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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*

May 30, 2013

**SENATE DIVISION CHAIRS
SENATE COMMITTEE CHAIRS**

Dear Colleagues:

As you know, over the past year the Senate has engaged in a thorough systemwide review of a proposal by UCOLASC to adopt an Open Access (OA) policy for the University of California. The Academic Council considered responses by the nine undergraduate divisions, UCAP, UCFW, UCORP and UCBP at its meeting in January 2013. At that time, Council requested that UCOLASC further revise the policy to address division and committee concerns and provide additional information about specific questions. UCOLASC Chair Chris Kely provided a revised proposal, additional information such as lists of publishers that allow green OA, scholarly societies that support OA, and statistics from institutions that have instituted OA policies. In addition, UCOLASC asked Provost Dorr to provide assurances about how UCOP would interpret and support implementation of the policy. In a letter dated May 6, Provost Dorr responded positively to the proposal and addressed the particular funding and implementation questions.

At its meeting on May 22, Council voted to send the revised proposal, associated materials and the provost's letter for expedited final review. I realize that it is a difficult time of year to initiate this process, but I believe it is critical that the same committees that reviewed the earlier version advise on the revised proposal with its supporting material. To that end, I request responses to the review by **July 17**. Please send comments to senatereview@ucop.edu.

Some respondents have questioned why there is no non-commercial use clause in the license grant. Chair Kely has addressed this in the enclosed FAQ. The Provost also specifically states in her letter that UC will not sell or make commercial use of the articles placed in the open access repository and will abide by the wishes of the faculty. In addition, I will seek further advice on this topic from colleagues in the law schools and will forward any opinion I receive to you.

I wish to thank you for your time and the insights you have contributed to improving this proposal and for conducting another review on such a short time line. I also wish to thank UCOLASC for its extraordinary effort and leadership on this issue.

Sincerely,

A handwritten signature in black ink that reads "R. L. Powell". The signature is written in a cursive style with a large, prominent "P" and "L".

Robert L. Powell, Chair
Academic Council

Cc: Martha Winnacker, Senate Executive Director



MAY 09 2013

OFFICE OF THE PROVOST AND EXECUTIVE VICE PRESIDENT

OFFICE OF THE PRESIDENT
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

May 6, 2013

ROBERT L. POWELL
ACADEMIC COUNCIL CHAIR

Dear Bob,

I am writing in response to your April 11 letter on the Council's review of the UC Open Access (OA) policy and requesting a formal statement from UC administration regarding some aspects of the proposed OA policy. I am heartened by the Senate's engagement with this important issue and pleased to partner with you and your colleagues in moving this issue forward. For the sake of clarity, I will address each of the issues that you raise separately, below.

1. **Oversight.** I agree that the UC Open Access Policy will require joint oversight by faculty and the administration, due to the substantial role that UCOP will play in implementing the policy and managing its ongoing administration.

You have requested that UCOP adopt this as a Presidential policy which seems appropriate under Standing Order 100.4 of the By-Laws of the University (Duties of the President of the University) which states:

The President is authorized to develop and implement policies and procedures on matters pertaining to intellectual property, including patents, copyrights, trademarks, and tangible research products, and to execute documents necessary for the administration of intellectual property, including those which may contain commitments existing longer than seven years. The President annually shall report to the Board [of Regents] on matters pertaining to intellectual property.

A Delegation of Authority can be made from the President to the Provost. As the primary stakeholder in the Open Access Policy, the Academic Senate would be consulted, per the policy review process, before any changes could be made to the policy. I furthermore hereby formally agree that implementation of the policy and any future changes to the policy will be done only in consultation with the Academic Senate.

Development of a "Presidential Policy" can take several routes, once the Senate has a final policy to recommend. I would likely work with the Vice President for Research and Graduate Studies, the Vice Provost for Academic Personnel, and the Executive Director of California Digital Library in managing an appropriate review.

2. **Scope of the license grant.** The University of California has no intention of altering, selling, or otherwise using articles for which license has been granted. UCOP and the California Digital Library, as responsible stewards of the articles deposited in the eScholarship repository, will abide by the articulated wishes of the faculty via the Academic Senate to make the articles freely available in eScholarship. They will never sell the content of the repository; that would be contrary to the purpose of the repository.

3. **Improvement of deposit capabilities in eScholarship.** I recognize the importance of enhancing the eScholarship repository's article deposit mechanisms in support of the policy. From conversations with CDL staff, I understand that there are two complementary approaches for achieving this goal: a refinement of the current manual deposit workflow and the establishment of an automated harvesting tool. Both of these approaches need to be designed to minimize faculty time and effort in depositing articles, while still supporting significant levels of systemwide participation in the policy. For the current budget cycle (FY14), I am recommending the allocation of systemwide funds to support a 1-year implementation of a tool that can support robust and efficient deposit and harvesting into eScholarship. The implementation of this tool will begin with three campuses: UCSF (which already has an open access policy) and two other campuses to be determined. The system will be designed in consultation with the faculty on these three campuses and evaluated by faculty participants before being extended to all ten campuses. CDL will also continue to seek advice from UCOLASC as well as SLASIAC during this time. Funding for future years will be determined through normal UCOP budget procedures.
4. **Cost Allocation.** I understand the faculty's concerns about personally bearing the article processing costs (APCs) charged by some open access journals. Although the proposed UC Open Access Policy does not require faculty to publish in open access journals (as stated in the letter from Chris Kelty that you forwarded: "*the proposed policy does not require faculty or the university to pay any fees or charges to publish articles... Faculty members are expected to continue to publish in the journals of their choice*"), it may encourage authors to explore that option, which may in turn lead to more authors paying APCs. At this point, it is impossible to know what it would take to support all of the APCs that may be incurred by faculty systemwide; however, there are a few initiatives underway to help address the changing landscape.

The UC Libraries have long been committed to engaging with all aspects of scholarly communication, including the reform and reining-in of an increasingly economically unsustainable system. An Open Access Publishing fund was launched last year by the UC Libraries to assist authors in covering the cost of APCs levied by some open access publications. The outcomes of this pilot will be assessed, and the sustainability will be evaluated. In addition, the UC Libraries are currently working on an analysis of open access publishing charges that will help to determine what fees are reasonable by discipline. While no article accepted for publication should go unpublished solely due to an author's inability to pay the publication fee, the University cannot promise to cover all fees in every situation. UC librarians have been and will continue to be available to help authors find solutions should this circumstance arise. As you are aware, if a particular publisher will not accept the terms of UC's Open Access Policy, there may be room for compromise. Authors can negotiate an embargo period (before the article is made publicly available) or, if all else fails, authors can opt out of the policy. Assistance will be available at each campus library, and through the eScholarship team, to help individual authors.

It appears to me that the revised draft of the UC Open Access Policy has ably addressed the concerns that were raised during the review by faculty in the fall. I hope that, along with the revised Policy text and annotations, this letter will help allay faculty fears concerning implementation of the Policy.

Academic Council Chair Robert L. Powell

May 6, 2013

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Please let me know if you have any questions or further concerns.

Sincerely,

A handwritten signature in cursive script that reads "Aimée Dorr". The signature is written in black ink and is positioned above the printed name and title.

Aimée Dorr

Provost and Executive Vice President

cc: President Yudof
Vice President Beckwith
Vice Provost Carlson
Executive Director Farley



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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*

April 11, 2013

AIMÉE DORR
PROVOST AND EXECUTIVE VICE PRESIDENT

Dear Aimée:

After an extensive Senate review process, the Academic Council recently considered a proposed policy for increasing open access to scholarly works. The proposed policy would be a collective commitment by the Senate to make their scholarly articles available to the public now and in the future. It would also express the responsibility of individual faculty members concerning the management of their copyrights in scholarly articles. The policy has two components – a default non-exclusive license to the University to exercise copyright rights in faculty members' scholarly articles combined with deposit of the final version of each published article in the eScholarship repository of the CDL. The policy would include a generous opt-out provision and would not impose compliance sanctions. Because members of the faculty own the copyright in their scholarly works, it is essential that such a policy originate in the Senate. At the same time, its implementation would require substantial Administration engagement.

The proposed policy was developed by the University Committee on Libraries and Scholarly Communication in close collaboration with the University Librarians and the California Digital Library and has been broadly reviewed by the Academic Senate.

The Senate response has been generally very favorable to the idea of open access, but predictably has included many requests that the proposed policy be revised for clarification and assurance. The committee has revised the proposed policy to address some of the concerns. However, a number of concerns cannot be resolved without a firm and credible indication that the Office of the President would interpret the policy as the faculty do, and would provide the necessary resources and support (especially to the California Digital Library) to make the policy a reality.

We write now to request a formal statement that would address the following issues and would be circulated with a revised policy in a second round of review:

Oversight

- This policy originates as an Academic Senate Policy but would require joint oversight and a substantial UCOP role for implementation. Faculty thus want assurance that UCOP would

adopt it as a presidential policy, but that its implementation and any changes to the policy itself would be undertaken only in consultation with the Senate, and only on the basis of agreement by both parties.

Scope of the license grant

- The proposed policy rests on the 1992 University Policy on Copyright Ownership, which affirms faculty members' ownership of their copyrights. Thus, the proposed default grant of rights to the University as described in the policy will be made under the explicit assumption that the UC will be a responsible steward of these rights, granting them back to faculty as necessary, and making use of those rights only to the extent covered by this policy. Accordingly, faculty would like assurance that UCOP and CDL will not do anything with the articles other than making them openly and freely available, or granting those rights back to the authors themselves. Specifically, the license grant is made with the understanding that the University will not alter, sell or otherwise use articles for which the license is granted to generate revenue without express permission of the faculty copyright holder.

Implementation and improvement of the eScholarship repository

- For the policy to be effective, faculty authored work must actually be made freely available, and the primary mechanism for this will be CDL's eScholarship repository. Faculty would like assurance that the workflow and burden of making deposits to eScholarship will be eased through technological improvements in CDL's eScholarship repository, including development of an automatic deposit capability for those who wish to use it. Without these improvements, the deposit mechanism is too cumbersome and difficult to support the widespread use that will be essential to achieve the goal of open access.
- The details and estimated costs of these improvements have been spelled out in detail by CDL, and are readily available from them. Faculty would object to imposing these costs on the existing, extremely overtaxed budgets of the libraries.

Cost Allocation

Faculty are aware that publication does not happen for free, but have also come to recognize that its financial costs (not including their own freely contributed labor) are overwhelmingly borne by the libraries in the form of subscription fees for journals. Some publishers have proposed an alternative model that would achieve open access by shifting costs to authors in upfront payments for publication. While the faculty recognizes that the latter model has benefits for dissemination, they fear that they will be asked as individuals to shoulder publication costs that are now borne by institutions.

- Faculty would like UCOP to show a credible commitment to ensuring that the University will create institutional mechanisms at least as robust as library subscription budgets for covering publication costs, so that individual faculty authors are not left on their own to secure funds for publication. Specifically, the faculty would welcome hearing that no peer-reviewed research conducted at UC, regardless of discipline, would ever fail to be published because a faculty member could not afford to do so.

The faculty recognize that there is great uncertainty in the future of the scholarly publishing system, but feel that it is the obligation of the University to ensure that all research, across all disciplines, is adequately and equitably supported.

We will be happy to discuss this request with you at greater length and look forward to receiving a letter that would help reassure the faculty in these matters.

Sincerely,



Robert L. Powell, Chair
Academic Council



Christopher Kelty
UCOLASC Chair

Cc: Academic Council
Martha Winnacker, Senate Executive Director

Encl.

Revised Draft of Proposed Open Access Policy for the University of California; Version of 3/20/13 *with annotations and differences.*

Preamble¹

The Faculty of the University of California is committed to disseminating its research and scholarship as widely as possible. In particular, as part of a public university system, the Faculty is dedicated to making its scholarship available to the people of California. **Furthermore, the Faculty recognizes the benefits that accrue to themselves as individual scholars and to the scholarly enterprise from such wide dissemination, including greater recognition, more thorough review, consideration and critique, and a general increase in scientific, scholarly and critical knowledge. Faculty further recognize that by this policy, and with the assistance of the University, they can more easily and collectively reserve rights that might otherwise be signed away, often unnecessarily, in agreements with publishers.** In keeping with ~~this commitment to open dissemination and public access~~ **these facts, and for the primary purpose of making our scholarly articles widely and freely accessible,** the Faculty adopts the following policy:²

Grant of License and Limitations

Each Faculty member grants to the University of California a nonexclusive, irrevocable, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, and to authorize others to do the same.³ **Faculty members grant this license for the purpose**

¹ Section headings have been added to make the policy easier to navigate.

² The preamble has been expanded to include a clearer statement of the intended benefits of this policy: 1) to make our work more accessible; 2) to accrue the individual benefits, such as increased citation and re-use by other scholars; and 3) to collectively reserve broad rights by entrusting the University to hold them on our behalf. The preamble is also intended to communicate that the primary purpose of this action is to make our work freely available, and not for any commercial advantage or use that the University might want to consider, whether beneficial or not (see also notes 3-5 below).

³ This license grant has two functions: 1) to preserve the rights that faculty might want to use *in their own articles* by systematically granting those rights to the university, who may grant them back to us as needed (this is the purpose of the phrase “and to authorize others to do the same”); and 2) to enable the University to make our articles available to those who would use them (i.e. readers of our articles). Faculty have an incentive to make this grant as broad as possible so as to preserve as many rights as possible—any restriction on this grant simply means that those rights will go to the publisher instead. However, it is clear that faculty members do not intend UCOP to make unapproved and systematic use of the articles (especially commercial ones), and that restriction is stated after the license grant (see notes 4-5 below). By granting broad rights to the University, we also allow faculty to individually choose (at the point of

of making their articles widely and freely available in an open access repository and so that the University can grant these rights back to the author.⁴ Any other systematic uses of the licensed articles by the University of California must be approved by the Academic Senate.⁵ This policy does not transfer copyright ownership, which remains with Faculty authors under existing University of California policy.⁶

Scope and Waiver (Opt-Out)

The policy applies to all scholarly articles authored or co-authored while the person is a member of the Faculty except for any articles published before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. ~~This policy does not transfer copyright ownership, which remains with Faculty authors under existing University of California policy. Application of the license will be waived.~~ **Upon express direction by a Faculty member, the University of California will waive the license** for a particular article or ~~access~~ **delay access to the article** for a specified period of time.⁷

deposit) to direct UCOP which rights will be passed on to other users. Although it cannot be specified in the text of the policy itself, the **default** license used by eScholarship will be a non-commercial license (CC-by-NC). But by preserving this broad license grant, faculty may also choose to make other commercial uses of their own works—such as republishing them, excerpting them, or collecting them in an edited volume for sale.

⁴ This sentence clarifies the intention of the license grant by spelling out what uses the Senate authorizes CDL to make of the articles, namely, to make them freely available, and to grant back to the Author the rights granted to the University. However, the language cannot be so restrictive that it contradicts the license grant and invalidates the policy. Rather, the design of the policy is such that the Senate is expected to maintain oversight of what the license grant is used for, and in the case that faculty object, to review or ultimately rescind the policy.

⁵ This sentence clarifies that any other systematic uses (that is, uses made of all of the articles as a whole, not any particular article) is subject to restriction by the Senate. The intention is to disallow any other uses unless approved by the Senate.

⁶ The 1992 UC Copyright Policy clearly states that Faculty retain their copyrights in scholarly works, and this policy does not change that; further the license grant above, being nonexclusive, does not constitute a transfer of copyright to the University of California.

⁷ This sentence has been rewritten to more clearly express that it is the Faculty member who will direct the University to waive the license (not the University or the publisher). The waiver itself (also known as the “opt-out” clause) has not been revised here and applies only to the license, not to the policy as a whole. To obtain a waiver requires only that faculty communicate their intention to do so; no one must grant permission or otherwise negotiate to waive the license. This waiver is separate from the deposit

Deposit of Articles

To assist the University in disseminating and archiving the articles, **Faculty commit to helping the University obtain copies of the articles.**⁸ Specifically, each Faculty member **who does not permanently waive the license above** will provide an electronic copy of his or her final version of the article to the University of California by the date of its publication,⁹ **for inclusion in an open access repository.**¹⁰ ~~The University of California will make the article available in an open access repository.~~ When appropriate, a Faculty member may instead notify the University of California if the article will be freely available in another repository or as an open-access publication.¹¹ **Faculty members who have permanently waived the license reserve the right to deposit a copy with the University of California or elsewhere for archival purposes.**¹²

obligation, but as should be clear from the following paragraph, the deposit obligation in this version clearly applies only to those people who DO NOT opt out of the license.

⁸ This added line states generally that faculty will hereby commit to helping the University of California make their work more available, and to indicate that it is the responsibility of both parties to do so.

⁹ Faculty members are expected to deposit the final version at the time of publication of the official version, to the extent practicable. If they have opted to delay access (e.g. for 6 months, 12 months or even longer), they may deposit the article either at the time of publication (with the understood requirement that CDL will only make it available when the embargo period is over), or at the time at which the embargo period expires.

¹⁰ This sentence states the obligation by Faculty to deposit a copy of their final version of the article by the date of its publication. This obligation applies to all faculty **who DO NOT** opt out of the license in the preceding paragraph. If a faculty member prefers not to deposit for any reason, he or she can do so by waiving the above license, which can be done by simply visiting the eScholarship site and communicating the title of the article and name of the journal. The sentence also declares again that the purpose of this deposit is to make the work available in an open access repository, and not for any other purpose.

¹¹ Publication in an open access journal, or deposition in another open access repository satisfies the deposit obligation under this policy. If research is covered by another mandate, or a faculty member chooses to publish in open access journals, it is not necessary to also deposit an article in eScholarship, though eScholarship may still display the meta-data and permanent location of the article.

¹² This sentence clarifies that even if a faculty member opts out of the license, he or she may still deposit a copy in eScholarship or elsewhere, even though no longer obligated to. This line is important in indicating to publishers that the faculty member is not hereby relinquishing the right to keep an archival copy of his or her articles.

Notwithstanding the above, this policy does not in any way prescribe or limit the venue of publication. This policy neither requires nor prohibits the payment of fees or publication costs by authors.¹³

Oversight of Policy

The Academic Senate and the University of California will be **jointly** responsible for implementing this policy, resolving disputes concerning its interpretation and application, and recommending any changes to the Faculty. **Any changes to the text of this policy will require approval by both the Academic Senate and the University of California.**¹⁴ The Academic Senate and the University of California will review the policy within three years, and present a report to the Faculty **and the University of California.**

The Faculty calls upon the Academic Senate and the University of California to develop and monitor mechanisms that would render implementation and compliance with the policy as convenient for the Faculty as possible.

¹³ This sentence clarifies that the choice of where to publish is not in any way limited by this policy, and remains the responsibility of the author and his or her co-authors. Furthermore, the policy only requires that an *additional copy* of an article be deposited, and does not in any way require or even encourage a faculty member to pay to publish the original article in an open access journal.

¹⁴ This sentence further asserts the intention of the Academic Senate to oversee the policy jointly with the University of California, and to ensure that changes cannot be made unilaterally by either party.

Definitions and Notes:

“University of California”: Throughout the policy “University of California” refers to the University of California Office of the President, the system wide administrative body responsible for the operation of the University. Practically speaking, the primary entity responsible for implementing this policy is the California Digital Library. CDL is co-funded by UCOP and the ten campus libraries.

“Academic Senate”: Through the policy “Academic Senate” refers to the system-wide faculty Senate, which is composed of senate representatives from all of the campus divisions. Practically speaking, the relevant committees that would oversee this policy include the Academic Council, the University Committee on Library and Scholarly Communication, and the University Committee on Research Policy, and other system-wide committees as necessary.

“scholarly articles”: the term is intended to mean published, peer-reviewed research articles. However, the least restrictive term available is preferred. Any greater precision of the term tends to exclude one discipline or practice; for example, to say “scholarly journal articles” might exclude those who publish in edited volumes; to say “peer-reviewed scholarly articles” might exclude law reviews (reviewed by students) or those reviewed by editorial collectives; etc.

“co-authored”: Current copyright law gives all co-authors equal rights in a publication; even if one author objects to making a work openly available (or not), the co-authors still retain the right to do so. There is no conflict if two different universities (or funders) require one or another author to make a work open access.

“access delayed”: Also known as an “embargo” – this term refers to the length of time after publication that an article will remain inaccessible. Most publishers who demand waivers in order to publish are actually satisfied with a temporary delay of access (usually 6-12 months).

“final version”: In this policy, final version is taken to mean (at minimum) the post-peer review, revised and copy-edited version of a paper, but not necessarily the typeset publisher's copy (unless allowed by the publisher, which CDL will help to determine). Faculty members are expected to deposit the final version at the time of publication of the official version, to the extent practicable. If they have opted to delay access (e.g. for 6 months, 12 months or even longer), they may deposit the article either at the time of publication (with the understood requirement that CDL will only make it available when the embargo period is over), or at the time at which the embargo period expires.

A note on the scope of this policy

This is an Academic Senate Policy; should it be approved, it will apply to all Senate Faculty (also known as “ladder” faculty) throughout the UC system. If it is subsequently adopted by the Office of the President as a presidential policy, it will presumably apply to all academic personnel as defined in the APM; however, that designation of scope is the prerogative of the Office of the president, not the Faculty Senate.

What are creative commons licenses and how are they used?

To make our articles available for any use other than reading on a screen (copying, printing, use in a classroom, inclusion in a course reserve or course reader, and so on), eScholarship must indicate what license rights are given to the end-user of the article. The standard licenses for this purpose are the Creative Commons licenses (creativecommons.org), which very clearly indicate what can be legally done with an article. All Creative Commons licenses that eScholarship uses require attribution. The default license restricts end-users from making “commercial” use of an article. Faculty may remove this restriction if they wish and choose a CC-by license (“attribution only”).

Differences of this policy from existing and proposed federal and state legislation

The proposed policy reserves a non-exclusive right for authors by granting it to our employer on the understanding that they will use those rights to make our articles available (*immediately*, or after a delay designated by the author) and also enable authors to make other uses of these works, by granting those rights back to the authors.

Existing federal legislation (the NIH Public Access Act) does not preserve such rights, but only requires that NIH-funded research articles are made publicly accessible 12 months after the date of publication, via the PubMed repository.

Proposed legislation in Congress (the FASTR Act), and a directive from the White House Office of Science and Technology Policy mirror the NIH Public Access legislation. FASTR would extend the requirement to all federal funders with budgets over \$100 million, and would require deposit 6 months after publication. The OSTP directive applies to the same agencies and recommends 12 months, but leaves it in the hands of the agencies to develop the ultimate policy.

The proposed state legislation (AB 609) is nearly identical to the Federal FASTR act, but is intended to cover only state-funded research (and is not intended to apply to all state employees in the University systems)

The proposed UC policy would cover all faculty, but allow individuals to opt out; federal and state legislation only covers those who receive federal or state funds, and does not allow opt-out.

The proposed UC policy clearly defines what legal rights authors will retain, and the implementation would clearly communicate those rights; the federal and state legislation use the term “public access” but do not define what rights are included when a work is made publicly accessible. The CA legislation may include a specification that the works be made available for commercial use, but as of 3/20/2013, it has not been amended.

If both the UC policy and the federal or state legislation were passed, compliance with the federal legislation would also satisfy the UC policy (authors would not have to deposit twice—but would retain greater rights than under the federal legislation alone).

Although the systems are compatible, the UC policy is preferable for faculty on several counts: it allows opt out, it clearly specifies the rights reserved, and it covers all research, not just federally funded research.

Differences of this policy from the UCSF policy adopted May 21, 2012.

The UCSF policy does not grant as broad a set of rights, because it restricts the use of the articles by the phrase “provided they are not sold” to the license grant. The intention of this language is that it prevent UC from selling the articles; the actual effect is that it restricts all subsequent uses of the articles (for instance, the subsequent inclusion of an article in an edited volume). The proposed policy would preserve broader rights, but attempts to limit any systematic use of the articles by UC other than making them freely available; furthermore it leaves the choice of such restrictions (commercial/non-commercial uses) in the hands of the authors rather than dictating acceptable uses in the policy.

The UCSF policy requires deposit even in the case of opting out from the license. The revised policy proposed here only obligates deposit by those who do not opt out of the license.

Revised Draft of Proposed Open Access Policy for the University of California; Version of 3/20/13.

Preamble

The Faculty of the University of California is committed to disseminating its research and scholarship as widely as possible. In particular, as part of a public university system, the Faculty is dedicated to making its scholarship available to the people of California. Furthermore, the Faculty recognizes the benefits that accrue to themselves as individual scholars and to the scholarly enterprise from such wide dissemination, including greater recognition, more thorough review, consideration and critique, and a general increase in scientific, scholarly and critical knowledge. Faculty further recognize that by this policy, and with the assistance of the University, they can more easily and collectively reserve rights that might otherwise be signed away, often unnecessarily, in agreements with publishers. In keeping with these facts, and for the primary purpose of making our scholarly articles widely and freely accessible, the Faculty adopts the following policy:

Grant of License and Limitations

Each Faculty member grants to the University of California a nonexclusive, irrevocable, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, and to authorize others to do the same. Faculty members grant this license for the purpose of making their articles widely and freely available in an open access repository and so that the University can grant these rights back to the author. Any other systematic uses of the licensed articles by the University of California must be approved by the Academic Senate. This policy does not transfer copyright ownership, which remains with Faculty authors under existing University of California policy.

Scope and Waiver (Opt-Out)

The policy applies to all scholarly articles authored or co-authored while the person is a member of the Faculty except for any articles published before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. Upon express direction by a Faculty member, the University of California will waive the license for a particular article or delay access to the article for a specified period of time.

Deposit of Articles

To assist the University in disseminating and archiving the articles, Faculty commit to helping the University obtain copies of the articles. Specifically, each Faculty member who does not permanently waive the license above will provide an electronic copy of his or her final version of the article to the University of California by the date of its publication, for inclusion in an open access

repository. When appropriate, a Faculty member may instead notify the University of California if the article will be freely available in another repository or as an open-access publication. Faculty members who have permanently waived the license reserve the right to deposit a copy with the University of California or elsewhere for archival purposes.

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The Faculty calls upon the Academic Senate and the University of California to develop and monitor mechanisms that would render implementation and compliance with the policy as convenient for the Faculty as possible.

Proposed UC Open Access Policy: Questions and Concerns July 2012

This document lists the most commonly expressed questions and concerns about a proposed open access policy for the University of California. Concerns and questions were submitted by the Library and COLASC committees of all ten campuses, The California Digital Library, the University Council of Librarians, several Graduate Student Associations, the Library Association of the University of California, as well as the University Committee on Academic Personnel (UCAP) and the University Committee on Research Policy (UCORP), the University Committee on Academic Freedom (UCAF) and the University Committee on Faculty Welfare (UCFW), as well as many faculty members on each campus polled via town-halls, surveys and on-line discussions between Dec 2011 and July 2012.

Additional questions not addressed here can be found on the Reshaping Communication Website (<http://osc.universityofcalifornia.edu/openaccesspolicy/>)

Academic Freedom/Waiver of license

Issues of academic freedom are the most commonly expressed concerns about an open access policy. Many, if not all of these concerns, are answered by the fact that the proposed policy has an *extremely generous opt-out clause*. Scholars may opt out for whatever reason: if they disagree with the policy, or want to support subscription access, or co-author with others who disagree with it, or want to retain full control over their own copyright, or are asked to by a publisher, etc. Thus the policy balances the need for academic freedom with the need for greater access to research. The disadvantage, of course, is that it allows publishers to abuse the opt-out clause by routinely demanding opt-out waivers in order to publish. But from the perspective of achieving more open access, a policy with an opt-out clause is preferable to no policy at all.

Commercial use and Reuse

The proposed policy limits the use that UC may make of our scholarly articles to depositing them in an open access repository. Other uses (such as republication or resale by UC) are not authorized by the policy. However, the policy does not restrict the uses that *end-users* may make of these articles. In effect, it requires that articles by default be released under a Creative Commons Attribution license (CC-by), a form of license that requires attribution but does not restrict the use, commercial or otherwise, that may be made of these articles. Many faculty have insisted that open access versions of articles must be restricted to non-commercial uses only. The expressed intention in most cases is to protect our work from unscrupulous commercial re-use. In practice, the only legal way to attempt this (a so-called “non-commercial” restriction on the license used to redistribute the work) may also drastically restrict *legitimate* commercial reuses, such as republication of the work in another scholarly volume, re-use in a course reader, print republication in a foreign country, text mining, etc. It is also not clear that unscrupulous uses can be so prevented—fraud and plagiarism are not forestalled by copyright license restrictions. Furthermore, a more “open” license also introduces more, rather than less, competition into the scholarly publishing marketplace, something that is desperately needed in an industry that currently operates largely in secrecy and with little overt competition.

Deposit Requirement

Another concern occasionally raised about the policy is the requirement to provide a copy of each article for deposit in eScholarship. This concern takes two forms. The first concerns the extra amount of work it will require of faculty; the second concerns the lack of ability to opt out of this requirement (the opt-out waiver applies only to the license requirement). While it is undeniable that this requirement makes work for faculty in an absolute sense, it is not clear whether that work is onerous. In fact, it may well have extensive benefits for faculty. In practical terms, the amount of work required is extremely small—far less work, for instance, than submitting an article to a manuscript management system for a journal. Some of the deposit of articles may be automated; eScholarship can find and deposit some articles on behalf of faculty, requiring only a simple email response agreeing to the action, some articles (those that are already open access) may require no action at all. For those that do require deposit, the process can be streamlined to the point where it requires only a simple upload and verification of basic data.

Deposit benefits faculty in the discoverability of their research—the more accessible, and the better the metadata about an article, the more likely it will be found in a search or linked to by other sources, improving the impact of the research. In addition, because eScholarship is designed to function as an archive, it also provides faculty with a permanent place to store and retrieve all articles, for any purpose—from promotion and tenure, to requests for articles, to use as a backup personal archive.

The obligation to make our work available is paramount, and the proposed policy has no simple opt-out clause as in the case of the license. Allowing opt-out from deposit would have the unfortunate effect of giving publishers the power to demand even more rights (including the right to archive the work) which many faculty members do not want to give up. In the case where there are concerns about the use of previously copyrighted materials (images, graphs, passages requiring permission, etc), those concerns can be dealt with in the implementation of the deposit process itself.

Definitions: “scholarly article” and “final version”

Some have expressed concern about the definition of the terms “scholarly article” and “final version.” In both cases, the language has been chosen for two reasons. First, because it is strategically “vague” meaning that the definition of “scholarly articles” and “final version” is not specified in the text of the policy itself, but in the implementation and oversight of the policy. It will be easier to create a FAQ and an interface in the deposit process that explains what kinds of materials are covered by the policy and where the limitations might be, than it is to do the same in the policy language itself. The more tightly worded a policy is, the more exceptions it creates, and so the option has been to use this wording. The second reason is that this is the same language that nearly all of the other existing scholarly policies use, and so in preference for compatibility with other universities and publishers, the proposed policy retains these terms as well.

Faculty Oversight and Review

A final concern often expressed is that this policy will require clear *faculty* oversight and review. The policy thus requires oversight by both the Academic Senate and the UC Office of the President. In practice, oversight has been and will continue to be the primary responsibility of UCOLASC and the California Digital Library, who historically have worked very closely with each other and are in frequent consultation on issues regarding scholarly communication. The policy sets a limit of three years within which these two entities must report on the policy to the Faculty.

Other Issues

Many other concerns have been raised which are valid, but which would not in fact be at issue if this policy were passed. These include:

Copyright transfer to the University

- The policy does not transfer copyright to the university, only a very limited non-exclusive license.

Peer review concerns

- The proposed policy assumes no change in the current system of peer review.
- Further, open Access has no effect on how peer review is conducted. The quality of a journal and its peer review is independent of whether it is distributed freely or not, and under this policy, faculty are not required to publish in OA journals—they may and must continue to publish in the most appropriate venue.

Faculty (or students) should not be limited in where to publish

- Although we might want to encourage publication in OA venues, this policy makes no requirements on where to publish; there is no expectation or requirement to publish articles in open access venues, only that UC will have the right to make a version available in eScholarship.

Additional questions not addressed here can be found on the Reshaping Communication Website (<http://osc.universityofcalifornia.edu/openaccesspolicy/>)