



## COMMITTEE ON ACADEMIC FREEDOM

Stuart Gansky DrPH, Chair

## Annual Report 2005-2006

The Committee on Academic Freedom (CAF) enjoyed a productive year during which it met nine times. The Committee was represented on the University Committee on Academic Freedom (UCAF) by Mark Eisner, MD. The major issues reviewed and acted on by the Committee during 2005-2006 are summarized in this report.

*UCSF Cancer Center Protocol Review Committee*

At the transition meeting, Senate Chair Greenspan asked if the Cancer Center Protocol Review Committee (PRC) had implemented CAF's 2004 recommendations. During follow-up with PRC we discovered that the PRC never received the transmittal. In 2004, Chair Eisner forwarded the final report to then Academic Senate Chair Leonard Zegans in February, 2004 for further consideration and action. Thus, Chair Gansky sent a formal communication to the Cancer Center and the original complainant transmitting the Committee's 2004 report. In recent meetings, Chair Gansky recommended that the Committee adopt a policy to be more responsive to the original grievance filer. CAF should take steps to ensure that the filer is kept apprised of the progress of the investigations periodically.

*American Chemical Society Lobbies Congress to Shut Down PubChem*

The American Chemical Society (ACS) lobbied Congress to shut down PubChem, a freely accessible database created by NIH in 2004 to provide information about small organic molecules. It was designed for use as a research tool and starting point that may lead to the development of new medications. The database connects chemical information with biomedical research and clinical information. It combines new data generated by the NIH with data available from other public sources to create a powerful new research tool. The ACS issued a report that PubChem threatens the financial viability of a similar, but much larger resource, Chemical Abstracts Services (CAS).

A fundamental NIH principle is that medical research information developed with public funds must be made freely and publicly available for the good of advancing medical research to cure disease.

In June, 2005, UCSF faculty received a letter from the University Librarian and Chair of the Academic Senate Committee on the Library informing them of the possible shut down. ([Appendix 1](#)) The Academic Council transmitted a letter to ACS stating its concerns regarding the potential shutdown. ([Appendix 2](#)) At Chair Gansky's suggestion, the Committee on Academic Freedom and the Committee on Library agreed to

form an ad hoc committee to take further action on behalf of the UCSF campus. Before this committee met, the issue was resolved by PubChem and ACS in December 2005.

#### *Anti-prostitution Pledge for AIDS Investigators*

Under the President's Emergency Plan for AIDS Relief (PEPFAR) ([Appendix 8](#)), US-based AIDS groups working in foreign countries are required to take an oath against prostitution before obtaining federal funding. The Committee expressed concern over the potential impact of this policy on UCSF researchers working overseas and concern about the slippery slope created by these types of government actions. The National Institutes of Health (NIH) have not yet required such an oath for domestic researchers, but the Committee felt that the Academic Senate should be poised to address any such actions in the future. The Committee discussed possible actions it might take to address the anti-prostitution oath. Chair Gansky suggested that an ad hoc committee be formed consisting of Senate members who serve on NIH panels, allowing the University to be apprised of, and therefore, respond to, government changes to policy or procedure. Chair Gansky drafted a communication to Senate Chair Deborah Greenspan recommending that the Senate consider forming such a group for this purpose.

#### *Department of Medicine's Waiver of Principal Investigator Status for Faculty in the Professional Research Series.*

Lee Goldman, MD, former Chair of the Department of Medicine, issued a statement that the Department of Medicine would no longer grant waivers for Principal Investigator (PI) status to appointees in the Professional Research Series unless he/she already has an NIH grant (with exception). Chairs have discretion to grant PI status pursuant to the Academic Personnel Manual (APM 310-4). The apparent reason for this policy change was that many individuals in the Professional Research Series have overspent their grants and left the DOM to pay the overage.

The definition from the APM is as follows: *The Professional Research series is used for appointees who engage in independent research equivalent to that required for the Professor series and not for appointees whose duties are limited to making significant and creative contributions to a research project or to providing technical assistance to a research activity.*

A total of 199 people are in the Professional Research Series, 149 of whom are in the School of Medicine with 20 of those in the Department of Medicine. Concerns about rescinding a right formerly held by a person whose status has/will change as well as recruitment and retention were raised by the Committee. In addition they seem to be penalized for inadequacies of the accounting system or their training in using the system.

Based on feedback, a revised PI status policy for the DOM was written.

### *Proposed Language for Statement on Student Freedom of Scholarly Inquiry*

UCAF developed a policy on student freedom of inquiry. This issue originated from groups that feel there should be a University definition of academic freedom that applies to students as well as faculty. Last year, these groups sponsored SB 5, legislation that would require The University of California (UC) to adopt and implement a “Student Bill of Rights.” The Office of the President was able to convince the Legislature that UC has adequate internal policies providing students with academic freedom protections and that legislation is not necessary.

A task force on Student Freedom of Scholarly Inquiry Principal, chaired by Stuart Gansky, was convened. A draft statement to ensure students’ rights to develop a mature independence of mind through freedom in the classroom and discuss controversial material relevant to a course of instruction, enjoy constitutionally protected freedom of expression, and be judged by faculty in accordance with fair procedures solely on the basis of the student’s academic performance was developed by a joint Senate-Administration systemwide working group on academic freedom. ([Appendix 3](#)) After a history of the development of the document by Patrick Fox, PhD, who has worked extensively on the language of this document, the committee discussed its importance to the environment that we live in today. Several recent situations, including a legislative bill, were discussed to counterbalance what is perceived to be a too liberal attitude by University of California faculty. The Task Force on Student Freedom of Scholarly Inquiry unanimously voted to approve the statement.

### *Rapid Response to Academic Freedom Threats*

On January 2, 2006, a memo was submitted to Academic Senate Chair Deborah Greenspan regarding a proposal, in conjunction with the Committee on Research, for response to possible changes in government policies that might threaten research pursuits. The proposal was presented at the Executive Committee meeting on May 18, 2006. It was suggested that Larry Coleman, Vice Provost for Research be contacted to determine the situation at the UC administrative level and to contact the Committee on Research to ascertain their interest in these issues. The concern is that UC administration may view a policy change by the government differently than the faculty, plus in the spirit of dual governance the faculty should respond in addition to the administration. Therefore, it is felt that faculty should have a voice in these issues. Another premise is that faculty who serve on NIH committees might learn about proposed changes before they become policy and would allow us to respond more readily.

Chair Gansky submitted a Communication to Chair Greenspan regarding the proposal on Rapid Response from the Committee on Academic Freedom. ([Appendix 4](#)) It was discussed in the next Coordinating Committee meeting.

### *SCSC White Papers*

Facing falling University budgets and rising costs of publications, the Executive Committee of the UC Academic Senate established a Special Committee on Scholarly Communication (SCSC) to determine what role the faculty should take in addressing these issues. In February, 2006, all committees of the San Francisco Division were asked to review and provide comments and recommendations related to the draft

White Papers responding to the challenges facing scholarly communications and proposed policy on scholarly work copyrights (White Papers). ([Appendix 5](#)) Members of the Committee on Academic Freedom discussed the white papers. Overall, members were primarily concerned with executing the policies without support of UC in the form of legal backing, explicit instruction or other mechanisms supporting individual authors when dealing with large publishers. Members felt they do not have enough expertise on copyrights and may be giving up rights that they are entitled to retain. The Committee agreed to support the aims of the papers but have concerns regarding implementation, and request to be kept informed on any developments related to the furthering of these policies. The Committee's communication was submitted to Chair Greenspan. ([Appendix 6](#)) Following receipt of responses from UCSF Divisional Committees and Faculty Councils, the Division's response was communicated to the Academic Council for consideration. ([Appendix 7](#))

### *Symposium on "Science, Government and Academic Freedom in a Polarized Political Environment"*

The Committee devoted effort to the planning of a campus-wide Symposium on "Science, Government and Academic Freedom in a Polarized Political Environment." The Chair worked with the UCSF Office of Community and Government Relations to coordinate invitations to public officials who may be willing to speak at the event. However, attempts to have a prominent politician involved fell through during 2005-6. The Committee agreed to plan a Fall 2006 date in order to secure two or more speakers from government and academia and a moderator in an effort to ensure a balance of views and opinions. Recent discussions included the possibility of presenting the forum as a debate.

A request for funding to cover refreshments and reasonable honoraria and travel expenses for the speakers will be presented to the Academic Senate prior to the scheduling of the Symposium.

### *Issues for 2006-2007*

The Committee will continue to respond to issues brought to it by the University Committee on Academic Freedom and by the Chair of the UCSF Academic Senate.

The Committee expects to resume the planning of the Symposium on "Science, Government and Academic Freedom in a Polarized Political Environment" in October, 2006.

Respectfully submitted,

### **Academic Senate Committee on Academic Freedom**

**Stuart Gansky, DrPH, Chair**

**Jim Lightwood, PhD, Vice Chair**

**Mark Eisner, MD**

**Stephen Gitelman, MD**

**Miriam Kuppermann, PhD, MPH**

**Howard Pollick, DDS**

**Victor Reus, MD**  
**Mary White, MPH, PhD**  
**Paula Braveman, MD, MPH**

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### *Appendices*

- Appendix 1: PubChem letter to faculty from UCSF Librarian
- Appendix 2: PubChem, letter to ACS from Academic Council
- Appendix 3: Student Freedom of Scholarly Inquiry
- Appendix 4: Communication to Chair Greenspan from S. Gansky - PEPFAR
- Appendix 5: Special Committee on Scholarly Communications – White Papers
- Appendix 6: Communication from Committee on Academic Freedom on White Papers
- Appendix 7: UCSF Division Response to White Papers
- Appendix 8: PEPFAR

June 10, 2005

Dear UCSF Faculty

We are writing as University Librarian and Chair of the Academic Senate Committee on the Library to inform you about US Congressional and professional society actions that might limit your access to information.

The American Chemical Society (ACS) is lobbying Congress to shut down PubChem, a freely available resource developed and managed by the National Library of Medicine to support the NIH Roadmap Molecular Libraries Initiative.

PubChem is a database with information on small organic molecules that can be used as chemical probes to study functions of genes, cells, and biochemical pathways. The database has 656,000 structures with substance information, compound structures, bioactivity data and integrated with other resources from the National Library of Medicine. PubChem has a small staff of 13 who work on the database. In contrast ACS's Chemical Abstract Services, which we license as SciFinder Scholar, indexes 25 million unique chemicals along with summaries written by CAS experts and links to the chemistry journal abstracts.

A press report issued by ACS on May 23, 2005, claims that PubChem threatens the financial viability of Chemical Abstracts Service (CAS). NIH contends the databases are complimentary and any duplication is quite modest. NIH has tried to negotiate with ACS to seek a solution that would resolve the society's concerns but ACS has broken off discussions and is seeking a solution via congressional action.

While ACS is a not-for-profit organization it operates much as a commercial publisher with over \$1 billion in assets, price increases of 9% for its 30 scholarly journals and databases, and a staff of 1,300. Additionally, its CEO earned 1.025 million in 2003 and the salary for the president of publications was over \$670,000. UC faculty have published over 2,300 articles in ACS journals in the past 2 1/2/ years and more than 70 UC faculty members serve as editors or editorial board members.

We call your attention to the UC Libraries Office of Scholarly Communication's website listed below which provides considerable information including a "what you can do" section for faculty. Of interest is the statement by the Association of American Medical Colleges and the letter from Richard Roberts, 1993 Nobel Laureate in Physiology or Medicine. We encourage UCSF faculty to review the facts, discuss the issue with colleagues, and voice your concerns to ACS.

UCSF faculty have demonstrated remarkable leadership in the past around issues of scientific communications. This is another opportunity to participate in the development of a healthy system for scientific communications. This is also an opportunity to work with ACS in addressing these issues rather than a defense of the current system, which we know is not sustainable.

Please feel free to contact Karen Butter or Gail Persily if you have further questions or wish to discuss this issue further. [Adele Clarke will be out of the country until 7/21.]

Sincerely,

Karen Butter  
University Librarian  
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[gail.persily@library.ucsf.edu](mailto:gail.persily@library.ucsf.edu)

Adele E. Clarke  
Chair, AS Committee on the Library  
Professor of Sociology and History of Health Sciences  
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**Additional Information:**

University of California Office of Scholarly Communications  
[http://osc.universityofcalifornia.edu/news/acs\\_pubchem.html](http://osc.universityofcalifornia.edu/news/acs_pubchem.html)

PubChem  
<http://pubchem.ncbi.nlm.nih.gov/>

American Chemical Society  
[http://www.cas.org/acsnih/acscas\\_statement.pdf](http://www.cas.org/acsnih/acscas_statement.pdf)

Statement by the Association of American Medical Colleges  
<https://mx2.arl.org/Lists/SPARC-OAForum/Message/1962.html>

Statement by Richard Roberts, 1993 Nobel Laureate in Physiology or Medicine  
<https://mx2.arl.org/Lists/SPARC-OAForum/Message/1977.html>



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*Assembly of the Academic Senate*  
*Academic Council*  
*1111 Franklin Street, 12th Floor*  
*Oakland, CA 94607-5200*

7 June 2005

Madeleine Jacobs, Executive Director  
William F. Carroll, Jr., President  
James D. Burke, Chair of the Board  
Robert D. Bovenschulte, President, Publications Division  
American Chemical Society  
1155 Sixteenth Street, NW  
Washington DC, 20036

Robert J. Massie, President  
Chemical Abstracts Service  
2540 Olentangy River Road  
PO Box 3012  
Columbus, OH 43210

Dear Ms. Jacobs & Messrs. Carroll, Burke, Bovenschulte, and Massie:

I am writing on behalf of the University of California's Academic Council and its Special Committee on Scholarly Communication. We want to express our concern about recent ACS actions seeking to constrain the NIH's PubChem project.

In discussion with colleagues at the University of California and elsewhere we have come to understand that PubChem represents a vital next step for NIH in leveraging its investment in the human genome project by providing data on small molecules. It is a powerful tool that enables medical researchers to harness NIH-funded and other public resources about chemical structures so that they can advance development of new medications. By ensuring that publicly financed knowledge is broadly accessible on the Internet in this way, NIH is enhancing the return on public investment in research and stimulating further innovation by public and private scientific enterprises. As you may know, Nobelist Richard Roberts and other renowned chemists and chemical engineers have expressed themselves in detail about these public benefits associated with PubChem (see [http://osc.universityofcalifornia.edu/news/acs\\_pubchem.html#positions](http://osc.universityofcalifornia.edu/news/acs_pubchem.html#positions)).

It is our understanding both from press reports and from your website ([http://www.cas.org/acsnih/acscas\\_statement.pdf](http://www.cas.org/acsnih/acscas_statement.pdf)) that the American Chemical Society is actively calling for NIH to eliminate or restrict PubChem. ACS claims that PubChem competes with its Chemical Abstracts Service. We appreciate that CAS is a well-used, high-quality database, whose ongoing support depends upon a reasonable business model. However, we are convinced through discussions with and analyses by colleagues that PubChem does not represent an imminent threat to

CAS, that indeed science and the public are well-served by continued development of PubChem and, further, that ACS is missing an opportunity to work creatively and collaboratively with NIH and others to create complementary, affordable services in direct support of its charter of “encouraging the advancement of chemistry; promoting research in chemical science and industry; increasing and diffusing chemical knowledge; and promoting scientific interests and inquiry through its meetings, reports, papers, and publications.”

At the University of California, as elsewhere, faculty are carefully considering the challenges and opportunities to strengthen scholarly communication systems. It is well understood that current systems for the dissemination of scholarship are economically unsustainable. We believe that scholars, universities, societies, research funders, and publishers must work together to address the economic dysfunctions and reinvent scholarly publishing systems that are healthy, equitable, and sustainable.

We are concerned that the ACS is not providing the leadership toward sustainable scholarly communication systems that we might expect of our best scholarly societies. In addition to the unwarranted action against PubChem, your explicit declaration that “the principle sources of funding for the Society's activities include net revenues generated by the Publications Division and the Chemical Abstracts Service Division,” and the associated hyperinflationary 9% annual price increases of your publications and services, leads us to believe that revenue generation is a higher priority than “increasing and diffusing chemical knowledge.”

University of California faculty members have authored or co-authored over 2,300 articles in ACS publications in the last 2 ½ years alone. Seventy-two UC faculty hold ACS journal editorial positions and a number serve on ACS committees and sections. In addition to expressing our concerns to you directly, we are encouraging these faculty members to discover the facts, discuss the issue with colleagues, and let ACS know their preferences. In the meantime we sincerely hope you will work with the society's membership to rethink your position on PubChem and to establish ACS as a proactive and creative contributor to the evolution of economically sustainable scholarly communication systems.

Thank you for the opportunity to share our perspectives with you.

Sincerely,



George R. Blumenthal, Chair  
UC Academic Council

Copy: Academic Council

# D R A F T

## Student Freedom of Scholarly Inquiry Principles (6/16/05)

The University seeks to foster in its students a mature independence of mind, and this purpose cannot be achieved unless students are free to express the widest range of viewpoints in accord with the standards of scholarly inquiry for the competence of student work at each level of the educational process. The substance and nature of these standards properly lie within the expertise and authority of the faculty as a body.<sup>1</sup> As such, it is primarily the responsibility of the faculty as set forth in the Faculty Code of Conduct to insure that student freedom of scholarly inquiry is fostered and preserved in the University.<sup>2</sup>

While there is substantial variation in students' competence to engage in scholarly inquiry based on their level in the educational process, the faculty have the major responsibility to establish conditions that protect and encourage all students in their learning, teaching, and research activities. Such conditions include, for example: free inquiry and exchange of ideas; the right to critically examine, present, and discuss controversial material relevant to a course of instruction; enjoyment of constitutionally protected freedom of expression; and the right to be judged by faculty in accordance with fair procedures solely on the basis of the student's academic performance and conduct.

For students to develop a mature independence of mind, they must be free in the classroom to express the widest range of viewpoints in accord with standards of scholarly inquiry. Students should be free to take civil and reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.<sup>3</sup> The faculty has authority for all aspects of the course, including content, structure, and evaluations. Students have the right to have all decisions affecting their academic standing, including the assignment of grades, based upon academic considerations only, administered fairly and equitably under policies established

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<sup>1</sup> See University of California Academic Freedom, Academic Personnel Manual 010.

<sup>2</sup> See University of California Faculty Code of Conduct, Academic Personnel Manual 015.

<sup>3</sup> An example of this responsibility from the American Association of University Professors statement on the Academic Bill of Rights follows:

If a professor of constitutional law reads the examination of a student who contends that terrorist violence should be protected by the First Amendment because of its symbolic message, the determination of whether the examination should receive a high or low grade must be made by reference to the scholarly standards of the law. The application of these standards properly distinguishes indoctrination from competent pedagogy. Similarly, if a professor of American literature reads the examination of a student that proposes a singular interpretation of *Moby Dick*, the determination of whether the examination should receive a high or low grade must be made by reference to the scholarly standards of literary criticism. The student has no "right" to be rewarded for an opinion of *Moby Dick* that is independent of these scholarly standards. If students possessed such rights, all knowledge would be reduced to opinion, and education would be rendered superfluous (<http://www/aaup.org/statements/SpchState/Statements/billofrights.htm>).

by the Academic Senate.<sup>4</sup> In professional curricula, such decisions may include consideration of performance according to accepted professional standards.<sup>5</sup>

Students may also serve as instructors under supervision of the faculty. The faculty retains authority over all aspects of the course, including, content, structure, evaluations, and delegation of authority for the course, and must base the guidance of student instructors on accepted scholarly and professional standards of competence in teaching. However, such student instructors share with faculty the freedom and responsibility to present concepts, lead discussion in class, and to insure the appropriate and civil treatment of other members of the academic community.

Faculty guidance and supervision of student research is desirable and appropriate. Students' freedom of inquiry while conducting research may not be abridged by decisions unrelated to accepted conduct<sup>6</sup> and scholarly and professional standards. Students are entitled to the protection of their intellectual property rights, including recognition of their participation in supervised research and their research with faculty, consistent with generally accepted standards of attribution and acknowledgement in collaborative settings.

These protections are in addition to the full protections of the Constitution of the United States and of the Constitution of the State of California.

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<sup>4</sup> See APM 015.

<sup>5</sup> See University of California 170.00 Policy on University Obligations and Student Rights, section 171.09.

<sup>6</sup> See University of California Presidential Policy on Student Conduct and Discipline, Section 100.00.



**COMMUNICATION FROM THE COMMITTEE ON ACADEMIC FREEDOM**

**Stuart Gansky, DrPh, Chair**

Deborah Greenspan, DSc, BDS  
Professor and Chair  
UCSF Academic Senate  
Box 0422

January 2, 2006

Dear Dr. Greenspan:

As you may know, political considerations have recently been overriding science in some areas. One such issue that has come to our attention is that of the US federal government requiring oaths that international reproductive health and sexually transmitted disease research projects do not involve sex workers (a so-called anti-prostitution pledge under the President's Emergency Plan for AIDS Relief (PEPFAR)).

Furthermore there are rumors that such an oath may be expanded to NIH funded domestic studies. Since many UCSF faculty research programs deal with reproductive health or sexually transmitted diseases, there are a significant number of faculty who could be adversely affected by policy changes. In fact, from an academic freedom perspective, some faculty members have noted this has had a chilling effect causing self-censorship of research topics.

Thus, the Committee on Academic Freedom (CAF) wishes to set up a proactive system rather than a reactive one which would anticipate such issues and expedite our response. In advance we can identify the individuals (e.g. legislators) and groups (e.g. Union of Concerned Scientists) who should be contacted if such policies are enacted. Since many UCSF faculty members serve on NIH councils and review panels, they can alert CAF and the Committee on Research if a policy becomes implemented and the already established list can be contacted. These are suggestions for a proactive rapid response alert system, which of course could be altered and improved with additional input. Therefore, we request that a group be formed to perform these tasks.

Sincerely,

Stuart Gansky, DrPh, Chair  
**Committee on Academic Freedom**  
Jim Lightwood, PhD, Vice Chair  
Paula Braveman, MD, MPH, *EQOP Representative*  
Mark Eisner, MD, *UCAF Representative*

Stephen Gitelman, MD, *Clinical Representative*  
Miriam Kupperman, PhD, MPH  
Howard Pollick, DDS  
Victor Reus, MD  
Mary White, MPH, PhD

cc: John Kurhanewicz, Chair  
Committee on Research



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January 13, 2006

**DIVISION ACADEMIC SENATE CHAIRS**  
**SYSTEM-WIDE COMMITTEE CHAIRS**

**RE: Special Committee on Scholarly Communication (SCSC) Draft White Papers—Responding to the Challenges Facing Scholarly Communications- 5 Papers and 1 Proposed Policy**

Dear Division and System-wide Committee Chairs:

On behalf of the Academic Council please find attached the [above document](#), which is being sent to you for review by your Division and Committees as appropriate.

At its December 14, 2005 meeting, the Academic Council discussed the SCSC white papers and the proposed policy on Scholarly Work Copyright Rights, with SCSC Chair Lawrence Pitts. Council agreed that the draft papers and proposed policy would be sent out for general Senate review and then eventually to the Assembly for its consideration.

In order to complete the review process in time to submit these papers and the policy to the May Assembly, it would be very much appreciated if you would submit your comments by the following dates:

**System-wide Committees: By no later than March 8, 2006**  
**Divisions: By no later than April 5, 2006**

As a reminder, please note that all requests for comments are sent out to all System-wide Committees and Divisions. **Each Committee and Division may decide whether or not to opine. For System-wide Committee Chairs** please notify this office either directly by emailing me or through your Committee Analyst, if your committee chooses not to participate in this review. **For Division Chairs**, please notify this office either directly by emailing me or through your Senate Director, if your Division chooses not to participate in this review.

Thank you for taking this matter under consideration.

Cordially,

María Bertero-Barceló, Executive Director  
Academic Senate

Encl: 1  
Copy: Academic Senate Committee Analysts  
Senate Directors

*Responding to the Challenges Facing Scholarly Communication*  
Overview (December 22, 2005)

During University of California negotiations with publishers of scholarly works in 2004, it became clear to UC faculty that the current models of scholarly communication had become unsustainable. UC Librarians and budget officers had seen this crisis approaching for some years. But long as library budgets could be managed and access to the most critical work could be maintained, faculty members were largely insulated from the growing crisis. When it became clear, in the face of falling university budgets and rising costs of publications, that the UC community's access to new knowledge would progressively be limited, and that the access by others to UC-produced scholarship would similarly be limited, the Academic Council (effectively the Executive Committee of the UC Academic Senate) established a Special Committee on Scholarly Communication (SCSC) to consider what role the faculty should take in addressing these important issues. The accompanying five short papers and appendices are the result of SCSC's work. The papers define and explain the faculty's view of changes that could improve dissemination of scholarly work to enhance the discovery and communication of new knowledge, and best serve the public interest.

The current model for many publications is that faculty write articles and books, referee them, edit them and then give them to a publisher with the assignment of copyright. The publisher then sells them back to the faculty and their universities, particularly to university research libraries. While there clearly are costs of publication, a number of publishers (particularly, but not always, for-profit corporations) earn munificent profits for their shareholders and owners. However, maximizing profits for these latter groups may work to the detriment of faculty, educational institutions and the public.

Meanwhile, opportunities to reduce production and distribution costs and to create innovative forms of publication and dissemination are increasingly manifest, and enabled by networked digital technologies, new business models, and new partnerships.

The papers explore this simultaneous challenge and opportunity from five starting points:

- One discusses copyright issues, and recommends that faculty authors adopt the practice of granting to publishers non-exclusive copyright of their research results, while retaining copyright for other educational purposes, including placing work in open access online repositories.
- Two consider recommended best practices, from a faculty viewpoint, for journal and book publishers respectively.
- One considers the role of scholarly societies in publishing, and recommends changes in some societies so that they may better support development and dissemination of scholarly work in their discipline, and at more economical cost.
- The final paper recognizes that technology has made and will continue to make available new methods of publishing and presenting new knowledge.

The University of California faculty recognizes that these changes must be carefully reviewed to ensure that the quality of presentation of scholarly research remains as high as or higher than in the past, principally by continued application of the well-established and tested process of peer-review. We feel that faculty, University administration, publishers and societies can work collaboratively not only to improve and sustain dissemination of scholarship, but can materially improve it using new technology.

It is the Academic Senate's intention to work actively with the University of California Administration to press for and enact the changes outlined in these papers, and to encourage their wide adoption throughout the world, both by other faculties and universities, and by the publishers of our scholarly work.

## Responding to the Challenges Facing Scholarly Communication

### Evaluation of Publications in Academic Personnel Processes

(Approved for Systemwide Academic Senate Review by the Academic Council on December 14, 2005.)

#### Discussion Statement

The University of California Academic Senate recognizes and reaffirms the importance of a scholar's creation of new knowledge in fulfilling the faculty's role of education, research, and service. The process that a university faculty uses to make decisions about hiring, promotion and award of tenure relies heavily on scholarly works including publications. Historically, the quality of publications has been based in part on the quality of reviewers, presentation, and distribution, which features are well known for existing books and journals. As publications evolve with modern techniques of presenting scholarly works, these same features of quality must be continually evaluated and preserved.

Veterans of our academic personnel process feel the following statements are important in evaluating and maintaining the quality and accessibility of scholarly works that are used in assessing faculty performance:

1. The standard for evaluating scholarship is publication or presentation at peer reviewed, refereed outlets, as judged appropriate by faculty within each discipline. Publication need not necessarily be in print.
2. Publishers of new and established books and journals should provide the following in a readily-accessible form:
  - a. Names and institutional affiliations of editors and referees
  - b. Names and institutional affiliations of authors for the past two or more years
  - c. Numbers of manuscript submissions and the acceptance rate for publication
  - d. Copyright, open-access, and archival policies for the publication
3. Using available information including what publishers provide, it is the obligation of the evaluating department to assess the quality of the publication and the publication outlet. Evaluation of presentations of scholarly work (conferences, concerts, galleries, and so on) should include an explanation of the importance of the venue.
4. Economic factors make it increasingly difficult to publish books in the humanities and social sciences. The University should therefore consider offering subventions in start-up support for new faculty, particularly junior faculty, to publish books in peer-reviewed presses.
5. Academic personnel committees will consider new forms and modalities of scholarly communication as they become available and are validated through experience, as well as new forms of evaluating them.

#### Background

Central to the life of the University is evaluation of a faculty member's research. Large price increases for academic journals, and the unwillingness of many presses to publish books with limited circulation, force the University to ask whether the ways it had evaluated publications in the past (relying largely on publication in peer-reviewed, printed outlets) remain appropriate and realistic, and to ask how to evaluate work appearing in electronic media. A subcommittee of the Special Committee on Scholarly Communication (SCSC), consisting largely of faculty who had served on a campus and statewide personnel committee,<sup>1</sup> reviewed the academic personnel policies of other universities and found few references to electronic publications. The State

<sup>1</sup> The roster of full committee and subcommittee members is maintained at <http://www.universityofcalifornia.edu/senate/committees/scsc/>.

University of New York at Buffalo requests in its "Promotion Dossier" a separate listing of "scholarly electronic publications with complete description of academic or professional nature and sponsorship of the electronic agency." Perhaps because electronic publication is new, most academic personnel policies do not mention them specifically. For example, MIT describes Research and Scholarship as "Contributions to scholarship resulting from research and study, including publication of books, articles, and reports" without reference to electronic publications or presentations.

In some fields scholarly activity is not judged by publication in journals or books. The performing arts (such as music or dance) offer one example. Nevertheless, evaluation can be rigorous. The factors that enter into academic review include the venues of performances (Carnegie Hall usually counts more than a presentation at a local community college), the content of published reviews, and the reputation of the reviewers (a review in the New York Times will likely count more than a local review). Computer scientists often publish in proceedings of refereed conferences. Some UC physics departments accept electronic journal articles for appointment and advancement cases; several view some papers published only electronically as equivalent to articles published in standard journals. Some departmental faculty give the Journal of High Energy Physics (JHEP) and the Journal of Cosmology and Astroparticle Physics (JCAP) equal weight to that of a traditional print journal, despite the Institute for Scientific Information's recent rating of JCAP as having the highest impact factor in the field. Furthermore, these electronic archives maintain a database of citations, allowing evaluation of a paper's impact.

Publication and presentation practices in different disciplines are likely to change over time, and academic personnel committees should regularly evaluate the merits of new practices.

### **Forms Of Evaluation**

Review and evaluation of scholarly work should consist of at least two steps. First, the work should appear in a peer-reviewed outlet. Second, work should be evaluated after its appearance. Why the first step? It has the advantage that the venue and reviewers can be evaluated, for example, according to the quality of a journal, the standards of a journal editor, and the reputations of referees. In contrast, when we solicit a letter of recommendation, we know the academic quality of the writer, but we do not know what standards that person uses, or how the reviewer rates other people. Letters of reference are not substitutes for publication or presentation in outlets with readily knowable reputations. A gatekeeper for publication can also protect the University against weak departments or weak departmental selection or promotion procedures that might result in a narrow selection of external referees, and inappropriately finding the few, perhaps a small minority, who think highly of a candidate's work.

Evaluation of the work and its impact after it appears is an important second function, performed by academic personnel committees with the help of other appropriate faculty. Acceptance by a prestigious venue pertains to a specific scholarly work. The committee should judge that work as part of the whole body of material, not abrogating or transferring its judgment to an external entity, such as a journal editor. The academic personnel committee also has the opportunity and experience, more than do ad hoc departmental hiring or tenure committees, to judge work broadly across disciplines thereby helping promote and ensure excellence across schools and campuses.

The University should welcome publication in electronic or other new media where appropriate, but faculty members and departments have a responsibility to explain the distinction of those venues in comparison with more established ones. Electronic publishing can provide several advantages, including quicker access to new information, web links, 3-dimensional graphing, and storage of data sets. But as we emphasize above, the quality of new methods or venues of presentation needs to be determined by carefully scrutinized peer review.

The evaluation of a new or established publication venue can include a number of factors. ISI publishes citations for over 8,700 international journals, and discusses the criteria it uses in selecting ten to twelve percent of the nearly 2,000 new journal titles it reviews annually. (See

"The ISI Database: The Journal Selection Process"). These criteria include the journal's basic publishing standards, its editorial content, the international diversity of its authorship, the timeliness of publication, and citation data associated with it. Other important features of a publication's quality are the credentials of its editorial board and peer reviewers, the reputation of other authors, the quality of work published, and articles cited. Electronic venues may offer new measures of a scholarship's utility, such as frequency of viewing and querying new work. In the end, departments, deans, and the faculty members themselves have the responsibility to explain how they regard a particular venue's quality and why, for both new and already established venues.

### **Conclusion**

New ways of presenting and disseminating scholarly work are inevitable, but they must be attended by scrupulous protection of the quality of scholarship and extend successful practices in evaluating that quality. We offer the discussion and specific suggestions above to assist the UC and other university communities in their role of protecting and evaluating scholarship even as forms for its presentation evolve.

### **ADDENDUM TO THE SUBCOMMITTEE REPORT**

The SCSC appreciates and agrees with the statements above, drafted by a subcommittee comprising former Committee on Academic Personnel (CAP) members and chairs, and based on their extensive experience using current methods in the selection and promotion of an outstanding faculty at UC. SCSC absolutely agrees with UC's CAPs that the quality of work presented in new publication methods must be of the same or greater quality as current scholarly works.

However, we want to stress that in the immediate future, the University, its faculty, and its evaluation processes will increasingly encounter new forms of, and new media for, scholarly communication. Many faculty may fear that they will be penalized for publishing in new venues. The University will be disadvantaged if innovative forms and media of scholarly dissemination are discouraged for no other reason than that they are new. In the current system we believe that the academic personnel process at times may place excessive reliance on the reputation of the venue to the detriment of specific assessment of the work itself. As the variety of venues for scholarly publication widens, all participants in the review process should rededicate themselves to judicious assessment of all faculty research, in whatever venue, and to extend to innovative forms of publication the same careful evaluation of scholarship upon which the University has traditionally relied to assure the quality of its faculty.

## Responding to the Challenges Facing Scholarly Communication

### The Case of Journal Publishing

(Approved for Systemwide Academic Senate Review by the Academic Council on December 14, 2005.)

#### Discussion Statement

Journal publishers are essential partners in the dissemination of knowledge. Both publishers and researchers want academic papers to have the widest possible circulation. The current system of journal publication, however, limits the dissemination of knowledge. Better systems can be developed to meet both the goals of academic research and the economic interests of journal publishers.

The Academic Senate calls upon – and seeks partnerships with – those who publish scholarly journals to:

1. Seek only the copyrights necessary for first publication;
2. Concentrate on adding value to, rather than ownership of, scholarship;
3. Pursue innovation to improve scholarly communication systems;
4. Avoid monopoly pricing;
5. Provide transparent financial information;
6. Enable ongoing access to the persistent scholarly record; and
7. Provide full information about peer review and copyright policies and processes.<sup>1</sup>

#### Background

Faculty of the University of California, and their academic colleagues worldwide, are growing increasingly concerned about the rising costs and declining circulation of journals. For decades the cost of scholarly materials has escalated at rates exceeding the consumer price index (CPI). From 1986 to 2003 the unit cost for scholarly journals rose 245% while the CPI rose 68%. Among the many factors behind this unsustainable trend, three are particularly problematic. First, the full transfer of copyright ownership to publishers gives them monopoly rights on this knowledge. Second, profit-maximizing publishers value revenue generation far above the spread of knowledge. Third, the bundled pricing of journals gives publishers undue power in their negotiation with universities. Rapidly rising subscription prices reduces academic access to research and severely handicaps universities' ability to maintain collections that support research, teaching, and the public interest. Escalating journal subscription prices are also limiting library acquisition of scholarly monographs, to the detriment of authors whose scholarship is best presented in longer publications than journal articles. As a result, the University, its faculty, and its libraries must continuously assess cost efficiency and effectiveness of scholarly materials as a factor in their selection.

It is essential for scholars, libraries and publishers to partner for the larger public good. By so doing, they can establish and reaffirm values and practices that lead to equitable, sustainable, and flexible scholarly journal publishing.

#### Ideal Journal Publishing Practices

The Academic Senate calls upon those who publish scholarly journals to:

1. **Seek only first publication copyright.** To add value and make an economic return, publishers do not need full transfer of copyright ownership, as is current practice. Most business needs can be met by securing an exclusive right of first commercial publication, with requests for other rights such as foreign distribution and reprinting, made when and as necessary. Authors and their institutions then retain and take advantage of other copyrights as needed for research, teaching, content management and continued influence.

<sup>1</sup> As suggested, for example, in the companion to this whitepaper titled *Responding to the Challenges Facing Scholarly Communication: Evaluation of Publications in Academic Personnel Processes* <http://www.universityofcalifornia.edu/senate/committees/scsc/cap.eval.scsc.12.05.pdf>.

2. **Concentrate on added value rather than ownership.** Publishers can and should maintain and extend peer review, editing, access, and other services that add great value to scholarly materials. These services can be priced and valued independently. Their addition does not require that the publisher own the content of an academic paper.
3. **Pursue technological and organizational innovation to improve scholarly communication systems.** Journal publishers have been, and continue to be, an important source of technical and organizational innovation.<sup>2</sup> We wish to encourage continued experimentation and innovation providing it meets contemporary scholarly needs, rather than simply providing the opportunity to raise prices. There are pressing needs for innovation in areas such as support for data sets, automated search, retrieval, and manipulation, online commentary, and other services that add to scholarship.
4. **Avoid monopoly pricing.** Universities, states and others will use all available means to sustain access, including anti-trust and other legal remedies.
5. **Provide transparent financial information.** Transparent finances will build trust among stakeholders in scholarly communication. Publishers, authors, and research institutions rely on one another for inputs, processes, and outputs of scholarly communication. Their actions influence each other's motivations and rewards. Therefore scholarly communication stakeholders must work together to reduce total costs and make improvements to scholarly communication systems. Financial insight and transparency is necessary in this pursuit, and should include identification of production costs and agreement on measures of value.

A worthy challenge for all stakeholders in the scholarly publishing community is to derive business models that simultaneously a) maximize the audience for scholarly publications; b) sustain consumer costs within a predictable and affordable range for the academic and public marketplaces; c) provide reasonable economic returns to owners and shareholders; and d) encourage reinvestment in creating greater efficiencies and effectiveness of publishing processes and infrastructure.

6. **Enable the persistence of, and permanent access to the scholarly record.** Rapid technological change, notably frequent change in digital storage regimes, generates a risk that academic papers will not be readable in the future. Publishers and other stakeholders need to work together to establish trusted repositories ensuring persistence of and ongoing access to the scholarly record.

### **Accountability**

Aligning current practice with the shared goals of creating healthy, sustainable systems for scholarly communication is a difficult task that must a) acknowledge and draw from the successes of the scholarly publishing industry; and b) define, as suggested above, new standards and best practices against which to assess the pursuit. Fortunately, publishers, libraries, and scholars have an existing set of metrics and partnerships upon which to draw.<sup>4</sup>

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<sup>2</sup> We count among these innovations the use of technology to increase production efficiencies and access and decrease time to publication, new business models including open access and "producer pays," and creative partnerships to leverage and best apply the contributions of all stakeholders in scholarly publishing.

<sup>3</sup> See, for example, the antitrust analyses of mergers and pricing practices in the scholarly publishing industry from the Information Access Alliance. <http://www.informationaccess.org/>.

<sup>4</sup> Recent examples include the COUNTER standards for usage statistics, the citation-driven "impact factor" metric for assessing the impact of scholarly journals, and the OpenURL and DOI schemes for persistent and flexible identification of journal articles.

The Academic Senate envisions building upon past practice to encourage the emergence of a sustainable scholarly communication system through specific actions such as: establishing a set of best-practice criteria for scholarly journals across all formats<sup>5</sup>; periodically evaluating and reporting the ways in which the journals to which the UC system subscribes meet the best practice criteria; recommending cancellations, subscriptions to competitors, or the launching of competing journals in those cases where journals consistently fail to meet best practices; publicly recognizing those journals that consistently do meet or exceed expectations and encouraging UC faculty to publish in them; and creating venues through which to discuss and harmonize these strategies and actions with those of other prominent universities and university consortia.

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<sup>5</sup> These criteria may include indices of price, use, quality of content and service, and the publisher's orientation toward copyright.

## Responding to the Challenges Facing Scholarly Communication

### The Case of Scholarly Book Publishing

(Approved for Systemwide Academic Senate Review by the Academic Council on December 14, 2005.)

#### Discussion Statement

The scholarly book is in peril. The history and causes of the crisis are complex, but the effect is straightforward: in many fields opportunities for publishing scholarly books, including specialized monographs, have become scarce, even as they remain critically important to scholarly communication and a requirement for scholarly advancement. Analysis, planning, and action to address these problems must become a shared priority of authors, universities, and publishers.

The Academic Senate calls upon its own and other faculty authors, university administrators, libraries, commercial publishers, and university presses to:

1. Experiment with new publishing models that fully leverage scholarly editorial expertise and digital technologies;
2. Collaborate to make best use of each other's strengths while maximizing the efficient dissemination of scholarship;
3. Pursue and expand indicators of scholarly quality that acknowledge the continuing value of the printed format, but remove it as a tacit requirement for acceptable scholarship;
4. Rethink how university resources for book publishing are distributed; and
5. Provide subventions for non-tenured faculty to assist in the publication of appropriately peer reviewed, high quality scholarship.

#### Background

The University of California faculty, along with academic colleagues throughout the world, are growing increasingly concerned about reduced and lost opportunities to share the results of research and scholarship for the progress of knowledge. The crisis involves all forms of scholarly publishing, but is especially acute for monographic works and for university presses, where declining sales are forcing presses to publish many fewer specialized monographs even though monographs remain essential for disseminating knowledge and establishing credentials in most humanities and many social science disciplines. There is no lack of diagnoses of the problem, which variously have analyzed the effect of high-priced databases and science journals on library budgets, increasing disciplinary specialization leading to smaller markets, decreasing subsidies for presses, and the changing demographics of higher education itself.<sup>1</sup>

Diagnosis must now be complemented by systemic and strategic efforts to directly address the problems. As in other sectors of scholarly communication, the participants in scholarly book publishing must adopt values, practices, and partnerships that lead to equitable, sustainable, and flexible scholarly publishing that is well matched to the needs of academe.

#### Values and Practice

1. **Experiment with new publishing models that fully leverage scholarly editorial expertise and digital technologies.** Because the status quo is not working, we must analyze and experimentally reconfigure the components of book publishing. We encourage, for example,

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<sup>1</sup> See, for example, Davidson, Cathy N., *Understanding the Economic Burden of Scholarly Publishing*, *The Chronicle of Higher Education*, October 3, 2003; Greenblatt, Stephen, *A Special Letter from Stephen Greenblatt [to the MLA]*, May 28, 2002. [http://www.mla.org/scholarly\\_pub](http://www.mla.org/scholarly_pub) ; and McPherson, James, *A Crisis in Scholarly Publishing*, *Perspectives* [American Historical Association], October, 2003. <http://www.historians.org/Perspectives/Issues/2003/0310/0310pre1.cfm>.

experiments in journal-like distributed editing, and digital-first peer reviewed publication followed by print-on-demand. Moreover, we advocate for a move away from book/journal and print/digital dichotomies, toward approaches that produce high quality scholarship in a variety of formats for a range of audiences.

2. **Collaborate to make best use of each other's strengths while maximizing the efficient dissemination of scholarship.** Faculty, libraries, and scholarly book publishers must collaborate to make best use of each entity's strengths, leverage work that is already being done, and use the university's financial resources most efficiently. We encourage creative partnerships, such as the one between the California Digital Library (CDL) and UC Press, which is creating book series that are managed by faculty editorial boards, uses the CDL's eScholarship repository for digital publication, and leverages the Press's printing and marketing services.
3. **Expand and pursue indicators of scholarly quality that acknowledge the continuing value of the printed format, but remove it as a tacit requirement for acceptable scholarship.** The distinction between print and digital is blurring. Because print-on-demand technology makes it possible and cost effective to produce high quality print versions of rigorously reviewed digital-first or digital-only publications, print publication is no longer a meaningful surrogate for peer review and quality of imprint. Of course here, as elsewhere in scholarly publishing, peer review and other quality control policies and processes must be disclosed.<sup>2</sup> However, publication format need not be an issue in the dissemination of scholarship.
4. **Rethink how university resources for monograph publishing are distributed.** Direct and indirect support for scholarly book publishing – historically including library book purchases, direct and indirect support to the university press, and scholars' editing services, among others – needs to be considered within the overall rapidly evolving scholarly communication environment. The need to rethink support arises from factors such as: a) rapid changes in other sectors that affect book publishing, as when escalating journal prices constrain library book purchasing power; b) the need to encourage innovations called for above, such as library-press publishing partnerships; and c) calls for direct economic action, such as "first book" subventions to support non-tenured faculty. We urge an evaluation of the support needed to evolve healthy monograph publishing that takes into account the university's overall role in scholarly communication, and the implied cost sources, centers, and totals.
5. **Provide subventions for non-tenured faculty to assist in the publication of appropriately peer reviewed, high quality scholarship.** An effective form of university support is subventions to authors which can be applied to initial publication costs at an appropriate, post peer review, point in production.<sup>3</sup> Subventions, including as startup packages for new non-tenured faculty, have analogs in the sciences, are well tested and well used in much of academe, and, in aggregate, will help ease the economic dysfunctions in university and scholarly press publishing.

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<sup>2</sup> As suggested, for example, in the companion to this whitepaper titled *Responding to the Challenges Facing Scholarly Communication: Evaluation of Publications in Academic Personnel Processes* <http://www.universityofcalifornia.edu/senate/committees/scsc/cap.eval.scsc.12.05.pdf> .

<sup>3</sup> See *Ibid.*

## Responding to the Challenges Facing Scholarly Communication

### Scholarly Societies and Scholarly Communication

(Approved for Systemwide Academic Senate Review by the Academic Council on December 14, 2005.)

#### Discussion Statement

Most scholarly societies help enable the development and dissemination of new knowledge in their disciplines by publishing scholarly books and journals, and sponsoring research and educational conferences with great benefit to their members and the public. However, faced with rising costs of operating their organizations, some societies have begun pricing their scholarly works above what is needed for maintaining the publication to provide additional income for the society. For many societies the complexities of publication production have led to partnerships with profit-maximizing commercial publishers, often leading to further price increases. Rapidly rising prices inevitably create barriers to access and reduce the impact of the scholarly work.

In recognition of their critical and singular ability and self-proclaimed responsibility to advance knowledge within their discipline and to make this knowledge affordable to the widest audience, the Academic Senate recommends that scholarly societies facilitate access to scholarship by:

1. Reaffirming that development and dissemination of scholarly information is the or one of the most important purposes of the society;
2. Setting their publications policies to sustain publication and dissemination of knowledge, without requiring high or rapidly rising subscription prices to support other society operations;
3. Acquiring only those copyrights for scholarly works that demonstrably protect their investment in publication, while allowing scholars to retain rights which will facilitate other non-commercial use and dissemination of new knowledge;
4. Working collaboratively with universities and publishers to develop and adopt the most economical and technologically effective methods of publishing that also maximize quality, dissemination, and impact, including placing work in open access fora; and
5. Providing organizational and financial innovations, and transparent society and publication finances to promote efficient and economical resource use in scholarly communication.

#### Background

*Societies are a critical contributor to and stakeholder in scholarship and scholarly communication.* They have served the public well for centuries, beginning with learned societies in antiquity, and entering more modern history with such bodies as the British Royal Society (founded in 1660), the five académies of the Institut de France (all founded in the seventeenth and eighteenth centuries) and leading to more than 4,100 societies serving contemporary scholarship.<sup>1</sup> They have largely been led by academics and have fostered open and intellectual inquiry into virtually all fields of scholarship from aesthetics and archeology to zoology. Many of their deliberations have been made public through the societies' meetings and publications, and these efforts remain at the heart of the work of many societies today. These groups often sponsor education within their discipline for all levels of students and the public, and often act as advocates for public and private support of their discipline.

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<sup>1</sup> As documented by the Scholarly Societies Project at the University of Waterloo Library, <http://www.scholarly-societies.org/>.

*Societies were founded and run by scholars and still depend upon their intellectual contributions; for good reasons many outsourced their publication activities, yielding what should and could be successful partnerships that still support the societies' missions.* While many societies published their own books and journals for centuries, in the past fifty years, the complexities of modern publishing and the focused academic interests of the society leaders led to increasingly close relationships between some societies and commercial publishers. Academics generally are responsible for founding and maintaining society journals and other publications, and organizing conferences whose scholarly work is often published. They usually write articles and books, referee and edit their colleagues' work, and often provide important society leadership. Publishers bring their organizational skills to producing the scholarly works, and achieve some important economies in printing and marketing among others.

*Transfer of limited copyrights in scholarly material from author to society (via copyright transfer) can assist that part of the society's mission to spread and advance knowledge, which itself has been and could continue to be subsidized by other society activities when necessary.* While full copyright transfer was a convention, it never was and no longer is required to fulfill the mission. Societies used to require that authors transfer copyright to them to facilitate production and dissemination, and some still do. Those in this latter group maintain control of their publications from solicitation and acceptance of scholarly work, to editing and coordinating refereeing of the material, to printing and distributing the final work. Because of the importance that they attribute to dissemination of scholarship, these societies sometimes produce this work at a financial loss that is borne by other society income sources such as membership dues or conference income. This model was followed by most societies from their inception, until the last thirty years or so when new methods of producing scholarly work began being adopted.

*Copyright transfer is subject to abuse, particularly when societies partner with profit-maximizing commercial publishers and therefore cede control of the material, with resulting constraints on dissemination and impact.* With the economics and effort of publishing, in some societies, scholars increasingly are transferring copyright to publishers and have little control on costs and prices. Faculty now write the material, edit it, referee it and then give it to publishers who sell it back to scholars and their universities, often making substantial profits and rapidly increasing costs of the publications. If there are any profits accruing from the books and journals, the societies usually share them, but the publisher controls the large parts of costs including corporate development and overhead over which the society has virtually no control, and often little knowledge. Publishers vary in their management of costs and profits. Some control costs very effectively and require only modest profits, while others follow more traditional corporate practices of charging what the market will bear and maximizing profit for shareholders, at the expense of their market which are faculty, academic institutions and the public. Societies similarly vary in the costs of and profits from their publications, across nearly the same range as commercial publishers.<sup>2</sup>

*Societies are in unique positions to improve scholarly communication within their discipline by creating and fostering new publication methods.* Through the enlightened leadership of scholars, societies can help define productive areas for advancement in their discipline, and can foster research and new thought by focused conferences and publications in developing topics that they feel are likely to benefit their members and society more generally. To enhance the availability of knowledge, societies can orchestrate the organization of information across publications where neither the individual scholar nor separate journal has the motivation or ability to do so. Societies should use their particular broad and powerful position as shepherds of their discipline's

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<sup>2</sup> See Bergstrom, Carl and Bergstrom, "The Economics of Scholarly Publishing," 2001, for data and analyses that document this variation and the mix of society, commercial and society-commercial hybrid publishers that characterize several disciplines. <http://octavia.zoology.washington.edu/publishing/intro.html> (accessed 12/6/2005).

knowledge to not only encourage the development and organization of that knowledge, but to also encourage extending that knowledge through eased and improved access to it. Emerging technology can facilitate efforts by societies and their scholars to organize and enhance substantially their discipline's scholarship and its availability, tasks that societies are uniquely positioned to undertake.

There are many current society experiments and successes in evolving healthy scholarly communication to meet the needs of scholars, societies, and academe.<sup>3</sup> All societies who have the advance of disciplinary knowledge as a priority goal should study and replicate these experiments, and create their own technological, organizational, and operational innovations in support of that goal.

*Societies are accountable to their membership and to the academy for the ways in which they fulfill their scholarly communication mission.* Transparency in business models that support publishing and other society efforts is a necessary part of this accountability. A transparent presentation of a society's finances will allow its membership to determine whether or not profits from publications are needed for the work of the society. The prices of access to new knowledge will be lowest if they are set to meet the core costs of production and dissemination of new knowledge, and are not inflated by the society's need for other income. A society might choose to curtail some of its activities if its members have to bear all the associated costs, rather than relying on its scholarly publications to defray some of these non-publication costs. The societies must recognize that increased costs of publications slows the spread of knowledge that the societies themselves hold as a crucial societal function. We believe that societies should examine carefully their policies on publication costs and the use of that income, and place a very high value on spreading knowledge widely.

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<sup>3</sup> See, for example, the publication program of the Optical Society of America and its *Optics Express* open access journal, <http://www.opticsexpress.org/>; the American Anthropology Association's integrated knowledge portal *AnthroSource*, <http://www.anthrosource.net/>; or the series of "virtual" journals in the physical sciences that has been jointly developed by the American Institute of Physics (AIP) and the American Physical Society (APS), <http://www.virtualjournals.org/>.

## Responding to the Challenges Facing Scholarly Communication

### The Case of Scholars' Management of Their Copyright

(Approved for Systemwide Academic Senate Review by the Academic Council on December 14, 2005)

#### Discussion Statement

We call upon UC faculty and scholars at other institutions to exercise control of their scholarship, and their institutions to support this behavior, in at least the following ways:

1. UC and other faculty members must manage their intellectual property in ways that ensure the widest dissemination of works in service to education and research. Specifically, and with the understanding that copyright is actually a bundle of rights that can be separately managed, we urge faculty to transfer to publishers only the right of first publication, OR at a minimum, retain rights that allow postprint archiving and subsequent non-profit use.<sup>1</sup>
2. As part of copyright management, faculty shall routinely grant to The Regents of the University of California a limited, irrevocable, perpetual, worldwide, non-exclusive license to place the faculty member's scholarly work in a non-commercial open-access repository for purposes of online dissemination and preservation on behalf of the author and the public.<sup>2</sup>
3. The University must explore and develop support services to assist faculty to manage their copyright and disseminate their scholarship.
4. University stakeholders must continue to partner, explore, and create a set of information management services including, but not limited to, alternative modes of publishing and disseminating information that allow broadest access at the lowest sustainable cost to the scholar, students and the public.

The management of copyright assigned to scholarly work is a crucial component of scholarly communication. The dysfunctions of scholarly communication – dysfunctions that already decrease the University of California community's access to scholarly materials and limit the dissemination and impact of UC's scholarship – can be addressed, in part, by scholars' active and explicit management of their intellectual property via copyright provisions in publication agreements. Copyright management, which can allow wider and timelier dissemination of research results and therefore increases the potential for impact on subsequent scholarship and societal progress, is largely within the purview of the individual scholar as author, but can be facilitated by the author's institution to support both individual and collective copyright management. The Academic Senate calls upon its members to actively manage their copyrights, and on the University to: a) provide assistance in scholars' retention of rights; and b) to establish and promote alternative modes of scholarly publishing that enable broad access at affordable costs. The Academic Senate also feels this call for action is appropriate for other scholars and institutions in the United States and abroad.

#### Background

The University of California faculty, along with academic colleagues throughout the world, are increasingly concerned about lost control and impact of its published scholarship. A significant part of the story is economic. For decades the cost of scholarly materials has escalated at rates far exceeding the consumer price index rate of inflation. This continuing inflation not only severely handicaps the UC libraries' ability to maintain world-class collections, but also, when coupled with

<sup>1</sup> See Appendix I for a list of actions to take.

<sup>2</sup> See *Proposal for UC Faculty - Scholarly Work Copyright Rights Policy*, a companion piece to this whitepaper, for a discussion of one possible implementation strategy for this recommendation <http://www.universityofcalifornia.edu/senate/committees/scsc/proposed.copyright.policy.scsc.12.05.pdf>.

the rapidly expanding volume of scholarship, results in UC scholars and students having access to a diminishing proportion of research relevant to their work.

The current economic dysfunctions simultaneously limit the audience for and impact of the scholarship produced by UC's faculty. When fewer institutions can afford the publications that carry the results of UC research, it will be read and used by fewer members of the research community. These factors combine to make this a critical issue for the University.

Having UC scholarship reach its potential impact is not limited to addressing economic dysfunctions. Scholarly communication systems must evolve to take advantage of new computer and communications technologies and must adapt their traditional functions to the expanding forms of scholarly material and an expanding audience reachable through global networks.

How faculty choose to manage their copyright is another essential contributing factor that determines whether scholarship reaches its potential impact.

### **The Role of Copyright**

Among the primary goals and aspirations of the academy and its scholars are the creation and wide dissemination of new knowledge for the benefit of society.

U.S. copyright law was designed to "promote the Progress of Science and useful Arts" (U.S. Constitution, Article 1, Section 8, Clause 8). It is meant to encourage the work of inventors and authors through the granting of limited monopolies in inventions and original works of authorship, with the resulting possibility of commercial reward. In copyright law a balance was intended in which the prospect of commercial reward would be an incentive to produce new works, while time limits and other facets of copyright, such as fair use, would ensure that the societal benefit would reach its full potential despite the limited monopoly enjoyed by the creator/author.

However, historically, the relationship between scholarship and copyright can be characterized differently:

- Commercial reward has rarely been a direct incentive for scholars. Rather, scholars desire that their work be widely disseminated and that it have an impact on society and subsequent scholarship. Scholars are evaluated and rewarded primarily based on that impact rather than the direct economic value of their work. Indeed, scholarship has been called a "gift exchange society" where scholarly products, and also the labor of reviewing and filtering them for quality, are given away.<sup>3</sup>
- Historically the interests of the disseminators, i.e. publishers, have been closely aligned with the authors. Indeed, early scholarly publishers were largely non-profit societies, i.e. the scholars themselves aligned within discipline-based cohorts. Non-profit and society publishers comprise a significant but shrinking proportion of current scholarly publishers.
- There were real "first-copy" costs (for soliciting, reviewing, and editing) and distribution costs that needed to be met for distributing scholarship in the form of print materials.

The relationship between copyright and scholarship has changed, for reasons that include the following:

- Digital and network technologies create efficiencies and modest reductions in first copy costs; for works that can be effectively used in electronic format – becoming the norm for scholarly journals and under active experimentation for monographs - they lower the marginal cost of distribution to very low amounts.

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<sup>3</sup> *Policy Perspectives: To Publish and Perish*, The Association of Research Libraries, the Association of American Universities, and the Pew Higher Education Roundtable, Special Issue March 1998, Volume 7, Number 4. <http://www.arl.org/scomm/pew/pewrept.html> .

- Commercial enterprises have entered the scholarly publishing arena. By nature their interests are driven in large part by the need to generate profit and meet shareholder's expectations. The well-documented and dramatic four decade trend of rising journal prices, a related "merger effect" as large commercial publishers seek growth and higher profitability, and a subsequent decrease in access to and impact of scholarship is the result.<sup>4</sup>

This new relationship therefore is characterized by the economic use of copyright and by the monopoly on distribution and use of material that copyright provides to its owner, who now usually is the publisher and not the scholar. However, technological advances can allow other disseminators and even individuals to have these benefits. Further, publishers who possess copyright ownership enjoy economic advantage such as charges to users of the material, and publishers can exercise great control over additional use of the material. The control and economic advantage to the publisher are especially strong when all copyrights are transferred from the author to the publisher.

In publication agreements scholars are often asked or required to transfer their copyrights. Seeking to maximize profits, and when they possess the monopoly that full copyright gives them for any piece of scholarship (for which there are not competing alternatives as would be the case in a "normal" consumer market), many publishers can and do select the highest price that the market will bear. Further, when creators give away copyright, they themselves no longer necessarily have the right to use nor permit the use of the work in a variety of ways that advance the research and education goals of the scholar and the academy. Barred uses may include classroom use, posting on class websites, electronic reserve, deposit in an online repository such as UC's *eScholarship Repository*, or even deposit in long term preservation archives. Explicitly barred use, or lost potential use because of high access fees (subscription or purchase charges), decreases the utility and impact of scholarship and delays, decreases, or hides the scholar's contributions to the progress of knowledge.

However, copyright is a bundle of rights, and it is possible to achieve a balance between the goals of the publisher and the goals of sharing the material for the progress of scholarship and societal benefit. For example, faculty authors can transfer only the right of first publication to the publisher and to retain or share other rights, including the right for classroom use, for non-profit distribution following first publication, for preservation by a university entity, or the right to create derivative works, among others. Evidence suggests that the retention of these rights need not seriously reduce publishers' economic and other incentives for first publication.<sup>5</sup> Many academic organizations promote the importance of faculty management of their copyright and the ensuing potential for a balance of stakeholder interests.<sup>6</sup>

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<sup>4</sup> These and other economic trends are presented in summary form at [http://osc.universityofcalifornia.edu/facts/econ\\_of\\_publishing.html](http://osc.universityofcalifornia.edu/facts/econ_of_publishing.html) , and other places. In-depth analyses are readily available, for example *An Economic Analysis of Scientific Research Publishing*, October 2003 by the Wellcome Trust, <http://www.wellcome.ac.uk/assets/wtd003182.pdf>

<sup>5</sup> Consider, for example, publishers who ask only for first publication rights, e.g. [http://www.alpsp.org/http\\_grantli.htm](http://www.alpsp.org/http_grantli.htm) ; <http://www.firstmonday.org/guidelines.html#copy> ; and <http://www.plos.org/journals/license.html> ; <http://www.biomedcentral.com/info/authors/license> , or the estimated 71 percent of publishers who permit deposit of some form of the scholarship in an open access repository (as tracked by the UK's Romeo/SHERPA project, ( <http://www.sherpa.ac.uk/romeo.php?stats=yes> )

<sup>6</sup> See Appendix III for examples from AAAS and others.

### The Faculty Position on the Role of Copyright in Balancing Stakeholders Interests

Scholarly tradition and current University policy assert that copyright belongs to the faculty author in most cases.<sup>7</sup> At present, it is primarily the individual faculty member who, through publication agreements and individual negotiations with publishers, is in a direct position to manage their copyright in ways that address their own and the academy's interests. The individual author's retention of key rights, or the transfer of only those rights necessary for first publication by a publisher, is therefore an influential individual action.

However, working with their Senate and the University, the faculty can also wield their influence and manage their rights collectively, granting, by default, a limited and non-exclusive set of rights to the Academic Senate; and thus the faculty will guarantee and ease non-commercial use and widest possible access to research results.<sup>8</sup>

Meanwhile, the University is in a position to assist individual action and leverage them collectively, for example, by building supporting tools and infrastructure to manage for the long term the products of UC's scholarship, developing new forms of publishing and online access, and providing digital preservation, among others. Indeed several tools, such as the *eScholarship Repository*, are already available for use. The University of California is poised, through the Office of Scholarly Communication, the California Digital Library, the campus libraries, and others, to extend and add to these information management services thereby enabling new forms of publication, long-term archiving, classroom use, innovative impact analysis and the like. The ultimate benefits, and in some cases the viability of such services, will be enhanced if a set of appropriate and non-exclusive rights are granted from authors to the University.

For these reasons, the University of California Academic Senate strongly urges its members and scholars throughout the world to begin improving accessibility of scholarly works to a wider public by retaining greater control of copyrights to their material.

#### Appendix I. Management of Copyright<sup>1</sup>. Retain Rights

- Keep basic copyright while transferring limited rights to the publisher: Techniques and sample publishing agreements to transfer limited rights to the publisher are available at [http://osc.universityofcalifornia.edu/manage/keep\\_copyrights.html](http://osc.universityofcalifornia.edu/manage/keep_copyrights.html).

Or

- Transfer copyrights but reserve some rights: Techniques and language to modify the language of the publishing contract to transfer non-exclusive rights to the publisher are available at [http://osc.universityofcalifornia.edu/manage/transfer\\_copyrights.html](http://osc.universityofcalifornia.edu/manage/transfer_copyrights.html).

Or

- Submit work to publishers with enlightened copyright policies: Many publishers are liberalizing their policies to help achieve a balance between their interests and those of their authors.

<sup>7</sup> See Appendix II for a summary of UC policy.

<sup>8</sup> See *Proposal for UC Faculty - Scholarly Work Copyright Rights Policy*, a companion piece to this whitepaper, for a discussion of one possible implementation strategy for this recommendation <http://www.universityofcalifornia.edu/senate/committees/scsc/proposed.copyright.policy.scsc.12.05.pdf> .

<sup>9</sup> Exemplary policies from the Association for Computing Machinery ([http://www.acm.org/pubs/copyright\\_policy/](http://www.acm.org/pubs/copyright_policy/)), the Association of Learned and Professional Society Publishers (<http://www.alpssp.org/lplicense.pdf>), and others are available at <http://www.earlham.edu/~peters/fos/lists.htm#statements> . A directory of publisher policies regarding preprints and postprints is available at <http://romeo.eprints.org/> .

## 2. Leverage Retained Rights

- Deposit a preprint or postprint of your work in an open access repository, such as UC's eScholarship Repository (<http://repositories.cdlib.org/escholarship/>)

And

- Grant non-exclusive rights to others to use your work: for example by attaching a creative commons "attribution license" to your work (see <http://creativecommons.org/about/licenses/>).

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## Appendix II. Current UC Copyright Policy

Ownership of copyrighted works created at the University is determined by the 1992 Policy on Copyright Ownership:

"This Policy is intended to embody the spirit of academic tradition, which provides copyright ownership to faculty for their scholarly and aesthetic copyrighted works, and is otherwise consistent with the United States Copyright Law, which provides the university ownership of its employment-related works. Pursuant to Regents' Standing Order 100.4, the President has responsibility for all matters relating to intellectual property, including copyrights in which the University is involved." -- *Preamble from the [University of California Policy on Copyright Ownership, 1992](#).*

Within UC, the Provost's Standing Committee on Copyright "Monitors the copyright environment and makes recommendations to the University on how to align University copyright policy and management with the goals of the academic mission in the context of continuous and rapid change" (<http://www.ucop.edu/copyright/> , accessed 9/28/04).

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### Appendix III. Samples of Principles for Copyright Management in Higher Education

#### The Tempe Principles<sup>10</sup>:

"The academic community embraces the concepts of copyright and fair use and seeks a balance in the interests of owners and users in the digital environment. Universities, colleges, and especially their faculties should manage copyright and its limitations and exceptions in a manner that assures the faculty access to and use of their own published works in their research and teaching."

#### The AAAS<sup>11</sup>:

"...scientists, as authors, should strive to use the leverage of their ownership of the bundle of copyright rights, whether or not they transfer copyright, to secure licensing terms that promote as much as possible ready access to and use of their published work."

#### Zwolle Principles<sup>12</sup>:

Balancing stakeholder interests in scholarship friendly copyright practices.

##### Objective

To assist stakeholders—including authors, publishers, librarians, universities and the public—to achieve maximum access to scholarship without compromising quality or academic freedom and without denying aspects of costs and rewards involved.

##### Principles

1. Achievement of this objective requires the optimal management of copyright in scholarly works to secure clear allocation of rights that balance the interests of all stakeholders.
2. Optimal management may be achieved through thoughtful development and implementation of policies, contracts, and other tools, as well as processes and educational programs, (collectively "Copyright Management") that articulate the allocation of rights and responsibilities with respect to scholarly works.
3. Appropriate Copyright Management and the interests of various stakeholders will vary according to numerous factors, including the nature of the work; for example, computer programs, journal articles, databases and multimedia instructional works may require different treatment.
4. In the development of Copyright Management, the primary focus should be on the allocation to various stakeholders of specific rights.
5. Copyright Management should strive to respect the interests of all stakeholders involved in the use and management of scholarly works; those interests may at times diverge, but will in many cases coincide.
6. All stakeholders in the management of the copyright in scholarly works have an interest in attaining the highest standards of quality, maximizing current and future access, and ensuring

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<sup>10</sup> The result of a meeting held in Tempe, Arizona, on March 2-4, 2000. Sponsored by the Association of American Universities, the Association of Research Libraries, and the Merrill Advanced Studies Center of the University of Kansas. <http://www.arl.org/scomm/tempe.html> .

<sup>11</sup> *Seizing the Moment - Scientists' Authorship Rights in the Digital Age*, The American Association for the Advancement of Science, 2002.  
<http://www.aaas.org/spp/sfrl/projects/epub/finalrept.html>

<sup>12</sup> Endorsed by attendees during a December 2002 conference in Zwolle, the Netherlands, hosted by the Dutch SURF Foundation and by the UK's Joint Information Systems Committee (JISC).  
<http://www.surf.nl/copyright/keyissues/scholarlycommunication/principles.php> .

preservation; stakeholders should work together on an international basis to best achieve these common goals and to develop a mutually supportive community of interest.

7. All stakeholders should actively promote an understanding of the important implications of copyright management of scholarly work and encourage engagement with the development and implementation of Copyright Management tools to achieve the overarching objective.

**Cornell (2005)**

The Senate strongly urges all faculty to negotiate with the journals in which they publish either to retain copyright rights and transfer only the right of first print and electronic publication, or to retain at a minimum the right of postprint archiving.<sup>13</sup>

**CSU, SUNY, CUNY (1997)**

"...through creative reallocations of rights, members of the university community can use copyright protection to better serve the wide range of dynamic interests associated with the growth and sharing of knowledge, which are the core of a university's mission -- all in direct furtherance of the Constitution's provision that copyright should promote the Progress of Science and the useful Arts."<sup>14</sup>

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<sup>13</sup> Cornell Faculty Senate Resolution on Scholarly Publishing, passed 11 May 2005.

<http://www.library.cornell.edu/scholarlycomm/resolution.html> .

<sup>14</sup> Ownership of New Works at the University: Unbundling of Rights and the Pursuit of Higher Learning (CSU, SUNY, CUNY, 1997).

## Proposal for UC Faculty – Scholarly Work Copyright Rights Policy

(Approved for Systemwide Academic Senate Review by the Academic Council on December 14, 2005.)

In order to facilitate scholarly communication and maximize the impact of the scholarship of UC faculty<sup>1</sup>, the Academic Council's Special Committee on Scholarly Communication (SCSC) proposes that the Academic Council consider the following recommended UC copyright policy change:

“A faculty member's ownership of copyright is controlled by the University of California Policy on Ownership of Copyright [<http://www.universityofcalifornia.edu/copyright/>]. University of California faculty shall routinely grant to The Regents of the University of California a limited, irrevocable, perpetual, worldwide, non-exclusive license to place the faculty member's scholarly work in a non-commercial open-access online repository. In the event a faculty member assigns all or a part of the faculty member's copyright rights to a publisher as part of a publication agreement, the faculty member must retain the right to grant this license to the Regents.”

Faculty can opt out of this agreement for any specific work, or invoke a specific delay before such work appears in an open-access repository. The Regents will direct the Academic Senate, in collaboration with UC Administration, to establish support and control mechanisms for the use of scholarly work covered by this policy. No income will accrue to the Regents, the University or the Academic by this non-exclusive copyright license.

SCSC understands that such a proposed policy change would require broad discussion and adoption by the Academic Assembly before submission to UC Administration and the Regents for consideration.

(Some comments offered by SCSC that may be helpful to reviewers.)

1. Terminology-- If a copyright owner retains ownership, he or she "licenses" another to exercise some/all of the copyright rights granted by statute. If a copyright owner "assigns" a copyright to another, ownership of the copyright is transferred to the other party. It is possible to assign ownership of copyright but to reserve a license to use the work in a way specified by a publishing agreement. From SCSC's perspective, the ideal is for the faculty to retain copyright ownership but grant a *license* to the publisher to publish on an exclusive basis for X period of time but with the copyright owner reserving the right during that period of time to license the right to another body for the kind of publication we envision.

2. License – an earlier draft policy called for faculty to "assign" to the Academic Senate a limited right to place their work in a scholarly repository. A better route would be to grant a "license," not an assignment, since a license allows the author to continue to own the copyright. Additionally, it is preferable to grant the license to a legally recognized body, such as a corporation. Thus, the current policy proposal calls for the faculty to reserve a license to The Regents (i.e., the corporation), with the intention that The Regents will ask the Senate to oversee the placement and use of the scholarly work in an open access repository. As an internal matter, a policy could be adopted clarifying that The Regents is authorized to do only X, Y, and Z with the licensed material.

3. Opt-out statement—SCSC was divided on whether or not to include the opt-out option. Its inclusion would give faculty greater flexibility in handling their scholarly work, but perhaps makes a weaker statement by the UC faculty about the importance of retaining copyright. An intermediate stance might be to have a body (a committee of the Senate?) designated to decide whether the policy can be waived and internal guidelines/standards for such waiver could be adopted. These would be available to anyone who asked for such and might strengthen the faculty's leverage more than simply allowing the faculty to opt out.

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<sup>1</sup> This proposal follows and implements the intent and specific principles contained in *Responding to the Challenges Facing Scholarly Communication: The Case of Scholars' Management of Their Copyright*  
<http://www.universityofcalifornia.edu/senate/committees/scsc/copyright.whitepaper.scsc.12.05.pdf>



**Communication from the Committee on Academic Freedom**  
**Stuart Gansky, DrPH, Chair**

April 3, 2006

Deborah Greenspan, DSc, DBS

UCSF Academic Chair

Office of the Academic Senate, Box 0764

Dear Chair Greenspan,

The following is a draft of the review on the white papers *Responding to the Challenges of Scholarly Communication*. Approval is pending.

The Committee on Academic Freedom members are concerned about executing the policies set forth in the White Papers without support from UC in the form of legal backing, explicit instruction or other mechanisms which will support individual authors when dealing with large publishers.

There is also concern about how this will effect multi-author publications, particularly when co-authors come from outside the UC system.

Members preferred to choose the journals on the basis of recognition in the community as well as the weight for prestige allotted during promotions. Some electronic journals do not have the same impact at this time. Unless faculty are given explicit incentives during reviews for submitting to journals which allow UC Regents to retain copyright, faculty will continue to submit to journals that provide the greatest impact regardless of copyright; if such incentives were implemented, this might have impact on faculty academic freedom to publish in venues of choice which include journals requiring transfer of copyright to them. Currently all rights are given to the journal which would necessitate negotiating contracts for rights to their articles. .

One possibility for UC to implement the policies described in the White Papers might be to distribute a list of publishers (paper, online or otherwise) who support more progressive copyright policies, and to encourage faculty and departments to consider publishing there rather than in publications with less favorable copyright policies. Another choice might be to pursue other fair use directions such as Creative Commons ([www.creativecommons.org](http://www.creativecommons.org)) to stipulate fair use (including "some rights reserved"). Rather than have faculty push the issue with publishers, lawyers from a consortium of universities including UC might be better poised to negotiate with publishers.

## **Committee on Academic Freedom**

**Stuart Gansky, DrPh), Chair ■ EMAIL**

**Jim Lightwood, PhD (Clinical Pharmacy) Vice Chair, Adjunct Representative**

**Mark Eisner, MD (Occupational Medicine) Systemwide Representative**

**Stephen Gitelman, MD (Pediatrics) Clinical Representative**

**Miriam Kuppermann, PhD, MPH (Obstetrics, Gynecology and Reproductive Sciences)**

**Howard Pollick, DDS (Preventive and Restorative Dental Sciences)**

**Victor Reus, MD (Psychiatry)**

**Mary White, MPH, PhD (Community Health Systems)**

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Jean Olson, MD, Parliamentarian

## **COMMUNICATION FROM THE SAN FRANCISCO DIVISION** **Deborah Greenspan, DSc, BDS, Chair**

### **San Francisco Division Comments and Recommendations on Draft White Papers Responding to the Challenges Facing Scholarly Communications and Proposed Policy on Scholarly Work Copyrights**

#### **EXECUTIVE SUMMARY**

In early February 2006, all committees of the San Francisco Division were asked to review and provide comments and recommendations related to the draft White Papers Responding to the Challenges Facing Scholarly Communications and Proposed Policy on Scholarly Work Copyrights (White Papers). Twelve of our Divisional committees responded: Committees on Academic Planning and Budget, Academic Personnel, Education Policy, Courses of Instruction, Library, Clinical Affairs, Faculty Welfare, Academic Freedom and the Schools of Dentistry, Medicine, Nursing and Pharmacy and Faculty Councils.

Overall, UCSF Committees expressed support for the concepts put forward in the White Papers and for the proposed policy. However, a number of concerns were expressed, which should be taken into account as the Academic Council works with OP and UC General Counsel to formalize and finalize the recommendations and processes. Additionally, specific recommendations were provided which the UCSF Division believes will strengthen the overall proposal. At the forefront is the need to properly and thoroughly educate UC faculty on any changes from existing processes and to provide the faculty with adequate resources/support (financial, administrative and/or legal) prior to implementation.

The collective comments and recommendations of UCSF Committees are indicated below and represent the Divisional response for consideration and action by the Academic Council.

#### **RECOMMENDATIONS**

1. Approve in concept, and transmit to the President for further consideration, the White Papers and proposed Policy.
2. That consideration be given to integrating into the final proposals/procedures for implementation the following:

- A. UC faculty be provided with specific training, more information and increased awareness related to rights associated with “copyright”, “limited licensing fair use” and “use by the author.”
  - B. UC faculty be provided with specific training designed to provide a more in-depth understanding of issues related to monographs, electronic textbooks, personally created works (fiction or non-fiction works), teaching materials, and personal or didactic Web sites.
  - C. That easy access to campus counsel or other dedicated UC support mechanism(s) be made available and easily accessible to UC faculty to assist with the negotiation between publishers and UC faculty (authors) in order to assist faculty and to add strength to the collective “University” position in such negotiations.
  - D. University or departmental support be provided to UC faculty in the way of funding, administrative and legal assistance as an incentive to submit their creative activities to open access venues such as the Public Library of Science, since doing so shifts the burden of cost and negotiations related to publication onto the researcher or Principal Investigator.
  - E. Provide UC faculty with additional clarification as to how these proposals and new policy would effect multiple author publications, particularly when one or more co-authors are not within the UC system.
3. The Special Committee on Scholarly Communication papers should be amended to provide a stronger recommendation with respect to evaluating the content of scholarly work, as opposed to the “venue” or “reputation” of the service.
  4. The Resolution should be rephrased as follows: “A non-exclusive license is not such a transfer and might be described colloquially as a grant of ‘permission’. This nomenclature may make the proposal more palatable to faculty members inclined to distrust their employing institution’s motives.”
  5. The Special Committee on Scholarly Communication should provide clarification to section 2.a. of the *Evaluation of Electronic Publications in the Academic Review Process* document. The requirement as to referees is unclear. For individual issues or articles, the identities of referees are nearly always confidential and would not, and in most cases, should not be indicated. It should be explicit that any required list of referees should not be linked to individual articles.

## **COMMENTS**

1. The University must take the lead in developing a policy that enables individual faculty members to retain part or all of the copyright without interfering with the ability to publish their work in the desired journals. Individual faculty are not likely to be able to do this on their own in a consistent fashion.
2. UCSF CAP believes it can evaluate electronic publications as easily as press publications. It is already the practice of CAP to consider electronic publications in the academic review process. UCSF CAP equally values press, electronic and open source publications and asserts that electronic disseminations of creative activity is considered equivalent to print dissemination.

3. UCSF CAP does not support putting individual authors (UC faculty members) in the position of negotiating copyright individually with publishers. There should be a University responsibility or the University should provide the support mechanisms and the collective strength of the “University of California” for such negotiations.
4. Concerns were expressed about the quality control and content of the eScholarship repository related to whether the contents is subject to peer review and whether the eScholarship repository would be linked with the National Institutes of Health (NIH) data repository.
5. There should be clarification in the final recommendations/policies as to whether UC faculty will have the ability to “opt out” if they believe that the new policy(s) will limit their ability to publish in the most appropriate journal for their work.

Thank you for the opportunity to evaluate these White Papers, comments and proposed policy.

Yours sincerely,

A handwritten signature in cursive script that reads "Deborah Greenspan". The signature is written in black ink on a white background.

Deborah Greenspan, DSc, BDS  
Chair, UCSF Academic Senate

cc: All Chairs Divisional Committees  
All Faculty Council Chairs  
Professor Lawrence Pitts  
Academic Senate Office

Copyright © AVERT

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## President's Emergency Plan for AIDS Relief (PEPFAR)

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### What is the President's Emergency Plan for AIDS Relief?

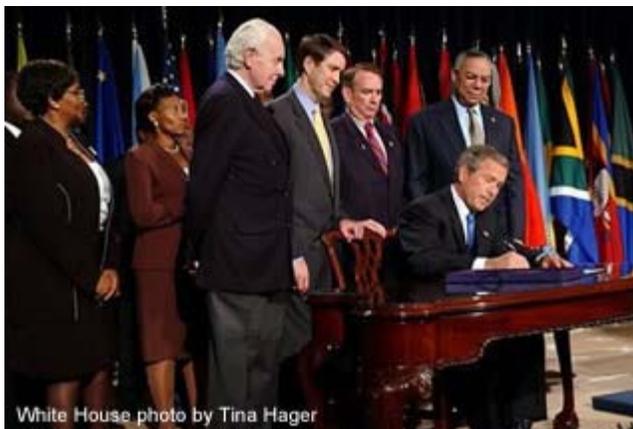
The President's Emergency Plan for AIDS Relief, often known as PEPFAR, is a U.S. five year \$15 billion global initiative to combat the HIV/AIDS epidemic.

### When did PEPFAR start?

In his State of the Union Address in January 2003, President Bush made a commitment to substantially increase U.S. support to addressing the global HIV/AIDS epidemic.<sup>1</sup>

*"I ask the Congress to commit \$15 billion over the next five years, to turn the tide against AIDS in the most afflicted nations of Africa and the Caribbean" - President Bush.*

In May 2003, the U.S. Congress approved, and President Bush signed into law, the "United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003" (PL108-25).<sup>2</sup> This legislation approved expenditure of up to \$15 billion over 5 years and it provides the legal and policy framework for the expenditure.



White House photo by Tina Hager  
George W. Bush signs the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003

President

### Is this the total U.S. Government expenditure on HIV/AIDS?

The sum of \$15 billion is the proposed expenditure of the U.S. Government on HIV/AIDS outside of the U.S. over a five-year period. This is in addition to domestic HIV/AIDS expenditure for which \$21 billion was requested for fiscal year (FY) 2006.

### What does the Leadership Against HIV/AIDS Act of 2003 say generally about President Bush's AIDS Plan?

Congress has stated in the legislation that there should be a:

*"particular focus on the needs of families with children (including the prevention of mother to child transmission), women, young people, and children (such as unaccompanied minor children and orphans)"*

### How is the money to be divided between different areas of work?

Congress required that the PEPFAR money should be divided in the following way:

1. 55% for the treatment of individuals with HIV/AIDS  
(and in FYs 2006 through 2008, 75% of this is to be spent on the purchase and distribution of antiretroviral

- drugs)
2. 15% for the palliative care of individuals with HIV/AIDS
  3. 20% for HIV/AIDS prevention  
(of which at least 33% is to be spent on abstinence until marriage programs)
  4. 10% for helping orphans and vulnerable children  
(and in FYs 2006 through 2008, at least 50% (of the 10%) is to be provided through non-profit, non-governmental organisations, including faith-based organisations, that implement programs at the community level).

So PEPFAR has a very strong emphasis on the provision of treatment and care for people with AIDS, with only a fifth of the money being for HIV prevention work. And in FY 2006 through 2008, forty-one per cent of the total money is to be spent on the purchase and distribution of antiretroviral drugs.

In order that the legislation was passed there had to be considerable cooperation between people of differing political, religious and ideological views, which resulted in many people being dissatisfied with the outcome. Some people were dismayed by the requirement that a third of prevention resources had to be spent on programs promoting sexual abstinence before marriage. However, other people were equally dismayed that two thirds of prevention funds would be used for activities other than abstinence promotion, including condom dissemination.<sup>3</sup>

## Who is in charge of PEPFAR?

Dr Mark Dybul is the acting U.S. Global AIDS Coordinator and is responsible for coordinating all U.S. Government HIV/AIDS activities. He is based in the Department of State and is directly responsible to the Secretary of State.

The previous Global AIDS Coordinator was Ambassador Randall Tobias, who held the post from October 2003 until early 2006. He left to become America's first ever Director of Foreign Assistance, as well as head of the U.S. Agency for International Development (USAID), which receives the bulk of PEPFAR money.

## Is the \$15 billion all "new" money?

Prior to the start of PEPFAR the U.S. Government was already spending significant sums on combating HIV/AIDS outside of the U.S., with most of this expenditure being through bilateral agreements (agreements between the U.S. and one other country) and most of these agreements continued and became part of PEPFAR.

Of the total of \$15 billion, \$9 billion is extra funding, \$5 billion is to continue these existing bilateral agreements (i.e. existing commitments) and \$1 billion is money that is proposed should be provided to the Global Fund to Fight AIDS, Tuberculosis and Malaria.

## Will \$15 billion definitely be provided?

No, because although Congress has approved \$15 billion, the actual amount to be provided each year will depend on how much Congress annually appropriates (approves for spending) for PEPFAR.

## How much money has President Bush requested for PEPFAR so far and how much was enacted?

In FY 2004, President Bush requested \$1,900 million for combating global HIV/AIDS, TB and Malaria, suggesting that the \$3,000 million was an average and that the annual expenditure would be increased over the five year period.

Congress insisted on increasing President Bush's figure by \$500 million, and in January 2004 appropriated \$2.4 billion for HIV/AIDS, TB and Malaria for FY 2004, which ended on 30th September 2004. Of this total \$1,258 million was for existing bilateral programs. In addition there was \$488 million for the U.S. Global Coordinator's Office, \$149 million for the Mother to Child Prevention Initiative, and \$547 million for the Global Fund to Fight AIDS, Tuberculosis and Malaria. Of the overall total, \$850 million was "new" money.<sup>4</sup>

The total budget for global HIV and AIDS in FY 2005 was \$2,701 million, of which \$2,598 million was enacted. Within this amount, \$1,374 million was for the U.S. Global Coordinator's Office, and \$347 was for the Global Fund.<sup>5</sup>

In FY 2006, President Bush requested, and Congress appropriated, approximately \$3.2 billion.<sup>6</sup>

For FY 2007, the president has asked for around \$4 billion including \$300 million for the Global Fund. However this amount may still be cut by Congress.<sup>7</sup>

## **What is the Mother to Child Prevention Initiative?**

This is a President Bush AIDS initiative, started in 2002, to reduce mother to child transmission of HIV in 14 specific countries.<sup>8</sup> These fourteen countries are the same countries listed below which would later become the main beneficiaries of PEPFAR.

The initiative committed \$500 million over five years, and had the aim of reaching one million women with HIV testing and counselling and providing antiretroviral preventive drugs to 80 per cent of HIV positive delivering women by the end of the initiative.

Between October 1 2002 and March 31 2004 the U.S. Government provided \$143 for the initiative. From FY 2005 both the funding and activity for the Mother to Child Initiative have been included in PEPFAR.

## **Which countries are going to benefit from PEPFAR?**

The Leadership Against HIV/AIDS Act of 2003 refers to funding relating to combating HIV/AIDS focusing on fourteen specific countries designated by the President, the fourteen countries being:

Botswana, Cote d'Ivoire, Ethiopia, Guyana, Haiti, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda and Zambia.

These countries are usually now referred to as the "focus" countries. However, the Act of 2003 also says that the President may designate any other country in which the United States was implementing HIV/AIDS Programs in 2003.

## **Why are there now fifteen focus countries?**

When Congress appropriated the funding for FY 2004, they required that a 15th focus country should be added, and that it should be outside of Africa and the Caribbean.<sup>9</sup> Vietnam was added as an additional focus country in June 2004.

## **When reference is made to PEPFAR does this just mean the fifteen focus countries?**

The acronym PEPFAR, or the longer name, the "President's Emergency Plan", are often used confusingly as though they refer solely to the focus countries. However PEPFAR and the President's Emergency Plan refer to all HIV/AIDS expenditure and activities that the U.S. government provides to all countries outside of the U.S.

An example of non-focus country PEPFAR expenditure is the funding that is being provided for HIV/AIDS work in India.

## **Will more focus countries be added?**

On 17th March 2005, separate House (H.R. 1408) and Senate (S674) bills were introduced to designate India as the 16th PEPFAR focus country. It is not clear whether assistance provided in India - if it were to be added to the list - would count towards reaching the goals originally set out for 15 focus countries. If this were the case then those goals would suddenly become considerably easier to achieve, because India has 5 million people living with HIV, and the U.S. already provides substantial funding for the country.<sup>10</sup>

## What are the goals of PEPFAR?

President Bush talked about the goals when he made the first announcement of PEPFAR.

*"This comprehensive plan will prevent 7 million new 'AIDS' infections, treat at least 2 million people with life-extending drugs, and provide humane care for millions of people suffering from AIDS, and for children orphaned by AIDS."*

Following on from this, Congress specified, in the Leadership Against HIV/AIDS Act of 2003, that the aims for the provision of antiretroviral treatment should be that:

1. by the end of FY 2004 at least 500,000 individuals with HIV/AIDS are receiving antiretroviral treatment (ART) through United States assistance programs
2. by the end of FY 2005, at least 1,000,000 such individuals are receiving treatment
3. by the end of FY 2006, at least 2,000,000 such individuals are receiving treatment.

There was also in the Act the renewal of commitments on the prevention of mother to child transmission (PMTCT).

At the United Nations Special Session on HIV/AIDS in June 2001, the United States committed to the specific goals with respect to the prevention of mother to child transmission, including the goals of reducing the proportion of infants infected with HIV by 20 percent by the year 2005, and by 50 percent by the year 2010, as specified in the Declaration of Commitment on HIV/AIDS adopted by the United Nations General Assembly at the Special Session.

The Leadership Against HIV/AIDS Act of 2003 reaffirmed this commitment, by specifying that PEPFAR should provide for meeting or exceeding the goal of reducing the proportion by 20% by 2005, and by 50% by 2010.

## What progress is being made towards these goals?

By July 2004 PEPFAR was supporting ART for at least 24,900 HIV infected men, women and children in nine countries. Of this number, the Emergency AIDS Plan was directly funding ART for approximately 18,800 HIV infected individuals at the point of service delivery. An additional 6,100 people were receiving indirect treatment support through U.S. Government contributions to national, regional or local activities.

These numbers are considerably smaller than the targets set by Congress in the 2003 Act, but as Ambassador Tobias explained in his report on "Current Activities to Expand Treatment", the first money was not received from Congress until 23 January 2004, eight months after enactment, and full implementation of the program did not start until June 2004.<sup>11</sup> PEPFAR therefore set a new goal of reaching at least 200,000 people by June 2005.

In January 2005 it was announced that PEPFAR had provided ARV therapy to 155,000 people in the focus countries and an additional 17,000 in other countries by the end of September 2004.<sup>12</sup> The focus country total had increased to 235,000 by the end of March 2005 (as shown below). This means that the June target had already been achieved, even though more than half of the national goals had not been reached.<sup>13</sup>

By the end of September 2005, some 401,000 people were receiving treatment with PEPFAR support in the focus countries, and around 70,000 were benefiting in other countries through U.S. bilateral programs. Roughly 60% of those receiving treatment in focus countries were women, and around 7% were children.<sup>14</sup>

The focus country number rose to 561,000 at the end of March 2006.<sup>15</sup>

With regard to the targets on prevention of mother to child transmission (PMTCT), in FY 2004 around 125,500 women were provided with antiretroviral therapy to prevent infection of their unborn child, and as a result an estimated 23,700 infant infections were averted. The figures for FY 2005 were slightly lower.<sup>16</sup> The explanation for these small numbers in terms of infections prevented is that there has been a need to develop capacity in order to effectively scale up programs, with there being considerable limitations in respect both of human resources and sites able to provide PMTCT services.

PEPFAR supported care for over 1.7 million people through March 2005, exceeding a goal of 1.1 million set for June

2005. By the end of September 2005, the number had reached nearly 3 million. The initiative also supported counselling and testing services for over 4.6 million people during FY 2005.<sup>17</sup>

So far no figures have been presented for prevention of sexual HIV transmission. It is not clear how PEPFAR intends to evaluate achievements in this area.

## What are the treatment targets and numbers achieved by PEPFAR for individual focus countries?

The table below gives the treatment targets by country for June 2005 and FY 2008, as well as giving the number provided with treatment by July 2004<sup>18</sup>, September 2004<sup>19</sup>, March 2005<sup>20</sup>, September 2005<sup>21</sup> and March 2006<sup>22</sup>.

Country	Provided treatment by July 2004 (direct U.S. support)	Provided treatment by end September 2004	Receiving treatment end March 2005	Receiving treatment end September 2005	Receiving treatment end March 2006	Target for FY 2008
Botswana		32,839	20,000	37,300	51,200	33,000
Côte d'Ivoire	400	4,536	2,100	11,100	16,400	77,000
Ethiopia		9,500	14,800	16,200	26,800	210,000
Guyana		469	500	800	1,200	2,000
Haiti		2,829	3,900	4,300	6,000	25,000
Kenya	2,700	17,152	28,300	44,700	58,000	250,000
Mozambique		5,133	10,200	16,200	22,900	110,000
Namibia	2,500	4,000	9,600	14,300	19,000	23,000
Nigeria	500	13,579	13,500	28,500	49,500	350,000
Rwanda	100	4,386	10,300	15,900	22,500	50,000
South Africa	3,700	12,253	44,600	93,000	132,000	500,000
Tanzania	100	1,518	4,300	14,700	22,800	150,000
Uganda	7,300	33,000	50,900	67,500	75,000	60,000
Vietnam*		0	340	700	1,600	22,000
Zambia	1,500	13,636	22,000	36,000	56,100	120,000
Total	18,800	154,830	235,000	401,000	561,000	2,000,000

\* Vietnam was designated a focus country on 23rd June 2004 and was not included in the reporting period to the end of September 2004.

These numbers refer only to people receiving antiretroviral treatment supported by PEPFAR (for data on the total number of people receiving treatment from all sources, see our [drug access table](#)).

## What do these numbers really mean?

There are a couple of issues worth bearing in mind when interpreting PEPFAR treatment figures.

Firstly, many thousands of people (544,000 in April 2006) are on treatment as a result of funding from the [Global Fund](#),

and the U.S. Government has provided a third of all money for the Global Fund. So the Global AIDS Coordinator has decided that PEPFAR's totals should include a large proportion of people whose treatment was supported by the Global Fund. Of the 471,000 people worldwide said to be receiving treatment with support from PEPFAR at the end of September 2005, around 214,000 (45%) were benefitting indirectly via the Global Fund.

Secondly, in some countries such as Botswana, a small contribution to clinic costs by PEPFAR funds is resulting in all of the people attending certain clinics being credited to PEPFAR.<sup>23</sup> Some Botswanan health officials have argued that in fact zero patients in Botswana have been put on treatment because of PEPFAR.<sup>24</sup>

It should be noted that the numbers of people receiving treatment include not only those assisted through site-specific support of treatment centres, but also those supported by PEPFAR through contributions to national, regional or local "system strengthening" (including such activities as staff training, laboratory support, logistics, and curriculum development). Of the 561,000 referred to in March 2006, only 366,800 received direct, site-specific support.<sup>25</sup>

PEPFAR, the Global Fund, and indeed the WHO do seem to be attaching great importance to the number of people receiving ARVs, and who is credited with achieving this. It is indeed excellent news that in countries such as Kenya and Zambia, an increasing number of people are receiving treatment. However, there also needs to be great importance paid to the quality of treatment, because if insufficient attention is given to such matters as adherence then not only will people die despite receiving treatment, but also a great deal of money will be wasted.

This sudden but very welcome increase in numbers may also obscure some of the real difficulties which exist with the scaling up of treatment.

## What are some of the critical issues in the scaling up of treatment?

A number of major difficulties have been identified as hampering the efforts to expand ARV treatment in the focus countries.<sup>26</sup> These difficulties include:

1. coordination difficulties amongst both U.S. and non U.S. agencies
2. U.S. government policy constraints
3. shortages of qualified focus country health workers
4. focus country government restraints
5. weak infrastructure, including data collection and reporting systems, and drug supply systems.

## What is the PEPFAR strategy document?

In February 2004 the President's Emergency Plan for AIDS Relief, U.S. Five-Year Global HIV/AIDS Strategy was published (hereafter called "the strategy document").<sup>27</sup> Required by the Act of 2003, this document is the central policy document that interprets the provisions of the 2003 Act, and as Ambassador Tobias says at the start of the 100 page document,

*"The plan reflects our current best thinking about what needs to be done and what we believe it is possible to do."*

The strategy document has major sections on critical interventions on prevention, treatment and care in the focus countries. It also discusses centrally managed interventions that will be needed such as an effective and accountable supply chain, and a strong research program to provide the necessary evidence base for the programs.

## Which U.S. Government Agencies are involved in distributing the money?

The expenditure of money is coordinated by the Global AIDS Coordinator's office, but is distributed through a number of government agencies which include the U.S. Agency for International Development ([USAID](#)), the U.S. Department of Health and Human Services Health ([HHS](#)), the U.S. Department of Defense, the Department of Labor, the Peace Corps and the Census Bureau.

Within HHS a number of different agencies are involved including the Centers for Disease Control and Prevention (CDC), the Health Resource and Services Administration (HRSA), and the National Institute of Health (NIH). HHS

manages the central funding for providing care and antiretroviral therapy for HIV positive people, and prevention activities through safe blood programs. USAID manages the central funding for orphans and vulnerable children, for behaviour change through abstinence and being faithful, and for the Supply Chain Management System (SCMS) contract.<sup>28, 29</sup>

## What is the Supply Chain Management System (SCMS) contract?

HIV/AIDS programs require a large number of products, and as the strategy document explains effective supply management is critical to the delivery of these products. Any interruption to the supply of antiretroviral drugs can be literally life threatening, but there is also a need to avoid waste, and to address such issues as drug diversion and counterfeiting.

President Bush's AIDS Plan has the objective of providing an uninterrupted supply of high-quality, low cost products that flow through an accountable system, and in order to achieve this USAID decided to issue a contract to establish and operate:

*"a safe, secure, reliable, and sustainable Supply Chain Management System (SCMS) to procure and distribute pharmaceuticals and other commodities needed to provide care and treatment of people with HIV/AIDS and related infections."*<sup>30</sup>

The SCMS is designed to provide a one-stop shopping point for HIV/AIDS supplies and supply-related services for use by all HIV/AIDS programs funded by President Bush's AIDS Plan.

After a number of delays, the contract was finally awarded on 27th September 2005. The winning proposal was led by the Partnership for Supply Chain Management (PFSCM), a nonprofit organisation established by JSI Research & Training Institute (part of John Snow International) and Management Sciences for Health (see our [PEPFAR partners](#) page for more about these organisations). The contract funds up to \$77 million in system operating expenses and technical assistance over the first three years. More than \$500 million worth of drugs and supplies could be handled by the system during that time.<sup>31</sup>

The Ecumenical Pharmaceutical Network (EPN) - a consortium of over 70 health service providers and drug supply organisations from 29 countries - has expressed concern about the SCMS. In a May 2006 statement, the EPN said it fears that the system could destabilise existing, well-functioning supply chains, and that it may be unsustainable. It also criticised PEPFAR for not involving stakeholders from target countries when it designed the SCMS.<sup>32</sup>

## What products can be purchased with PEPFAR money?

A very large amount of PEPFAR money (probably several billion dollars) is going to be spent on the purchase of HIV antiretroviral drugs, and there are also going to be significant purchases of a wide range of other supplies. These other supplies include such diverse items as soap and non-sterile gloves (for home care kits), laboratory equipment for CD4 counts, other laboratory supplies such as fridges, and breast-milk substitutes (for the prevention of mother-to-child transmission).

The strategy document specifies that all products purchased with Emergency AIDS Plan money must be "of the highest quality", and that "products will be procured from reliable manufacturers to ensure product safety and efficacy". But how is safety and efficacy to be confirmed?

Safety and efficacy for all pharmaceuticals purchased with PEPFAR money was subsequently explained as meaning that the drugs had to be approved by the U.S. FDA or a regulatory agency in Canada, Japan or Western Europe.<sup>33</sup> It would not be sufficient for drugs to have been pre-qualified by the World Health Organisation.

## How does this policy affect the purchase of generic drugs?

The strategy document says that drugs purchased with PEPFAR money may be "bioequivalent versions of branded ARV and other medications", meaning that lower priced generics could be in theory be purchased. However, the requirement for approval by the US FDA, or a similar regulatory body, initially excluded the purchase of most generics as most

generic antiretrovirals were only prequalified by the WHO. The policy totally excluded the purchase of Fixed Dose Combinations (FDCs), none of which were approved by the FDA.<sup>34</sup>

In May 2004 the FDA announced an accelerated review process for FDCs and generic drugs, and it was agreed by Ambassador Tobias that drugs approved through this process could then be purchased with President Bush's Emergency AIDS money "where international patent agreements permit them to be purchased".<sup>35</sup> But although FDA approval can be provided in as little as six weeks after submission of an application, the first drugs received "tentative" FDA approval through this route only in December 2004.<sup>36</sup>

By August 2005, nine generic drugs had won FDA approval. However none could be distributed by PEPFAR because several African countries refused to trust the FDA, and insisted the drugs be approved by the WHO before allowing them to be imported. To solve this unforeseen problem, FDA officials agreed to share with the WHO its files about the drugs, so that the WHO could quickly add them to its list of approved medicines.<sup>37</sup> PEPFAR eventually began distributing generics towards the end of 2005, by which time 15 such drugs had been approved by the FDA, including two FDCs.<sup>38</sup>

AVERT.org has more about [low cost treatment and FDCs](#), as well as a page discussing the issues surrounding [TRIPS, AIDS and generic drugs](#).

## **How important is it that generics and FDCs are made available through PEPFAR?**

The inclusion of FDCs is potentially very important because of the beneficial effect FDCs have on adherence.<sup>39, 40</sup> FDCs are not only very important for developing countries but could also be very useful for some people in more developed countries such as the USA and UK.

Generic copies of AIDS drugs are usually cheaper than brand-name versions, so potentially enable more people to receive treatment.

## **Is it proposed that a very significant amount of PEPFAR money be spent on "abstinence until marriage" and other HIV prevention work?**

HIV prevention money accounts for around 20% of total PEPFAR expenditure, and Congress has specified that at least a third of this money should be spent on abstinence until marriage programs. The grants provided through the USAID managed Abstinence and Healthy Choices for Youth Program have been the focus of considerable discussion, particularly with regard to the effectiveness of this approach at the apparent expense of other initiatives such as the distribution of condoms. More information about some of the recipients of these grants is provided in a page on [PEPFAR's partners](#).

A document that first became public when leaked to the Baltimore Sun in December 2005 revealed a new requirement for Federal Year 2006, decreeing that at least two-thirds of all funds for preventing sexual transmission of HIV should be spent on promoting abstinence and being faithful (known as "AB" strategies). If a country does not meet this requirement then they must be able to supply a good excuse. In the case of countries with generalised epidemics (which includes most of Africa), the document says "a very strong justification is required to not meet the 66 percent AB requirement". PEPFAR expects all fifteen of its focus countries to meet the requirement. It says that, without exception, no country should decrease between 2005 and 2006 the proportion of sexual transmission activities that are AB.<sup>41</sup>

The PEPFAR five-year strategy document mentions condom provision and promotion only for those who practice high-risk behaviours. Those who practice high-risk behaviours include "prostitutes, sexually active discordant couples [in which one partner is known to have HIV], substance abusers, and others". Condoms are not mentioned as a strategy for helping young people in general.<sup>42</sup> This approach differs significantly from previous U.S. policy and the policies of other donors including the Global Fund and the European Union. The latter has said it is "profoundly concerned about the resurgence of partial or incomplete messages on HIV prevention which are not grounded in evidence and have limited effectiveness."<sup>43</sup>

There have been some reports of organisations refusing U.S. funding because they believe condoms should be promoted

beyond "high risk" groups. Such groups fear that PEPFAR's approach will lead to re-stigmatisation of condoms, and will promote the notion that condoms don't work as a form of HIV prevention.<sup>44</sup> However, Dr Mark Dybul has claimed that,

*"It is impossible for a site to be told to stop distributing condoms, or to close because of condom distribution... it would be directly contravening the stated policy of the U.S. government to say that because someone distributes condoms, they cannot receive resources from the U.S. government."*

Dr Dybul has also insisted that,

*"The notion that there's an excessive focus on abstinence is just untrue... The policy both in the guidance we issue and in the programs we support is fully ABC - abstain, be faithful, and correct and consistent use of condoms."*<sup>45</sup>

In April 2006, the Government Accountability Office (GAO) released the results of an extensive investigation of PEPFAR's policies for preventing sexual HIV transmission. Seventeen of the twenty country teams interviewed by the GAO said that fulfilling the spending requirements set by PEPFAR presented "challenges to their ability to respond to local prevention needs." Some said that they had had to scale down efforts to prevent mother-to-child transmission or to improve blood safety in order to try to meet the one-third AB requirement, and many said that not enough emphasis was being placed on condoms. In one country, the budget for outreach work with high-risk groups such as sex workers, sexually active youth and discordant couples was cut from \$8 million to \$4 million in order to meet AB requirements.<sup>46</sup>

Following the GAO report, medical journal The Lancet published a full-page editorial calling PEPFAR's approach to preventing sexual HIV transmission "ill-informed and ideologically driven", and calling for "a complete reversal of policy". The editorial concluded that, "Many more lives will be saved if condom use is heavily promoted alongside messages to abstain and be faithful."<sup>47</sup> Other critics of the AB funding requirement include the HIV Medicine Association (HIVMA) and the Infectious Diseases Society of America (IDSA),<sup>48</sup> as well as a number of prominent American HIV prevention experts.<sup>49, 50</sup>

The PATHWAY bill proposed by Congresswoman Barbara Lee, and supported by many non-governmental organisations, would remove the one-third AB requirement, and also require the President and the Office of the Global AIDS Coordinator to establish a comprehensive and integrated HIV prevention strategy to address the vulnerabilities of women and girls to HIV infection.<sup>51</sup>

AVERT.org has more about PEPFAR's controversial approach to the ABC of HIV prevention, and how it might be affecting the AIDS epidemic in Uganda.

## Other funding restrictions

PEPFAR sets other funding restrictions that are not necessarily based on evidence of what is most effective in combatting HIV/AIDS.

The First Annual Report states that, "Emergency Plan funds will not support **needle or syringe exchange**".<sup>52</sup> Many people have objected to this because needle exchange programmes have been proven to help reduce the spread of blood-borne HIV by providing injecting drug users with sterile syringes, without encouraging drug use. In some areas, this may be part of a wider harm reduction strategy, whereby users are given a safe, monitored place to inject and/or pure uncontaminated drugs to reduce the risk of overdose. However, the U.S. government is opposed to such measures as it believes they make drug use seem more acceptable, and facilitate continued drug use.

The "Leadership" act of 2003 states that, "No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing **prostitution and sex trafficking**".<sup>53</sup> This condition (sometimes called the "Prostitution Loyalty Oath") led to Brazil refusing \$40 million of PEPFAR funds in May 2005. The director of Brazil's HIV/AIDS program explained, "Brazil has taken this decision in order to preserve its autonomy on issues related to HIV/AIDS as well as ethical and human rights principles". The Brazilian government and many organisations believed that adopting the PEPFAR condition would be a serious barrier to helping sex workers protect themselves and their clients from HIV.<sup>54</sup> In January 2006, the BBC World Service Trust abandoned a USAID-funded, multi-million-dollar AIDS awareness campaign in Tanzania because it refused to comply with this anti-prostitution clause. The Trust said it did not want to inhibit its ability to make television and radio programs that discuss sex workers in a non-judgemental way.<sup>55</sup> As a result Tanzania was left without any

mass media programme to combat HIV.

In May 2006, two American judges ruled in two separate cases that this funding restriction violated the First Amendment of the U.S. constitution - the right to free speech - and so could not be applied to the U.S.-based organisations that brought the cases.<sup>56</sup> This probably means that all U.S.-based organisations will be exempted from the clause. However, all overseas groups wishing to receive U.S. Government funding, whether directly or indirectly, must still comply. Numerous non-governmental organisations and public health experts believe that the clause is harmful and should be removed.<sup>57</sup>

The "Global Gag Rule", also known as the "Mexico City Policy", denies U.S. international family planning funding to foreign non-governmental organisations that provide safe **abortion** services, counselling, referral, or information about safe abortion, advocate for changes in abortion law in their own country, conduct research on the effects of unsafe abortion, or otherwise work on safe abortion issues. In August 2003, President Bush released an Executive Order specifically exempting HIV/AIDS funds from restrictions under the Global Gag Rule. However, the restriction appeared twice in Kenya's \$193 million Request for Application (RFA) for HIV/AIDS prevention, treatment and care, released by USAID in November 2005.<sup>58</sup> The inclusion seems to have been due to administrative error, and the document was later retracted. Nevertheless, there remains confusion about how the Global Gag Rule relates to HIV/AIDS funding, and some organisations may be denied funds as a result. Moreover, the policy is a significant obstacle to the integration of HIV prevention with reproductive health services.

In pursuit of rapid results, PEPFAR is in some cases taking over established projects that already had sufficient (though perhaps less generous) funding from other donors. In order to qualify for U.S. support, the organisations running such projects are compelled to sign documents setting out what activities they may and may not perform. Successful programmes may be terminated if they do not comply with PEPFAR conditions. Organisations that have previously relied on large amounts of U.S. money may have great difficulty securing alternative funding should they refuse to comply with the new "morality clauses".

These official funding rules may not be the only constraints on the type of work that is carried out. According to one of PEPFAR's implementing partners in Nairobi:

*"There are perceived restrictions in PEPFAR about what you can discuss with whom, so everyone is being very cautious... People are afraid to discuss family planning, condoms, abortion - so many groups don't address them at all."*<sup>59</sup>

## Are there any other controversial areas?

Another controversial area has been the circumventing of the Global Fund to Fight AIDS, Tuberculosis and Malaria, by directing the bulk of resources to a separate initiative. However, the U.S. Government is still the largest contributor to the Global Fund.

The controversial areas of PEPFAR have at times overshadowed what has already been achieved, which is the channeling of hundreds of millions of newly appropriated funds to treatment programs for tens of thousands of AIDS patients around the world.<sup>60</sup>

## How did the Global AIDS Coordinator plan the implementation of PEPFAR?

It was clear from the very specific targets in the legislation that there was a need for the implementation of PEPFAR to take place as rapidly as possible. So planning proceeded along two "pathways" at the same time.

1. Plans were made to develop five year strategic plans for each focus country.
2. Plans were made to distribute a considerable amount of money as soon as the first of the "new" money was released by congress.

## How were the five year focus country plans developed?

The U.S. Global AIDS Coordinator asked the USAID Chief Of Mission in each country to undertake a strategic

planning process to develop a five year plan for strengthening the quality, availability, and sustainability of treatment, prevention and care services.<sup>61</sup> The planning process was to include all relevant U.S. Government (USG) entities, as well as the "host-country" government, the NGO sector, people living with AIDS, other bilateral and multilateral donors, and additional stakeholders.

These five year plans had to be submitted to the Global AIDS Coordinator for review, and final approval had to be given by the Coordinator to "ensure consistency with congressional intent, administration policy, and program objectives". Funding levels for the focus countries was to be allocated on the basis of the five year strategic plans. By May 31 2004, 14 countries had had their first year plans totalling \$589 approved.

## How is money distributed?

Organisations and governments that receive PEPFAR money directly from a U.S. government agency are known as "prime" partners. Many of these prime partners in turn give grants to "subpartners" who help to implement PEPFAR's plans.

PEPFAR money is provided not only for country-managed programs, but also through central funding mechanisms that fund regional initiatives serving more than one country. Examples of central programs are the Abstinence and Be Faithful program, the Blood Transfusion Safety program and the Supply Chain Management program. Such programs provide central support for partners working in a number of countries.

The first "new" money of \$350 million was made available by Congress in February 2004, and within a few months \$114 million had been made available for central programs, and \$232 for country-managed programs.<sup>62</sup>

## How transparent is the distribution of funds?

Organisations are not required to publicise details of money received from PEPFAR. Some information is released by the Global AIDS Coordinator's Office, by USAID or by U.S. embassies, but it is impossible to track the flow of all PEPFAR money. There is enormous scope for improvement in transparency.

AVERT.org has a page containing details of some of [PEPFAR's partners](#) and the projects for which they have received PEPFAR grants.

## Do we at least know how much money is provided for each country?

The Second PEPFAR Annual Report gives the following figures for the funding for each focus country in FY 2004 and FY 2005.<sup>63</sup> AVERT.org has a page describing in more detail how funds are being allocated in [PEPFAR focus countries](#).

Country	FY 2004 budget enacted for country-managed programs (\$ millions)	FY 2005 budget planned for country-managed programs (\$ millions)
Botswana	17.9	43.3
Côte d'Ivoire	13.0	30.8
Ethiopia	41.0	75.7
Guyana	9.3	15.8
Haiti	20.3	45.1
Kenya	71.4	124.6
Mozambique	25.5	50.8
Namibia	21.2	39.0

Nigeria	55.5	89.0
Rwanda	28.0	46.2
South Africa	65.4	123.9
Tanzania	45.8	85.7
Uganda	80.6	132.3
Vietnam	17.4	27.6
Zambia	57.9	102.7
Total	570.2	1,032.4

## How much money goes to indigenous organisations?

In FY 2004, PEPFAR had around 1,271 partners, of which 1,022 were indigenous (that is, based in the country in which they were working). Around 47% of all prime partners were indigenous, and 83% of subpartners. Indigenous prime partners received 22% of all money obligated to prime partners, and indigenous subpartners received 72% of all money obligated to subpartners.<sup>64</sup>

In FY 2005, some 53% of all prime partners were described as "local" (which is essentially the same thing as "indigenous"), as were 92% of all subpartners.<sup>65</sup>

## How many of PEPFAR's partners are faith-based?

In FY 2004, PEPFAR had 248 faith-based partners (16 primes and 232 subpartners), comprising just over 20% of all partners. PEPFAR views faith-based groups as priority local partners because many people participate in religious institutions, and they are important providers of health services in many focus countries.<sup>66</sup>

In FY 2005, faith-based organisations comprised 7% of prime partners and 23% of sub-partners.<sup>67</sup>

## Has all the FY 2004 and FY 2005 money been spent?

There will often be some delay between the time when money is allocated to a prime partner and the time when that money is passed on to an in-country subpartner, such as a small community-based organisation. More time will then pass before the money is finally put to use. In some cases the whole process can take a considerable amount of time, so it is more than likely that some funds allocated by PEPFAR in FY 2004 and FY 2005 have still not trickled down to their intended beneficiaries.

## What is the New Partners Initiative?

This initiative will provide \$200 million for HIV prevention and care grants to focus country organisations that have previously received little or no U.S. funding. The aim is to increase the number of PEPFAR partners and to "build local ownership of HIV/AIDS responses for the long term."<sup>68</sup> Critics point out that the initiative is likely to increase funding for Christian groups that are ideologically aligned with the Bush administration.

## More information

Find out more about what PEPFAR is doing in each of its [focus countries](#), and about [PEPFAR's partners](#) - the international organisations and firms who are implementing U.S. plans.

*Written by Annabel Kanabus and Rob Noble.*

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