

UNIVERSITY OF CALIFORNIA  
UNIVERSITY COMMITTEE ON LIBRARY AND SCHOLARLY COMMUNICATION  
ACADEMIC SENATE  
MINUTES OF TELECONFERENCE  
THURSDAY, MAY 14, 2009

**Attending:** Larry Armi, Chair (UCSD), Richard Schneider, Vice Chair (UCSF), Stephen Bondy (UCI), Ignacio Lopez-Calvo (UCM), John Baez (UCR), Shane Butler (UCLA), Cynthia Kaplan (UCSB), Elise Knittle (UCSC), Stefan Tanaka (UCSD), Pam Samuelson (Director, Berkeley Center for Law & Technology, Boalt Hall), Mary Croughan (Academic Senate Chair), Martha Winnacker (Academic Senate Executive Director), Harry Powell (Academic Senate Vice Chair), Brenda Abrams (Policy Analyst)

**I. Consent Calendar**

**Action:** The minutes were approved.

**II. Open Access**

Chair Armi merged sections from the three statements about open access into one memo on implementation of open access at UC.

**Discussion:** The committee provided feedback on the new memo.

**Action:** The committee approved the revised memo.

**III. Google Settlement Background**

- *Martha Winnacker, Executive Director, Academic Senate*

The UCLA representative led the discussion about the Google settlement. The committee's primary focus is on the settlement and determining what actions UCOLASC should take. Members should think about the best outcome and then what steps need to be taken to reach it. It would be undesirable for Google to have a monopoly and for UC to pay for this access for the long-term. There are ways that the settlement can be tweaked to make it more likely that the positive things occur. The Senate could submit a letter to the Court in an effort to influence the settlement in a positive way. Professor Samuelson can help UCOLASC identify the problematic parts of the settlement that should be changed.

**Discussion:** The monopoly issue is a concern. The Hathi Trust is 70% of the Google library. There are limitations to the Hathi Trust including the lack of access and index tools. Hathi Trust members could be given access to member libraries. The nature of the litigation is that the judge cannot do anything for anyone who is not a party to the settlement. The settlement cannot extend copyright to anyone but Google so the Hathi Trust could not have access. There is no incentive for more vendors to be in the market. One member spoke with his University Librarian who indicated that this agreement is not a bad deal and that there is not that much cause for alarm. To avoid price gouging by a Google monopoly, the court would need to retain jurisdiction of the agreement and provide oversight.

Since the plaintiffs are almost exclusively literary authors or publishers the settlement could be modified to require that the book rights registry board include scholars. The case has been litigated as a class action lawsuit but for living authors who are almost exclusively literary authors. Under the terms of class action, however, faculty are part of the lawsuit. Individual faculty could opt out of the agreement, but this is not a practical strategy. The playing field could be dramatically changed if there is orphan rights legislation that allows anyone to publish books. Google should be encouraged to support orphan books legislation.

There should be clearer language to allow authors to authorize distribution by open access. The Senate should make a strong statement about the monopoly, that the book rights registry does not represent scholarly concerns, and recommend court oversight and a different board of directors from what is proposed. Pamela Samuelson could write to the court on behalf of various individual faculty members but not on behalf of the Senate. If the committee could draft a statement in time for the May 27<sup>th</sup> Council meeting it would be sent out for systemwide review, and approved at Council's July meeting. Executive Director Winnacker indicated that it is not clear whether Council can write a letter to the court. The letter could be framed to suggest strategic improvements to the settlement agreement that are not at odds with UCOP's position.

#### **IV. Google Settlement Background**

- *Pamela Samuelson, Richard M. Sherman Distinguished Professor of Law;  
Director, Berkeley Center for Law & Technology, Boalt Hall*

UCLA's representative explained the committee's concerns to Professor Samuelson. The Senate is in a unique position to comment on the settlement. The committee would like to submit a letter to Council that could go to the court expressing reservations to aspects of the settlement and possible strategies to improve it. Professor Samuelson indicated the judge can approve or not approve the settlement. However, the decision is based on what is in the best interests of the class. The Senate would be explaining that its members are authors of books and that the settlement needs to be fair to them as members of the class. The recommendations would improve aspects of the agreement or suggest things that are not currently in the settlement. The judge may decide the recommendations are not relevant or that the recommendations are a concern and the parties should discuss them. The judge will probably want to show that he/she is conscientious and understands the significance of the agreement. The Senate members are more representative of the actual class than the members of the Authors Guild. The parties want the agreement to be approved so if the recommendations are viable, there may be room for leverage.

Professor Samuelson pointed out the things that might be negotiable. One issue is whether Google will facilitate open access. There is a provision in the agreement that allows authors to select the kind of access they want, but the Senate could press for open access and Google may be interested in this. A second issue is the absence of a provision related to user privacy and this could be raised in two ways. Some books are on sensitive subjects and if readers do not have a guarantee that the privacy of what they are reading will be respected they may hesitate to purchase these books. Google has not been hospitable to the privacy issues but in other instances Google has been willing to address privacy concerns while members of the Authors Guild may share concerns about the privacy issues and be willing to take some steps to address these concerns. A third issue is that scholarly authors should be on the book rights registry and a

commitment to this would be a good idea. The court could be asked about the process for creating the book rights registry. Finally more transparent information about the books that are in the public domain and are orphaned should be provided.

Professor Samuelson is willing to assist UCOLASC with drafting an outline for the letter that would be submitted for the May Council meeting. In her view if the settlement is not approved there will be some outcomes that are not good. Some of Google's interests are more closely aligned with the interests of the academic community. Divisional Senate chairs could be asked to schedule some events close to the settlement date to inform faculty and provide information.

**Action:** Professor Samuelson will draft a document outlining possible recommendations to the Court. The document will be finalized by the Senate's Executive Director and the policy analyst.

**V. Consultation with the Academic Senate Office**

- *Mary Croughan, Chair, Academic Senate*
- *Martha Winnacker, Executive Director, Academic Senate*

UCLA's representative provided Chair Croughan and Vice Chair Powell with a brief overview of the Google settlement and the committee's intent to submit a letter to Council that would be filed with the Court.

**Discussion:** Chair Croughan indicated that whether the Council can submit the letter or whether it needs to go through the president needs to be determined. Professor Samuelson explained the recommendations that might be included in the letter to the Court. Chair Croughan suggested emphasizing UC's interest in open access so that UCOP may be more inclined to support the UCOLASC letter. One suggestion is to include a statement about the pricing of subscriptions in the letter. Chair Croughan and Executive Director Winnacker reported on a meeting with Vice Provost Greenstein and the Office of General Counsel. During that meeting, the process of the settlement discussions was explained and indicated the people from UC who participated in the discussions after signing the non-disclosure agreement. Since UC was not a party to the lawsuit, UC was not in a position to dictate who would be involved in the discussions. There are multiple benefits to UC including providing storage for the UC libraries. If the president submits the letter it may be a stronger statement. It was noted that if Google and its partners, including UC, were part of the lawsuit UC may have been given rights.

Meeting adjourned at 3:35

Minutes prepared by Brenda Abrams

Attest: Larry Armi