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Chair of the Assembly and the Academic Council
Faculty Representative to the Board of Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

July 9, 2007

WYATT R. HUME
PROVOST AND EXECUTIVE VICE PRESIDENT, ACADEMIC AND HEALTH AFFAIRS

Re: Academic Senate Review of the Draft University of California Open Access Policy

Dear Rory,

At its June 27, 2007, meeting, the Academic Council discussed the outcome of the Academic Senate's review of the *Draft University of California Open Access Policy*. Reviewers saw the obvious potential for this policy to be beneficial to the broader scholarly community and were supportive of the policy's goals, but also stated significant concerns with respect to implementation of the policy and the risk of undue burden on the faculty. The Academic Council therefore respectfully requests that the ad hoc working group that developed the draft Open Access Policy consider and respond to the comments and recommendations set forth in the summary below, and in the complete set of appended responses. The Academic Council looks forward to a second review of the draft Open Access Policy, as thus revised, and hopes it can decide to endorse the policy at that time.

I. The Open Access Policy Proposal: Summary of Responses

General Concerns

- Policy will delay and interfere with publication, and may limit publishing options and opportunities (UCI, UCSB, UCPB).
- Policy is overly complicated: suggest including a glossary of terms, and pictorial representations (see ITTP letter for examples).

II. Policy Implementation: Summary of Responses

Policy Would Require a Large and Costly Bureaucracy to Implement: UCD, UCI, UCSD, UCSB, ITTP, UCPB, UCPT.

- The current proposed policy is insufficiently thought-out and as a result would be risky to adopt in its present form – it could well be counter productive and might also impose significant costs on researchers, the University, and publishers that outweigh the desirable social benefits (UCORP – please see complete response; UCD, UCSB, UCPT).
- The administrative structure is not currently in place to ensure that the faculty is adequately supported when the issue of opting out surfaces. New resources must be developed to educate faculty about open access and how to ensure its availability to their work, to

provide a database of the open access practices of the various publishers, and to respond to questions from the faculty as they arise. Such resources must be readily available to each faculty member, both via the web and via direct, personal contact (UCSF).

Policy is Burdensome to Faculty, and the Academic Senate

- The policy should be structured to place more of an administrative burden on the publisher and less on the UC faculty (UCD, UCLA, UCR, UCSF, UCSB, UCPB).
- Implementation is an unrealistic burden on the Academic Senate (UCSD). Further, the roles of the various offices and Academic Senate committees in determining and implementing the open access policy should be defined at a University-wide level. Who will monitor that the administrative support of the faculty is adequate, and who can the faculty turn to if it is perceived to be inadequate? Who will police faculty compliance, and who will determine to what extent open access practice by a faculty member is considered in advancement? (UCSF)

General Concerns

- *Six-Month Delay*: The proposed delay of six months before posting the articles is arbitrary and is not consistent with the one-year delay already implemented by the Public Health System. A one-year delay is consistent with NIH guidelines (UCI).
- *Merits, Justification, and Context of Policy Desired*: The merits and procedural mechanisms for the three proposed options are not stated with sufficient clarity (UCLA, UCR, UCSB). Additional context information is desired, for example: Will the UC stand alone in this position or is there precedent for it? Are faculty actually giving up rights under the proposal? Are there sufficient protections for faculty? (UCLA, UCSB) How will the policy be implemented? What happens when faculty depart UC to other institutions? (UCSB)
- *Impact on Non-Profit Professional Societies; Different Disciplines*: Potential impact on non-profit professional societies (the Institute of Electrical and Electronic Engineers was mentioned as an example) which provide a valuable service in peer review and quality control, which depend on fees charged to access their publications (both online or in print) to support these services, and which are (in our judgment) efficient and cost-effective (ITTP; separate comments from UCD).
- *APM Implications*: Does the policy require changes to the APM? (ITTP)
- *Ambiguities & Contradictions*: Ambiguous terminology needs to be clarified (ITTP). The policy is confusing as written and sometimes seemingly contradictory (UCD).
- *Compliance*: The proposed policy is silent about incentives for compliance or penalties for non-compliance, as well as oversight mechanisms (UCPT).
- *Potential for P&T Grievances*: There is potential for several unintended negative repercussions on UC faculty that could give rise to grievances before P&T committees (UCPT).
- Information about open-access status does not, by itself, constitute a relevant or appropriate criterion for assessment of a faculty member's research and impact. Its inclusion, therefore, could be seen as introducing extraneous information into the personnel process that could be used to disadvantage certain faculty members.

i. **“Opt-Out Mechanism (*n.b.* policy implementation would include *one* of the options below)”**

“Option A – Permission-Based”

- Option A is unduly coercive, unduly costly with respect to administrative oversight and implementation, and insufficiently sensitive to the diversity of publication practices across the range of academic disciplines (UCB). Unduly burdensome to faculty (UCAF).

“Option B – Consultation and Notification-Based”

- Option B is the least coercive, by still unduly cumbersome (UCB). Unduly burdensome to faculty (UCAF).
- Options A and B are the best options to ensure rapid adoption of a real open access environment. If either option is adopted, it must be done with a clear commitment that it will be enforced only once adequate resources have been established, and that ongoing assessment of the impact of such a policy on the publication of faculty work be monitored and evaluated within the first years of its adoption (UCSF).

“Option C – Notification-Based”

- Option C is the only viable option of the three alternatives (UCB, UCPB). It is the best from the academic freedom perspective as it provides individual faculty members with the most direct control over the opt-out process (UCAF). It is the best option to protect the faculty member to advance his/her career (UCSF).
- If adopted, this process should be as streamlined as possible so that publication delays do not result. Concern was expressed that the proposed policy might adversely affect some journals and scholarly societies. The suggestion was made that there be an option to allow a faculty member to generally opt out in order to protect the interests of journals or scholarly associations or if the faculty member, for any other reason, preferred not to place his or her work in digital repositories (UCSD).

ii. **“Tracking publishers’ open access practice”**

Such a provision may generate an institutional power struggle between the university and the publishers, placing individual UC faculty who seek to publish with these outlets in an untenable situation. While faculty have little clout to affect the university-publisher negotiations in a meaningful way, UC faculty could be the recipients of fallout from these interactions that could impair their publishing opportunities (UCPT).

iii. **“Use of open access repositories”**

Concerns such as permanence of articles, ability to find articles in the repository using standard search engines, repository organization to separate refereed and un-refereed publications and workshop, conference, and journal publications; ability to display all articles correctly (linguistics and special fonts) (UCI).

iv. **“Recording access characteristics of faculty publications”**

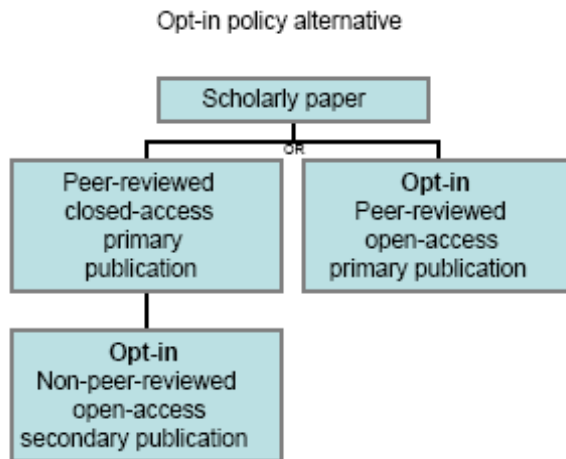
- An unduly burdensome requirement of UC faculty, and we strongly oppose this recommendation (UCB, UCD, ITTP, UCAF).
- Policy implication is that opt-out is mandatory, and recording access characteristics acts as a penalty to faculty. Some other form of reporting that is private and completely independent of the academic personnel process may be acceptable, if that is deemed necessary for monitoring or administering the policy (ITTP, UCAF).

- “Recording access characteristics of faculty publications,” would require regulation and monitoring of the open access policy combined with the academic personnel review process. Whether a faculty member posts on open access repositories is not germane to the reviews conducted by CAP and should not be a criterion for merit/promotion (UCI).
- Finally, none of the reviewers understood why it would be necessary to record the open access characteristics of faculty publications as part of the academic personnel review process (UCSD, CCGA). Academic freedom concerns are wholly absent from consideration in this policy (UCD).

III. Other Senate Recommendations

Prefer an Opt-In Policy – Reject All Three Opt-Out Policies

- Strong recommendation for an opt-in option: would be the least burdensome to the faculty (UCB, UCI, UCLA, UCR, UCSB, ITTP, UCPB, UCPT).
- ITTP suggests the following approach (see full letter for pro/con argument):



On behalf of the Academic Council, I commend the diligent work that has produced the *Draft University of California Open Access Policy*, and look forward to the receipt of another draft for the Council’s review. Please let me know if this course of action is not one you can endorse.

Sincerely,

John B. Oakley, Chair
Academic Council

Encl: 15
Copy: Academic Council
María Bertero-Barceló, Executive Director



May 9, 2007

JOHN OAKLEY
Chair, Academic Senate

Subject: Proposed UC faculty – scholarly work copyright rights policy

On May 7, 2007, the Divisional Council of the Berkeley Division considered the issue cited above, along with the comments of the divisional Committee on Budget and Interdepartmental Relations, Committee on Academic Planning and Resource Allocation, Committee on the Library, Committee on Computing and Communications, and Committee on Research. While there was broad support for the goal of the proposed policy, there are significant concerns about the proposed “opt-out mechanisms.”

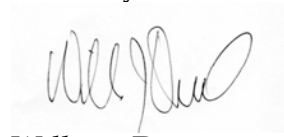
DIVCO agreed with the Committee on Budget and Interdepartmental Relations:

The first of these options (Option A), requiring faculty to seek *permission* from a “UC Open-Access Agent” prior to signing a publishing contract is, in our view, unduly coercive, unduly costly with respect to administrative oversight and implementation, and insufficiently sensitive to the diversity of publication practices across the range of academic disciplines. Option B—requiring consultation and notification of a “UC Open-Access Agent,” rather than receipt of permission, before opting out, strikes us as less coercive by still unduly cumbersome. Option C—the simple requirement to notify when opting out strikes us as the only viable option of the three alternatives. Mandatory notification will, in our view, create a culture of compliance without instituting an undue administrative burden upon faculty.

We find the additional requirement that faculty include the open-access publication data as part of the required bibliographic citation in files submitted to Academic Personnel Committees for merit or promotion review, “indicating, for each, whether it has been included in an open access repository(ies), and, if so, providing the identity of that repository(ies),” to be an unduly burdensome requirement of UC faculty, and we strongly oppose this recommendation. We believe notification provides sufficient UC oversight of the policy.

There was a consensus on DIVCO that an opt-in option would be the least burdensome to the faculty. Accordingly, DIVCO recommends that such an option be considered.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Drummond', is positioned above the printed name.

William Drummond
Chair, Berkeley Division of the Academic Senate

Cc: Patrick Kirch, Chair, Committee on Budget and Interdepartmental Relations
Calvin Moore, Chair, Committee on Academic Planning and Resource Allocation
Whitney Davis, Chair, Committee on the Library
Martin Head-Gordon, Chair, Committee on Computing and Communications
Miguel Villas-Boas, Chair, Committee on Research
Jean Fitz, Manager, Committee on Budget and Interdepartmental Relations
Diane Sprouse, Senate Analyst, Committee on Academic Planning and Resource Allocation and Committee on Research
Brenda Krell, Staff, Committee on the Library
Margarita Zeglin, Staff, Committee on Computing and Communications

May 14, 2007

**JOHN OAKLEY, CHAIR
ACADEMIC COUNCIL**

Re: Proposed Open Access Policy

On May 8, 2007, the Academic Senate Cabinet unanimously opposed the proposed Open Access Policy. Moreover, the Council on Computing, Research and Library Resources co-sponsored with the Library, an Open Forum on April 30, 2007. The faculty spent considerable time reviewing the policy, and expressed significant concern with the implementation and consequences of the Open Access Policy as proposed.

The major issues that were raised by various groups were as follows:

- Members were very concerned with the affect of this policy on individual faculty members. It was felt that it may interfere with and delay publication, or even limit the individual's publishing options.
- The required opt-out provision for every scholarly work, after acceptance but before publication, would be difficult and costly to implement. An individual opt-out approval for every article does not appear feasible and should be reconsidered.
- Many issues were raised concerning the repository implementation, such as permanence of articles, ability to find articles in the repository using standard search engines, repository organization to separate refereed and un-refereed publications and workshop, conference, and journal publications, ability to display all articles correctly (linguistics and special fonts).
- The proposed delay of six months before posting the articles is arbitrary and is not consistent with the one-year delay already implemented by the Public Health System. A one-year delay is consistent with NIH guidelines.
- Although it was noted in the FAQs that open access does not adversely affect a society's income, strong concern was expressed over the policy using small societies to go under, since many are supported by journal publication.
- The policy will require a huge bureaucracy to implement it in a timely fashion. The UC should assess the cost to implement this policy and ensure that it has adequate resources to maintain it in the long-term.
- Academic personnel considerations related to the academic review process were questioned. "Recording access characteristics of faculty publications," would require regulation and monitoring of the open access policy combined with the academic personnel review process. Whether a faculty member posts on open access repositories is not germane to the reviews conducted by CAP and should not be a criterion for merit/promotion.

- The faculty requests that the University consider the possibility of having an opt in policy versus an opt out.

I have highlighted only a few of the major issues that were presented by the various Senate Councils, committees, and individuals. Several more concerns were expressed, and I have, therefore, appended the Senate Councils' full responses to this issue.

The faculty agreed it is important, particularly from a medical standpoint, to extend access to published information to the rest of the world. The Senate Cabinet, however, agreed that the implementation of this policy and possible consequences were too problematic as proposed. The Cabinet, therefore, unanimously voted to oppose endorsement of the open access policy, and would like the enclosed comments to be considered for future discussions of an open access policy

A handwritten signature in dark ink, reading "Martha McCartney". The signature is fluid and cursive, with the last name "McCartney" being more prominent and having a large, sweeping loop at the end.

Martha McCartney

C: Maria Bertero-Barcelo, Executive Director, Academic Senate

April 23, 2007

**MARTHA MECARTNEY, CHAIR
ACADEMIC SENATE, IRVINE DIVISION**

RE: Proposed Open Access Policy

The Council on Faculty Welfare (CFW) discussed the open-access policy on April 17 and voted unanimously in favor of Option C – the notification-only option – among the three options listed. With that proviso, CFW has no objections to the proposed policy, although questions were raised about value of creating a UC open-access agent, or agency, and about the qualifications that would be sought in filling such a position, if it is created.

A handwritten signature in cursive script, reading "Pauline Yahr". The signature is written in dark ink and is positioned above the printed name and title.

Pauline Yahr, Chair
Council on Faculty Welfare

May 7, 2007

MARTHA MECARTNEY, CHAIR
ACADEMIC SENATE

Re: Proposed Open Access Policy

At its meeting of May 3, 2007, the Council reviewed the Open Access Policy. The principle goals of the proposed Open Access Policy, allowing UC faculty to retain copyright ownership of their scholarly work and providing a mechanism to make such work widely available to the academic community and the general public, are laudable. We have, however, serious reservations about the plan and a number of concerns regarding its implementation.

First, making journal articles widely and easily available is a most desirable goal, but it must not undermine the publishers of scholarly journals. Journals provide an important service to the community by reviewing and editing manuscripts submitted by scholars and ensuring high standards for published work. These activities of scholarly review and editing, add significant value to the manuscripts submitted by scholars, but they also require resources, and these resources are garnered through journal subscriptions. Although a few journals are very expensive and are run at a profit, many small journals are not. If only a small number of journals survive in a given field, access to publication outlets becomes seriously curtailed. We must be sure that the Open Access Policy under consideration does not undermine the financial viability of most journals. The proposed UC repository is not a substitute for journals, and it would be disastrous for many fields if important journals were forced out of business because they could no longer find a market for their product. Therefore, the potential financial impact on small journals should be carefully investigated before introducing any Open Access Policy.

Moreover, the biological sciences (which have the most journals) already have a largely open policy, either because of NSF/NIH rules or because journals themselves adopt them or are set up that way (Public Library of Science, PLoS). This may be true of other science fields as well, particularly those relying on federal funding. Permission can easily be sought from open journals, and scholarship, fair use, etc. is not a problem.


Second, many questions came up regarding the implementation of the proposed Open Access Policy. Here are a few items that were raised as concerns by council members:

- The required opt-out provision for every scholarly work, after acceptance but before publication, would require a huge bureaucracy to implement it in a timely fashion. How many new staff members will be hired to deal with these demands, and who will pay for them? A much more streamlined opt-out policy is needed. An individual opt-out approval for every article does not appear feasible and should be reconsidered.

- The proposed delay of six months before posting the articles is arbitrary and is not consistent with the one-year delay already implemented by the Public Health System. Why not adopt a one-year delay to avoid needless complications arising from different standards?
- Collaborations with non-UC faculty could become complicated, and thus this policy may discourage collaborations.
- Will the UC repository become a useful, searchable source for scholarly papers? Simply posting papers in an unstructured database does not make them accessible.
- Papers posted to the UC repository should include a citation to the original journal article and the posted version must be essentially identical to the original article. Posting significantly revised versions of articles could be problematic, and unacknowledged revisions could be construed as academically dishonest. The author should be required to certify that the article has not been significantly changed.
- Faculty may occasionally fail to comply with the new Open Access Policy or the required opt-out provision. Will there be any consequences to the individual faculty member beyond the lack of open-access citations in their next merit promotion file?
- If under the new policy the UC scholar retains copyright ownership, why must he or she grant the Regents license to post it in an open-access repository? In most situations this permission would be routine, but in special cases it may not be in the interest of the faculty member. There should be a provision for the author to decline to give such rights to the Regents.
- Clarify the responsibilities of UC graduate students under the proposed policy, with an explicit statement that any new rules should not add to the responsibilities of graduate students publishing research.

In conclusion, the Graduate Council applauds the intention of the Open Access Policy, but the proposal is fraught with possible unintended consequences that should be carefully considered. The Graduate Council therefore strongly opposes moving forward with the Open Access Policy as proposed.

On Behalf of the Graduate Council,

A handwritten signature in black ink, appearing to read "Jutta Haeckmann". The signature is fluid and cursive, with the first name "Jutta" and last name "Haeckmann" clearly distinguishable.

May 4, 2007

CHAIR MARTHA MECARTNEY
ACADEMIC SENATE, IRVINE DIVISION

RE: Proposed Open Access Policy

At its meeting of April 19, 2007, the Council on Academic Personnel discussed the proposed Open Access Policy, drafted by the working group convened by Provost and Executive Vice President Hume.

CAP focused its discussion on issues that relate to the academic review process and raised a number of objections and cautions. CAP unanimously opposes the section of the proposed policy, "Recording access characteristics of faculty publications," (bottom of page 3) that would have faculty indicate on the list of publications going to CAP which of their published articles have been posted in an open access repository and the name of the repository. Regulation and monitoring of the open access policy should not be combined with the academic review process because it does not serve either process well. Whether a faculty member posts on open access repositories is not germane to the reviews conducted by CAP and should not be a criterion for merit/promotion. Use of the addendum to report when articles are posted to open access repositories will make it difficult to report on older publications, since these publications were listed in previous personnel reviews. Listing them again will make CAP's evaluation more difficult and may be misinterpreted as seeking additional credit for the same publication. For these reasons, CAP strongly recommends another method be used for faculty to report when their publications have been posted to open access repositories.

CAP's other concerns relate to the possible delays caused by the negotiations with publishers inherent in the new policy. We foresee such delays may negatively impact faculty whose academic and publication records are being reviewed for merit increases or promotion. This is particularly problematic for junior faculty who do not have clout with publishers, which may lengthen negotiations. Any publication delays may mean missing the merit review deadlines or, in cases of promotion, they may severely impact assistant professors who are subject to the eight-year limit. Another concern is that the negotiating process may make publishing in particular journals more difficult and might, therefore, affect the venues in which a faculty member publishes. Since CAP uses the prestige or selectivity of the venue as a factor in evaluating a faculty member's academic record, this may have a negative impact on faculty rank/step and, ultimately, compensation.

While many CAP members agree with the goals of the Open Access Policy, we see some unintended consequences and hope the University will proceed with caution before imposing a new policy on the faculty who conduct research in diverse disciplines, with different publication expectations and opportunities.

Sincerely,


Hung Fan
Chaircc: Executive Director L. Crespo
CAP Analyst M. Larson

May 3, 2007

**MARTHA MECARTNEY, CHAIR
ACADEMIC SENATE, IRVINE DIVISION**

RE: Review of the Proposed Open Access Policy

At the April 19, 2007 meeting of the Council on Research, Computing and Library Resources (CORCLR), members discussed the proposed Open Access Policy. CORCLR supported the principle of open access, but found the proposed implementation of the policy to be problematic and recommended against it. The following is a list of the Council's concerns:

- Members were very concerned with the affect of this policy on individual faculty members. It was felt that it may interfere with and delay publication, or even limit the individual's publishing options.
- Even the ability to opt out still requires action on behalf of the faculty member and is not desirable.
- Members also felt that the policy put additional burden on the faculty to deal with this issue. It would be much better if the University would make agreements with publishers instead. However, while members acknowledged the value in collective bargaining, many questioned the authority of the University to act on behalf of the individual who owns the copyright agreement.
- It was noted that the University and the individual have different interests in regards to open access. The interest of the University is open access; the interest of the individual is to publish.
- UC should assess how much it will cost to implement this policy and ensure that it has adequate resources to support it.

In addition, the proposed policy was discussed by UCI faculty on April 27, 2007 at the Open Access Policy Forum. The discussion brought forward some supporting arguments but also raised additional concerns with the proposed policy:

- Although it is noted in the FAQs that open access does not adversely affect a society's income, strong concern was expressed over the policy causing small societies to go under, since many are supported by journal publication.
- The length of time between publication and appearance in the repository may need to be increased, for instance NIH has it set to 1 year.
- Serious concerns were raised about publications when non-UC co-authors may be the lead authors dealing with publishers.
- Many issues were raised concerning the repository implementation, such as permanence of articles, ability to find articles in the repository using standard search engines, repository organization to separate refereed and un-refereed publications and workshop, conference, and journal publications, ability to display all articles correctly (linguistics and special fonts).
- The faculty requests that the University consider the possibility of having an opt in policy versus an opt out. At both the CORCLR meeting and forum, members weighed both options.
- The faculty appreciated the competition open access would create. Members hope this policy will force publishers to provide better quality of service.

- Many agreed that it is very important, especially from a medical standpoint, for the rest of the world to have open access to published information.
- Members questioned how the University would manage multiple versions of the same article in the repository.
- Faculty often deal with a faculty member at another school (or his/her secretary) who is organizing a conference rather than with a publisher. Such individual cannot accept amended agreement without a delay which may be unacceptable.

Given these additional concerns, the repository organization and the best way to achieve open access need to be further studied.

A handwritten signature in black ink, reading "Alex Veidenbaum". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Alex Veidenbaum
Chair, Council on Research,
Computing, and Library Resources

c: Executive Director Luisa Crespo



ACADEMIC SENATE EXECUTIVE OFFICE
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May 10, 2007

Professor John Oakley
Chair of the Academic Senate
1111 Franklin Street, 12th Floor
Oakland, CA 94607

In Re: Proposed Open Access Policy

Dear John,

Thank you for the opportunity to opine upon the Proposed Open Access Policy. Upon receipt of the proposal, I sent it to all standing committees of the Academic Senate and all Faculty Executive Committees, with the specific request that the Committee on Library and Scholarly Communications (COLSC), the Council on Research, the Committee on Academic Freedom, and the Executive Board opine. Of the individual FECs, the Anderson School of Management had particular reservations about the policy as currently articulated. The Senate committees were generally supportive of the proposal, however, the majority opined that the proposal needs further refinements before it should be endorsed. Only the Committee on Academic Freedom endorsed the proposal as written. The dominant UCLA response is a lack of support for the the policy as written. Please allow me to explain.

- Both the Executive Board and the Committee on Library and Scholarly Communications (COLSC)were concerned with the 'opt out' language. As COLSC wrote, "The implementation of this policy poses a variety of problems, which have not been sufficiently addressed. We are particularly concerned about the suggested 'Opt Out' policy, as the merits and procedural mechanisms for the three proposed options are not stated with sufficient clarity. There was some skepticism about the need of an 'Opt Out' policy that establishes electronic distribution and storage of research produced by UC faculty as a protected default. Why has an 'Opt In' policy not been a considered? This might be advisable as a first step, for a few years, until faculty become better acquainted with the merits of the system, and perhaps less resistant to accepting an 'Opt Out' policy."
- The Council on Research noted that "in summary, while there are some negative issues which must be considered, the benefits of this Open Access Policy,

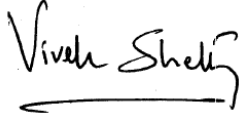
for the most part, do appear to be meritorious. Nevertheless, it is the Council's belief that if there is a way to structure the new policy to place more of an administrative burden on the publisher and less on the UC faculty, such an option should be seriously considered as an alternative to the current proposed policy."

- Members of the Anderson School of Management FEC wanted more context provided: Will the UC stand alone in this position or is there precedent for it? One member indicated concern that faculty were actually giving up rights under the proposal. Still another raised questions regarding the Opt Out policy and if it was sufficient protection for faculty who might otherwise be caught "between a rock and a hard space."

I am attaching the responses from COR and COLSC for further consideration. The Anderson FEC response was in the form of an email with questions which are articulated in the bullet point above. The Committee on Academic Freedom also indicated its support in an email without further comment. I will therefore not attach their responses.

Please do not hesitate to contact me should you have any questions.

Regards,

A handwritten signature in black ink that reads "Vivek Shetty". The signature is fluid and cursive, with a long horizontal stroke at the end.

Vivek Shetty
Senate Chair
UCLA Division

Cc: María Bertero-Barceló, Systemwide Academic Senate Executive Director
Jaime R. Balboa, CAO UCLA Academic Senate

MEMORANDUM

Academic Senate Executive Office
Council on Research
Los Angeles Division
3125 Murphy Hall
140801

DATE: May 7, 2007

TO: Vivek Shetty, Chair, Academic Senate

FROM: Council on Research Meeting May 4, 2007

RE: UC Proposed Open Access Policy

UCLA's Council on Research (COR) discussed the above-entitled action item during their May 4, 2007 meeting. Based upon Rory Hume's request, a comprehensive review was conducted by a working group for the Proposed Open Access Policy and resulted in the creation of the document entitled "UC Open Access Policy" which in effect would enable open access to journal articles and conference proceedings authored by UC faculty. This policy was approved at the Systemwide Academic Assembly on May 10th 2006, in the form of the "UC Faculty Scholarly Work Copyright Rights Policy" proposal. This proposal was initiated by the Academic Council's Special Committee on Scholarly Communication (SCSC). The spirit behind the policy would support the dissemination of knowledge produced by UC faculty to the local and international communities. In essence, this policy would grant a license to the Regents to make journal articles and conference proceedings accessible to the broader scholarly community.

The benefits for faculty are that their work would be widely disseminated, thus maximizing scholarship of UC faculty, which is in line with the UC's mission of education and research. By granting to the Regents of UC a "limited, irrevocable, perpetual, worldwide and non-exclusive license to place in a non-commercial open-access online repository the faculty members scholarly work published in a scholarly journal or conference proceedings", faculty can retain a number of copyright rights which may have previously been signed over to a publisher. It would serve to encourage faculty to retain their individual copyright; thus enabling them to use and develop their works without restrictions, while granting publishers non-exclusive and limited. This includes the right to use his or her work for the purpose of teaching, conference presentations, the construction of derivative work and reuse of their work in digital form. Support structures provide sample publication agreement contracts and staff who would facilitate this Open Policy for the faculty member in a timely manner. While the timeliness of this mechanism remains to be seen, the time limitations for negotiation would be helpful so that faculty will not be delayed in publishing their work.

Negative aspects of the policy, from a faculty member perspective, may include the sense of "Big Brother" mentality by some or the possibility of increasing regulation by UC over time. Certainly, for some faculty, anxiety over any demands placed on publishers may be concerning. The proposed policy does contain an "opt-out" option for faculty who do not or cannot retain the required license when granting the copyright in their work to a publisher. In the current draft, there are three opt-out possibilities: Option A, Option B, and Option C. Of these three options,

Options A and B seem to involve a high level of administrative burden for faculty seeking to publish their work. Both Option A and B require faculty to consult with a “UC Open Access Agent” as part of the opt-out process. It is possible that, over time, this process of consulting with a “UC Open Access Agent” would become routine and painless. However, given how little attention most faculty currently devote to the copyright implications of publishing their work it is COR’s sense that any policy requiring coordination with University officials is likely to be perceived by most faculty as imposing significant new administrative burdens. “Option C” seems to be the most faculty-friendly opt-out provision in that it requires only that faculty notify the “UC Open Access Agent” of his or her decision to opt-out. If this policy is to be adopted, it is COR’s suggestion that Option C be included as the preferred opt-out provision.

The Council on Research would like to emphasize that the proposed policy represents a significant departure from current practice. While the ideas underlying the proposed policy are commendable, it is doubtful that many faculty give much thought or consideration to the copyright implications of publishing their work in scholarly journals or conference proceedings. It is likely that the main objective of most faculty is to publish their work in the most prestigious journal possible. The copyright implications of publishing their work are a minor detail in that process. The proposed Open Access policy has the potential of imposing significant new burdens on faculty attempting to publish their scholarly work. The proposed policy requires faculty to retain in any publication agreement the right to grant a license to the University for purposes of placing the work in an online repository. If the faculty member fails to do this, she will presumably be considered to be in breach of University policy. Moreover, the proposed policy indicates that a faculty member’s compliance with this policy will be considered by Academic Personnel Committees in connection with merit or promotion reviews. It is the belief of COR that this is a rather severe departure from current practice and one which is not necessarily in the best interests of the faculty. The Council on Research suggests the elimination of this provision.

In summary, while there are some negative issues which must be considered, the benefits of this Open Access Policy, for the most part, do appear to be meritorious. Nevertheless, it is the Council’s belief that if there is a way to structure the new policy to place more of an administrative burden on the publisher and less on the UC faculty, such an option should be seriously considered as an alternative to the current proposed policy.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ajit K. Mal". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Ajit K. Mal, PhD
Chair, UCLA Council on Research

MEMORANDUM

Academic Senate Executive Office
Committee on Library
Los Angeles Division
3125 Murphy Hall
140801

DATE: May 7, 2007

TO: Vivek Shetty, Chair, Academic Senate

FROM: Claudia Rapp, Chair, Committee on Library

RE: UC Proposed Open Access Policy

The COL at UCLA has discussed the proposed Open Access Policy at its meetings on March 21 and April 23, but has not found itself in a position to express its informed consent to the policy as currently proposed.

We do, however, enthusiastically welcome the initiative of the UC leadership and the working group to address the root of an endemic problem with many ramifications: how to counteract the detrimental effect of the ever-increasing pricing policies of for-profit publishers? The solution that is being proposed aims to establish mechanisms to ensure that faculty members, who produce the content, also retain means of preserving copyright.

We are also grateful for the guidance offered by Library staff in educating faculty members on their options for retaining copyright for their work, and note with pride that the UCLA Library has been a leader within the UC system in offering a series of workshops to educate faculty. Despite these efforts, the awareness of faculty members of their current options to preserve copyright remains too low, in our estimation, to guarantee the successful implementation of the proposed policy at this time.

The implementation of this policy poses a variety of problems, which have not been sufficiently addressed. We are particularly concerned about the suggested “Opt Out” policy, as the merits and procedural mechanisms for the three proposed options are not stated with sufficient clarity. There was some skepticism about the need of an “Opt Out” policy that establishes electronic distribution and storage of research produced by UC faculty as a protected default. Why has there not been a consideration of an “Opt In” policy? This might be advisable as a first step, for a few years, until faculty has become better acquainted with the merits of the system, and perhaps less resistant to accepting an “Opt Out” policy.

We are also concerned about the additional burden that the policy (as currently proposed) would place on faculty members, in having to justify at each promotion what choices they made with regard to their copyright of published work.

In short, while we welcome the efforts that have been made in drafting the Open Access Policy and are wholeheartedly in agreement about the need for such a policy, we are not at this moment satisfied with the modalities suggested for its implementation and await further clarification.

Sincerely,

Claudia Rapp
Chair, Committee on Library



CHAIR, ACADEMIC SENATE
RIVERSIDE DIVISION
UNIVERSITY COLLEGE BUILDING, RM 225

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May 8, 2007

John Oakley
Professor of Law
Chair, UC Systemwide Academic Senate
1111 Franklin St., 12th Floor
Oakland, CA 94607

Dear John:

RE: System-wide Senate Review of the Proposed Policy on 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.

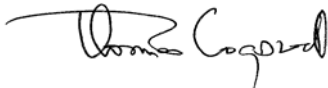
1. Although the goals of the policy are addressed in the first of the 20 FAQs on the website and the specific results of application of the policy are enumerated on page one of the draft, it is not clear specifically how this policy will actually enhance the educational and research mission of the institution 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 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.¹ Opt out is essential.

A handwritten signature in black ink, appearing to read "Thomas Cogswell". The signature is fluid and cursive, with a large initial 'T' and 'C'.

Thomas Cogswell
Professor of History; and
Chair of the Riverside Division



OFFICE OF THE ACADEMIC SENATE

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May 11, 2007

Professor John Oakley
Chair, Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

Re: Systemwide Senate Review of the Proposed Open Access Policy

Dear John:

In response to your request of March 29, the San Diego Senate Council received comments from cognizant Divisional committees and discussed the Proposed Open Access Policy at its May 7, 2007 meeting. Reviewers saw the obvious potential for this policy to be beneficial to the broader scholarly community and were supportive of the policy's goals as stated, but also had concerns, outlined below.

Successful implementation of the proposed policy would require significant University resources, and reviewers worried that, without such a commitment, implementation would lead to confusion and resentment on the part of faculty and thus negatively affect the University's reputation. Without effective help from the "UC-OA", faculty are likely to become disillusioned with the process and make *de facto* decisions to not to participate.

The proposed policy says that the Academic Senate will take the lead in initiating implementation. This struck reviewers as unrealistic; the role of UCOP (and of University resources) in initiating the process is essential. It also gives the impression of limiting the policy's applicability to Senate members, but other UC employees and, of course, students write scholarly articles as part of their University work and must be incorporated, also.

The majority of reviewers thought that faculty would not want to negotiate with publishers and favored Option C, the "notification based" opt-out mechanism. Even this process should be as streamlined as possible so that publication delays do not result. Concern was expressed that the proposed policy might adversely affect some journals and scholarly societies. The suggestion was made that there be an option to allow a faculty member to generally opt out in order to protect the interests of journals or scholarly associations or if the faculty member, for any other reason, preferred not to place his or her work in digital repositories.

Finally, none of the reviewers understood why it would be necessary to record the open access characteristics of faculty publications as part of the academic personnel review process.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry C. Powell", with a long horizontal flourish extending to the right.

Henry C. Powell, Chair
Academic Senate, San Diego Division

UNIVERSITY OF CALIFORNIA, SAN FRANCISCO

ACADEMIC SENATE



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Deborah Greenspan, DSc,BDS, Chair
David Gardner, MD, MS Vice Chair
Mary J. Malloy, MD, Secretary
Jean Olson, MD, Parliamentarian

May 9, 2007

John Oakley, JD
Professor and Chair
UC Academic Senate
1111 Franklin Street, Room 12308
Oakland, CA 94607-5200

Attn: María Bertero-Barceló, Executive Director

Dear Chair Oakley,

I am in receipt of the attached communications from both the UCSF Committee on Library and the Academic Senate Task Force Reviewing and Recommending Comment to the Proposed Policy on Open Access. While both bodies strongly support the Proposed Policy on Open Access, there are concerns with implementation of the policy and undue burden of faculty that choose to opt out of open access which should be considered. I enthusiastically support and concur with the recommendations of the Committee and the Task Force and forward you these recommendations so that you may take them under consideration.

Please feel free to contact me should you have any questions or need additional information.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "David G. Gardner", is written over a horizontal line.

David G. Gardner, MD, MS
Vice Chair
San Francisco Division

Encl: 1 ([Communication from the Task Force Reviewing and Recommending Comment to the Proposed Policy on Open Access 05.08.07](#))
2 ([Communication from the Committee on Library RE Proposed Open Access Policy 04.17.07](#))

cc: Task Force Reviewing and Recommending Comment to the Proposed Policy on Open Access
UCSF Committee on Library



Communication from the Task Force Reviewing and Recommending Comment to the Proposed Policy on Open Access

David Teitel, MD, Chair

May 2, 2007

Deborah Greenspan, DSc, BDS
Chair, UCSF Academic Senate
Office of the Academic Senate, Box 0764

**RE: Suggestions for Divisional Response to the System-wide Senate Review of the
Proposed Policy on Open Access**

Dear Chair Greenspan,

The Task Force Reviewing and Recommending Comment to the Proposed Policy on Open Access, consisting of two members from the Committee on Library (Chair), one Member of the Committee on Research, one Member of the Committee on Academic Freedom, one Member from the School of Medicine Faculty Council and one Member from the School of Dentistry Faculty Council, met on May 2, 2007 to review the proposed policy and to suggest a possible response from the San Francisco Division.

First, the Task Force would like to state its strong support for the open access policy. We concur that such a policy greatly improves the ability of researchers to share their findings, which advances their own research and education goals as well as those of the University. By not transferring all of the rights for use of their work to the commercial publisher, faculty authors will be able to publish their work on open-access, non-commercial repositories. This will result in increased dissemination of that work, as evidenced by increased citations of research freely available on such repositories. Moreover, such a policy assists changes in the economics of publishing faculty research, by providing an alternative to the excessive subscription rates charged by some of the commercial publishers who have near monopoly control of certain areas of scientific publication.

As we considered the various "opt out" policies put forward in the draft, we were torn between the incongruent goals of ensuring the rapid adoption of a real open access environment versus protecting the faculty member to advance his/her career. Options A and B are most in keeping with the former goal, whereas option C is most in keeping with the latter, as it only requires notification of opting out by the faculty member. We are in agreement that open access should be achieved rapidly, and thus we would like to support options A or B. However, we are concerned that the administrative structure is not currently in place to ensure that the faculty is adequately supported when the issue of opting out surfaces. New resources must be developed to educate faculty about open access and how to ensure its availability to their work, to provide a database of the open access practices of the various publishers,

and to respond to questions from the faculty as they arise. Such resources must be readily available to each faculty member, both via the web and via direct, personal contact. Currently, adequate resources to respond to calls for detailed assistance do not exist, and there is no clear commitment that adequate numbers of “open access agents” will be hired to assist the faculty in negotiating with the publisher. If either option A or B is adopted, it must be done with a clear commitment that it will be enforced only once adequate resources have been established, and that ongoing assessment of the impact of such a policy on the publication of faculty work be monitored and evaluated within the first years of its adoption.

Lastly, the roles of the various offices and Academic Senate committees in determining and implementing the open access policy should be defined at a University-wide level. Who will monitor that the administrative support of the faculty is adequate, and who can the faculty turn to if it is perceived to be inadequate? Who will police faculty compliance, and who will determine to what extent open access practice by a faculty member is considered in advancement?

Although important issues must be addressed prior to the implementation of an open access policy, we strongly support this initiative, and are delighted that the University of California is in the vanguard of this critically important step toward the advancement of faculty scholarship.

Sincerely,

The Task Force Reviewing and Recommending Comment to the Proposed Policy on Open Access

David Teitel, MD, Committee on Library, Chair

Richard Schneider, PhD, Committee on Library

Lisa Bero, PhD, Committee on Research

Sheila Brear, DDS, School of Dentistry Faculty Council

James Lightwood, PhD, Committee on Academic Freedom

Lawrence Pitts, MD, School of Medicine Faculty Council



COMMUNICATION FROM THE COMMITTEE ON LIBRARY

David Teitel, MD, Chair

April 17, 2007

Deborah Greenspan, DSc, BDS
Chair, UCSF Academic Senate
Office of the Academic Senate, Box 0764

Dear Chair Greenspan,

At its last meeting on the 12th of April 2007, the Committee on Library reviewed the proposed Open Access Policy. Our Committee fully supports the overall goals and intent of this Open Access Policy, which we believe will ultimately make scholarly information more readily available and help University of California faculty retain rights to their creative works. We urge the authors to develop a final policy that does not place an excessive burden on the faculty member who wishes to opt out, which we believe that the first two options listed in the draft do, and we acknowledge that safeguards must be established to protect faculty advancement. With those caveats, we strongly and unanimously endorse the creation of a Policy on Open Access as a first step toward addressing current copyright issues and publication barriers that threaten access to research by scholars and the public at large, and the San Francisco Division of the Committee on Library stands ready to assist in its dissemination and realization.

Respectfully,

UCSF Academic Senate Committee on Library

David Teitel, MD, Pediatric Cardiology, *Chair*
Frank Szoka, PhD, Biopharmaceutical Sciences, *Vice Chair*
Nancy Hessol, MSPH, Medicine
Eberhard Fiebig, MD, Laboratory Sciences
Ilona Frieden, MD, Dermatology
Thomas Lang, PhD, Radiology
Ruth Malone, RN, PhD, Social & Behavioral Sciences
Geoff Manley, MD, PhD, Neurological Surgery
Ralph Marcucio, M, PhD, Orthopaedic Surgery
George Rutherford, MD, Epidemiology & Biostatistics
Richard Schneider, PhD, Orthopaedic Surgery
Kathy Shook, RN, MS, Community Health Systems
Karen Butter, University Librarian



COORDINATING COMMITTEE ON GRADUATE AFFAIRS (CCGA)
Reen Wu, Chair
rwu@ucdavis.edu

The Assembly of the
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Oakland, CA 94607-5200
Phone: (510) 587-6138
Fax: (510) 763-0309

May 14, 2007

JOHN OAKLEY, CHAIR
ACADEMIC COUNCIL

RE: Open Access Policy Proposal

Dear John,

The Coordinating Committee on Graduate Affairs (CCGA) recently evaluated the Open Access proposal, which members strongly supported. In expressing their support, members commented that open access is becoming more prevalent in academic publishing, especially in the sciences.

However, the committee would also like to share some of its concerns. The first of these is that the proposal remains ambiguous in some places. While the committee is behind the proposed policy in principal, they understand that certain details will need to be worked out. Although not technically within CCGA's purview of graduate education, members were also unsure of the intent behind recording the access characteristics of faculty publications. While members opined that recording such access characteristics would be alright and benign for the purposes of data collection, they would be concerned if these characteristics were used in an evaluative fashion in academic personnel reviews for promotion and tenure.

Thank you for the opportunity to review this important policy proposal. If you have any questions, please let me know.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R Wu".

Reen Wu
Chair, CCGA

cc: CCGA
Executive Director Bertero-Barcelo



INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS POLICY
David Messerschmitt, Chair
messer@eecs.berkeley.edu

Assembly of the Academic Senate
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May 11, 2007

**JOHN OAKLEY, CHAIR
ACADEMIC COUNCIL**

RE: Proposed Open Access Policy

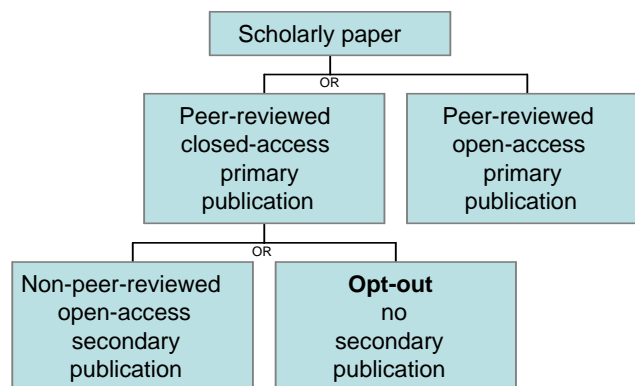
Dear John,

At its May 4, 2007, teleconference, the University Committee on Information Technology and Telecommunications Policy (ITTP) discussed the proposed Open Access Policy. The majority, as defined by a single vote, cannot support the Policy in its present form. Our concerns are outlined below.

We firmly support the notion of promoting open access to scholarly works. Furthermore, we recognize that we, as faculty members, are at a significant disadvantage when attempting to negotiate open access options for our scholarly works with incumbent publishers. We therefore applaud the University becoming an ally in attempts to make our scholarly works as widely accessible as we would like them to be. We also applaud the reinforcement of faculty's copyright ownership of their scholarly works.

The policy is structurally fairly complex, and we found ourselves spending too much time explaining its nuances to one another. A glossary of terms would be helpful (what is an open-access publication?), as would be coupling the description to a pictorial representation such as this:

Opt-out policy as written

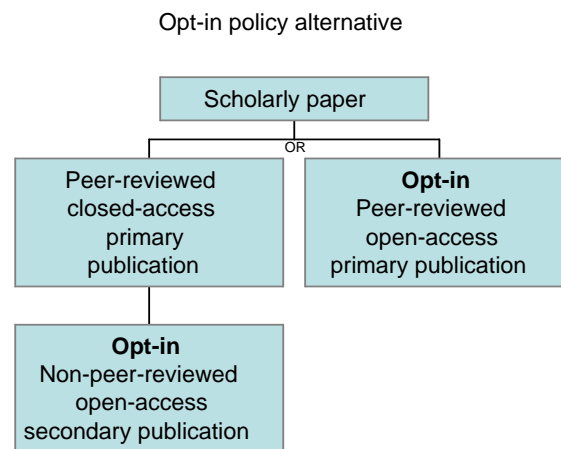


We understand that one goal is to reduce library acquisition costs for the University, and we are sympathetic with this goal. However, most high-quality peer-reviewed open-access publication vehicles

charge author fees, so one effect is to redirect a portion of the costs of publication from the University to faculty, academic departments, or research grants. Open access publication could be encouraged by returning some of the acquisition savings in the form of author fee subsidies, and this would arguably be equitable as well. This would likely have greater impact than new policies.

We have reservations about the potential impact of this Policy on non-profit professional societies (the Institute of Electrical and Electronic Engineers was mentioned as an example) which provide a valuable service in peer review and quality control, which depend on fees charged to access their publications (both online or in print) to support these services, and which are (in our judgment) efficient and cost-effective. We are concerned that the negotiations underlying a change in copyright approach with individual societies will be long and involved, consume considerable resources within the university, and create considerable rancor in the relationship between the faculty and University and professional societies. Since it is our understanding that these societies are not a target of these initiatives, we urge strongly that care be taken to insure that these publication outlets are not compromised in any way.

The bulk of the Committee discussion concerned the opt-out provision of the policy, and specifically whether this should be replaced by an opt-in provision. This alternative approach would look like this:



Arguments in favor of the proposed opt-out policy:

- The opt-out requirement forces faculty to confront and not ignore this copyright issue, and increases the visibility of the issue with both publishers and faculty.
- This makes it more likely that publishers will bend to this policy, since they will fear increasing defections of top-notch papers if it is not accepted.
- The fact that faculty are free to opt-out without publicity or retribution (see below) implies that the Policy will not influence the ultimate choice of a publication outlet.

Arguments in favor of an opt-in approach:

- The Internet has forever put more power in the hands of the author, and the movement toward open-access will occur with or without this policy.
- Since open-access publication is a new and evolving modality, it is better at this early stage to encourage it (a “carrot”) rather than try to enforce it (a “stick”).
- The best way to encourage open access would be to subsidize open-access publication fees financed by savings from the acquisition side.
- Opt-out is heavy handed, will be resented by many faculty, and compliance will thereby be reduced.

- Dealing with a bureaucracy for each and every paper places another burden on an already heavily burdened faculty.
- In practice, this policy cannot be enforced without inappropriate interference in the well-established right of faculty control over their own scholarly works.
- The University's role should be promoting choice and encouraging beneficial action, rather than mandating outcomes.
- A blacklist of non-compliant publishers will be contentious and resented.

Our Committee strongly opposes the paragraph "Recording access characteristics of faculty publications" and believes it should be stricken. The characteristics of the primary publication outlet for a scholarly paper, such as peer-reviewed or not, quality of the review, and the selectivity are certainly relevant to academic personnel reviews. However, the existence or nature of a secondary or duplicate publication outlet is irrelevant to any judgment of the intellectual quality or impact of a publication. Why then is this reporting required? A faculty member can only assume that a sanction or penalty for opting out of the policy is intended, thus making the Policy virtually mandatory from his or her perspective. Faculty should feel free to opt out, and this action should be neither publicized nor penalized. Some other form of reporting that is private and completely independent of the academic personnel process may be acceptable, if that is deemed necessary for monitoring or administering the policy.

Finally, here are a few editorial comments:

- The document is not clear on under what authority this policy is being proposed. Is this an addendum to the University's copyright policies? Who has authority to change those policies?
- Does the Policy require modifications to the Academic Personnel Manual? Certainly the "Recording access characteristics of faculty publications" would seem to require changes to the APM, and those changes should also include a rationale (how is the information relevant to the academic personnel process, and how will it be used).
- The memorandum mentions at least three separate policy statements or drafts (established University copyright policy, and the 2006 and 2007 drafts), and it is not always clear to which reference is made. Take for example the conjunction of two sentences: "A faculty member's ownership of copyright is delineated by the University of California Policy on Ownership of Copyright. This open access policy seeks to increase authors' influence in scholarly publishing by establishing a collective practice of retaining a right to open access dissemination of certain scholarly works." Although the policy mentioned in the second sentence presumably does not refer to the policy mentioned in the first sentence, this is easily misconstrued on first reading. Please make an editing pass with the goal of establishing an unambiguous terminology and making these distinctions clear.

We thank you for the opportunity to opine on this matter, and we look forward to learning the result of your deliberations.

Sincerely,

David Messerschmitt, Chair
ITTP

cc: Maria Bertero-Barcelo, Executive Director, Universitywide Academic Senate
ITTP



UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM
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May 10, 2007

JOHN OAKLEY
CHAIR, ACADEMIC COUNCIL

Re: Proposed UC Open Access Policy

Dear John,

The University Committee on Academic Freedom (UCAF) has reviewed the draft University of California Open Access Policy, which would grant to The Regents limited, non-exclusive permission to make published faculty scholarly work available in an open-access online repository of publications.

In general, UCAF supports the proposed policy as consistent with academic freedom principles. We applaud its intent to help “facilitate scholarly communication and maximize the impact of UC faculty scholarship,” and we feel it will strengthen the right of the faculty to retain ownership over their own scholarly work. We also believe the provision allowing faculty members to “opt out” is an appropriate and important safeguard that will protect individual faculty freedoms. The opt-out provision does address a potential concern that certain journals could refuse to allow faculty to give publishing rights to The Regents, effectively preventing faculty from publishing in the journal of their choice.

UCAF focused its discussion on the most preferable of the three “opt-out” mechanisms presented as options in the policy. We believe Option C, the notification-based alternative, is best from the academic freedom perspective as it provides individual faculty members with the most direct control over the opt-out process. Options A and B, which would require varying degrees of consultation with a “UC Open Access Agent,” place an undue burden on individual faculty members. Option A (permission based) is certainly the least preferable of the two. We also note that the process of consultation as described in the draft policy could impair a faculty member’s ability to publish in certain journals that might balk at the extra layer of negotiation.

The Committee also expressed concern about the Policy Implementation topic entitled “Recording access characteristics of faculty publications.” Some members felt the requirement for faculty to submit to Academic Personnel Committees a list of published works appearing in open access repositories, and the identity of those repositories, could constitute intimidation. It would also place another clerical burden upon faculty, resulting in a waste of their time and taxpayer funds.

Thank you for giving UCAF the opportunity to review and comment on this proposed policy.

Sincerely,

Jerold Theis
Chair, UCAF

cc: Executive Director Bertero-Barceló



UNIVERSITY COMMITTEE ON LIBRARY (UCOL)
Ben Crow, Chair
bencrow@ucsc.edu

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May 8, 2007

JOHN OAKLEY, CHAIR
ACADEMIC COUNCIL

RE: Open Access Policy

Dear John,

The University Committee on Library (UCOL) recently considered the proposed policy on open access. Members strongly support for this policy for two main reasons. The first concerns the influence of faculty research. The second relates to the economics of contemporary publishing. We want to emphasize, nonetheless, that the Policy does this in the context of reinforcing individual faculty copyright rights.

The Open Access Policy is desirable, firstly, because it promotes the influence of faculty research. Studies have shown that research papers which are both published in a journal and made freely available on the Internet are cited much more frequently than papers only published in a journal. The Policy provides the opportunity for faculty to take advantage of this greater impact by establishing a collective practice of Internet posting in conjunction with journal publication or conference presentation.

Secondly, the Policy assists changes in the economics of publishing by providing counterbalance to some commercial journal publishers currently taking advantage of their monopoly situation to charge excessive online subscription rates. A small number of the biggest commercial journal publishers have been undermining the academic publishing enterprise by raising their rates to unsustainable levels. Library acquisitions of journals and monographs have been threatened, and in some cases significantly curtailed, by these unprecedented charges. The UC Open Access Policy provides an alternative publishing venue that will operate alongside existing commercial and scholarly society journal publishing.

While the Open Access Policy proposes to increase the influence of faculty research and provide greater balance in scholarly publishing, it achieves these objectives within the context of increased faculty copyright rights. At present, many publishers require faculty to give up all their copyright rights when they allow their paper to be published. The UC Open Access Policy encourages faculty to give up only those rights of first publication to the journal publisher, and to retain all other copyright rights. Under this policy faculty will retain the right to use their material in their teaching and to post materials on the Internet. This retention of copyright rights

can best be achieved through collective bargaining between the faculty as a whole and publishers. It is this collective bargaining that enables faculty to achieve the ends of the Policy and to retain more of their copyright rights.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben Crow". The signature is fluid and cursive, with the first name "Ben" and the last name "Crow" clearly distinguishable.

Ben Crow
Chair, UCOL

cc: UCOL
Executive Director Bertero-Barcelo



UNIVERSITY COMMITTEE ON RESEARCH POLICY (UCORP)
Wendy Max, Chair
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May 9, 2007

**JOHN OAKLEY, CHAIR
ACADEMIC SENATE**

RE: Open Access Policy

Dear John,

At its April 9, 2007, meeting, and subsequently via electronic forums, the University Committee on Research Policy (UCORP) discussed the proposed Open Access Policy. We appear to have consensus on (a) Open Access is a highly desirable goal, but (b) the implementation is extremely complicated and needs to be worked through most carefully, and (c) the current proposed policy is insufficiently thought out and as a result would be risky to adopt in its present form -- it could well be counter productive and might also impose significant costs on researchers, the University, and publishers that outweigh the desirable social benefits.

I would like to note that considerable, spirited, and far from unanimous debate characterized our consideration of this issue. Rather than submit a milquetoast response appealing to all, we submit one that, I believe, reflects the variety of convictions and concerns voiced by the committee. Despite the enumerated concerns surrounding the proposed policy, we wish to emphasize the desirability of pursuing open access in a more thoughtful and comprehensive manner.

Sincerely,

Wendy Max, Chair
UCORP

Encl.

cc: Maria Bertero-Barcelo, Executive Director, Universitywide Academic Senate
UCORP

UCORP Review of the Proposed Open Access Policy

May 10, 2007

Traditional Avenues of Publication:

The proposed policy implicates two areas of publishing that should perhaps be considered separately. However the economic problems that affect both are interrelated:

1) Publishers, including university presses, are cutting back on their production of scholarly books, largely due to decreased sales of these books. Sales have decreased in part because university libraries' budgets have decreased and they purchase fewer books.

2) Increasingly larger portions of library budgets are spent on medical, scientific and technical journals.

The Role of Open Access:

In addition to addressing financial problems, open access is seen as an opportunity to maximize efficient dissemination of scholarship. Moreover, open access is seen as a way to explore new avenues of scholarship and to remove printed format as the tacit requirement for acceptable scholarship.

Increasingly academic institutions are creating their own digital repositories to collect and disseminate research, teaching and other output of their faculty and staff. Institutional repositories are seen by some as a fast track to open access publishing.

When considering these competing interests in light of the proposed Open Access policy, a number of questions arise:

1. Is deposition of research material in the institutional repository equivalent to self-publishing?
2. Will such material undergo peer review prior to placement in the digital archive?
3. What is the relationship between institutional archiving, journal publication, open access in journal archives and open access in public archives—such as PubMed, for example?

- a) If an author submits a paper to a journal, it will be necessary to determine if that journal allows institutional archiving and, if so, what version of the paper is archived.
 - b) Are different versions of the same paper to be archived?
 - c) Should there be distinct categories for papers that have been subjected to external review and modified in consequence of that review? Papers that were rejected by peer review?
- 4. Funding agencies often require that a paper be deposited in an open access source within a defined period of funding. In the case of NIH funded research, this source is PubMed Central. Will there be different versions of the paper in different digital resources? The manuscript accepted by PubMed Central is the one accepted by the journal for publication, including revisions made by the author following review.
- 5.
 - a) There are specific advantages in having material in large archives such as PubMed Central or in subject archives, *e.g.* in physics, compiled by scholarly societies. Advantages cited for PubMed, for example, are that data is stored in a common format in a single repository. Furthermore, earlier print-published material is being digitized. These features make it possible to integrate the literature and to integrate with other information sources.
 - b) Although required by NIH, most of their grantees are not submitting publications to PubMed Central. Why is that? UC should investigate the success or non-success of PubMed Central and the factors that produced that outcome, whatever it is, before requiring participation in an Open Access modality.
- 6. UC Administration states that the California Digital Library Funds will fund Open Access and institutional deposition of material. Will libraries and purchase of published work get any of these funds? Will University presses get any of the funds? Do we see University presses, *e.g.* California University Press, closing?
- 7. Is it our intent that journals should go out of business? It is important to note that academic institution presses, for example, University of Chicago Press, Oxford University Press, and Cambridge University Press, publish many journals. Also,

- many journals are published by scholarly societies. Will the survival of scholarly societies become solely dependent on yearly fees from members?
8. It is important to note that many journals are investigating whether open access can be financially sustainable. With funds from the Wellcome Trust, three publishers, Blackwell, Springer and Oxford University Press, are investigating open access. In some cases there is a charge to the author if that author wishes open access. The charge is in line with page charges. To what extent will the California Digital Project Archive work with journals and authors in the Open Access feasibility endeavor?
 9. UC Open Access policy documents state that faculty should grant to the Regents of the University of California limited, worldwide non-exclusive license, or opt-out. Could this be reversed so that the option is to *opt-in* rather than to *opt-out*?

There were concerns that a default opt-out policy would create a substantial level of bureaucracy that could delay publication and prevent faculty from choosing the journal in which to publish their material. Faculty members wondered what measures the Regents would adopt if a faculty member inadvertently or otherwise failed to complete the opt-out option prior to publishing?

Furthermore, support for maintaining an opt-in paradigm was characterized as opposition to the perceived coercive tone of the proposed policy and its heavy-handed treatment of publishers and faculty alike.

Others reported encountering an insurmountable bureaucratic red-tape when attempting to publish in UC's open access repository. Compliance with the policy likely will be low, because of the extra work involved, as is already apparently the case for PubMed Central.

Still others ask whether or not the contents of posted articles will be free from any and all interference from UC? Or will UC worry about defamation, liability, copyright infringement, and being sued if it forces the faculty, and perhaps also the range of individuals listed above, into an Open Access site? Will UC try to regulate content? The proposed policy, which would be backed up by the personnel process, might mean that in a court of law, under some

- circumstances, that UC has taken "ownership" of the content, despite any pro forma claim to the contrary.
10. It seems that any author who seeks to place material in the institutional archive and to publish in journals and contribute to external open access sources faces a minefield of complicated legal issues regarding copyright. What degree of institutional support will be required to deal with the bureaucratic issues of opt out forms and to offer help to authors? Clearly, there are on line resources that can help the author resolve some problems, *e.g.* the Sherpa Romeo and Juliet databases provide information on specific journals and copyright issues, and the Cornell Digital Library links to information on journal open access policy.
 11. Who will be legally responsible for infringement of copyright: the institution or the author?
 12. Will authors not be allowed to publish in journals that do not accept the institution's open access deposition policy?
 13. Faculty members raised the issues of the consequences that would result if an author knowingly or unknowingly violated the policy of institutional deposition.
 14. Complications will likely ensue when there are multiple authors from different institutions on a paper and decisions will need to be made about which institutional digital resource has copyright and or license.
 15. Further complications will likely ensue when authors are from different countries. Will the legal implications of the copyright issue be clear to them?
 16. Researchers need papers in high-impact journals, not just for promotion, etc., but because granting agencies and grant reviewers want to see these. Yet these types of journals (*e.g.* Nature and Nature family of journals) are certainly not going to open access in the immediate future. So researchers will have no choice here but to surrender copyright.
 17. The question of copyright and digital publishing is being considered throughout the academic and publishing world. Useful language regarding copyright was published recently, following extensive discussion and negotiation by SURF and JISC organizations that promote the innovative use of information and computer technology in higher education. The license to publish agreement that they

- propose contains language that addresses important issues of when and in what form material appears.
18. The policy does not mention non-faculty authors at UC, of which there are many. Professional researchers and postdoctoral fellows, and in some fields graduate students, publish independently of the faculty. Will the policy be extended to them? What of Adjunct Professors? Will UC provide staff support to all of these classes of authors in order to negotiate with publishers?
 19. The proposed policy included an addendum on page 5 presenting a sample agreement with a publisher. It did not include a sample Repository Author Agreement with the University of California eScholarship Repository. Such an addendum, supported by language that commits UC to not imposing more restrictive clauses without prior faculty review, should be part of the policy in order to avoid unforeseen consequences.
 20. a) The term "scholarly work" is not defined. Does it include scholarly work like sculpture? After all, 3-D stereoscopic images of sculptures can be digitized and viewed with the right sort of monitor. Does it include ordinary 2-D graphics, music and perhaps other types of non-text files, or does it include only text files?
b) Many faculty members acting as consultants working on their own time prepare reports for companies. The reports are proprietary. Also, many faculty members write text books from which they derive significant royalties. If the publisher no longer owns the copyright, will royalties stop? The policy does state that it applies to "the faculty member's scholarly work published in a scholarly journal or conference proceedings." Perhaps the sorts of publications mentioned above should be explicitly excused from the policy to minimize the likelihood of unintended consequences in this area.

UCORP members do support the principle of open access, but find the proposed policy to require substantial revision and clarification to address the issues described above.



UNIVERSITY COMMITTEE ON PLANNING AND BUDGET
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May 10, 2007

JOHN OAKLEY
ACADEMIC COUNCIL CHAIR

Re: Proposed Open Access Policy

Dear John,

At its May 8, 2007 meeting, the University Committee on Planning and Budget considered the proposed Open Access Policy. We applaud the proposal's responsiveness to changing publishing conditions and agree that its goal is important from a resource point of view (library acquisitions budgets) because it will act to put pressure on existing high price publishers and encourage more open source publishers. In addition, the proposal provides safeguards in connection with all of the problems that could reasonably arise, and tracks with initiatives in many other venues, including national foundations in science and health.

The actual proposal for implementation, however, looks cumbersome and creates an administrative bureaucracy, in addition to placing an increased burden on faculty. It also involves a serious change in the way the faculty think of publication, from both a personnel and access perspective. Some faculty fear that even though the policy has opt-out provisions, it would make publication more difficult. In addition, there is concern that the journals have their own agreements with various types of archives, which could be jeopardized by the policy and therefore jeopardize publication opportunities for faculty.

Given these concerns, UCPB feels the simplest and least intrusive implementation option is the best, and we urge that the sponsors of this initiative investigate other options less intrusive and burdensome than those outlined in the proposal. If the choice comes down to the three choices for opt-out listed in the proposal, we clearly prefer Option C.

Sincerely,

Christopher Newfield
UCPB Chair

Copy: UCPB
Executive Director Bertero-Barceló



UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE (UCP&T)
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May 4, 2007

JOHN OAKLEY, CHAIR
ACADEMIC COUNCIL

RE: Systemwide Review - Open Access Policy

Dear Chair Oakley:

The University Committee on Privilege and Tenure (UCP&T) has carefully considered the proposed Open Access Policy. In the course of our review, we have also revisited our communication to Academic Council Chair Brunk of March 3, 2006, pertaining to the proposals from the Academic Council's Special Committee on Scholarly Communication (SCSC), which served as a precursor to the current proposal.

Our members and their divisional P&T committees express support for the principle of an open access policy designed to make scholarly work freely accessible. We appreciate the efforts of the working group to develop mechanisms that facilitate open access while not intruding on faculty ownership of copyright of their scholarly work. At the same time, we recognize that serious implementation barriers can readily arise in any effort to impose UC rules and standards on an important and independent industry that is vital to the careers of faculty.

Our concerns include the potential for several unintended negative repercussions on UC faculty that could give rise to grievances before P&T committees, and we limit our discussion here to concerns that may have direct P&T implications. We add, however, a general sentiment that the overall proposal has not devoted adequate attention to the challenges and costs of implementation.

1. During our initial review of the SCSC proposals, we observed:

"Divisional P&T committees are one avenue for faculty to appeal a tenure denial on the basis of procedural irregularities in the review of their case. Appropriate recognition of electronic publication may soon be essential for fair tenure procedures in a number of fields. Yet, inadequate consideration of new criteria (e.g., electronic publication outlets in a candidate's file) may result in an incomplete evaluation of the material in a candidate's tenure file. UCP&T urges that UCAP and divisional CAPs take measures to widely disseminate policy changes to assure that they are applied fairly. The process of educating professional colleagues about the new UC policy for evaluating electronic

publication outlets might also extend to external reviewers, in the form of an amended solicitation letter."

We reiterate this concern, and do not feel that the proposed Open Access Policy would adequately address this. While the proposed policy contains a plan to record open-access characteristics of faculty publications for merit or promotion review purposes, information about open-access status does not, by itself, constitute a relevant or appropriate criterion for assessment of a faculty member's research and impact. Its inclusion, therefore, could be seen as introducing extraneous information into the personnel process that could be used to disadvantage certain faculty members.

2. Our initial review of the SCSC proposals also expressed P&T-related concerns about the policy implementation:

"Faculty ownership of copyrights for their own work is an important matter of faculty privilege. While we are far from expert in the intricacies of the proposal regarding UC Copyright Policy, UCP&T urges that any change that may reduce faculty privileges, in the interest of enhancing free availability of scholarly work, be taken with great care. This may be best addressed when designing various "opt in" or "opt out" provisions in a way that will not inadvertently abridge individual faculty rights."

The proposed Open Access Policy contains only three opt-out options; there are no opt-in provisions. Any of the three proposed opt-out provisions would require individual faculty to navigate through a series of yet-to-be-established bureaucratic steps within the university, in order to obtain permission to publish with non-open-access publishers. This has the potential to disadvantage faculty members whose available publishing outlets are less amenable to open-access policies. Moreover, the situation is likely to be exacerbated while UC goes through the process of establishing the large and costly bureaucracy necessary to implement this provision.

UCP&T also is very concerned about issues of compliance, given that the proposed policy is based on an opt-out approach, rather than an opt-in approach. The proposed policy is silent about incentives for compliance or penalties for non-compliance, as well as oversight mechanisms. Because such provisions could have P&T implications with respect to faculty rights and responsibilities under the faculty code of conduct, they require careful vetting before adoption.

3. UCP&T also expresses concern about the implications for individual faculty of the proposal that the UC Office of Scholarly Communications track publishers' open access practices. Such a provision may generate an institutional power struggle between the university and the publishers, placing individual UC faculty who seek to publish with these outlets in an untenable situation. While faculty have little clout to affect the university-publisher negotiations in a meaningful way, UC faculty could be the recipients of fallout from these interactions that could impair their publishing opportunities.

In summary, UCP&T members remain concerned that imposing additional internal bureaucratic requirements on individual faculty members may not be the ideal way to promote scholarly communication. We urge that any proposed change in current publishing practices available to faculty not be advanced until the potential repercussions and unintended consequences of any such proposal be thoroughly addressed.

Sincerely,

Kathleen Montgomery, Chair
UCP&T

cc: Michael T. Brown, Vice Chair
Maria Bertero-Barcelo, Executive Director
UCP&T



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May 18, 2007

JOHN OAKLEY, CHAIR

Assembly of the Academic Senate
Academic Council
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Re: Proposal for UC Faculty Scholarly Works Copyright Policy (aka: Open Access Policy)

The Proposal for UC Faculty Scholarly Works Copyright Policy was forwarded to all of the divisional standing committees and Faculty Executive Committee in each college and professional school. There was general support for the concept of an academic culture of open access. However, there were numerous concerns with the policy as proposed. In fact, so many committees requested an extension in order to articulate their concerns and opposition to the policy as written that we were not able to meet your original deadline. Although the Davis Division supports open access, we cannot support this proposal for the reasons enumerated below.

Objection to the proposal centered on five themes:

- The logistics of implementing the policy have not been carefully thought out nor presented
- The policy places an undue burden on faculty as go-betweens for the university and publishers
- The policy ignores the differential impacts on differing publishing cultures across disciplines
- The restrictions on choice of publication venue impact academic freedom, particularly if used in the merit and promotion system as a means of enforcement.
- The policy is confusing as written and sometimes contradictory

The logistics of implementing the policy have not been carefully thought out nor presented

What are the implications of granting the Regents "a limited, irrevocable, perpetual, worldwide, non-exclusive license to place in a non-commercial open access online repository the faculty member's scholarly work published in a scholarly journal or conference proceedings". By granting this right to the Regents there is the possibility that such an agreement is unacceptable to a publisher and the faculty member would be excluded from access to publication in particular journals.

Researchers in the biological sciences (including basic biology and the broad disciplines of medicine, veterinary medicine, agriculture, and environmental sciences) and in many other disciplines, disseminate the results of their research largely through publication in peer-reviewed journal articles. The overall quality and impact of an individual's research is judged in large part by proxy: by the perceived overall quality and impact of the journal in which the work appears. The Special Committee on Scholarly Communication's report, "Evaluation of Publications in Academic Personnel Processes," describes the importance of evaluating the "quality of a journal" in which a faculty member publishes. Review panels for extramural research funding likewise employ journal quality as a significant factor in judging an applicant's research quality.

Therefore, faculty at all ranks, from most junior to most senior, are obligated to place their research in the highest-quality journals that they can attain. Indeed, a publication in one of the top-tier journals (e.g., Science, Nature, Cell) is often sufficient to request an accelerated merit action or to ensure a favorable score on a grant application. Thus,

a faculty member would be professionally disadvantaged by publishing in a "lower quality" journal simply to ensure open access.

We are doubtful, however, that a centralized archive for all disciplines managed by the university is a good idea at this point in time. The emphasis should be on encouraging practical and useful ways to establish and use publicly accessible archives. In disciplines where such archives exist, the University is not likely to be able to provide a meaningful additional service. We also fear that the logistics of running such an open access archive, which includes making regular upgrades to keep it from becoming obsolete, has not been carefully considered.

The policy places an undue burden on faculty as go-betweens for the university and publishers

If many faculty members are going to consult with a "UC open access agent" with regard to opting out of the policy and, perhaps, enlisting the assistance of a UC-OA in negotiating with the publisher, these undertakings may involve a great deal of time and labor. Adequate resources and staff must be made available if the policy is to operate effectively. It is also unclear who is going to set up and administer the scholarship repository.

The policy "seeks to increase authors' influence in scholarly publishing" by granting to the Regents a license for open access dissemination of the copyrighted work. Publishers have their reasons for maintaining "closed access," and seem unlikely to abandon this position. In contrast, other journals fully comply with federal open access regulations, making articles publicly available within three to six months of initial release. Faculty will be placed in the difficult position of trying to explain to publishers why their mechanism of open access is not sufficient as compared to the UC repository. It is unlikely that the UC repository will provide advantages over what is currently being done elsewhere with respect to open access. Further, in some disciplines publicly accessible archives already exist, and again, the advantage of the UC process over these existing mechanisms of access is obscure. In any event, it should not be the responsibility of the faculty to defend this policy which in many cases will simply not be defensible on the grounds of enhancing open access.

The individual faculty member is in a weak position as an author: sign the copyright agreement with no amendment, or send the manuscript to a different journal. No evidence was presented to support the notion that the proposed policy will influence publishers' behavior. Further, The University of California may have no choice but to agree to closed access to avoid penalizing its researchers.

If subscription costs were more affordable, open access would be of less concern. Publishers maintain "closed access" in part to ensure that University libraries pay these costs. The University has had only limited success in negotiating subscription costs. By compelling individual scholars to demand open access for individual works, the University apparently seeks additional leverage in its negotiation with publishers. For decades it has been routine for authors to request permission from publishers to reproduce part of a published work, for example in a review article. This permission routinely is granted. No evidence was presented to document that this stated issue ("authors' rights") is of sufficient gravity to warrant the proposed University policy.

Of the options offered, we can only support opt-out option C. However, Opt-in is a more effective option and preferred by the Division. Under "opt-out option A" described in the policy, scholars would have to wait ten working days after acceptance of the work before being allowed to opt out of the policy. During this time, the faculty member would be required to "seek permission from the open access agent" and to be engaged in "negotiating with the publisher." After the publisher refuses to allow open access, the faculty member then "is required to notify the open access agent" of the opt-out. This mechanism puts individual faculty members in a difficult position between the publisher and the University, and unduly delays (or even jeopardizes) publication of the work. It is imperative that the issues surrounding copyright assignments not be allowed to impede the timely submission of manuscripts. It appears to us that resolution of many of these copyright assignments will be difficult to reconcile with the on-line submission processes and rapid publication schedules of many journals.

The policy ignores the differential impacts on differing publishing cultures across disciplines

Federal funding agencies already require that federally funded research be so designated in scholarly publications and that the journals accepting such publications have open access policies in compliance with federal policy. The UC open access policy offers no obvious advantages over what is already being mandated. The scope of the policy is unclear. Does it apply to books? Does it apply to op-ed pieces in the newspaper? The policy seems geared toward journal articles but might extend far more broadly.

The restrictions on choice of publication venue impact academic freedom, particularly if used in the merit and promotion system as a means of enforcement

The requirement that open access availability of scholarly works be included in merit and promotion review files may result in pressuring faculty members to publish the bulk of their scholarly work in "appropriate" venues. It is troubling that explicit discussion of academic freedom is absent from a document dictating University policy regarding scholarly publishing. Although provisions are made for eventually allowing publication of work as an exception to the open access policy, this negotiation will be time consuming and will delay appearance of a scholarly work which may adversely affect advancement through the professoriate. What disciplinary action(s) is faced by a faculty member who overlooks or ignores the requirement to "seek permission" from, or "notify," the open access agent? What is the authority and role of Academic Personnel Committees to monitor or enforce open access publication?

The policy is confusing as written and sometimes seemingly contradictory

The qualifications, supervision and appointment of the open access agent are not clear, nor is there a stipulation that a timely decision must be made. The workload of such individuals and guidelines for approval of exceptions to policy are not clearly presented. The final 3 sentences in the policy are almost incomprehensible. How can a faculty member assign "all copyright rights to a publisher as party of a publication agreement yet "must retain the right to grant this license to the Regents". The opt out requirement is also troublesome. Opt-in is a better option since it is no longer a default. Finally it is unclear how this policy allows the faculty "to control subsequent uses of the work".

Overall, the general opinion was that this was a poorly crafted policy that did not address faculty access to publication venues, timely publication as well as other issues of copyright. The Davis Division opposes implementation of this policy.

Sincerely,

A stylized, handwritten signature in black ink, appearing to be the letter 'L' followed by a flourish.

Linda F. Bisson
Professor of Viticulture & Enology
Chair of the Davis Division of the Academic Senate



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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, appearing to read "Joel Michaelsen". The signature is fluid and cursive, with the first name "Joel" being more prominent and the last name "Michaelsen" following in a similar style.

Joel Michaelsen
Divisional Chair

Cc: Executive Council