significant challenges for departments/programs and for individual faculty in maintaining the line between academic independence and corporate employment. These challenges become even greater if the corporate partner seeks to employ faculty as consultants or independent contractors while faculty are also receiving funds through an SCA.

Such simultaneous arrangements must be very carefully managed, and must be avoided unless a clear separation can be maintained between work done as a faculty member of the university (though made possible through SCA sponsorship) and work for hire done for the corporate sponsor. See generally “Cornell University Conflicts Policy, Academic Policies/Responsibilities: Consulting”; Office of Sponsored Programs, “Guidelines for Consulting Agreements.”

The circumstances of a particular SCA may make it prudent to require the corporate partner to forego entirely such simultaneous, potentially confusing side relationships with faculty receiving support through an SCA. Indeed, experience with SCAs over time may reveal that general guidelines in this area are possible and appropriate.

3. ANY INTERFERENCE WITH A FACULTY MEMBER’S RESPONSIBILITY TO PUBLISH RESULTS, REGARDLESS OF EFFECT ON THE SPONSOR, IS UNACCEPTABLE.

To be consistent with academic integrity and responsibility, a faculty member’s decisions about whether and when to publish results must be based on objective assessment of the value of the work, using the standards and norms of the discipline – not on perceptions about the likely reaction of the sponsor to publication. Unfortunately, effectively insulating faculty from pressure to behave in ways that will please their sponsor is difficult – especially when the sponsor has committed large amounts of funding to the department/program over multiple years. The difficulties are multiplied when the faculty member has been working side by side with employees of the corporate partner, who understandably share their employer’s interests.^[23]

At a minimum, the SCA agreement should contain an explicit written commitment that neither the corporate partner nor its employees will attempt to dissuade faculty from publishing results obtained from sponsored research.^[24]

Such a provision at least puts the partner on notice that publication decisions lie solely in the realm of academic judgment, and are an area in which the partner has no legitimate role. Beyond this, oversight of the SCA in progress must be alert to any indications that faculty are being induced to engage in self-censorship based on sponsor interests rather than appropriate scholarly norms.

C. PRIMARY DECISIONMAKING AUTHORITY OVER CORNELL RESEARCH MUST REMAIN WITH CORNELL DECISIONMAKERS.

The Corporate Strategic Alliance Plan calls for creation of a Joint Steering Committee to manage the SCA.^[25] Beyond providing that the JSC will be “led by a Cornell and company representative,”^[26] the Plan does not specify organizational or operative details of the JSC. Under the Plan, the JSC “will review and select faculty proposals for funding,” through a process involving “internal faculty Requests-for-Proposals.”^[27]

1. THE MANAGEMENT GROUP SHOULD CONTAIN NON-PARTICIPATING, AS WELL AS PARTICIPATING, FACULTY.

The JSC should contain some faculty members who are not direct stakeholders in the SCA. Being themselves outside the funding opportunities of the alliance, their perspective can help provide balance and objectivity, flag potential conflicts and other incipient problems, and prevent the fact or appearance that the enterprise is becoming inbred. Moreover, participation of disinterested faculty gives additional reassurance – both within and outside the department/program involved – that funding decisions will be evenhanded, and that the SCA is being managed with due regard for the values and mission of the university as a whole.

2. DAY-TO-DAY MANAGEMENT OF THE SCA SHOULD BE BY CORNELL FACULTY, NOT CORPORATE REPRESENTATIVES.

One fundamental touchstone must never be lost: This is academic research, not corporate research.^[28]

If there is a Director of the alliance (see Section D.3), that Director must be a Cornell faculty member. If all management is to be done by the JSC as a committee of the whole, then Cornell representation must predominate. The corporate sponsor appropriately has a voice in management decisions, subject to the exception for actual funding awards discussed next. However, the sponsor should not be in the position of either having a representative as Co-Director or having equal representation on the JSC.^[29]

3. CORPORATE REPRESENTATIVES SHOULD NOT PARTICIPATE IN THE ACTUAL SELECTION OF FACULTY PROPOSALS FOR FUNDING.

In keeping with the purposes of the alliance, representatives of the corporate sponsor can appropriately play a collaborative role in shaping the Request for Proposals from faculty desiring funding through the SCA. Once the relevant criteria have been settled and announced, however, the sponsor's role ends – or at least substantially diminishes.

We are a research university, not a vendor supplying a corporate customer's requirements. Therefore, the distribution of alliance funds to Cornell faculty, staff and students should be in the hands of Cornell, not the sponsor. The sponsor's interests and priorities can be expressed through the RFP; beyond that, decisions about which research receives support should be based on scientific merit assessed through conventional scholarly methods. (See Section D.) Corporate representatives on the JSC may appropriately participate in discussion of proposals, but these members should not have any role in the actual award decision.

D. *OBJECTIVE STANDARDS, PEER REVIEW, AND SOME FORM OF EXTERNAL ACCOUNTABILITY PROTECT ACADEMIC INTEGRITY IN THE FUNDING PROCESS AND ENHANCE FAIRNESS.*

Although the subject-matter interests and commercial priorities of the corporate sponsor may appropriately inform the general objectives of the alliance, the process for funding research through the SCA should follow traditionally respected academic protocols for proposal evaluation and grant awards.

1. THE JOINT STEERING COMMITTEE SHOULD PREPARE REQUESTS FOR PROPOSALS THAT SPECIFY AS CLEARLY AS POSSIBLE THE CRITERIA THAT WILL GOVERN GRANT AWARDS AND THE PROCESS FOR APPLICATION.

Clear and detailed notice of the criteria and the process for obtaining funds through the SCA serves several purposes. Most obviously, it enables participating faculty to design their proposals as effectively as possible. In addition, it facilitates the job of those who will be reviewing the proposals (see Section D.2). Finally, from an institutional perspective, it is a small but important piece of the transparency that allows external monitoring to confirm that research funding through the alliance has been evenhanded and based on scientific merit. (See Section E.2).

2. PROPOSALS SHOULD BE EVALUATED BY NON-PARTICIPATING CORNELL FACULTY COMPETENT TO ASSESS THEIR MERIT.

Peer review by disinterested scholars remains the premier method of assessing the merit of

academic work. Cornell recognizes this in a number of relevant settings; for example, it constitutes internal peer review panels to evaluate proposals for the Affinito-Stewart Grant Program of the President's Council of Cornell Women.

After proposals are submitted in response to the RFP, internal peer review panels of non-participating faculty should be constituted to evaluate their merit. Factors to be considered may include the mission statement of the alliance. These evaluations need not be lengthy; examples of modest-length evaluation instruments exist from other programs. The important point – vital to honoring the principle that we are engaged in academic, not corporate, research – is that genuine, disinterested peer review occur.

3. FUNDING DECISIONS SHOULD BE MADE IN A WAY THAT ENHANCES ACCOUNTABILITY, AND SHOULD BE THE SUBJECT OF PERIODIC EXTERNAL REPORTING.

The final step in the grant process – deciding which proposals to fund – should be structured to maximize accountability. This goal can be accomplished by placing ultimate responsibility in the hands of an alliance Director who will make grant award decisions (after receiving the peer review assessments) with the advice and consent of the JSC.

Note the important constraints that

Section C.3 imposes on this: The Director must be a Cornell faculty member, and the corporate JSC representatives may not participate in actually voting on the list of grant nominees.

The Director should prepare a report of funding decisions from each grant cycle and submit this report, along with the relevant RFP, no less frequently than annually to the Local Advisory Council (LAC). (See Section E.2). This report should be sufficiently detailed in describing projects both funded and not funded that LAC can satisfy itself that research support through the alliance has been evenhanded and based on scientific merit.

E. BECAUSE SCAS REPRESENT AN IMPORTANT BUT POTENTIALLY HAZARDOUS EXPERIMENT IN SUPPORTING THE CENTRAL RESEARCH MISSION OF THE UNIVERSITY, THE FACULTY, THROUGH ITS REPRESENTATIVES, SHOULD HAVE A CENTRAL ROLE IN THEIR APPROVAL AND OVERSIGHT.

Both the Trustee Document: Considerations & Principles and the Cornell University Strategic Corporate Alliance Plan (7/30/03 version) commendably contemplate that LAC will play a key role in review, approval and oversight of SCAs.^[30]

LAC's substantive expertise, its tradition of providing rigorously independent faculty judgment within a constructive working relationship with the administration, and its demonstrated ability to handle sensitive information appropriately, all make it the logical first choice for this role.

Nonetheless, some caution in calling upon LAC is appropriate. This committee already performs a vital service that places heavy demands on the time of its member faculty.^[31] If a complex SCA were to be proposed and/or if multiple SCAs were simultaneously to be undertaken, the burden could quickly become overwhelming. The faculty role in approval and oversight contemplated by this Statement is significant, and should not be undermined by entrusting it to a committee which, no matter how well-qualified and well-intentioned, is simply too busy with other important matters to carry it out. Therefore, although this Statement refers to LAC as the faculty committee with responsibilities in this area, entrusting the responsibilities to some other faculty committee might prove necessary.

1. NO SCA SHOULD BE ENTERED INTO WITHOUT THE APPROVAL OF LAC, WHO SHOULD BE INVOLVED EARLY ENOUGH IN THE PROCESS THAT THE AGREEMENT IS NOT A FAIT ACCOMPLI. AMENDMENTS TO AN SCA SHOULD ALSO RECEIVE LAC APPROVAL.

LAC SHOULD REPORT ITS CONCLUSIONS TO THE DEAN OF THE FACULTY, AS WELL AS TO THE APPROPRIATE ADMINISTRATION OFFICIALS.

Finalization of an SCA should not occur unless and until LAC has reviewed its terms and determined that the SCA – both in concept and, so far as can reasonably be predicted, in likely implementation – is consistent with this Statement and any refinements suggested by practice and experience under it. Moreover, LAC should be involved early enough in the process of attempting to form an SCA that it can have meaningful input in changing problematic elements. This timing issue is a point of considerable sensitivity for several reasons.

Involving LAC early in the process will raise concerns. From the perspective of the negotiators, the period before key terms of the deal are finalized is understandably viewed as highly confidential, volatile, and vulnerable to private leaks or unguarded public statements. Multiplying participants multiplies risks. From the perspective of the faculty, involving LAC while bargaining is active poses the danger that LAC will become invested in achieving an SCA. LAC's role as independent reviewer is compromised if it becomes a stakeholder in getting to an agreement.

On the other hand, too-late involvement also carries serious risks. If LAC does not review the proposal until the deal has been effectively struck between the administration and the corporate sponsor, the costs of disapproval become enormous. Considerable time and effort will have been expended by administration and corporate officials (often at the highest levels of both organizations), faculty in the involved department/program will have become invested in going forward, and a great deal of money and other research support is likely sitting on the table. LAC objections at that stage may divide the faculty against itself, and will surely put the faculty and the administration on a high-stakes collision course from which no one benefits.

In arriving at the form and timing of LAC involvement that best balances these various risks, the faculty must largely rely on the administration. The Cornell SCA Plan (7/30/03 version) contemplates LAC involvement at the point at which the negotiations team has reached a Memorandum of Understanding (MOU).^[32] An alternative model, that we encourage in the spirit of open and thoughtful faculty consultation, would be a carefully selected subcommittee of LAC who is initially briefed on the target project, who is kept informed by the negotiating team of any significant policy issues as they emerge, and who then can take an informed lead in full committee discussion of the MOU. In any event, subsequent to the MOU, LAC must *also* review and approve the final version of the SCA.

Recognizing that experience and/or external events might prompt changes during the term of an alliance, the Cornell SCA Plan provides for the possibility of amendment.^[33] The advice and consent of LAC should be sought before any not insignificant amendment is made to an SCA.

After it has made its assessment of the MOU, the final version of the SCA, or any amendments, LAC should communicate its conclusions to the Dean of the Faculty, as well as to the appropriate members of the administration.

2. LAC SHOULD REVIEW THE PERFORMANCE OF EVERY ONGOING SCA ANNUALLY, RECEIVING FROM THE JSC AND/OR THE ALLIANCE DIRECTOR PERIODIC REPORTS AND OTHER INFO AS NEEDED TO PERFORM THIS REVIEW.
LAC SHOULD REPORT ITS CONCLUSIONS TO THE DEAN OF THE FACULTY, AS WELL AS TO THE APPROPRIATE ADMINISTRATION OFFICIALS.

No matter how carefully the faculty, the administration, and the trustees attempt to think through the issues SCAs will pose, we can be confident that alliance implementation will be a work in progress that needs refinement. The planned scale and comprehensiveness of SCAs may produce a variety of unanticipated consequences in practice – consequences, for individual faculty and for departments/programs, that differ not only from those produced by other forms of sponsored research, but also from one alliance to another.^[34]

Therefore, in addition to approving the initial agreement, LAC must review the actual implementation of SCAs. Annual review appears the appropriate starting point, although actual experience might reveal that the period between reviews can be lengthened without undue concern. (E.g., annual review in initial years of an SCA, then less frequent review as program administration becomes well settled). To conduct its review, LAC should receive from the JSC and/or alliance Director the reports of funding decisions (see D.3), and any other material LAC needs to determine that the SCA is being implemented consistent with this Statement and any subsequent refinements suggested by practice and experience under it. It should also consider any complaints forwarded from the Dean of the Faculty under Section A.5, along with the results of any university processes that have been invoked to resolve those complaints.

The LAC's annual review of SCA implementation should be communicated to the Dean of the Faculty, as well as to the appropriate members of the administration.^[c1]

3. TO PERFORM ADEQUATELY THE FUNCTIONS OF APPROVING SCA AGREEMENTS AND REVIEWING THEIR IMPLEMENTATION, THE COMPOSITION OF LAC SHOULD BE BROADENED.

To the extent that it is engaged in review of SCA-related matters, LAC should be expanded to include significant representation from some or all of the following groups of faculty: (1) natural scientists with no personal stake in the alliance funding opportunities; (2) social scientists; (3) ethicists; and (4) researchers with experience in human and animal subjects research protocols.

Just as participation of disinterested faculty on the JSC helps expand the viewpoint of day-to-day alliance management (see Section C.1), so broadening the composition of LAC will enhance the range of perspectives that are examining SCA proposals and reviewing implementation. Broadening the expertise base of LAC review in this way could have very specific benefits. For example, private research is not covered by current federal law on human subjects research; therefore, the ramifications of the complex, and sometimes time-consuming, compliance procedures in this area may be outside the contemplation of the corporate partner. Ensuring that someone on LAC has this expertise could help bridge a potentially significant cultural gap.^[35]

More important, however, is the general benefit of bringing representatives of the larger university community into the process of SCA review, approval, and oversight. The addition of social scientists and ethicists, for example, will better position LAC to assess the alliance's ongoing impact on the department/program and on participating (and nonparticipating) faculty and graduate students.

F.

ONCE AN SCA HAS BEEN FINALLY APPROVED BY CORNELL AND THE CORPORATE PARTNER, THE TERMS OF THE SCA SHOULD BE MADE AVAILABLE TO THE CORNELL COMMUNITY.

Transparency and openness are significant steps towards reassuring those who fear the effect of SCAs on Cornell's tradition of research autonomy and integrity. As the chair of LAC said in discussing his committee's report with the Faculty Senate, "We think the way to deal with these potential fears, from our committee's point of view is..., 'Let there be light'." Many of the practices set forth in this Statement implement this general principle.

Allowing the community to see for itself what is permitted – and forbidden – under the terms of an alliance is essential. Otherwise, an undertaking that will inevitably be the subject of considerable interest and debate may become the object of uninformed speculation and wild rumor. Obviously, confidentiality is essential while negotiations are pending. Once the agreement is final, however, the administration should work hard to overcome any reluctance, on the part of the corporate partner, to make the terms of the agreement public to the university community. Openness about such matters may be a cultural difference about which the corporate partner will require education; nonetheless, it has such a high value in this environment that the administration should be insistent.

[1]

See Cornell University Guidelines on Sensitive and Proprietary Research, adopted by the Cornell Research Council on May 20, 1985, reproduced in Faculty Handbook at 91 (“Given the open nature of Cornell University, research projects which do not permit the free and open publication, presentation, or discussion of results are not acceptable. ... In particular, research which is confidential to the sponsor or which is classified for security purposes is not permitted at Cornell University.”)

[2]

“A strategic [corporate] alliance is a comprehensive, formally managed company-university agreement centered around a major, multi-year, financial commitment involving research, programmatic interactions, intellectual property licensing, and other services.” Cornell University Strategic Corporate Alliance Plan (7/30/03 version) at 1.

[3]

Compare Trustee Document: Considerations & Principles Regarding Strategic Corporate Alliances ¶ IIa (“A review of the University’s intellectual property right policies ... should be undertaken, optimally before any major strategic alliances are concluded”).

[4] Those instances are flagged in the text below. Sometimes, the text of the SCA Plan is *capable* of being interpreted in a way consistent with this Statement, but inconsistent interpretations are also possible.

[5]

Compare Trustee Doc: Considerations & Principles ¶ II.1 (“The academic independence of the University and the integrity of the Cornell name will be paramount.”)

[6]

Compare Trustee Doc: Considerations & Principles ¶ II.4 (“Faculty participation in any alliance, as outlined, will be voluntary.”). See also id. ¶ VIII.1.

[7] See Cornell SCA Plan at 6, 8.

[8]

Compare Cornell SCA Plan at 6-7: “Among the benefits Cornell may offer companies are: ... Agreement that Cornell will not enter into research sponsored by competitors that involves the same investigator and similar work.”

[9]

See Cornell SCA Plan at 7: “Among the benefits Cornell may offer companies are: ... Facilitated access to facilities, faculty and students.”

[10]

Compare Cornell University Copyright Policy (adopted by Board of Trustees Executive Comm., 6/28/90) (“As a matter of principle and practice, the University encourages all members of the Cornell community to publish without restriction their papers, books, and other forms of communication in order to share openly and fully their findings and knowledge with colleagues and the public.”)

[11] See Cornell SCA Plan at 6-7: “Among the benefits Cornell may offer companies are: ... First look at discoveries.”

[12] Compare Cornell Guidelines on Sensitive and Proprietary Research , Fac. Hand. at 91 (“ Such information [i.e., proprietary] must be identified as such in writing when transmitted and the condition of its acceptance specified.”)

[13] Regulations from the Office of Sponsored Programs may impose additional limitations on first look rights.

[14]

Compare Current Cornell Principles (undated) No. 3 (“Reasonable delays would be permitted for review for confidential company information, patentable subject matters and, if appropriate, preparation of patent applications. In no case will the total delay exceed 90 days.”)

[15]

Compare Cornell Guidelines on Sensitive and Proprietary Research , Fac. Hand. at 91 (“Beyond the thirty days, delays of up to three months are acceptable on the basis of a *formal request* from the sponsor.”) (emphasis added)

[16] Cornell University Copyright Policy, General Statement.

[17] Cornell University Patent Policy, ¶ A.1.

[18] *Id.* ¶ A.2.

[19]

The Patent Policy recognizes that “the development and marketing of inventions resulting from University research so as to reach a public usefulness and benefit ... may require various forms of agreements including the granting of exclusive licenses.” *Id.* ¶ F. The challenge, of course, is accurately predicting the circumstances in which exclusive licensing will indeed be the optimal strategy for developing the invention in the public interest.

[20] Compare Cornell Principles (undated) No. 5

(“Cornell will retain the right to practice any inventions for its own research and education purposes, and will retain the ability to distribute any biological materials created under a corporate research sponsorship to other academic researchers.”)

[21] See Faculty Handbook at 89 (statement on research freedom of faculty, indicating that those who are threatened or harassed in the exercise of this freedom “should seek assistance through the Dean of Faculty.”)

[22] *Id.*

[23]

Among the duties of the new Director of Corporate Strategic Alliances is “keeping companies fully engaged” by “e.g., facilitating symposia, arranging visits, and placing company researchers in residence at Cornell. [The Director] ... will maintain close communication and coordination with Cornell faculty, and will help bridge any culture gap by exhibiting and encouraging mutual trust and synergy among scientists.” Cornell SCA Plan at 8.

[24]

Compare Cornell Guidelines on Sensitive and Proprietary Research , Fac. Hand. at 91 (“ Nor will the university enter into any agreements unless the principal and co-principal investigators have the final authority on what is to be published or presented.”)

[25] Cornell SCA Plan at 6, 7, 8.

[26] *Id.* at 8.

[27] *Id.* at 8, 7.

[28] See Cornell Guidelines on Sensitive and Proprietary Research, Fac. Hand. at 91:

The university will accept only sponsored research projects which are expected to further the research and

educational mission of the institution. While a sponsor may delineate the areas of research to be supported, the principal and co-principal investigators must have final authority for decisions on the course of the research program within these limits. The principal and co-principal investigators must also have final authority regarding employment of personnel for the project. In particular, research that is subject to a sponsor's approval of personnel is not permitted at the university.

[29]

Compare Cornell SCA Plan at 6-7: “Among the benefits Cornell may offer companies are: ... Shared management of the Alliance via Joint Steering Committee.”

[30] See Trustee Doc: Considerations & Principles ¶ VII; Cornell SCA Plan at 5.

[31]

Currently, LAC performs two principal functions. It advises the administration, through the Vice Provost for Research, on key issues pertaining to the research enterprise at Cornell. Recent examples include review of the Center for the Environment and the Ward Center for Nuclear Sciences. In addition, it reviews proposals and nominations and makes recommendations regarding the relative ranking of Cornell candidates for external grants and awards in cases where the competition is limited to a fixed number of applications or nominations.

[32]

Cornell SCA Plan at 5. The MOU sets out the “key elements” of a proposed SCA (“the expectations of the parties and the source(s) of alliance funding”), but has not yet been approved by either legal counsel or senior management. *Id.*

[33] *Id.* at 6-7.

[34]

The Cornell SCA Plan acknowledges this by contemplating the creation of a new administrative position, the Director of Corporate Strategic Alliances, although the focus of this position may be more on facilitation of alliance activities than oversight of them. See p. 8.

See also Trustee Doc: Considerations & Principles ¶ IX (“The plan, and any alliances, will include provisions that will require periodic review and will allow the University to implement modifications or terminate alliances that were not judged to be successfully furthering Cornell’s research or educational missions.”)

[35]

We assume that every SCA agreement will contain an explicit statement that research conducted under the alliance will comply with all rules, policies, and protocols applicable to other Cornell research. Of course, it is a wholly separate matter whether the corporate sponsor *knows* the full extent of these rules, policies and protocols – and appreciates the practical implications they may have for how research is done and published in academia.

[c1]David P: suggests an external review every few years by qualified social scientists