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UNIVERSITY COMMITTEE ON LIBRARY AND SCHOLARLY COMMUNICATION

Senate Maria DePrano, Chair
mdeprano@ucmerced.edu

Assembly   of   the   Academic
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

18 March 2024

Jim Steintrager, Chair
Academic Council

Re: Request for Academic Senate endorsement of UCOLASC Statement on the University Libraries' Negotiations with Publishers Regarding Fair Use, Text and Data Mining, and Artificial Intelligence Usage Rights

Dear Jim,

In the UCOLASC 2018 Statement of Principles, the University Committee on Library and Scholarly Communication (UCOLASC) voiced the importance of protecting the fair use exception to copyright for research, educational, and scholarly purposes, and expressed its support for protecting fair use rights in negotiations with publishers.

As the electronic resource licensing landscape has developed in the six years since that declaration, there has been a worrying increase in publishers' attempts to use library license agreements to restrict fair use of content for research, education, and scholarship. In particular, some publishers are attempting to limit fair use for computational research (like text and data mining or TDM) and the use of artificial intelligence (AI) tools in that research. Fair use restrictions on TDM and AI usage can have detrimental effects: they limit freedom of inquiry, intensify bias in research, and magnify the views of an unrepresentative set of creators given the limited types of materials otherwise available with which to conduct research studies.[1] Such restrictions also disadvantage UC researchers relative to colleagues in other countries (including the European Union) where publishers are prohibited from using contracts to nullify exceptions to copyright for research.[2]

Increasingly, publishers and vendors are presenting libraries with content license agreements or addenda to those agreements that attempt to preclude or charge additional fees for fair use like training AI tools in the course of conducting TDM.

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[1] *See, e.g.,* Levendowski, A. (2018). How Copyright Law Can Fix Artificial Intelligence's Implicit Bias Problem. *Washington Law Review, 93*(2), 579. https://digitalcommons.law.uw.edu/wlr/vol93/iss2/2/;

[2] *Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.* (2019). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0790

For further discussion of the importance of fair use and the lawfulness of TDM and AI training, please see the [Office of Scholarly Communications blog](#) by Rachael Samberg, Scholarly Communication Officer and Program Director, UC Berkeley Library with her colleagues Tim Vollmer, Scholarly Communications and Copyright Librarian at UC Berkeley Library, and Samantha Teremi, Licensing Specialist, UC Berkeley Library. Please also see Ms. Samberg's article (with colleagues) about [fair use and AI on the Author Alliance website](#).

UCOLASC strongly supports the UC Libraries' efforts to preserve fair use rights when licensing electronic resources—including the fair use rights to conduct computational research and utilize artificial intelligence tools in academic scholarship. UCOLASC respectfully requests that Council endorse the following statement.

The Academic Council of the Academic Senate of the University of California (UC) hereby communicates its commitment to support the UC Libraries' negotiating position to preserve fair use rights when licensing electronic resources—including the fair use rights to conduct computational research and utilize artificial intelligence tools in academic studies and scholarship. Preserving fair use in research and teaching will protect UC scholars' abilities to make discoveries that further the pursuit of knowledge.

Action Item: UCOLASC respectfully requests that the Academic Senate endorse and issue the above statement in support of the UC Libraries' efforts to protect fair use in negotiations with publishers.

Please let us know if you have any questions or need additional information. We thank you in advance for considering this request.

Sincerely,

Maria DePrano

Maria DePrano, Chair

Mark Hanna, Vice Chair

Deborah Blocker, UC Berkeley
Naoki Salto, UC Davis
Michael Fortun, UC Irvine
Kathrin Plath, UC Los Angeles
Christopher Ojeda, UC Merced
Curt Burgess, UC Riverside
Laurence Armi, UC San Diego
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Sven Spieker, UC Santa Barbara
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