May 10, 2007

Professor John Oakley
Chair of the Academic Senate
1111 Franklin Street, 12th Floor
Oakland, CA 94607

In Re: Proposed Open Access Policy

Dear John,

Thank you for the opportunity to opine upon the Proposed Open Access Policy. Upon receipt of the proposal, I sent it to all standing committees of the Academic Senate and all Faculty Executive Committees, with the specific request that the Committee on Library and Scholarly Communications (COLSC), the Council on Research, the Committee on Academic Freedom, and the Executive Board opine. Of the individual FECs, the Anderson School of Management had particular reservations about the policy as currently articulated. The Senate committees were generally supportive of the proposal, however, the majority opined that the proposal needs further refinements before it should be endorsed. Only the Committee on Academic Freedom endorsed the proposal as written. The dominant UCLA response is a lack of support for the the policy as written. Please allow me to explain.

- Both the Executive Board and the Committee on Library and Scholarly Communications (COLSC) were concerned with the ‘opt out’ language. As COLSC wrote, “The implementation of this policy poses a variety of problems, which have not been sufficiently addressed. We are particularly concerned about the suggested ‘Opt Out’ policy, as the merits and procedural mechanisms for the three proposed options are not stated with sufficient clarity. There was some skepticism about the need of an ‘Opt Out’ policy that establishes electronic distribution and storage of research produced by UC faculty as a protected default. Why has an ‘Opt In’ policy not been a considered? This might be advisable as a first step, for a few years, until faculty become better acquainted with the merits of the system, and perhaps less resistant to accepting an ‘Opt Out’ policy.”

- The Council on Research noted that “in summary, while there are some negative issues which must be considered, the benefits of this Open Access Policy,
for the most part, do appear to be meritorious. Nevertheless, it is the Council’s belief that if there is a way to structure the new policy to place more of an administrative burden on the publisher and less on the UC faculty, such an option should be seriously considered as an alternative to the current proposed policy.”

- Members of the Anderson School of Management FEC wanted more context provided: Will the UC stand alone in this position or is there precedent for it? One member indicated concern that faculty were actually giving up rights under the proposal. Still another raised questions regarding the Opt Out policy and if it was sufficient protection for faculty who might otherwise be caught “between a rock and a hard space.”

I am attaching the responses from COR and COLSC for further consideration. The Anderson FEC response was in the form of an email with questions which are articulated in the bullet point above. The Committee on Academic Freedom also indicated its support in an email without further comment. I will therefore not attach their responses.

Please do not hesitate to contact me should you have any questions.

Regards,

Vivek Shetty
Senate Chair
UCLA Division

Cc: María Bertero-Barceló, Systemwide Academic Senate Executive Director
    Jaime R. Balboa, CAO UCLA Academic Senate
DATE: May 7, 2007

TO: Vivek Shetty, Chair, Academic Senate

FROM: Council on Research Meeting May 4, 2007

RE: UC Proposed Open Access Policy

UCLA’s Council on Research (COR) discussed the above-entitled action item during their May 4, 2007 meeting. Based upon Rory Hume’s request, a comprehensive review was conducted by a working group for the Proposed Open Access Policy and resulted in the creation of the document entitled “UC Open Access Policy” which in effect would enable open access to journal articles and conference proceedings authored by UC faculty. This policy was approved at the Systemwide Academic Assembly on May 10th, 2006, in the form of the “UC Faculty Scholarly Work Copyright Rights Policy” proposal. This proposal was initiated by the Academic Council’s Special Committee on Scholarly Communication (SCSC). The spirit behind the policy would support the dissemination of knowledge produced by UC faculty to the local and international communities. In essence, this policy would grant a license to the Regents to make journal articles and conference proceedings accessible to the broader scholarly community.

The benefits for faculty are that their work would be widely disseminated, thus maximizing scholarship of UC faculty, which is in line with the UC’s mission of education and research. By granting to the Regents of UC a “limited, irrevocable, perpetual, worldwide and non-exclusive license to place in a non-commercial open-access online repository the faculty members scholarly work published in a scholarly journal or conference proceedings”, faculty can retain a number of copyright rights which may have previously been signed over to a publisher. It would serve to encourage faculty to retain their individual copyright; thus enabling them to use and develop their works without restrictions, while granting publishers non-exclusive and limited use of these works. Support structures provide sample publication agreement contracts and staff who would facilitate this Open Policy for the faculty member in a timely manner. While the timeliness of this mechanism remains to be seen, the time limitations for negotiation would be helpful so that faculty will not be delayed in publishing their work.

Negative aspects of the policy, from a faculty member perspective, may include the sense of “Big Brother” mentality by some or the possibility of increasing regulation by UC over time. Certainly, for some faculty, anxiety over any demands placed on publishers may be concerning. The proposed policy does contain an “opt-out” option for faculty who do not or cannot retain the required license when granting the copyright in their work to a publisher. In the current draft, there are three opt-out possibilities: Option A, Option B, and Option C. Of these three options,
Options A and B seem to involve a high level of administrative burden for faculty seeking to publish their work. Both Option A and B require faculty to consult with a “UC Open Access Agent” as part of the opt-out process. It is possible that, over time, this process of consulting with a “UC Open Access Agent” would become routine and painless. However, given how little attention most faculty currently devote to the copyright implications of publishing their work it is COR’s sense that any policy requiring coordination with University officials is likely to be perceived by most faculty as imposing significant new administrative burdens. “Option C” seems to be the most faculty-friendly opt-out provision in that it requires only that faculty notify the “UC Open Access Agent” of his or her decision to opt-out. If this policy is to be adopted, it is COR’s suggestion that Option C be included as the preferred opt-out provision.

The Council on Research would like to emphasize that the proposed policy represents a significant departure from current practice. While the ideas underlying the proposed policy are commendable, it is doubtful that many faculty give much thought or consideration to the copyright implications of publishing their work in scholarly journals or conference proceedings. It is likely that the main objective of most faculty is to publish their work in the most prestigious journal possible. The copyright implications of publishing their work are a minor detail in that process. The proposed Open Access policy has the potential of imposing significant new burdens on faculty attempting to publish their scholarly work. The proposed policy requires faculty to retain in any publication agreement the right to grant a license to the University for purposes of placing the work in an online repository. If the faculty member fails to do this, she will presumably be considered to be in breach of University policy. Moreover, the proposed policy indicates that a faculty member’s compliance with this policy will be considered by Academic Personnel Committees in connection with merit or promotion reviews. It is the belief of COR that this is a rather severe departure from current practice and one which is not necessarily in the best interests of the faculty. The Council on Research suggests the elimination of this provision.

In summary, while there are some negative issues which must be considered, the benefits of this Open Access Policy, for the most part, do appear to be meritorious. Nevertheless, it is the Council’s belief that if there is a way to structure the new policy to place more of an administrative burden on the publisher and less on the UC faculty, such an option should be seriously considered as an alternative to the current proposed policy.

Sincerely,

Ajit K. Mal, PhD
Chair, UCLA Council on Research
DATE: May 7, 2007
TO: Vivek Shetty, Chair, Academic Senate
FROM: Claudia Rapp, Chair, Committee on Library
RE: UC Proposed Open Access Policy

The COL at UCLA has discussed the proposed Open Access Policy at its meetings on March 21 and April 23, but has not found itself in a position to express its informed consent to the policy as currently proposed.

We do, however, enthusiastically welcome the initiative of the UC leadership and the working group to address the root of an endemic problem with many ramifications: how to counteract the detrimental effect of the ever-increasing pricing policies of for-profit publishers? The solution that is being proposed aims to establish mechanisms to ensure that faculty members, who produce the content, also retain means of preserving copyright.

We are also grateful for the guidance offered by Library staff in educating faculty members on their options for retaining copyright for their work, and note with pride that the UCLA Library has been a leader within the UC system in offering a series of workshops to educate faculty. Despite these efforts, the awareness of faculty members of their current options to preserve copyright remains too low, in our estimation, to guarantee the successful implementation of the proposed policy at this time.

The implementation of this policy poses a variety of problems, which have not been sufficiently addressed. We are particularly concerned about the suggested “Opt Out” policy, as the merits and procedural mechanisms for the three proposed options are not stated with sufficient clarity. There was some skepticism about the need of an “Opt Out” policy that establishes electronic distribution and storage of research produced by UC faculty as a protected default. Why has there not been a consideration of an “Opt In” policy? This might be advisable as a first step, for a few years, until faculty has become better acquainted with the merits of the system, and perhaps less resistant to accepting an “Opt Out” policy.

We are also concerned about the additional burden that the policy (as currently proposed) would place on faculty members, in having to justify at each promotion what choices they made with regard to their copyright of published work.
In short, while we welcome the efforts that have been made in drafting the Open Access Policy and are wholeheartedly in agreement about the need for such a policy, we are not at this moment satisfied with the modalities suggested for its implementation and await further clarification.

Sincerely,

Claudia Rapp
Chair, Committee on Library