

Los Angeles: There are librarians at this campus trained in open access and interested in interacting with faculty. A presentation from various library personnel on eScholarship has been provided and discussions held with the California Digital Library. Many are concerned about the Google settlement. This committee is also involved with monitoring the cancelation of journals.

Merced: The campus is interested in the systemwide digital reference service.

San Francisco: The committee has been dealing with budgetary issues. A floor of the library is being remodeled but much of this has been put on hold because there is no money for the telemedicine bond issue. Future expansion to the Mission Bay campus is planned.

Santa Barbara: This campus has been struggling with budgetary issues and there is no money for an expansion project. The oldest part of the building also needs a seismic retrofit.

IV. Open Access

The Chair asked whether open access should be pursued at the campus level and how faculty can be made aware of the importance of open access.

Discussion: The committee finalized the letter responding to the Conyers Bill and agreed it should be submitted to Council. The three statements drafted about open access were reviewed. There was a discussion about how open access can be concretely defined. The committee agreed that sections of the statement on the dissemination and preservation of scholarship should be merged into the policy and implementation statements. The committee will focus on the implementation steps and create a complete proposal for Council.

Action: The analyst will submit the letter regarding the Conyer's Bill to Council. Members will work on the open access implementation proposal.

V. Consultation with the Office of the President

- *Dan Greenstein, Vice Provost, Academic Information and Strategic Services*
- *Mary Croughan, Chair, Academic Senate*

Vice Provost Greenstein joined the meeting to discuss the Google settlement. In about 2002, Vice Provost Greenstein was the head of the California Digital Library and at that time it was clear that the libraries would run out of space. There was a decision to plan to optimize for physical holdings and only store what would be needed. Service and access to students and faculty who want materials was also a consideration. The question of how digital materials could replace certain documents that were rarely accessed but take up a lot of space, such as federal government document collections. Yahoo initially approached UC about digitizing out of copyright books, which was aligned with UC's long-term goals to manage its collections more effectively, use space better, and increase accessibility. Microsoft became involved and several hundred thousand books were digitized at that phase. Google then offered to digitize books, agreeing to cover all costs, indemnify UC from all the risk, and give UC all the digital copies of everything scanned. This offer was also aligned with UC's goals to improve service and access, and think differently about the long-term cost implications of collection management. Phase one

of the agreement involved Google scanning both in and out of copyright books, making them available on the Google site and giving copies to UC, and indemnifying UC against all lawsuits. Two million books have been scanned by Google to date.

Two years ago a lawsuit was filed by the Authors Guild and the Publishers Association which did not like the fact that Google was scanning copyright works and not making them available but indexing them for the Google search engine. The claim was that making an index of the scanned works is an infringement on copyright. Instead of going to court, these parties went into settlement discussions. UC was brought into discussions with Google and Michigan, Stanford and Harvard libraries, while Google talked to the Authors Guild and the Publishers Association. UC is the biggest stakeholder, but all four libraries have institutional self-interest in seeing this succeed. Michigan for example cannot pay for the conservation of its brittle books whereas UC is interested in collection management.

The settlement discussions have taken place over the past two years under a non-disclosure agreement which is not unusual in negotiations of a commercial nature. The discussions took up to 25 hours per week. The settlement has been shaped by input from higher education and the university libraries. Senate Chair Croughan was added to the non-disclosure agreement about a year ago which allowed her to participate in the discussions. There was a gag order on the discussions which prevented Chair Croughan and others at UCOP from discussing it. UCOP is not a party to the settlement agreement but UC has registered its interests and is a participating library in the settlement in the technical terms of the agreement. The courts will determine whether the settlement will be approved. UC is still in discussions with Google about what the cooperative agreement would look like.

Discussion: It was noted that at one campus there is significant disagreement with the settlement and two library associations have filed objections to the settlement. According to the Vice Provost, as the settlement date of May 5th approached, only a few briefs have been filed and the settlement has received little attention. The Department of Justice is investigating the settlement under the anti-trust statutes. The DOJ case is driven by Internet Access, a small group stating that Google will have a monopoly which the Vice Provost believes is factitious since Google does not own the copyright. A member expressed concern about faculty input on UC's statement of support. The Vice Provost reported that the libraries were consulted and provided with informational materials. The librarians took different approaches to how they reached out and shared the information with faculty at their campuses. A concern is whether this process followed the principles of shared governance and how faculty should be consulted in a situation like this. Chair Croughan indicated that it is difficult to say what should have been put forward for consultation. The use of books, not just the ownership of the books, is a concern of faculty. All of the librarians were named on the non-disclosure agreement and were actively involved in the discussions from the beginning.

The Vice Provost reported that the southern regional library facility will be at capacity in two years, and the question is where any books shipped there will be stored at that time. As a consequence of the settlement UC will hold in its possession every out of copyright work ever scanned by Google. UC will be able to address the space management issue by having control of the digital collection. Rightsholders have bestowed upon Google the rights to use the materials.

For the most part, UC's rights are not impacted. A rightsholder can ask Google to make a work available through open access without charging for it. If interested in selling the work, the rightsholder can take it to someone else who can also make a profit. There is a question of whether other digital publishers will have access to work. Books in the public domain represent about 15% of all published books and these books will be in the hands of UC libraries. Orphaned works are impossible to identify in a way that would satisfy the courts because the copyright holder cannot be determined. Due diligence has to be taken on a one by one basis in determining the copyright holder of orphaned works. A registry of in-copyright works will be developed, and after a period of time it will be clear what works are orphaned. This mechanism will satisfy the court and rights holders will be able to come forward. It is unknown whether Google has rights to orphan works and if the Books Rights Registry represents the final word on orphaned books.

The settlement will have both good and bad aspects. Vice Provost Greenstein believes that if UC had not been involved with it the terms would have been worse. Chair Croughan indicated that having faculty input through UCOLASC moving forward will be extremely helpful. The Vice Provost indicated that Harvard's decision not to go forward has met with disagreement from faculty and remarked that faculty on all UC campuses need to be fully informed about the settlement and issues. Individual faculty have the right to file a brief. Issues that the Vice Provost is dissatisfied with include better access to the public libraries and the uses of the digital copies. The preference would have been language saying that libraries would have been allowed all uses as permitted by copyright law, but instead it gives specific rights.

The agreement is that UC will scan up to five million volumes and Google will return all of these volumes for free plus the public domain. UC will not pay for a limited subscription and UC will have access to all books scanned. UC will get as many books as scanned over the five million. UC will never pay to access anything that is scanned by Google. A member asked about Google's incentive and the Vice Provost indicated that publishing is moving in the direction of digital books and copyright will change. The expectation is that Google will make more available for less. If Google tries to position itself as a monopoly, others vendors will enter the market especially if demand exists. Chair Croughan indicated that UCOLASC can send recommendations that should be monitored or a request to Council requesting more definitive action. Chair Croughan will join the next UCOLASC teleconference. UCOLASC is concerned about whether the non-disclosure agreement violated shared governance and the fact that UCOLASC was not consulted.

Executive Session

Minutes were not taken for this section of the meeting.

Action: Chair Armi will discuss this matter with Chair Croughan before the next teleconference. Members will ask their University Librarians about their outreach to faculty.

V. UCOLASC Priorities for 2009-2010

This item was not discussed.

VI. New Business

Budget

Chair Armi asked if UCOLASC should take some action regarding the budget situation.

Discussion: One of the indirect costs of the budget is the slow decrease of the purchase of books. It is hard to know where the budget is having the worst impact in real time. Faculty need to be aware of what it is losing in terms of resources at the library. The library committee at one campus wrote a letter to the Chancellor stating that the library should have a differential cut since cuts to the library impact faculty. Cuts to the library, especially as they impact acquisitions, may not be recovered in contrast to cuts to faculty and staff. It was noted that budget cuts at Merced will have a different impact since this library is growing.

Mid-May Conference Call

Chair Armi proposed that a second teleconference should be scheduled for mid-May. The issues that will be on the agenda are the open access implementation proposal and what libraries will look like in the future.

Action: The analyst will send out dates for the week of May 11th to 15th for another call.

Meeting adjourned at 12:45
Minutes prepared by Brenda Abrams
Attest: Larry Armi