

agencies to develop a repository but provides leeway for how it is done. If UC does not pass its own policy, the state will do it but the state policy would be weaker. The state bill refers to state employees and some may argue that UC is exempt while the CSUs would not be. UC might ask for the language about state employee to be clarified and defined. UCOLASC's letter could specifically request that Council ask UC's federal governmental relations office to lobby for this bill. Regarding AB 609, UCOLASC can invite someone to the committee's next meeting from the state governmental relations or staff from Assemblyman Nestande's office. UCOLASC will be able to quickly prepare a letter about this legislation once the members are more informed.

The state bill will go to committee and be marked up which means UCOLASC now has an opportunity to provide feedback about critical details. Chair Kelty offered to draft a letter to Council about the federal legislation, which notes the state legislation and to prepare an analysis of the state legislation for the next meeting. A member suggested that the federal bill will provide UC with significant budgetary relief because the university will not have to manage the repository. Director Mitchell indicated that FASTR will not result in cost savings for UC because the CDL does not manage federally funded materials. The CDL sees a lot of activity involving the humanities and social sciences where there is less federal funding.

V. Proposed Open Access Policy ~ Results of the Systemwide Review

The committee received a summary of the feedback from the systemwide review prepared by Chair Kelty for Academic Council. UCOLASC should decide whether a revised policy should be resubmitted to the divisions and what the revisions would entail. There is general support for open access and opposition to details. The most common concern dealt with the scope of the policy. The policy should specifically state what UCOP can do with the articles faculty submit which would be restricted to making them available in eScholarship. This could be addressed by tightening the licensing grant or revising the proposal. Another approach proposed by UCORP is to draft a memorandum of understanding detailing the implementation details with the Office of the President, the California Digital Library and the Senate as signatories. The MOU specifies what would happen if the policy is passed and what would happen if UCOP adopts it as a presidential policy. Chair Kelty drafted the MOU with assistance from CDL representatives including Directors Anderson and Mitchell.

Discussion: While it is not clear if concerns expressed about scholarly societies should be interpreted as opposition to having an open access policy, the sustainability of the societies is a concern. The definition of a small society is also unclear. Although there are reservations about burdening faculty with too much detail, a member believes that for the policy to pass faculty will need the implementation details spelled out in the MOU. According to the San Diego division there was a procedural problem when UCOLASC members did not vote on the proposed policy before it was released for systemwide review. UCSD has objections to many aspects of the proposed open access policy and insists on a vote on whatever is proposed next so that a strong position comes from the UCOLASC. The UCSD committee wants a policy described by the San Diego representative as "weaker" but which could receive the strong support of UC faculty. San Diego's representative deferred from sharing the recommendations from that campus so that UCOLASC members can identify potential revisions to the policy. The UCSD representative stated that Chair Kelty only allowed committee members forty-eight hours to approve the draft policy that went to Council. The Chair asked that the record show that there was in fact two months between the May meeting when members decided to forward the draft policy to Council and when the policy was ultimately submitted to Council on July 27, 2012. The UCSD representative demanded a vote but would not specify what he was demanding the committee vote on. Chair Kelty indicated that this call for a vote is premature and

pointed out that a vote will only be necessary if a consensus is not reached after today's discussions. One member reported being unprepared to vote on anything final today, and Chair Kelty stated that basic goals for today are to reach consensus about revising the policy for another review and to obtain a general sense of what the revisions should be. The UCB representative reported that UCB is not likely to accept the policy as previously formulated and would probably only support the policy if the deposit requirement is removed.

The Davis division provided specific feedback about and language for revisions the chair has incorporated into a new draft shared with the committee today, and the chair urged committee members to also provide specific language for any changes they propose. To address concerns about the scope of the policy, it will be specified that the only use the non-exclusive license is granted for is to make the material widely and publicly accessible and at no cost to faculty and users. The language used in the opt out clause is still a source of confusion. As written now, the policy proposes that faculty may opt out of the license but that the deposit is required. Clarity about the distinction between opting out of the deposit or opting out of the deposit into the dark archive is also needed. After faculty deposit their materials they will have the opportunity to opt out of granting the license. The San Diego division's position is that there should be a restriction to non-commercial use, the policy should be to opt in to the deposit, and the waiver would only be associated with opting out. The UCB representative also indicated strong support for the removal of the requirement to deposit, which was one of the central concerns at Berkeley. Opting out was a philosophical foundation for the proposed policy because it is thought that an opt in policy, like Princeton's, was deemed to have so little leverage that no one would comply. Materials deposited in the dark archive may be there for permanent archival, under an embargo or because CDL has negotiated independent rights to make materials available after embargo. Some publishers request waivers because they require an exclusive license to publish, but they allow green deposit.

The deposit has to happen at some point in order for the license to go into effect. The policy asks for faculty either to deposit into eScholarship or to affirm that it has been deposited somewhere. If faculty deposit the materials but do not grant the license to the Regents they will still be in compliance with the policy. The draft policy currently allows faculty to opt out of granting the license but requires the deposit, and alternatives are that opting out of the licensing automatically removes the deposit requirement or there is never a deposit mandate. The policy could have the deposit requirement for anyone who agrees to the license and there would be no deposit requirement for anyone opting out or depositing elsewhere in open access. If the policy is opt out, 75% of faculty will do nothing including not opting out of the license or of the deposit which means that UC will have the right to do whatever the university wants with the materials. An issue with this approach is which version the university will use. If faculty have not opted out of the deposit or of the waiver, the policy implies that UC has the copyright to the materials. Regardless of whether faculty opt out of the license or deposit, the faculty do not have fully exclusive rights over their copyright when submitting articles to journals. If faculty have not opted out of the policy, the CDL would have to contact the faculty after harvesting data to ask if they want to deposit, and if faculty object the materials will be deposited into the dark archive. If faculty opt out of deposit, the CDL will not make the dark deposit or have a metadata record but CDL will still have the license only if faculty have also waived the policy. Director Mitchell indicated that faculty at UCSF come to the CDL to request the waiver of the license and/or the deposit. The CDL can still approach the faculty who have done nothing. One of UCSD's concerns is that UCOP will not take care of the dark archive. According to Director Anderson, publishers are very sensitive to whether open access will threaten their business models by making materials available outside of their controls. With the increasing prevalence of open access policies, publishers that currently do not have embargos are now considering them. The LAUC president noted that the absence of a deposit requirement eliminates

the principal of preserving materials.

Vice Chair Manduchi proposed revising the policy to allow faculty to waive granting the license with an automatic opt out of the deposit requirement. The deposit requirement will remain if faculty do not opt out of the policy. This change will respond to the results of the systemwide review, and members expressed support for the vice chair's proposal. Compliance may increase as faculty become aware of how popular open access is and that they can easily link a deposited article to their webpage. Incentives for faculty need to be communicated such as the potentially higher number of citations on articles published in open access. Any revised policy needs to include the ability to opt out of the deposit which Chair Kelty reasserted is a bad idea if a goal is to make work openly available, not having a deposit defeats this. If a goal is to have an impact on the big publishers, the policy will not be taken seriously if it does not have a deposit obligation. Another issue is that faculty will have to explicitly opt out of the deposit which potentially gives publishers an opening to demand that faculty also waive the deposit, preventing faculty from even archiving the work. When people do not want to deposit, they still have to go to the CDL website to be freed from this obligation unless they waive the license. If faculty are not required to deposit, it may result in more licenses being granted to UC to do whatever it likes with the materials although UCOP is not obligated to exercise these rights. Based on this discussion, the options the committee will consider for the revisions are to have no mention of the deposit at all in the policy (the weakest approach which is like Princeton's), to reorder the paragraphs so the waiver applies to both the license and deposit, or to allow faculty to opt out of license and a separate opportunity to opt out of deposit. Chair Kelty will revise the draft policy with each of these options and UCOLASC will decide upon one of them.

VI. Campus Reports and Member Items

Riverside: The library committee has met once so far. The librarian is retiring in June and the new librarian will begin in March.

San Diego: The committee has met twice to discuss open access. Stuart Shieber of Harvard was invited to discuss open access and Martin Frank, the president of the American Physiological Society, gave a presentation. The society has eleven journals and makes all articles available in open access after one year. A website was set up for faculty feedback on the open access policy.

Berkeley: A commission on the future of the library is being established and will devise a twenty year plan for the vision of the libraries which is due in April. Due to attrition, library staff are concerned about being overworked. There is a need for more study space and more hours in the libraries. There is a phrase being used, "access not ownership," that is causing concern among faculty who need ownership of actual physical materials for various purposes. UCB has twenty specialty libraries and there will be a reduction of these but it is not clear how many or which ones will be eliminated. The faculty want these decisions to be based on academic and research needs. The library budgets have also been discussed. The representative reported that UCB had slipped from number four in 2003 to fourteen in 2011 among research universities.

LAUC: The association is monitoring the proposed open access policy. The Council of University Librarians released a systemwide library plan for 2013-2016 and discussions are taking place at each campus about the document. The LAUC will provide comments to the CoUL. The LAUC is looking at and provide feedback on the different library advisory committees.

Santa Cruz: Library hours have been reduced but due to attrition layoffs have been avoided. There is a

capital campaign at UCSC and the library committee has reminded the fundraisers to mention libraries to the donors. The campus has a fund to assist faculty who want to publish in open access journals and several requests for support have been made. In the long term if there is funding to support open access, it may be the committee on research that oversees what is occurring so there has been an effort to get this committee involved in the initiative at UCSC.

CDL: Director Mitchell commented that since UCSF has passed its open access policy CDL needs to support its implementation. How the CDL supports the implementation and with what specificity depends on the timely passage of the systemwide policy. If CDL begins working with UCSF on the specifics of the deposit mechanism, it will be hard to involve other campuses in those discussions.

Davis: The library committee meetings have focused on garnering support for the open access policy. The representative held a town hall meeting attended by about one hundred people and about fifty comments were submitted to a whiteboard set up for comments. Information from the town hall and whiteboard were distilled by the representative and submitted to the Davis division Senate chair. The library budget has also been discussed. An effort will be made to encourage faculty to actively respond to requests from the librarians about the relevance of various journals so that the librarians can make good decisions.

Los Angeles: The campus UL is retiring and a decision will be made about the two candidates interviewed for the position. Discussions have focused on open access as well as freedom of information act requests. There have been requests for significant amounts of data and results of peer reviews, things normally considered confidential. The administration has been working on ways to inform faculty about what is and is not reasonable.

San Francisco: The CDL is assisting with the details for the implementation of the campus' open access policy. There are still some faculty who are unaware that the policy was passed. Immediately after it passed, several publishers called to ask about the implementation. Chair Kelty indicated the publishers are aware of the policy and have asked how they can support it. The way the proposed policy is written now, it includes all faculty including non-Senate faculty and this is something that would be addressed in the MOU. The campus committee has also discussed the library budgets. The new campus has very little library space currently in its design and the committee is attempting to address this. A dominant journal for biomedical practice, Up to Date, has recently been acquired and a quadruple increase in its cost has been proposed so the campus is trying to determine if money is available to handle the increase in the license or if there is a competitive journal. Up to Date has effectively taken over the other biomedicine resources previously available.

VII. Proposed Open Access Policy (Continued)

UCOLASC was joined by the University Librarians to participate in a continued discussion about the open access policy. Chair Kelty summarized the committee's morning discussion. UCOLASC will consider revised language to allow the waiver to apply to the deposit as well as the license. The discussion with the library will address implementation issues. A MOU has been drafted. A better understanding of the costs of the policy is needed so UCOLASC understands the librarians' concerns. Library Convenor Steel reported that the ULs met all day yesterday and have discussed open access. The ULs are eager to help with the implementation of the policy.

Discussion: A revised policy will be sent out for another systemwide review. The responses from the campuses did not focus on the commercial versus non-commercial license. One commercial use issue

is what UC can do with the works and another one is what end users might do with the works in terms of commercial use. There is broad agreement that the ability of UC to commercially profit from these materials should be restricted but the widest possible range of rights should be retained which will be controlled by implementation through offering a choice of license. Chair Kelty has spoken to faculty who want to restrict commercial use, some want to restrict all uses and some want to allow all uses. Therefore, the most open of the licenses should be the default otherwise the CDL will not be able to make the articles available for commercial use. The policy should include the distinction the commercial uses, and addressing the end-users issue is a good approach.

In terms of the cost concerns for the librarians, Director Mitchell reviewed potential cost data with the librarians this morning which include the staffing to manage the deposit and the costs of harvesting. Convenor Steel reported that a decentralized approach is now used so that campuses independently harvest materials for a variety of purposes, and it does not make sense to duplicate this work. The open access policy proposes another annual license with a vendor which will be costly so it will be important to have a thorough discussion about harvesting to determine if a more coherent and viable strategy can be devised that will minimize any new investment needed. The challenge for librarians is to educate faculty, not only with respect to open access but also about other scholarly communication. Some campuses have invested in providing support to faculty while others have not. There are campuses that also already use harvesting software, which will contribute to reducing costs. UCOP could look at this from a systemwide level to identify cost savings. The message has to be clear that the policy is not passing on the publishing costs to faculty. UCOP will need to indicate that in the future it will provide funds for open access publishing.

During this discussion, the committee was alerted to that day's announcement that President Obama had signed an executive order mandating that all federal agencies with research budgets over \$100M implement open access. One of the first things these agencies will need to do is develop a repository like PubMed Central. The federal agencies may not want to maintain these repositories so the mandate to researchers may be to publish in some repository. The UCSF librarian reported that it has taken the National Institutes of Health several years to fully implement the open access policy it instituted in 2005. UCOLASC should focus on the state legislation because UC already has the repository infrastructure. If UC has an open access policy in place, perhaps it could be exempted from the state legislation. Vice Chair Jacob stated that the revised proposal can come to Council for March and the results of the systemwide review would come back for discussion in July.

Committee members identified the specific issues in the current draft policy that are problematic and should be addressed in the revised draft. Opting out of the deposit will alleviate faculty's fears that the dark archive will not remain dark. Vice Chair Manduchi proposed that UC may want its policy to be aligned with the policies at other universities to restrict UC's use to non-commercial. This should be advertised as a major revision. The personal benefit of the policy for faculty should be emphasized. The goal is to restrict what UC can do with the materials but not what the end user can use them for.

The types of licenses and the pros and cons associated with each type were discussed. The vice chair recommended that the language stating that UC cannot sell the materials for profit should be in the policy. Members agreed upon the intention of the commercial language and Chair Kelty will work on precisely how this will be worded. UCSD would like the policy to be reviewed after three years including a review of its implementation. The license grant has to be broad enough to allow CDL to do what is needed. How late can the waiver be applied and still be legitimate must be determined. The license should allow the CDL to do the maximum of what is needed, but not to do anything commercial with the materials.

VIII. Update on Negotiations with NPG and Other Publishers

- *Ivy Anderson, Director, Collections, CDL*

Director Anderson reported on the negotiations on major contracts. The projections for 2013 indicate a 3% increase based on known contractual commitments and so forth. Projections were made before budget uncertainties like the outcome of proposition 13 were resolved. Director Anderson explained how CDL determines the value of each journal. Some of the publishers with contracts ending this year have been at the lower end or bottom of the value added scale. Director Anderson reported that several publishers have negotiated licenses that accommodated UC's reduced budget. Usage is a factor that CDL utilizes to determine value. Publishers are sensitive to usage at the publishers' site as open access drives down traffic to their sites. The ability to access materials in PubMed Central, for example, drives traffic away from the publishers' sites.

CDL has been conducting a comprehensive analysis of the value added of the journals from one publisher to determine what would be lost if the contract was not renewed. The goal is to preserve the license but to also meet the financial target, although at the end of the day the financial gains may be more important. This publisher will submit a proposed contract to the CDL for consideration next week. It will be an interesting experiment for CDL to consider walking away from a negotiation, although the publishers have a monopoly so there are not alternatives to their journals. If the CDL walks away from negotiations with a publisher, individual campuses will license the materials each needs with the publisher. Director Anderson described what happened when the CDL walked away from the negotiations with a publisher several years ago. In this case, there have been no perceived negative consequences resulting from walking away. CDL is able to tell the publishers which journals UC really wants and how much the university can pay, giving publishers the option to either walk away or to work with the CDL.

Discussion: In the past, there have been varying degrees of faculty support for proposed boycotts against different publishers. A member noted that the costs of the society journals subsidize activities that some believe should be supported by charging higher fees to members. Faculty need to receive the correct message when CDL may walk away from negotiations. Many publishers have noted that UCSF passed its open access policy and know that the system is considering a policy as well. Developments in the U.K related to gold open access are leading some publishers to put robust and active open access programs in place. Publishers are moving much more into service areas to find a new rationale for their business and revenue sources. Publishers want to see movement toward gold open access because they are paid up front. A twelve month embargo may not be preferred by researchers, but it does maintain the subscription base.

VI. New Business

There was no new business.

VII. Executive Session

There was no executive session.

Meeting adjourned at: 4 PM

Minutes prepared by: Brenda Abrams

Attest: Christopher Kelty