January 8, 2013

Robert Powell
Chair, Academic Council

Re: Proposed Open Access Policy

Dear Bob,

Thank you for the opportunity to review and opine upon the UCOLASC’s proposed Open Access Policy. Upon receipt, I invited all Senate Committees to opine, and specifically requested responses from the Council on Academic Personnel (CAP), the Committee on Library and Scholarly Communications (COLASC), Academic Freedom (AF), the Council on Research (COR), the Council on Planning and Budget (CPB), the Committee on Teaching (COT), and all Faculty Executive Committees (FECs). We also sponsored two campus-wide meetings on the matter, co-sponsored with our library, in order to best inform our faculty. The Executive Board, which speaks for the division on such matters, reviewed all responses. This letter serves as the Executive Board’s response.

On balance, the Executive Board supports the proposed Open Access Policy. We appreciate that this effort is part of the strategies to address issues challenging scholarly publishing, including accessibility and visibility of our scholarly work. During our discussion, several concerns were expressed that require further consideration and perhaps, alteration of the policy to clarify the implementation process. However, we recognize that a policy must be in place before these can be addressed. Concerns about breadth of license rights and details in the policy implementation about what UC can do with these works must be addressed. The policy needs to be explicit that faculty will have the right to choose how restrictive a license will be applied to an open access copy. The Executive Board noted that UCSF, in addition to over 140 other universities, does have a policy in place. Concerns were expressed about the level of funding necessary to support implementation of the policy. As AF noted, some publishers have allowed open access only after a fee is paid. We would urge the Academic Council to seek funds from UCOP as part of this policy so that there is a plan in place if funding required for publication continues to increase. We have detailed some additional concerns below:

1. **Implementation.** As COR indicated, the proposal leaves “responsibility for uploading scholarly publications … to UC faculty authors, which represents an extra (potentially labor-intensive) burden for UC faculty.” Funds will be needed to support this aspect of the policy.

2. **Scholarly Articles.** Some members were concerned that the phrase be better defined in the document. The School of Engineering FEC, for example, gave the hypothetical example of a professor who did not believe an article was scholarly and did not therefore opt out and presumes full copyright. How would her copyrights be protected? There continued to be confusion as to the definition of “scholarly” articles. As written, it is overly vague and subject to wide interpretations. Perhaps, this meaning can be more precise in the implementation phase.

3. **Other Creative Works.** The School of Engineering FEC also raised a question that requires further clarification. “Depending on the discipline, the creative output of a UC faculty member could include novels, non-fiction books, musical compositions…. All of these works fall under US copyright law. The OAP does not explain the logic behind
altering the copyrights of a subset of faculty whose primary output is scholarly research articles.” Although these concerns were echoed by the School of Arts and Architecture FEC, which requested “the authors of the policy acknowledge that intellectual property issues are different for faculty in the arts versus faculty in the sciences, where placement of the work is frequently part of the intellectual and aesthetic vision,” in fact, the Executive Board notes that they can opt out of the policy.

4. **Co-authors.** Many committees (COR, Engineering FEC, The College FEC), raised the question about co-authored works. However, as we understand it copyright law says that every co-author has the same rights over an article as all others. Thus, any author on a paper who is covered by an OA policy would have the obligation to make it OA, or opt-out. Regardless of the policy, they would still have the legal right to do so. This policy can not affect their rights as this is copyright law.

5. **Opt-in vs. Opt-out.** The School of Theater, Film, and Television FEC opposed the policy but would support it if the “opt-out” policy was amended to be an “opt-in” policy. The Executive Board was not persuaded that an “opt-in” policy would achieve the goals of the policy, but does believe that further clarification on the matter is required.

Thank you again for the opportunity to review this important matter. I look forward to discussing this with you in Academic Council.

Sincerely,

Linda Sarna
Chair, Academic Senate

Cc: Martha Kendall Winnacker, Executive Director, Academic Senate
Jaime R. Balboa, Chief Administrative Officer, UCLA Academic Senate