



UNIVERSITY COMMITTEE ON LIBRARY AND SCHOLARLY COMMUNICATION
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Assembly of the Academic Senate
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March 22, 2013

BOB POWELL, CHAIR
ACADEMIC COUNCIL

RE: REVISED PROPOSED UC OPEN ACCESS POLICY

Dear Bob,

I hereby submit for consideration by the Academic Council a substantially revised version of the Open Access policy that was circulated to the divisions in the Fall of 2012. The responses from the campuses were thorough, thoughtful and diverse in their concerns, and UCOLASC has worked hard to understand and address nearly all of them in this revised policy. It is clear from the responses that many faculty members across the divisions are in favor of an open access policy and expect to review a revised version, but that circumspection and precision are to be desired in any policy of this significance.

In the months since senate faculty have considered this policy, change has continued to sweep through the publishing world. In February, new legislation was introduced into both the US Congress (FASTR) and the California Legislature (AB 609). If adopted both the laws would require of UC Faculty that they make publicly available any federally or state funded research publications (a full analysis is included with the attached policy). In addition, days later, the White House Office of Science and Technology Policy also issued a directive to funding agencies to develop similar open access policies. UCOLASC strongly supports all of these initiatives and feels that none of these requirements would be incompatible with the proposed UC policy. The proposed policy would allow any federally mandated deposit to also satisfy the policy. However, it is clear that UC faculty members have a narrow opportunity to act quickly and decisively to control the kind of policy that governs their work, as faculties at other universities have and continue to do.

We repeat here that the attached policy has one main goal: to allow faculty to ensure that their work reaches the broadest possible audience. The proposed policy (like all so-called "Green" open access policies) achieves this by *proactively preserving* the rights that faculty members have in their scholarly works. To do this, the policy grants broad but non-exclusive copyright licenses for our scholarly articles to the University of California. This naturally comes with risks, but the benefits are these: it is a simple mechanism to *collectively* preserve these rights for all our works rather than giving them individually and exclusively to publishers, and it enables the University to assist us in making our works more widely available via the eScholarship repository at CDL.

It is clear from the responses that there is much anxiety about the scope of this policy and the kinds of limitations that are necessary to make it feasible. As such a major feature of the revisions is the attempt to clarify what Faculty intend this policy to achieve, and to fix more precisely the limits of what we wish to allow the University to do with this license grant. Although we recognize the risks, UCOLASC feels that the benefit of this policy for faculty is significant, and that it is necessary to maintain control over the future use and availability of our scholarship in a changing publication system.

Significant concern was also expressed about the changing economics of publishing and its relationship to this policy. We want to be very clear that the proposed policy *does not require faculty or the university to pay any fees or charges to publish articles* (that is, it is not a “Gold” open access policy). Faculty members are expected to continue to publish in the journals of their choice (whether subscription-based or fee-based), and the California Digital Library is expected to assist us in making versions of those articles more widely available than the publishers will. For better or worse, saving money is not the goal of this policy; the costs of publishing are substantial and fixed, and cannot be directly impacted by this policy. Where it might potentially have an impact is that a *strong* green open access policy gives faculty and the university greater bargaining power in negotiations with large publishers, possibly lowering subscription costs, or giving the University an advantage in shaping the models that will emerge.

Thus, as part of submitting these revisions UCOLASC also advises the Academic Senate to seek assurance and commitment from the Office of the President that all peer-reviewed research articles accepted for publication will be published, regardless of the ability of faculty to pay for publication costs. It is clear that Universities already subsidize the publishing industry through subscription costs, and that this institutional commitment should be maintained in the future, and equitably balanced across the disciplines, whether publishers increasingly adopt pay-to-publish models or not.

Finally we would like to emphasize how effectively the opt-out clause (also known as the waiver) in this policy serves to allay many of the concerns raised by the divisions. Faculty may waive the license for any reason; no one need ask permission or negotiate, only visit a website and indicate the intention with a title and journal name. If a faculty member has included copyrighted material governed by a restrictive license or contract, they may opt out (and in the revised policy are not required to deposit, either). If a small scholarly society sees this policy as a threat, they may require authors at UC to opt out in order to publish in the journal, or faculty may do so voluntarily to protect such societies (although currently only 5% or fewer of existing publishers require a waiver at other universities with open access policies, suggesting that as many as 95% are generally at ease with policies such as this one). If faculty are concerned about whether a co-author might object to making a work open access, they may opt out. If a faculty member considers something not to be a “scholarly article” they may opt out. And if for any reason, a faculty member thinks that open access for a particularly article will not benefit them, or will harm them, they may opt out.

Revisions to the Proposed Policy Language

All changes are clearly designated in the annotated policy attached to this letter, which also includes several clarifying notes and definitions. Two key areas of revision concern the deposit obligation and the scope of the license grant and its use by UCOP.

Although it was not widely expressed in the campus responses, it was clear from many Faculty members that the requirement to deposit *even if an author had waived the license* was too confusing. As such, the policy has been revised so that the deposit will be obligatory if the author does not waive the license. Or stated differently, waiving the license releases the author from the obligation to deposit. Those who do not

waive the license are still presumed to have granted the license and would still be obligated to deposit. The revised policy specifies however, that faculty may nonetheless still deposit even if they waive the license—in order to signal to publishers that we are not forfeiting the right to keep archived copies of our works.

Perhaps the major concern expressed by many divisions is the scope of the license grant, specifically, anxiety about what UCOP might be able to do with such a broad license grant. *There is total system-wide unanimity that UCOP and CDL should not be allowed to profit from our works or use the articles for commercial gain.* However, there are two parts to this consensus:

- a. Faculty wish to constrain the uses that UCOP itself may make of the license grants *en masse*—the only intended uses of the license grant are for CDL to make the articles freely available in eScholarship, and for UCOP to grant all licensed rights back to the faculty members.
- b. But, there is also a very clear desire to allow individual faculty members to ultimately decide what they themselves, and any readers who download the articles, may do with *any particular* article. Authors may wish to preserve rights to republish work, or excerpt it, or translate it or for other commercial uses. And authors may also wish to restrict end users to non-commercial uses or to prevent derivative works.

In order to preserve both intentions, the revised policy grants the same broad license so that faculty may be assured of preserving the greatest range of rights in (b), but it explicitly prescribes that the only uses approved by CDL are those in (a).

For this to work, *the Senate must oversee this policy*, and must take responsibility for altering, or if necessary, rescinding the policy if the prescribed uses are exceeded. Because the policy rests on the right of faculty to grant these licenses, this also provides us with the power to stop granting such licenses, as long as the policy stays under the control of the Senate.

The annotated policy also makes clear that faculty will ultimately control the approved uses of the articles made available by eScholarship, specifically through the choice of Creative Commons licenses applied to their works; the default license in the system would include a restriction to non-commercial use only (i.e. CC-by-NC).

Implementation

Many divisions demanded more information or clarity about the implementation of this policy by CDL, the costs of the policy, and various other types of information that would require collaboration and specification by the Office of the President and the California Digital Library.

As such, UCOLASC urges the Academic Council to obtain from the Office of the President a clear statement that outlines both the commitment to the policy and the details of implementation. Specifically this document would spell out the *joint oversight* of the policy by both UCOP and the Senate; it would explicitly affirm that no commercial uses would be made of the articles by CDL; it would affirm that UCOP will commit to funding the eScholarship repository in order to ease the process of deposit, and develop the capacities for automated harvesting of published articles. Finally, as mentioned earlier, this letter should also demonstrate that the University will create institutional mechanisms at least as robust as

library subscription budgets for covering publication costs, so that individual faculty authors, in whichever discipline, are not left on their own to secure funds for publication.

UCOLASC genuinely appreciates the extensive time and attention that the Senate has given to this important issue.

Sincerely,

A handwritten signature in black ink, appearing to be 'CKelty', written in a cursive style.

Christopher Kelty, Chair
UCOLASC