

**Proposed UC Open Access Policy
Summary of Non-Senate Responses
July 26, 2007**

On July 9, 2007 the Academic Council forwarded its report of the Senate review¹ of the proposed UC Open Access Policy.

This document summarizes the *non-senate* responses, specifically the reviews instigated by the request to Chancellors that was made simultaneous to the review request to the Academic Council, and to the individual comments forwarded through the website where the online version of the policy and other supporting materials were hosted.²

As of this writing seven campuses have forwarded administrative review materials. (Responses are not in evidence from Davis, Los Angeles, and Merced.) However, the response from Riverside duplicates entirely the Riverside contributions to the Academic Council report. The response from Santa Cruz includes commentary from “local Academic Senate Committees” which are not, apparently, included in the Academic Council’s discussion and report. In at least one other case – from Irvine – the response was constructed in part from a forum jointly sponsored by the Senate and the Office of Academic Personnel.

In some cases various administrative perspectives were sought and included in the administrative reviews, including the Social Sciences and Graduate Division Deans, and Technology Transfer office at Santa Barbara; the Mechanical Engineering and Astronomy departments at Berkeley; and the Research Office and Library at Santa Cruz. Clearly, there was some variation in, if not confusion about, the request for campus administrations to conduct separate and differently inclusive reviews from those being conducted by the Academic Senate.

Seven unsolicited comments from individuals were forwarded through the email address or online comment form at <http://osc.universityofcalifornia.edu/openaccesspolicy/>. All were from UC faculty members and six of the seven were from Irvine.

Summaries are provided below of response to the policy itself and to the implementation of the policy. This approach parallels that taken by the Academic Council report.

I. The Policy Proposal: Summary of Responses

The large majority are supportive of the intent of the policy and the University’s provision of leadership in this area. There are significant concerns about implementation of the policy.

General support

¹ The Senate’s review report can be found at:
<http://www.universityofcalifornia.edu/senate/reports/ac.open.access.07.07.pdf>

² <http://osc.universityofcalifornia.edu/openaccesspolicy/>.

Five of the seven campus responses (71%) are explicit in their support of the policy. In two cases this is expressed as “strong support.”

Two campuses (29%) reported that concerns outweighed support of the policy as written, encouraging the University to “proceed with extreme caution” (UCSC), or that it was “perhaps unnecessary, and in need of further study” (UCSD).

Four of the seven unsolicited individual responses were supportive (57%) while three expressed opposition (43%). In one case opposition appears to be based on a misunderstanding of the policy’s intent.

General concerns

Administrative reviews cited a number of concerns, most of which were similar to the Senate review in clustering around implementation issues, especially the potential financial and procedural burden on campuses (see below).

Other concerns focused on academic and systemic issues, including a perceived threat to academic freedom (UCSD), the uncertain status of graduate students regarding the policy (UCSB), and a perceived potential to harm the fiscal health of societies and their publication programs (UCSF, UCSD, individual).

II. Policy Implementation: Summary of Responses

Most responses include concern about incomplete or under-specified policy implementation paths, as well as specific objectionable implementation ideas. Noting the potential (or need) for extensive supporting infrastructure for an effective policy, the source and distribution of support is a ubiquitous concern.

Ongoing capacity and support

Four campus responses called for a cost analysis of the infrastructure needed to support the policy and leverage its effects (UCI, UCSD, UCSB, UCSC), or to fulfill the implied ongoing support of the eScholarship Repository to serve as the default infrastructure for open access to UC-authored articles and conference proceedings (UCSD, individual).

Faculty burden

Nearly all responses expressed some concern about the policy’s imposition of new work for faculty, even while acknowledging that some faculty action was inevitable and necessary to fulfill the potential of the policy. Explicit workload concerns mentioned the need to invoke an opt-out process (UCSD), to report access characteristics of their publications in merit files (UCSF), to negotiate with publishers over copyright terms (UCSB), and to deposit material into an open access repository (UCR).

Opt-out mechanism

No consensus appeared about which opt-out mechanism would be preferable, with one call for clarification of the options (UCSC), one opining that any opt-out process would be cumbersome (UCSD, UCSB), and one encouraging a change to an opt-*in* policy

(UCSB). The sources and location of support for an opt-out mechanism, and the associated “Open Access agent,” were also concerns (UCSB).

Copyright transfer negotiations with publishers

UCSF, UCSB, and one individual comment cited the need for policy implementation to be clear about how the university would support faculty negotiations with publishers over publication agreements that would comply with the policy.

Recording access characteristics of faculty publications

Three campuses reported a strongly negative view of the proposed requirement to record the access characteristics of faculty publications, calling it variously “onerous” (UCSF), “Draconian” (UCSD), “procedurally in error, and quite possibly an invitation to employment litigation” as well as “coercive” (UCSC).

Education, outreach, and supporting materials

Concerns about sustaining the supply of educational, procedural, and impact information were expressed by UCSF and UCSB. The UCSB response also opined that an education campaign on guidelines and principles for publication contracts might be a good program starting point. [Note that the Office of Scholarly Communication website, as well as most campus library websites, provide this material passively. Several more active educational activities are also routinely offered.]

UC Berkeley Response

From: Cathy Romanski [mailto:romanski@berkeley.edu]
Sent: Monday, June 11, 2007 11:34 AM
To: Rory.Hume@ucop.edu
Cc: Jeanne Fong
Subject: Call: "UC Faculty Scholarly Work Copyrights Rights" Policy

Dear Provost Hume,

On behalf of Vice Provost Jan de Vries, below are the comments received regarding the UC Faculty Scholarly Work Copyrights Rights Policy.

Regards,
Cathy

From: "Albert P. Pisano" <appisano@me.berkeley.edu>
To: <romanski@berkeley.edu>
Subject: UC Faculty Scholarly Work Copyrights Rights Policy
Date: Sun, 20 May 2007 21:27:42 -0700

Ms. Romanski,

The Mechanical Engineering Department has reacted very favorably to this new policy, and we would be pleased to see it implemented ASAP.

Regards,

Al Pisano
Albert (Al) P. Pisano, Professor and Chair
Department of Mechanical Engineering

From: Gibor Basri <basri@berkeley.edu>
Subject: Re: Call: "UC Faculty Scholarly Work Copyrights Rights" Policy

I am generally in favor of this policy. I prefer options B or C, depending on how faculty members would be made aware of their obligation under B. It seems difficult to insure that faculty members would always make the consultation (and for this to be effective, in any case they would somehow have to be reminded more regularly than at a merit review). I also wonder what would happen if a regularly used and prestigious journal refuses to accept this amendment. Would one have to "opt out" for every publication in that journal, or could a blanket "opt out" be issued to cover that case for that person? The thought behind this policy seems sound, however, and I am in favor of electronic dissemination (in my field, this is practically a reality already through the physics arXiv).

Professor Gibor Basri
Chair, Astronomy Department



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May 21, 2007

Wyatt R. Hume
Provost and Executive Vice President
Academic and Health Affairs
Office of the President
University of California
1111 Franklin Street
Oakland, CA 94607-5200

Dear Provost Hume:

RE: Review of Proposed Open Access Policy

The Irvine campus has conducted a comprehensive review of the proposed revised Open Access Policy (<http://osc.universityofcalifornia.edu/openaccesspolicy/OpenAccess-Policy-DRAFT1-29-2007.pdf>). In addition to soliciting comments from the campus faculty, a faculty forum, co-sponsored by the Academic Senate and the Office of Academic Personnel, was arranged to invite discussion on the proposed policy. UCI's response cannot capture the full breadth of the comments and opinions that exist on this topic, and participants were encouraged to provide their comments directly to osc@ucop.edu.

The proposed policy is in line with a recent study showing that open access publication leads to increased numbers of citations, implying wider dissemination of data. UCI faculty and administration support open access to journal articles and conference proceedings authored by UC faculty members, provided that the open access repository is well-designed for ease and speed of access, and is durable over time. It is also of great importance to the usefulness of the repository that publications are easily discoverable via major search engines, now and in the future.

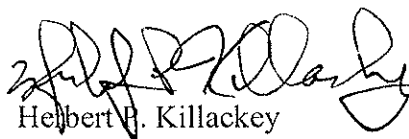
A positive aspect of the proposal is the expansion of authors' rights by limiting journal rights to the right of first publication, thereby allowing authors to retain non-exclusive rights to publish or disseminate their own work, provided that they cite the journal in which the article was first published.

Of the three 'Opt-Out' provisions, we support the "notification based" Option C. This option reduces the compliance obligations for authors wishing to opt out of the policy for work that has been accepted in a publication that does not allow open access placement of the work within 6 months, while providing authors with University support in negotiations with publishers.

Before implementation, we would like to encourage an open evaluation of the costs necessary to establish and maintain a robust repository.

Thank you for providing us with this opportunity to comment, and for providing easily accessible information and FAQs about the policy.

Sincerely,



Herbert R. Killackey
Vice Provost for Academic Personnel

cc: President Robert Dynes
Chancellor Michael Drake, M.D.
Executive Vice Chancellor and Provost Michael Gottfredson
Vice Chancellor Susan Bryant
UCI Senate Chair Martha Mecartney
UCI COCLR Chair, Alex Veidenbaum
Associate University Librarian Carol Hughes
Associate University Librarian Judy Kaufman
University Librarian Gerald Munoff
Acting Assistant Vice President Sheila O'Rourke
Working Group Chair Lawrence Pitts
Associate Vice Provost Daniel Greenstein
Director John Ober
Coordinator Nancy Capell



OFFICE OF THE CHANCELLOR

Dan

May 18, 2007

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Dear Rory,

Thank you for affording us the opportunity to review the proposed language regarding the University of California's Open Access Policy. Executive Vice Chancellor Ellen Wartella's office has worked with Academic Senate Chair Tom Cogswell and the UC Riverside Academic Senate to provide a thorough analysis of the proposed policy and a detailed response.

Three Senate committees reviewed the Open Access Policy draft and concluded that the proposal merits continued consideration. They have offered their comments as to which areas need clarification or additional discussion. These recommendations are included in the enclosed memorandum.

Please let us know if we can be of any further assistance. We will be glad to provide any more information that you request.

Sincerely,

France A. Córdoba
Chancellor

cc: EVC Ellen Wartella
Academic Senate Chair Thomas Cogswell

Enclosures

UNIVERSITY OF CALIFORNIA
OFFICE OF THE ACADEMIC SENATE
RIVERSIDE, CALIFORNIA

April 18, 2007

TO: ELLEN WARTELLA
EXECUTIVE VICE CHANCELLOR AND PROVOST

FM: THOMAS COGSWELL, CHAIR
RIVERSIDE DIVISION

RE: DRAFT OPEN ACCESS POLICY

The proposed University of California Open Access policy has been reviewed by three major senate committees and below are the comments received.

The Library Committee feels that the University's Draft Open Access Policy is worth pursuing. Members feel that for this policy to be successful, attention should be given to its effect on faculty. To this end, the program should be both convenient and transparent to scholars, and that a system-wide program should be developed that will assume the burden of negotiating with publishers. Members also recommend that the University adopt a policy of negotiating the Open Access Policy directly with publishers as it contracts with them for access to scholarly publications. To clarify the level to which faculty are expected to comply with this Policy, Members ask that the term "routinely" be clarified in its final text.

The Committee on Faculty Welfare considered the Draft Open Access Policy and has a number of concerns about the policy as presented in this document.

1. Although the goals of the policy are addressed in the first of the 20 FAQs on the website and the specific results of application of the policy are enumerated on page one of the draft, it is not clear specifically how this policy will actually enhance the educational and research mission of the institution or of individual faculty. While these listed objectives would clearly be of value to some faculty in some situations the necessity for a blanket policy to cover all faculty in all situations is not well-justified. Both the advantages and disadvantages relative to individual faculty of the policy need to be laid out.
2. While the institutional goals of the policy, mainly creating a repository of the intellectual work of the faculty, may be worthy, CFW is concerned that the effect of the proposed policy as written would be a substantial increase in the workload of individual faculty, especially those who are most productive in terms of publications. It is not clear what advantages of the policy accrue to the individual faculty who actually carry out this work.
3. The above two concerns of CFW lead us to recommend that all three of the "opt-out" options be rejected and that instead the policy be re-formulated as an opt-in

UNIVERSITY OF CALIFORNIA
OFFICE OF THE ACADEMIC SENATE
RIVERSIDE, CALIFORNIA

one. Faculty who initially can clearly see the advantage of the policy to their own research and teaching objectives could opt in, but others would not be forced into a cumbersome and annoying "opt-out" process. It may come to be that the majority if not all faculty will "opt in" as the advantages of doing so become more apparent.

The Committee on Research noted that there is widespread recognition that the entire system of scholarly communication has reached a crisis. Fees charged by commercial journal publishers for their ever-expanding bundles of titles have become extremely burdensome for university libraries while university presses find themselves uncomfortably squeezed between mandates to publish the highest quality academic work and remain economically viable in a market economy with dwindling subsidies. Faculty are all too often caught in the pinch, struggling to publish books required for tenure or further career advancement and standing helplessly by while under-funded libraries drop critical subscriptions either to pay for others or because the journals have simply become too expensive.

The Committee applauds the Office of the President for responding to calls emanating from the Academic Senate to try to do something about this problem. The draft proposal envisions a number of extremely appealing possibilities, foremost of which is an expansive digital repository, perpetually up-to-date, covering all fields, and universally accessible (the physics arXiv is the envy of many who know about it). Copyright management may well be the way to that highly desirable end, but the current proposal seems unlikely to get us there.

Key to the proposal being acceptable at all is the provision that faculty may opt out. Without this possibility, potentially any member of the faculty – but especially junior faculty under serious time constraints to publish in advance of tenure decisions – confronted by a publisher's unwillingness to agree to the proposed addendum would find themselves prevented from publishing by the very employer that requires that they publish to continue advancing in their career. The proposal clearly accounts for this possibility by providing the opt out mechanism. The opt out mechanism is also crucial for preventing what two outside commentators to the original proposal (Directors of the University of Virginia Press and Penn State University Press) foresaw as a potential hazard: an informal (or even formal) blackballing of UC authors. In fields or journals where there is fierce competition for available spots, presses may just not be willing to deal with UC authors who do not have the flexibility to opt out. Opt out is essential.

[UCSD Response]

June 13, 2007

PROVOST AND EXECUTIVE VICE PRESIDENT WYATT R. HUME
Office of the President
University of California
1111 Franklin Street, #12102
Oakland, CA 94607-5200

SUBJECT: Formal Review of Proposed Open Access Policy

Dear Rory:

As requested, the proposed Open Access policy was distributed to all academics at UCSD for review and comment. The UCSD Academic Senate also reviewed the Open Access policy, and has provided feedback separately. Based upon the campus feedback received, UCSD's academic community does not appear to support the Open Access policy as written, suggesting that it is burdensome to the individual faculty member, perhaps unnecessary, and in need of further study.

Specifically, faculty commented that the policy will put authors, who are already under time pressure, in a conflict situation with publishers. Since publication is so central to a professor's career, anything that may cause delay is seen as potentially catastrophic. Faculty also commented that the publication process is tedious enough as it is, and that this policy will simply add one more layer of bureaucracy.

An additional comment stated that the burden of noting which publications are in some version of open access on promotion file publication lists was "Draconian."

More than one faculty member felt this policy was a major interference with academic freedom: "Most of the journals in which faculty publish make the publications available after 6 months. This is sufficient. All of them require a signature sheet assigning copyright to the journal. Adding a UC-imposed step to this is unacceptable interference with freedom to publish."

The "opt out" option is also seen as cumbersome for the author, with one reviewer suggesting that it imposes a cost on the individual faculty member. Faculty felt they should not be required to "notify" a UC agent in order to opt out of this policy if a journal in which the faculty member is publishing won't conform to the policy; nor should the faculty member be required to negotiate with the publisher at all, since this may impede or slow down the faculty member's primary goal, which is to publish in a timely manner.

In calling for additional study and review, many faculty felt that the economics and political dynamics of the policy had not yet been adequately investigated, and could have unexpected and undesirable consequences. For example, a reviewer asked whether the University of California had “engaged its best economic minds to analyze” whether the 6-month exclusive rights window was enough to achieve a good balance.

Another faculty member asked whether the University of California had yet investigated the financial burden of maintaining an open repository: “Should publishers start vanishing, the UC repository might become the only source for many works. Does the UC have the budget, in perpetuity, to store all these works and provide quality access to them? Have the taxpayers of the state of California signed on to pay for their digital library? How will it be protected from budget cuts? If the UC had to decide between the digital library and firing faculty (for example), which would it do?”

A faculty member also suggested that the UC system is not a large enough organization to “take on” the publishing industry. Still another commented that “if other universities followed suit, there could be a dramatic restructuring of academic publishing, with publishers and their venues vanishing. Even professional societies could be financially endangered.” More study of these issues was requested.

Finally, one reviewer asked whether the UC system had consulted with publishers (including professional societies) in developing this policy, in order to hear their concerns: “They are important and knowledgeable allies in disseminating our work, and they should be included in this process.”

I appreciate your providing UCSD the opportunity to participate in the formal review of the Open Access policy. I hope that you will consider the thoughtful comments and questions raised by our faculty as you determine how to proceed.

With kind regards,

Marsha A. Chandler
Senior Vice Chancellor

c: Senior Vice Chancellor Chandler
Associate Vice Chancellor Bitmead
Assistant Vice Chancellor Collins
Director Ober
bc: Director Petruzzelli
Director Takacs

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May 15, 2007

PROVOST AND EXECUTIVE VICE PRESIDENT WYATT R. HUME

Re: Review of Proposed Open Access Policy

I write in response to your February 7, 2007 request for formal review of a proposed University of California policy that would enable open access to journal articles and conference proceedings authored by UC faculty members. Our comprehensive campus review includes input from the UCSF Divisional Academic Senate, the four professional schools, the Graduate Division, and the Library.

In the main, UCSF strongly supports the policy, believing that it provides a balance between the need for recognition and citation and the author's need for unlimited rights to his or her own scholarship. However, some concerns regarding both the substance and implementation of the policy were expressed.

First, there is concern that the burden placed on the individual faculty member is significant. The requirement that faculty members list the open access repository status for each publication (and the identity of the repository) in their merit and promotion packets was deemed onerous, especially since this information is neither required nor evaluated in the academic review process.

Second, the "opt out" mechanism is essential. There was no consensus favoring any of the three options. All were considered to have advantages. Options A and B would promote the rapid adoption of a true open access environment, while Option C would offer the best protection to the faculty member.

Third, new resources would be required to implement the University's support for faculty in their efforts to retain open access dissemination rights. UCSF believes that, at a minimum, a well-designed website and FAQ should be developed, and that these resources should be well-maintained and current. Additional staff support and training, both at the systemwide and campus levels, may be necessary to aid in negotiations with publishers and to provide other assistance.

Finally, since the University of California's policy is likely to have a national impact, the potential financial consequences need to be considered. Some scientific and professional societies believe that open access will bankrupt them; this proposed policy defines for open access after six months but some professional society journals utilize a twelve month period.

Thank you for the opportunity to comment on this important policy.



J. Michael Bishop, M.D.
Chancellor
Arthur and Toni Rembe Rock Distinguished Professor
University Professor

JMB:mf

cc: President Dynes
Working Group Chair Pitts
Executive Vice Chancellor and Provost Washington
Vice Provost Marshall
Associate Vice Provost Greenstein
Acting Assistant Vice President O'Rourke
Director Ober ✓
Coordinator Capell

Jan



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May 30, 2007

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Dear Rory:

I write in response to your letter of February 7, 2007, regarding the Review of Proposed Open Access Policy.

At my request, a review of the policy was coordinated by Executive Vice Chancellor Gene Lucas. I have enclosed Gene's memo to me of May 15, 2007, as well as the comments that were received about the proposed policy from Melvin Oliver, Dean of the Division of Social Sciences; Gale Morrison, Acting Dean, Graduate Division; and Sherylle Mills Englander, Director of the campus Office of Technology and Industry Alliances. I wanted to make certain you received their comments in their entirety.

The Santa Barbara Division of the Academic Senate also solicited comments on the proposed policy. I have also enclosed the May 22, 2007, memo from Joel Michaelson, Chair of the Academic Senate, to John Oakley, Chair of the Academic Council, commenting on the policy.

I hope you find these comments helpful. Thank you for the opportunity to review the proposed Open Access Policy. Please let me know if we can be of further assistance.

Sincerely,

Henry

Henry T. Yang
Chancellor

Enclosure

cc: Gene Lucas
Joel Michaelson

May 15, 2007

To: Henry T. Yang
Chancellor

From: Gene Lucas
Executive Vice Chancellor



Re: Comments on "UC Faculty Scholarly Work Copyright Rights Policy"

On April 13, 2007 you requested that I coordinate, along with Joel Michaelsen, a campus review of the proposed "UC Faculty Scholarly Work Copyright Rights Policy." I forwarded the draft to all Deans and Associate Vice Chancellors and the Office of Research. I have received three sets of comments. I am attaching these for your review and inclusion in the campus response to the Office of the President.

At least one of the Deans submitted his comments to the Academic Senate, which has carried out its own review, through his College Faculty Executive Committee. In addition, the Library has participated in the Academic Senate review of the draft and its comments will be included in the Senate's response to you.

May 14, 2006

TO: Gene Lucas
Executive Vice Chancellor

From: Melvin L. Oliver, Dean *MLO*
Division of Social Sciences

RE: UC Faculty Scholarly Work Copyright Rights Policy

Although I did not receive many comments from Social Sciences faculty, in general, I believe that the vast majority of Social Sciences faculty would or would be in support of UC's initiative to create an open access venue for their scholarly work. I support UC's mission to achieve "greater balance between the publisher's goals and the author's goals of sharing material to further scholarship." I would like to emphasize three points that are of concern with this proposed policy.

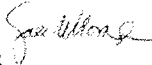
- 1) **Mandates:** Even though the policy is well intentioned, the idea of UC recognizing and confirming the author as the copyright holder yet, *mandating* what the faculty must do with their work, under the proposed Opt-Out Mechanisms, seems contrary to private ownership. These Opt-Out Mechanisms also appear to increase the bureaucratic reporting and paperwork burdens already placed on faculty.
 - a. Option A, appears contradictory because the policy acknowledges that the copyright belongs to the faculty member, but then *requires* the faculty member to seek out *permission* from UC to go with a non-open access journal. How is the UC going to fund and enforce such a requirement?
 - b. Options B and C both require the faculty member to notify the UCOA agent of their decision to opt out, which seems somewhat contradictory given the policy already acknowledges the faculty member owns and controls the copyright. The *mandatory* requirement that faculty members notify UC of their decision to opt-out of the open-access directive is contrary to the very notion of private ownership.

- 2) **Faculty Interests:** How could a faculty member opt-out of the UC repository if (for whatever reason) publishing his/her work is against the interest of the faculty member? Is the publisher's refusal to grant rights the only reason acceptable for opting-out? How will UC address opt-out requests not based on the publisher's refusal to grant rights? How will the implementation of this new policy reflect on non tenured faculty who are forced to assign copyright to major publication houses versus those faculty who succeed in retaining rights?
- 3) **Staffing:** Option A, B, and C all require the presence of an "UC Open Access Agent." Is this person going to be on each campus or someone up at UCOP? If this position is centralized at UCOP, how can UCSB ensure that faculty needs are met in a timely manner? Would there be funding available for each campus to have an "Open Access Agent?"
- 4) **Negotiation with publishers and publication agreements:** What is the role of the "UC Open Access Agent" in negotiation? How will the "UC Office of Scholarly Communication" prepare faculty to negotiate with publishing houses under this new policy? This policy places a burden on individual faculty members to negotiate with publishers and professional associations. Will UC provide significant guidance and resources to support faculty?

Overall, I believe UCOP should take the lead in promoting open access policies and that UC is a strong venue to advocate for it. I hope that these comments will be useful for you in the campus response to UCOP. I'm available to discuss any of these issues with you, if needed. I look forward to receiving the final policy.

May 13, 2007

To: Gene Lucas
Executive Vice Chancellor

From: Gale Morrison 
Acting Dean, Graduate Division

Re: UC Open Access Policy

My review of the proposed Open Access Policy for UC faculty members yields the obvious question of what this policy implies for graduate student authors and co-authors. The current document is completely silent on this issue. Policy implementation as proposed potentially can be applied to co-authorship with graduate students with the faculty as lead author. However, how will the graduate student learn of and be supported by this policy in the case where they are the lead and/or sole author?

Also, notable is the significant educational and implementation support that will be needed to accomplish the goals of this policy. Faculty will need to adopt new and somewhat complex habits related to publication of their research. The extent to which procedures for policy implementation are transparent and easy will affect their practice, as well as the practice that they teach their graduate students.

Thus, while the benefits of open access to UC research are clear, this policy needs to address the very significant role that graduate students have in the production and authorship of this research, as well as the possibility of graduate student contributions of original research. While there is a parallel move to place student theses and dissertations in the UC e-repository, their role in research prior to their final educational products should be considered and clarified.

Subject: Re: Request for Formal Review - UC Faculty Scholarly Work Copyright Rights Policy
From: Sherylle Mills Englander <englander@research.ucsb.edu>
Date: Fri, 20 Apr 2007 17:14:09 -0700
To: Toby Lazarowitz <toby.lazarowitz@evc.ucsb.edu>
CC: witherell@research.ucsb.edu

Dear Toby:

Thank you for the opportunity to provide comments on the proposed "UC Faculty Scholarly Work Copyright Rights Policy."

I applaud and fully support the spirit of this policy - which is to help preserve and protect our faculty's ability to use the wide array of academic writings of the University of California, and certainly it would be regrettable if the UC system could not access the publications it's researchers develop. However, there are some important points to consider in implementing the policy, as proposed.

1. As a practical matter, faculty may not have sufficient leverage over publishers to retain the rights necessary to grant a license to the University.

Virtually all academic writings are owned by the faculty, not UC. Under existing UC copyright policy, the publication contracts are negotiations between the individual faculty member and the publishing company. Thus, the faculty would have to implement this policy him- or herself. To provide further nuance to this issue, UC general counsel has expressed that, as a UC employee, I cannot provide advice to faculty on the terms of consulting agreements as they are private arrangements between the faculty member and a company (except to opine whether the agreement is consistent with UC policy). Otherwise, the UC system could be liable to the individual faculty member if the advice was inappropriate or misguided. I suspect similar concerns would arise in this arena if the campus or UCOP was to provide direct negotiation support to faculty in publication contracts for copyrightable works owned by the faculty member, not the UC.

In my experience negotiating publication contracts at the Smithsonian Institution, academic authors have very little leverage to demand that they retain copyright ownership or for arguing to retain rights to license to others - there is an abundance of high quality papers and manuscripts being submitted to publishers from all over the world. I suspect that only the most prominent in a field are likely to have leverage to successfully demand these rights on a routine basis. As a result, our faculty may be forced to choose between violating this policy and declining a publishing opportunity. A difficult position to be in, especially if publications are critical to promotions and tenure.

Also, the establishment of the repository, in addition to reserving the license, may add fuel to the fire, resulting in publication companies resisting any reservation of rights out of a fear the market for its journal will diminish through the direct competition of the repository, where a large body of academics can download the articles and texts.

Unless the UC were to provide the staff and authority to directly negotiate all publishing contracts, I worry that requiring faculty to reserve rights for the UC will place them in a difficult position.

2. The UCSB campus does not have sufficient resources to provide the support outlined in the policy.

Section 3 suggests that the UC system, and perhaps campuses, would provide support to the faculty. It also mandates the creation of an "open access" agent.

At this time, there are very little resources on our campus (and most UC campuses) for copyright management and advice. Those that do provide advice do so as opportunity allows. For example, my office tries to help provide copyright advice and support, but has no dedicated full or part-time FTE for this service.

If UCSB was expected to support the faculty in securing these rights, UCSB would need UCOP to provide funding for new staff positions. (I defer to UCOP as to whether it has such resources in place should it desire to provide support directly to the faculty.) Similarly, I am not aware of any position at UCSB that could assume the significant responsibilities of the "open access agent" for our 1,000 faculty, in addition to their current duties. I suspect there may be practical resource issues with meaningfully implementing this well-intentioned policy, unless UCOP provides funding to each campus.

Perhaps we can start with a program from UCOP that helps educate faculty on guidelines and principles they should consider when working out publication contracts. These are important issues that deserve attention. By framing the document as principles, faculty can learn the benefits of building in a reservation of rights whenever possible, while also being able to acknowledge the market conditions of the publishing world.

Thank you again for the opportunity to comment.

Sincerely,
Sherylle



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Joel Michaelsen, Chair
Claudia Chapman, Executive Director

May 22, 2007

John Oakley, Chair
Academic Council

RE: Proposed Open Access Policy

Dear John:

The UCSB Division has completed its review of the proposed Open Access Policy. It was sent to all college and school faculty executive committees, and all central councils for review and comment. I must note that some of the reviewers included journal editors from major publishers and individuals who have participated on panels to discuss the Open Access policy in general. On the whole, while deemed a noble attempt at a very difficult and multi-faceted problem, with the perceived good intention of promoting and making widely accessible the research performed by UC faculty, students and other researchers, the Division cannot endorse the policy as written.

There is agreement that the area of scholarly publication has reached crisis proportions. Certainly some alternative must be developed. However, the process put forth in the document was found to be cumbersome; the described process appears extraordinarily complicated, and the policy does not aim to deliver a tangible benefit, such as to induce a reduction in library subscription fees. At the same time, it would exact a cost of all faculty who publish in journals. It puts in place an extra layer of bureaucracy associated with the submission of a manuscript to a publisher; it mandates the responsibility of placing all new publications on a generally-accessible source specifically on the faculty, who have borne an increasing burden of duties associated with publications over the past two decades.

It was suggested that the proposed policy might even have the effect of decreasing and delaying conference and journal publications, and pose an extra hurdle for the faculty and researchers that does not exist at other institutions.

The "opt-out" options may be a simple solution for faculty, but if they are preferred, they appear to undercut the proposed policy. A suggestion was to consider an "opt-in" arrangement. Such an arrangement may already be in place with the eScholarship Repository sponsored by the California Digital Library on a more limited basis. Discussion on this latter point included the stability and longevity of the CA Digital Library; would discipline-based repositories be better options?

A future iteration would benefit from additional discussion regarding the rationale for implementation such a policy and what problem(s) it means to address/rectify; specifying procedures for multi-authored works with faculty outside the UC system, works co-authored with graduate students, and what happens when faculty move out of the UC

system to other institutions. It would need to clarify exactly what rights faculty are giving away. Overall, it would need more background discussion and clarity so faculty would understand the attendant details. Furthermore, a new draft would need to be accompanied by discussion about how the proposed policy would be implemented. Presumably, a discussion would occur with major publishers prior to implementation.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Joel Michaelsen". The signature is written in a cursive style with a large initial "J" and "M".

Joel Michaelsen
Divisional Chair

Cc: Executive Council

May 17, 2007

To: Provost Hume

From: CP/EVC Kliger on behalf of Acting Chancellor Blumenthal

RE: UC Santa Cruz Comments on UCOP proposed Open Access Policy

I write on behalf of Acting Chancellor Blumenthal to transmit comments from UC Santa Cruz on the draft proposed Open Access Policy transmitted by your office in February, 2007. These comments summarize feedback solicited from a wide range of campus constituents, including local Academic Senate committees; with the office of Research and the UCSC Library Office providing analysis. Should you have any questions regarding the comments below, please do not hesitate to contact me.

The issue of the short, medium and long-term impact of any Open Access policy on the academic enterprise is arcane and very complex. Specifically, the potential financial impact to the University is a difficult economic problem, one which most respondents were simply not qualified to judge. (The area of copyright law, also key to this proposal, is hardly simpler). Like any forward economic prediction, even the experts will acknowledge great uncertainty in any predictions. Therefore, because the proposed policy may have substantial and negative economic impact in the short term on both the Library (via changes in scholarly publication subscription rates) and individual faculty (via changes in page charges), and because this change is exceptionally difficult to predict quantitatively, many readers of the proposed policy conclude that UC should proceed with extreme caution, and the burden should be on those proposing change to demonstrate that this change is absolutely essential and urgent.

Two specific comments were made repeatedly from multiple readers of the proposed policy. The first involves the stated processes for opting out of the open access requirement. There was widespread agreement that the current text is vague, confusing, and not obviously self-consistent. Further, the uppermost level goal of the opt-out process is not overtly stated. If the intention is that 100% of faculty can easily opt out of open access for 100% of their publications, regardless of format and venue, then stating this openly might substantially expedite obtaining stakeholder agreement on the process.

Perhaps a more crucial comment involves the proposal that faculty merit and promotion materials identify how the faculty member has or has not utilized open access. There were both technical and also strong emotional objections to this proposal. The technical one is that this document and the presumed implementation group do not have the authority to modify merit or promotion criteria, and attempting to do so outside of the correct AHR path is both procedurally in error, and quite possibly an invitation to employment litigation.

The emotional objection is more provocative. Multiple stakeholders commented that mandatory inclusion of the faculty member's open access behavior in merit and promotion materials is highly coercive, as it impacts one of, if not the single most important aspect of faculty career growth. This level of coercion in turn invites the

perception that it is anticipated that many faculty will decline to participate in open access options, thereby raising the further suspicion that there must be distinct downsides for faculty, which need to be offset with the coercion. Even if this is an overly paranoid perception, the human nature aspect of this train of logic should be appreciated by the proposal authors, who presumably desire a maximally uncontroversial document. If indeed it actually is feared that open access options will be met with faculty hostility or indifference, then inducements of a far more clearly positive, rather than possibly punitive, nature should probably be sought.

These specific suspicions lead naturally to a discussion of a more general and alarming problem in the tone of the document, noted by many readers. Many faculty readers could not determine precisely what is broken in the current system that is in critical need of repair. Further, as the proposed policy and supplementary material state multiple and quite distinct candidate benefits of open access, they virtually invite readers of the proposed policy to conclude that they are indifferent to or, worse yet, strongly disagree with some or many of these outcomes.

Most readers with some previous exposure to the open access issue surmise that the catastrophic and continual price increase in library subscription prices lies at the heart of the motivation for open access. Although this factor is mentioned in the proposed policy and/or supplementary material, it is never strongly labeled as the core of “what is broken.” Instead of one sharp, compelling, urgent argument (which of course not all readers will accept), what has emerged instead is a more diffuse set of issues, all proposed to be addressed by the same procedure. As almost no reader benefits from all, or even most, of the list of issues, many readers fail to find the entire matter compelling.

There is a danger to focusing almost entirely on the crisis in library resources in an attempt to make open access compelling. Many university stakeholders are quite immunized to continual cries of resource starvation from multiple university units, and quickly conclude that the solution is simply for the institution to increment that particular budget. However, the nature of the resource shortfall and its time derivative in this instance is so overwhelming that one might hope that a starker argument might convince most readers, even the more cynical observers of university budget cycles. A key here is to make individual faculty understand that a complete implosion of the scholarly publication enterprise (both internal and external to the campus and the university) is looming, and is indeed their own personal problem as well as an institutional one.

It seems a safe prediction that the somewhat diffuse motivational nature of the current proposal, together with the specific technical problems noted earlier, will make this proposal a controversial one, and it will be difficult and slow to obtain stakeholder consensus.