To: Library and Information Technology Committee Colleagues
From: Molly Van Houweling
Re: Briefing Materials on Open Access

The issue of open access as it has been playing out as a policy matter at UC and at our peer institutions is—for starters, anyway—an issue of ownership and licensing of copyrights in faculty-authored texts. To frame our discussion of the issue, I have attached some documents regarding current and proposed faculty copyright policies at UC and our peer institutions. Here are some highlights of what these documents describe. (Page numbers refer to the numbers on the upper right hand corners.)

- The current UC policy on copyright ownership (adopted in 1992, attached at page 3) “is intended to embody the spirit of academic tradition, which provides copyright ownership to faculty for their scholarly and aesthetic copyrighted works.”

- In May 2006, the UC Academic Assembly unanimously endorsed a proposal by the Academic Council’s Special Committee on Scholarly Communication that “the Academic Council consider” a UC copyright policy change by which “faculty shall routinely grant to The Regents of the University of California a limited, irrevocable, perpetual, worldwide, non-exclusive license to place in a non-commercial open-access online repository the faculty member’s scholarly work published in a scholarly journal or conference proceedings.” The Special Committee on Scholarly Communication also issued a related white paper on “The Case of Scholars’ Management of Their Copyright” (attached at page 6). An ad hoc working group was subsequently appointed to draft a detailed policy (attached at page 14), which was released for discussion in January, 2007. The ensuing discussion across the UC campuses raised a variety of concerns, including many about the mechanisms the policy proposed for faculty member opt-out. These and other reactions are reflected in a July, 2007, memo summarizing Academic Senate review of the draft policy (attached at page 22, along with the response from the Berkeley’s DIVCO). In light of these concerns, the policy did not move forward. (For a summary of these events and links to additional documents, see http://osc.universityofcalifornia.edu/openaccesspolicy/).

- In the years since this initial attempt at UC-wide policy reform, many of our peer institutions have amended their copyright policies to clarify and/or change the default treatment of faculty-authored work. An emerging model is a simplified version of the proposal considered by UC in 2007. It assumes that faculty members (as opposed to the university) own copyright in their scholarly work but establishes the default rule that the
university receives a nonexclusive license to exercise all rights under copyright except for selling copies for a profit. Versions of this model have been adopted to govern “scholarly articles” at Harvard (Faculty of Arts and Sciences and many other individual schools and departments), MIT, Kansas, Duke, and Princeton, among others. (Selected policies attached starting at page 29.) Some but not all of these policies require faculty members to facilitate distribution of their articles by submitting electronic copies to the university; some but not all commit the university to making the articles available in an open-access repository. All permit waiver of the policy upon faculty member request. Stuart Shieber, who spearheaded the open-access policy adoption at Harvard, has crafted a “model open-access policy,” with helpful accompanying annotations (attached at page 33).

- To give a flavor for the arguments that have prompted adoption of such policies, and the questions typically raised about them, I have attached the report that led to the recent adoption of Princeton’s policy (page 37), MIT’s particularly comprehensive FAQ document (page 41), and the document used to frame faculty discussion at Duke (page 45). We will also have an opportunity to hear a first-hand account of a recent adoption and early implementation from Dave Hansen, now a Digital Library Fellow at the Law School but formerly involved in open access policy formation at Duke.
UNIVERSITY OF CALIFORNIA POLICY ON COPYRIGHT OWNERSHIP

University of California
Office of the President
August 19, 1992

I. Preamble

The creation of copyrighted works is one of the ways the University fulfills its mission of contributing to the body of knowledge for the public good. The University encourages the creation of original works of authorship and the free expression and exchange of ideas.

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 (mm), the President has responsibility for all matters relating to intellectual property, including copyrights in which the University is involved.

II. Purpose and Scope

This statement sets forth the University's Policy on the Copyright Ownership for works produced at, by, or through the University of California, its campuses, and the Department of Energy Laboratories. This Policy applies to University employees, students, and other persons or entities using designated University facilities or acting under contract with the University for commissioned works. This Policy addresses ownership of copyright; it does not address ownership or access to the underlying research results or data, as covered in Academic Personnel Manual Section 020, University Regulation 4. It does not change or affect obligations under the University of California Patent Policy. If, in any case, the application of the two policies gives rise to a conflict, the ownership principles of the Patent Policy shall apply.

III. Definitions

For purposes of this Policy, the following definitions shall apply:

A. Copyright

Copyright is the intangible property right granted by Federal statute for an original work fixed in a tangible form of expression. Copyright provides the owner with the following exclusive rights in a work: to reproduce, to prepare derivative works, to distribute by sale or otherwise, to perform publicly, and to display publicly.

B. Designated Academic Appointees

Those University employees who have a general obligation to produce scholarly/aesthetic works. Included are all appointees in the Professor series, In-Residence series, and the Professional Research series. Appointees in other academic titles may also be designated by the appropriate Chancellor or Vice President as having the obligation to produce scholarly/aesthetic works.

C. Independent Academic Effort

Inquiry, investigation, or research carried out by designated academic appointees to advance knowledge or the arts where the specific choice, content, course, and direction of the effort is determined by the designated academic appointee without direct assignment or supervision by the University. The general obligation of designated academic appointees to produce scholarly/aesthetic works is considered independent academic effort.

D. License

A contract in which a copyright owner grants to another permission to exercise one or more of the rights under copyright.

E. Originator(s)

One who produces a work by his or her own intellectual labor. When there is more than one originator, the ownership of each originator's contribution shall be considered separately pursuant to this Policy.

F. Permissible Consulting Activities

Professional or scholarly services provided by University employees for compensation, which do not interfere with regular University duties, do not utilize University resources, and are not prohibited by terms of the University employment contract or other applicable University agreements or policies.

G. Royalties

A payment made to an owner of a copyright for the privilege of practicing a right under the copyright.

H. Sponsor

An organization or agency which provides funding, equipment, or other support for the University to carry out a specified project in research, training, or public service pursuant to a written agreement. Sponsors include Federal, State, local, and other governmental entities as well as private industry, educational institutions, and private foundations.

I. University Facilities
Buildings, equipment, and other facilities under the control of the University, that are designated by the appropriate Chancellor, Laboratory Director, or Vice President as requiring an advance agreement, from non-University personnel and University personnel acting outside the scope of their employment, concerning the disposition of any copyrighted works that are originated with the use of these facilities. Such facilities normally include campus computer centers and normally do not include University libraries. For the purposes of this Policy, the Department of Energy Laboratories are considered to be under the control of the University.

J. University Funds
Funds, regardless of source, that are administered under the control, responsibility, or authority of the University.

K. University Resources
University funds or facilities.

L. Work
Any copyrighted expression, including literary work (written lectures are included); musical work including any accompanying words; dramatic work, including any accompanying music; pantomimes and choreographic work; pictorial, graphic, and sculptural work; motion pictures and other audiovisual work; sound recordings; and computer software.

IV. Copyright Ownership by Category of Work

A. Scholarly/Aesthetic Work
A scholarly/aesthetic work is a work originated by a designated academic appointee resulting from independent academic effort.
Ownership of copyrights to scholarly/aesthetic works shall reside with the designated academic appointee originator, unless they are also sponsored works or contracted facilities works, or unless the designated academic appointee agrees to participate in a project which has special provisions on copyright ownership pursuant to Section VI.C. of this Policy.

B. Personal Work
A personal work is a work that is prepared outside the course and scope of University employment (except for permissible non-University consulting activities) without the use of University Resources.
Ownership of copyrights to Personal works shall reside with the originator.

C. Student Work
A student work is a work produced by a registered student without the use of University funds (other than Student Financial Aid), that is produced outside any University employment, and is not a sponsored, contracted facilities, or commissioned work.
Ownership of copyrights to student works shall reside with the originator.

D. Sponsored Work
A sponsored work is a work first produced by or through the University in the performance of a written agreement between the University and a sponsor. Sponsored works generally include interim and final technical reports, software, and other works first created in the performance of a sponsored agreement. Sponsored works do not include journal articles, lectures, books or other copyrighted works created through independent academic effort and based on the findings of the sponsored project, unless the sponsored agreement states otherwise.
Ownership of copyrights to sponsored works shall be with the University unless the sponsored agreement states otherwise. Any sponsored work agreement which provides for ownership by other than the University generally shall provide the University with a free-of-cost, nonexclusive, world-wide license to use and reproduce the copyrighted work for education and research purposes.

E. Commissioned Work
A commissioned work is a work produced for University purposes by individuals not employed at the University or by University employees outside their regular University employment.
When the University commissions for the production of a work, title normally shall reside with the University. In all cases, copyright ownership shall be specified in a written agreement. Any such agreement which provides for ownership by other than the University, generally shall also provide the University with a free-of-cost, nonexclusive, world-wide license to use and reproduce the copyrighted work for education and research purposes.

F. Contracted Facilities Work
A contracted facilities work is a work produced by non-University personnel or University personnel acting outside the course and scope of their employment, using designated University facilities pursuant to a written agreement.
Ownership of copyrights to contracted facilities work shall be governed by the agreement permitting use of the specified University facilities. Depending on the nature of the facility and the nature and extent of the use, the agreement may specify that ownership of resulting copyrights rests with the University, or the University simply may be paid a fee for the use of the facility, or some other arrangement may be appropriate.

G. Institutional Work
Except as otherwise provided in this Policy, the University shall own all copyrights to works made by University employees in the course and scope of their employment and shall own all copyrights to works made with the use of University resources.

H. Work Acquired by Assignment or Will

The University may acquire copyrights by assignment or will pursuant to the terms of a written agreement or testament. The terms of such agreements should be consistent with this Policy on Copyright Ownership and other University policies governing such acquisitions.

V. Copyright Ownership of Jointly Originated Works

Copyright ownership of jointly originated works shall be determined by separately assessing the Category of Work of each originator pursuant to Section IV. above. Rights between joint owners of a copyright shall be determined pursuant to copyright law.

VI. Copyright Agreement and Notification

A. Prior to any use of a University facility by non-University personnel or by University personnel outside University employment, a signed agreement shall be required that specifies the disposition of copyrighted works. University employees using University facilities for work outside University employment are responsible for bringing this to the University's attention so that an appropriate agreement for use can be negotiated. (See IV.F. above.)

B. Designated academic appointees participating in sponsored projects must have an agreement on file with the designated campus official which acknowledges: (a) individual and joint responsibility to produce and deliver sponsored works to the sponsor, as required by the terms of the sponsored project agreement, and/or to the University when so requested, and (b) that copyright ownership of sponsored works, unless reserved to the sponsor or otherwise provided for in the sponsored project agreement, shall vest in the University. (See IV.D. above).

C. Any designated academic appointee, other employee, or student wishing to participate in a specified University project that includes copyright ownership requirements other than provided in Section IV. of this Policy must sign an agreement indicating his or her concurrence with that project's special conditions. Chancellors and Vice Presidents shall designate special University projects that shall require such special copyright agreements.

VII. Release of University Rights

The University may release its ownership rights in copyrighted works to the originator(s) when, as determined by the University: (a) there are no overriding or special obligations to a sponsor or other third party; and (b) the best interests of the University would be so served. Such release of ownership rights must be contingent on the agreement of the originator(s) that no further effort on, or development of, the work will be made using University resources and that the University is granted a free-of-cost, nonexclusive, worldwide license to use and reproduce the work for education and research purposes.

VIII. Licensing and Royalties

The University may assign or license its copyrights to others. Royalty or income received from such transactions may be shared with the originator(s) of such works, as determined by the appropriate Chancellor, Laboratory Director, or Vice President, taking into account the originator's contribution, the University's costs, any provisions imposed by sponsors or other funding sources, and any other applicable agreements concerning the copyright.

IX. Copyright Responsibilities and Administration: Chancellors, Laboratory Directors, and Vice Presidents

For copyrighted works under their respective jurisdictions, Chancellors, Laboratory Directors, and Vice Presidents are authorized to:

A. Issue guidelines, implementing procedures, and supplementary local policies consistent with this Policy. These may include directives regarding licensure, disposition of royalty income, and other rights related to copyrights. Copies of such guidelines, policies and procedures shall be sent to the President;

B. Identify campus, Laboratory, and other University facilities or projects as having special copyright assignment obligations and issue guidelines and implementing procedures regarding assignment of copyright in works produced using such facilities or projects;

C. Register copyrights, accept copyrights from third parties, and sell, assign, or grant licenses in the name of The Regents for any rights to copyrights; and

D. Release University ownership rights to copyrighted works which are in the name of The Regents of the University of California pursuant to Section VII.
Responding to the Challenges Facing Scholarly Communication

The University of California
Academic Council’s Special Committee on Scholarly Communication

The Case of Scholars’ Management of Their Copyright
(Endorsed by the Academic Council on April 19, 2006)

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.¹

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.²

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

¹ See Appendix I for a list of actions to take.
² 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/copyrightproposal0506.pdf], May 10, 2006].
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.3

- 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.

3 Policy Perspectives: To Publish and Perish, The Association of Research Libraries, the
Association of American Universities, and the Pew Higher Education Roundtable, Special Issue
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.4

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.5 Many academic organizations promote the importance of faculty management of their copyright and the ensuing potential for a balance of stakeholder interests.6

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

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5 Consider, for example, publishers who ask only for first publication rights, e.g. http://www.alpsp.org/htp_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).

6 See Appendix III for examples from AAAS and others.
Scholarly tradition and current University policy assert that copyright belongs to the faculty author in most cases. 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.

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

1. 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.⁹

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⁷ See Appendix II for a summary of UC policy.

⁸ 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/copyrightproposal0506.pdf](http://www.universityofcalifornia.edu/senate/committees/scsc/copyrightproposal0506.pdf), May 10, 2006.

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

The Tempe Principles\(^{10}\):
"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\(^{11}\):
"...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\(^{12}\):
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

\(^{10}\) 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.


\(^{12}\) 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.  

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.'"  

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14 Ownership of New Works at the University: Unbundling of Rights and the Pursuit of Higher Learning (CSU, SUNY, CUNY, 1997).
1. Introduction
This policy proposal and related materials were prepared by an ad hoc working group appointed by Provost Hume in response to a proposal unanimously approved by the Academic Assembly and forwarded to President Dynes in May 2006 to adopt a policy – titled then as the “UC Faculty Scholarly Work Copyright Rights Policy” – which confirms UC faculty ownership of copyright of their scholarly work, but through which faculty would grant a limited and non-exclusive permission to the Regents to make work published in a scholarly journal or conference proceedings publicly accessible by posting it in an open, on-line repository of scholarly publications. The full text of the proposal is attached as Appendix II and also available from http://www.universityofcalifornia.edu/senate/assembly/may2006/copyright0506.pdf.

When faculty authors sign away copyright, as they usually are asked to do through publication contracts with publishers, they themselves no longer necessarily have the right to use or permit the use of their work in ways that advance their own goals and the research and education goals of the University and the academy. Faculty may be unduly restricted in the dissemination and use of their work, e.g., their ability to post their work on the web, deposit it in long term preservation archives, or create follow up or derivative works. These restrictions decrease the utility and impact of scholarship and may delay, diminish, or hide the scholar’s contributions to the progress of knowledge.

Copyright ownership, however, comprises a bundle of rights, and copyright law allows authors to transfer some rights and retain others. Retention of all copyright rights allows an author full autonomy in the author’s use of his or her materials, but an author may transfer some rights to a publisher and retain others, which achieves a balance between the publisher’s goals and the author’s goals of sharing the material to further scholarship. In seeking this balance, the UC Open Access policy:

- Asserts and confirms the UC faculty author as the copyright holder;
- Supports authors’ retention of rights in order to use and develop their works without restrictions;
- Ensures the UC faculty author routinely grants the University a non-commercial and non-exclusive right to make the material available in an open access repository, where it will be permanently and openly accessible;
- Suggests a mechanism for the UC faculty author to transfer limited rights to the publisher so that it can publish a work, receive a financial return, and receive proper attribution and citation as the source of first publication.

2. The Open Access Policy Proposal

Preamble
As affirmed by the Academic Personnel Manual (APM 010), the University’s fundamental mission is to discover knowledge and to disseminate it to its students and to...
society at large. Appropriate management of copyright rights is a key factor in maximizing the dissemination and the resulting impact of the scholarship of the UC faculty.

**Policy**
A faculty member’s ownership of copyright is delineated by the University of California Policy on Ownership of Copyright. This open access policy seeks to increase authors’ influence in scholarly publishing by establishing a collective practice of retaining a right to open access dissemination of certain scholarly works. University of California faculty shall routinely grant to The Regents of the University of California a license to place in a non-commercial open-access online repository the faculty member’s scholarly work published in a scholarly journal or conference proceedings. In the event a faculty member is required to assign all or a part of his or her copyright rights in such scholarly work to a publisher as part of a publication agreement, the faculty member shall retain in the publication agreement the right to grant the foregoing license to the Regents. Faculty may opt out of this policy for any specific work or invoke a specified delay before such work appears in an open-access repository in accordance with the opt-out mechanism set forth below.

3. **Policy Implementation**

- **University support for copyright management**
  In support of the collective practice established by the policy, the Academic Senate, in collaboration with the University’s Office of the President, will initiate direct communication with scholarly publishers and establish support mechanisms for the policy and the use of scholarly work which it covers. The University, including assistance, as appropriate, from the Office of the President and the campuses will support faculty in their efforts to retain open access dissemination rights, and to foster a broad spectrum of publication venues. No income will accrue to the Regents, the University, or the Academic Senate by this non-exclusive copyright license.

- **Opt-Out Mechanism (n.b. policy implementation would include one of the options below)**
  **Option A – permission-based:** A faculty member may seek permission from a “UC open access agent” (UC-OA) to opt out of this policy for a specific work that has been accepted for publication in a journal or conference proceeding that refuses to allow open access placement of the work within six months of publication. Within five working days of receiving an author’s request, the UC-OA must grant permission

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1 [http://www.universityofcalifornia.edu/copyright/](http://www.universityofcalifornia.edu/copyright/)

2 A license means that the copyright owner gives to another the right to use a copyrighted work in specified ways. This license shall be limited, irrevocable, perpetual, worldwide, royalty-free, fully paid-up, and non-exclusive. Such a license does not transfer any right to The Regents other than the specific license to place the work in the non-commercial, open-access online repository. Accordingly, the faculty member retains copyright ownership in his or her work.

3 An open access agent is an appropriate university or campus agent to be developed jointly by the administration and the Academic Senate.
or assist the faculty member in negotiating with the publisher. Ten working days after the faculty member seeks permission, if the publisher has not agreed to allow open access placement of the work within six months of publication, the faculty member may opt out of this policy. The faculty member must notify the UC-OA of such an opt out.

**Option B – consultation and notification-based:** After consulting with a “UC open access agent” (UC-OA), a faculty member may opt out of this policy for a specific work that has been accepted for publication in a journal or conference proceeding that refuses to allow open-access placement of the work within six months of publication. As part of the process of consultation, the UC-OA may assist the faculty member in negotiating with the publisher. The faculty member must notify the UC-OA of such an opt-out.

**Option C- notification based:** A faculty member may opt out of this policy for a specific work that has been accepted for publication in a journal or conference proceeding that refuses to allow open access placement of the work within six months of publication. Before opting out, a faculty member may consult with a “UC open access agent” (UC-OA) and request assistance in negotiating with the publisher. The faculty member must notify the UC-OA of such an opt-out.

- **Tracking publishers’ open access practice**
  The UC Office of Scholarly Communication (OSC) shall make available a list, updated regularly, of publishers that do not allow open-access placement of their material. Notifications provided by faculty members under the opt-out mechanism shall be used by the OSC, in order to make a list of publishers that regularly fail to allow open-access. This information may be made public and serve as the basis for initiating further discussion with these publishers.

- **Use of open access repositories**
  The University of California eScholarship Repository (http://repositories.cdlib.org) is an open access repository in which UC faculty-authored materials can be placed to meet the goals of the policy. Placement of UC faculty-authored material in other trusted, publicly-accessible repositories, such as the National Library of Medicine’s PubMedCentral (http://www.pubmedcentral.nih.gov/), or the physics arXiv (http://www.arXiv.org) will also meet the goals of the policy. Trusted, publicly accessible repositories are those which provide reliable, long-term access to managed digital resources; are internet-accessible at no fee for the reader; have explicit preservation and governance policies; and use data formats and technology management that conform to industry standards.

- **Recording access characteristics of faculty publications**
  Files submitted to Academic Personnel Committees for merit or promotion review of a faculty member should contain a list of articles published in scholarly journals or conference proceedings, indicating, for each, whether it has been included in an open access repository(ies) and, if so, providing the identity of that repository(ies).
Appendix I. Supporting Materials

As noted above in Policy Implementation, it is proposed that the University provide mechanisms to support the policy and the use of materials which it covers. Examples of two such types of support are provided here:

A. a description of the extant UC eScholarship Repository;
B. a sample publication agreement addendum whose use by authors and publishers confirms the intent of the policy.

A. UC’s eScholarship Repository
The eScholarship Repository, sponsored by the California Digital Library, provides persistent and easily discoverable access to scholarly output from the University of California. It is a project of the eScholarship initiative of the California Digital Library within the University of California Office of the President. As of early 2007 the eScholarship Repository provides support for working papers, pre-prints, post-prints, seminar series, and UC-sponsored online journals with more than 200 participating academic and research units. The repository is on the web at http://repositories.cdlib.org/escholarship/.
B. Sample Publication Agreement Addendum\(^4\)
An amendment such as this, when attached by an author to a publication agreement or contract, is a mechanism through which crucial copyright rights can be retained by the author, including those necessary to follow the proposed UC open access policy.

Following this sample publication amendment is an explanation of its terms in non-legal language.

**AMENDMENT TO PUBLICATION AGREEMENT FOR UNIVERSITY OF CALIFORNIA AUTHORS**

1. In accordance with the University of California Open Access Policy, this Amendment hereby modifies the attached Publication Agreement concerning the following Article:

   (manuscript title)                                                               (journal name)

2. The parties to the Publication Agreement and to this Amendment are:

   (corresponding author)                                                                      (the Publisher)

3. The parties agree that in the event of a conflict between this Amendment and the Publication Agreement, the provisions of this Amendment shall prevail and the Publication Agreement shall be construed accordingly.

4. Notwithstanding any terms in the Publication Agreement to the contrary and in addition to the rights retained by Author and/or licensed by Publisher to Author in the Publication Agreement and any fair use rights of Author, Author and Publisher agree that the Author has the following rights:

   a. The Author, without limitation, has the non-exclusive right to use, reproduce, distribute, perform, and display publicly the Article and create derivative works, including, but not limited to, updates, of the Article in electronic, digital or print form in connection with the Author’s teaching, conference presentations, lectures, other scholarly works, and for all of Author’s academic and professional activities, provided the journal in which the Article has been published is cited as the source of first publication of the Article.

   b. The Author has all the non-exclusive rights necessary to make, or to authorize others to make, the Article available in online digital form, including but not limited to, a non-commercial website under the control of the Author or the Author’s employer or through any non-commercial digital repository, such as the University of California’s eScholarship Repository or the National Library of Medicine’s PubMed Central database, provided, however, that such rights shall not be exercised before publication of the Article. If Publisher delays publication of the Article unduly, Author has the option of terminating this Agreement.

   c. The Author further retains all non-exclusive rights necessary to grant to the Author’s employing institution the non-exclusive right to use, reproduce, distribute, display, publicly perform, and make copies of the Article in electronic, digital or in print form in connection with teaching, digital repositories, conference presentations, lectures, other scholarly works, and all academic and professional activities conducted at or by the Author’s employing institution at the time of publication of the Article.

5. Acknowledgment of Prior License Grants. Publisher acknowledges that Author’s assignment of copyright or Author’s grant of exclusive rights to Publisher in the Publication Agreement is subject to Author’s prior grant of a non-exclusive copyright license to Author’s employing institution and/or to a funding entity that financially supported the research reflected in the Article as part of an agreement between Author or Author’s

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\(^4\) This sample was adapted from existing addendums in use or proposed for use by MIT (see http://libraries.mit.edu/about/scholarly/copyright-form.html), the Scholarly Publishing and Academic Resources Coalition (SPARC; see http://www.arl.org/sparc/author/index.html) and the Science Commons and Creative Commons Scholar’s Copyright Project (see http://www.sciencecommons.org/projects/publishing/).
employing institution and such funding entity, such as an agency of the United States government. Publisher acknowledges that it has determined prior to execution of this Agreement whether any such grant exists.

6. Entire Agreement. This Amendment and the Publication Agreement, taken together, constitute the final agreement between the Author and the Publisher with respect to the publication of the Article and allocation of copyright rights in the Article. Any modification of or additions to the terms of this Amendment or to the Publication Agreement must be in writing and executed by both Publisher and Author in order to be effective.

**AUTHOR**
(corresponding author on behalf of all authors)

**DATE**

**PUBLISHER**

**DATE**

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**Annotated Explanation of Sample Publication Agreement Addendum**

Following is an annotated explanation of paragraphs 3 through 6 of the sample Amendment to Publication Agreement:

1. Paragraph 3— if there is a difference in the terms of the main publication agreement and this amendment and the difference is great enough that the terms are considered contradictory, the terms of the amendment will be given legal effect and the contradicting terms of the main agreement will not be given legal effect (i.e. the amendment “trumps” the Publisher’s agreement).

2. Paragraph 4— this paragraph specifies what copyright rights the author retains in his or her work, and contemplates the author’s present or future (near or distant) exercise of that right. Each subparagraph addresses a different right:

   subparagraph (a) — this means the author has the right to use his or her work fully for the purpose of teaching, conference presentations, and other scholarly/professional activity, and to update or use the work as a basis for a new work (in other words, a “derivative” work). It is a “non-exclusive” right, and the publisher may allow others to use the author’s work in these ways as well. If the author assigned all copyright and copyright rights to the publisher and did not retain these rights, the author would be in the same position as a complete stranger with respect to his or her use of the work. The author would have to rely solely on the fair use provisions of the federal Copyright Act and the “face-to-face” teaching exception in that Act (which allows the copying and other use of an entire work without permission of the copyright owner provided it is used in face-to-face teaching). The retained rights give the author greater rights than those available under fair use or the face-to-face teaching exception.

   subparagraph (b) — this means the author has the right to make the work available in digital form, including in a non-commercial online digital repository, to others. An author would not have this right if it was not retained. It is “non-exclusive” and allows the publisher to also place the work in its own or another’s repository. It preempts a potential publisher’s objection to the provision by specifying that the right may not be exercised before publication of the work. The last sentence is
intended as an escape hatch if the publisher delays in publication: the author may terminate and make other arrangements.

subparagraph (c)—this means the author has the right to give the author’s employing institution the right to fully use the work and place it in an online repository in connection with academic and professional activities conducted by the employing institution. It is “non-exclusive” in order to allow the publisher the right to do these things as well.

Paragraph 5—this puts the publisher on notice that the author may have already granted copyright rights to another before signing this agreement, such as the right given to the University under the Open-Access Policy or to a federal agency in compliance with regulations of the agency that helped fund the underlying research. This precludes a publisher from later asserting that it was not aware that the author had given such rights, and that the author’s granting of such rights must be rescinded or that the author owes compensation (“damages”) to the publisher. A grant to the University under the Open Access Policy is subject to the opt-out provision. If the publisher refuses to allow open access placement of the work, the faculty member can either withdraw the work or use the opt-out mechanism.

Paragraph 6—this means that the publisher cannot claim that it and the author had an enforceable agreement on a term that is not included in writing in either this amendment or in the main agreement. In other words, the written terms of this amendment and the main agreement are the only legally enforceable terms; thus, even if the author agrees orally to something proposed by the publisher, or vice versa, it is not legally effective unless it is in writing and signed by both the author and the publisher.
Appendix II. Original Academic Assembly Endorsed Policy Proposal (May 10, 2006)

[Preamble]
WHEREAS, in order to facilitate scholarly communication and maximize the impact of the scholarship of UC faculty, the Academic Council’s Special Committee on Scholarly Communication (SCSC) has proposed that the Academic Council consider the following recommended UC copyright policy change:

[Policy]
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 in a non-commercial open-access online repository the faculty member’s scholarly work published in a scholarly journal or conference proceedings. In the event a faculty member assigns all or a part of his or her 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 may opt out of this requirement for any specific work or invoke a specified delay before such work appears in an open-access repository. Such a license would preserve copyright ownership in the faculty-author, thereby enabling him or her to control subsequent uses of the work.

[Attendant Implementation Language]
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. The University, including assistance, as appropriate, from the Office of the General Counsel, will support faculty in their efforts to retain copyright with attention to maintaining a broad spectrum of publication venues. No income will accrue to the Regents, the University or the Academic Council by this non-exclusive copyright license.
WYATT R. HUME  
PROVOST AND EXECUTIVE VICE PRESIDENT, ACADEMIC AND HEALTH AFFAIRS

Re: Academic Senate Review of the Draft University of California Open Access Policy

Dear Rory,

At its June 27, 2007, meeting, the Academic Council discussed the outcome of the Academic Senate’s review of the Draft University of California Open Access Policy. Reviewers saw the obvious potential for this policy to be beneficial to the broader scholarly community and were supportive of the policy’s goals, but also stated significant concerns with respect to implementation of the policy and the risk of undue burden on the faculty. The Academic Council therefore respectfully requests that the ad hoc working group that developed the draft Open Access Policy consider and respond to the comments and recommendations set forth in the summary below, and in the complete set of appended responses. The Academic Council looks forward to a second review of the draft Open Access Policy, as thus revised, and hopes it can decide to endorse the policy at that time.

I. The Open Access Policy Proposal: Summary of Responses

General Concerns

- Policy will delay and interfere with publication, and may limit publishing options and opportunities (UCI, UCSB, UCPB).
- Policy is overly complicated: suggest including a glossary of terms, and pictorial representations (see ITTP letter for examples).

II. Policy Implementation: Summary of Responses

Policy Would Require a Large and Costly Bureaucracy to Implement: UCD, UCI, UCSD, UCSB, ITTP, UCPB, UCPT.

- The current proposed policy is insufficiently thought-out and as a result would be risky to adopt in its present form – it could well be counter productive and might also impose significant costs on researchers, the University, and publishers that outweigh the desirable social benefits (UCORP – please see complete response; UCD, UCSB, UCPT).
- The administrative structure is not currently in place to ensure that the faculty is adequately supported when the issue of opting out surfaces. New resources must be developed to educate faculty about open access and how to ensure its availability to their work, to
provide a database of the open access practices of the various publishers, and to respond to questions from the faculty as they arise. Such resources must be readily available to each faculty member, both via the web and via direct, personal contact (UCSF).

Policy is Burdensome to Faculty, and the Academic Senate
- The policy should be structured to place more of an administrative burden on the publisher and less on the UC faculty (UCD, UCLA, UCR, UCSF, UCSB, UCPB).
- Implementation is an unrealistic burden on the Academic Senate (UCSD). Further, the roles of the various offices and Academic Senate committees in determining and implementing the open access policy should be defined at a University-wide level. Who will monitor that the administrative support of the faculty is adequate, and who can the faculty turn to if it is perceived to be inadequate? Who will police faculty compliance, and who will determine to what extent open access practice by a faculty member is considered in advancement? (UCSF)

General Concerns
- **Six-Month Delay:** The proposed delay of six months before posting the articles is arbitrary and is not consistent with the one-year delay already implemented by the Public Health System. A one-year delay is consistent with NIH guidelines (UCI).
- **Merits, Justification, and Context of Policy Desired:** The merits and procedural mechanisms for the three proposed options are not stated with sufficient clarity (UCLA, UCR, UCSB). Additional context information is desired, for example: Will the UC stand alone in this position or is there precedent for it? Are faculty actually giving up rights under the proposal? Are there sufficient protections for faculty? (UCLA, UCSB) How will the policy be implemented? What happens when faculty depart UC to other institutions? (UCSB)
- **Impact on Non-Profit Professional Societies; Different Disciplines:** Potential impact on non-profit professional societies (the Institute of Electrical and Electronic Engineers was mentioned as an example) which provide a valuable service in peer review and quality control, which depend on fees charged to access their publications (both online or in print) to support these services, and which are (in our judgment) efficient and cost-effective (ITTP; separate comments from UCD).
- **APM Implications:** Does the policy require changes to the APM? (ITTP)
- **Ambiguities & Contradictions:** Ambiguous terminology needs to be clarified (ITTP). The policy is confusing as written and sometimes seemingly contradictory (UCD).
- **Compliance:** The proposed policy is silent about incentives for compliance or penalties for non-compliance, as well as oversight mechanisms (UCPT).
- **Potential for P&T Grievances:** There is potential for several unintended negative repercussions on UC faculty that could give rise to grievances before P&T committees (UCPT).
- Information about open-access status does not, by itself, constitute a relevant or appropriate criterion for assessment of a faculty member's research and impact. Its inclusion, therefore, could be seen as introducing extraneous information into the personnel process that could be used to disadvantage certain faculty members.
i. “Opt-Out Mechanism (n.b. policy implementation would include one of the options below)”

“Option A – Permission-Based”
- Option A is unduly coercive, unduly costly with respect to administrative oversight and implementation, and insufficiently sensitive to the diversity of publication practices across the range of academic disciplines (UCB). Unduly burdensome to faculty (UCAF).

“Option B – Consultation and Notification-Based”
- Option B is the least coercive, by still unduly cumbersome (UCB). Unduly burdensome to faculty (UCAF).
- Options A and B are the best options to ensure rapid adoption of a real open access environment. If either option is adopted, it must be done with a clear commitment that it will be enforced only once adequate resources have been established, and that ongoing assessment of the impact of such a policy on the publication of faculty work be monitored and evaluated within the first years of its adoption (UCSF).

“Option C – Notification-Based”
- Option C is the only viable option of the three alternatives (UCB, UCPB). It is the best from the academic freedom perspective as it provides individual faculty members with the most direct control over the opt-out process (UCAF). It is the best option to protect the faculty member to advance his/her career (UCSF).
- If adopted, this process should be as streamlined as possible so that publication delays do not result. Concern was expressed that the proposed policy might adversely affect some journals and scholarly societies. The suggestion was made that there be an option to allow a faculty member to generally opt out in order to protect the interests of journals or scholarly associations or if the faculty member, for any other reason, preferred not to place his or her work in digital repositories (UCSD).

ii. “Tracking publishers’ open access practice”
Such a provision may generate an institutional power struggle between the university and the publishers, placing individual UC faculty who seek to publish with these outlets in an untenable situation. While faculty have little clout to affect the university-publisher negotiations in a meaningful way, UC faculty could be the recipients of fallout from these interactions that could impair their publishing opportunities (UCPT).

iii. “Use of open access repositories”
Concerns such as permanence of articles, ability to find articles in the repository using standard search engines, repository organization to separate refereed and un-refereed publications and workshop, conference, and journal publications; ability to display all articles correctly (linguistics and special fonts) (UCI).

iv. “Recording access characteristics of faculty publications”
- An unduly burdensome requirement of UC faculty, and we strongly oppose this recommendation (UCB, UCD, ITTP, UCAF).
- Policy implication is that opt-out is mandatory, and recording access characteristics acts as a penalty to faculty. Some other form of reporting that is private and completely independent of the academic personnel process may be acceptable, if that is deemed necessary for monitoring or administering the policy (ITTP, UCAF).
• “Recording access characteristics of faculty publications,” would require regulation and monitoring of the open access policy combined with the academic personnel review process. Whether a faculty member posts on open access repositories is not germane to the reviews conducted by CAP and should not be a criterion for merit/promotion (UCI).
• Finally, none of the reviewers understood why it would be necessary to record the open access characteristics of faculty publications as part of the academic personnel review process (UCSD, CCGA). Academic freedom concerns are wholly absent from consideration in this policy (UCD).

III. Other Senate Recommendations

Prefer an Opt-In Policy – Reject All Three Opt-Out Policies

• Strong recommendation for an opt-in option: would be the least burdensome to the faculty (UCB, UCI, UCLA, UCR, UCSB, ITTP, UCPB, UCPT).
• ITTP suggests the following approach (see full letter for pro/con argument):

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Opt-in policy alternative

Scholarly paper

Peer-reviewed closed-access primary publication

Opt-in Peer-reviewed open-access primary publication

Opt-in Non-peer-reviewed open-access secondary publication
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On behalf of the Academic Council, I commend the diligent work that has produced the Draft University of California Open Access Policy, and look forward to the receipt of another draft for the Council’s review. Please let me know if this course of action is not one you can endorse.

Sincerely,

John B. Oakley, Chair
Academic Council

Encl: 15
Copy: Academic Council
María Bertero-Barceló, Executive Director
JOHN OAKLEY  
Chair, Academic Senate

Subject: Proposed UC faculty – scholarly work copyright rights policy

On May 7, 2007, the Divisional Council of the Berkeley Division considered the issue cited above, along with the comments of the divisional Committee on Budget and Interdepartmental Relations, Committee on Academic Planning and Resource Allocation, Committee on the Library, Committee on Computing and Communications, and Committee on Research. While there was broad support for the goal of the proposed policy, there are significant concerns about the proposed “opt-out mechanisms.”

DIVCO agreed with the Committee on Budget and Interdepartmental Relations:

The first of these options (Option A), requiring faculty to seek permission from a “UC Open-Access Agent” prior to signing a publishing contract is, in our view, unduly coercive, unduly costly with respect to administrative oversight and implementation, and insufficiently sensitive to the diversity of publication practices across the range of academic disciplines. Option B—requiring consultation and notification of a “UC Open-Access Agent,” rather than receipt of permission, before opting out, strikes us as less coercive by still unduly cumbersome. Option C—the simple requirement to notify when opting out strikes us as the only viable option of the three alternatives. Mandatory notification will, in our view, create a culture of compliance without instituting an undue administrative burden upon faculty.

We find the additional requirement that faculty include the open-access publication data as part of the required bibliographic citation in files submitted to Academic Personnel Committees for merit or promotion review, “indicating, for each, whether it has been included in an open access repository(ies), and, if so, providing the identity of that repository(ies),” to be an unduly burdensome requirement of UC faculty, and we strongly oppose this recommendation. We believe notification provides sufficient UC oversight of the policy.
There was a consensus on DIVCO that an opt-in option would be the least burdensome to the faculty. Accordingly, DIVCO recommends that such an option be considered.

Sincerely,

William Drummond
Chair, Berkeley Division of the Academic Senate

Cc:  Patrick Kirch, Chair, Committee on Budget and Interdepartmental Relations
     Calvin Moore, Chair, Committee on Academic Planning and Resource Allocation
     Whitney Davis, Chair, Committee on the Library
     Martin Head-Gordon, Chair, Committee on Computing and Communications
     Miguel Villas-Boas, Chair, Committee on Research
     Jean Fitz, Manager, Committee on Budget and Interdepartmental Relations
     Diane Sprouse, Senate Analyst, Committee on Academic Planning and Resource Allocation and Committee on Research
     Brenda Krell, Staff, Committee on the Library
     Margarita Zeglin, Staff, Committee on Computing and Communications
Notable policies at peer institutions

Harvard

In February, 2008, Harvard’s Faculty of Arts and Sciences approved this policy (http://osc.hul.harvard.edu/hfaspolicy):

Each Faculty member grants to the President and Fellows of Harvard College permission to make available his or her scholarly articles and to exercise the copyright in those articles. In legal terms, the permission granted by each Faculty member is a nonexclusive, irrevocable, paid-up, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, and to authorize others to do the same, provided that the articles are not sold for a profit. The policy will apply to all scholarly articles written while the person is a member of the Faculty except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. The Dean or the Dean’s designate will waive application of the policy for a particular article upon written request by a Faculty member explaining the need.

To assist the University in distributing the articles, each Faculty member will provide an electronic copy of the final version of the article at no charge to the appropriate representative of the Provost’s Office in an appropriate format (such as PDF) specified by the Provost’s Office.

The Provost’s Office may make the article available to the public in an open-access repository. The Office of the Dean will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the Faculty from time to time. The policy will be reviewed after three years and a report presented to the Faculty.

The MIT faculty adopted this policy in March, 2009. The materials covered by the policy are publicly available in MIT’s dSpace repository, http://dspace.mit.edu/.

The Faculty of the Massachusetts Institute of Technology is committed to disseminating the fruits of its research and scholarship as widely as possible. In keeping with that commitment, the Faculty adopts the following policy: Each Faculty member grants to the Massachusetts Institute of Technology nonexclusive permission to make available his or her scholarly articles and to exercise the copyright in those articles for the purpose of open dissemination. In legal terms, each Faculty member grants to MIT a nonexclusive, irrevocable, paid-up, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, provided that the articles are not sold for a profit, and to authorize others to do the same. The policy will apply to all scholarly articles written while the person is a member of the Faculty except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. The Provost or Provost’s designate will waive application of the policy for a particular article upon written notification by the author, who informs MIT of the reason.

To assist the Institute in distributing the scholarly articles, as of the date of publication, each Faculty member will make available an electronic copy of his or her final version of the article at no charge to a designated representative of the Provost’s Office in appropriate formats (such as PDF) specified by the Provost’s Office.

The Provost’s Office will make the scholarly article available to the public in an open-access repository. The Office of the Provost, in consultation with the Faculty Committee on the Library System, will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the Faculty. The policy is to take effect immediately; it will be reviewed after five years by the Faculty Policy Committee, with a report presented to the Faculty.

The faculty calls upon the Faculty Committee on the Library System to develop and monitor a plan for a service or mechanism that would render compliance with the policy as convenient for the faculty as possible.
Duke


The Faculty of Duke University is committed to disseminating the fruits of its research and scholarship as widely as possible. In addition to the public benefit of such dissemination, this policy is intended to serve faculty interests by promoting greater reach and impact for articles, simplifying authors’ retention of distribution rights, and aiding preservation. In keeping with these commitments, the Faculty adopts the following policy.

Each Faculty member grants to Duke University permission to make available his or her scholarly articles and to reproduce and distribute those articles for the purpose of open dissemination. In legal terms, each Faculty member grants to Duke University a nonexclusive, irrevocable, royalty-free, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, and to authorize others to do so, provided that the articles are not sold. The Duke faculty author remains the copyright owner unless that author chooses to transfer the copyright to a publisher.

The policy will apply to all scholarly articles authored or co-authored while the person is a member of the Faculty except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. The Provost or Provost's designate will waive application of the license for a particular article or delay access for a specified period of time upon written request by a Faculty member.

To assist the University in distributing the scholarly articles, each faculty member will make available, as of the date of publication or upon request, an electronic copy of the final author’s version of the article at no charge to a designated representative of the Provost’s Office in an appropriate format (such as PDF) specified by the Provost's Office. The Provost's Office will make the article available to the public in Duke’s open-access repository. In cases where the Duke license has been waived or an embargo period has been mutually agreed, the article may be archived in a Duke repository without open access for the period of the embargo, or permanently in cases of waiver.

The Office of the Provost, in consultation with the Executive Committee of the Academic Council, will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the Faculty from time to time.

The Faculty calls upon the Library Council and Duke University Libraries to develop and monitor a plan for a service or mechanism that would render compliance with the policy as convenient for the faculty as possible.

The policy and service model will be reviewed after three years and a report presented to the Faculty.
University of Kansas

The University of Kansas claims to be the first public university to adopt an open access policy, in June 2009. Kansas maintains a repository called KU ScholarWorks, http://kuscholarworks.ku.edu/dspace/.

The faculty of the University of Kansas (KU) is committed to sharing the intellectual fruits of its research and scholarship as widely as possible and lowering barriers to its access. In recognition of that commitment and responsibility, the KU faculty is determined to take advantage of new technologies to increase access to its work by the citizens of Kansas and scholars, educators, and policymakers worldwide. In support of greater openness in scholarly endeavors, the KU faculty agrees to the following:

Each faculty member grants to KU permission to make scholarly peer-reviewed journal articles to which he or she made substantial intellectual contributions publicly available in the KU open access institutional repository, and to exercise the copyright in those articles. In legal terms, the permission granted by each faculty member is a nonexclusive, irrevocable, paid-up, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, and to authorize others to do the same, provided that he articles are not sold for a profit. This license in no way irrevocably interferes with the rights of the KU faculty author as the copyright holder of the work.

The policy will apply to all scholarly peer-reviewed journal articles authored or co-authored while a faculty member of KU. To assist in the open distribution of the articles, faculty members will provide bibliographic information and an electronic copy of each article within 30 days of publication to the Provost’s Designate. The license granted to KU regarding an article will be waived by the Provost’s Designate at the sole discretion of the faculty member upon written/electronic notification. The Provost’s office will be responsible for interpreting this policy, resolving disputes concerning its application, and recommending changes as necessary. This policy will be reviewed by Faculty Governance, in concert with the Provost’s office, every three years, and a report presented to Faculty Governance. A broadly representative Open Access Advisory Board made up of faculty, representatives from faculty governance, and the Provost’s Office will provide additional guidance and oversight in policy implementation.
Princeton

In September, 2011, the Princeton faculty approved a policy under which faculty. It does not require submission of articles to a institutional repository (and does not commit the University to establish one).

grant to The Trustees of Princeton University a nonexclusive, irrevocable, worldwide license to exercise any and all copyrights in his or her scholarly articles published in any medium, whether now known or later invented, provided the articles are not sold by the University for a profit, and to authorize others to do the same. This grant applies to all scholarly articles that any person authors or co-authors while appointed as a member of the Faculty, except for any such articles authored or co-authored before the adoption of this policy or subject to a conflicting agreement formed before the adoption of this policy. Upon express direction of a Faculty member, the Provost or the Provost’s designate will waive or suspend application of this license for a particular article authored or co-authored by that Faculty member.
A MODEL OPEN-ACCESS POLICY

STUART M. SHIEBER

The following is a model open-access policy in the Harvard style — with a freely waivable rights-retaining license and a deposit requirement. This language is based on and informed by the policies voted by several Harvard faculties, as well as MIT, Stanford University School of Education, Duke University, and others. I have added some annotations explaining why the wording is chosen as it is.

Further information explaining the motivation for and implementation of the Harvard open-access policies is available at the web site of Harvard’s Office for Scholarly Communication (http://osc.hul.harvard.edu/). Inquiries about the policy and this model language can be made to osc@hulmail.harvard.edu.

This document will be updated over time as further refinements are made to the policy. This is revision 1.7 of April 17, 2010, 00:57:25.

The Faculty of ⟨university name⟩ is committed to disseminating the fruits of its research and scholarship as widely as possible. In keeping with that commitment, the Faculty adopts the following policy: Each Faculty member grants to ⟨university name⟩ permission to make available his or her scholarly articles and to exercise the copyright in those articles. More specifically, each Faculty member grants to ⟨university name⟩ a nonexclusive, irrevocable, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, provided that the articles are not sold for a profit, and to authorize others to do the same. The policy applies to all scholarly articles authored or co-authored while the person is a member of the Faculty except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. The Provost or Provost’s designate will waive application of the license for a particular article or delay access for a specified period of time upon express direction by a Faculty member.

Each Faculty member will provide an electronic copy of the author’s final version of each article no later than the date of its publication at no charge to the appropriate representative of the Provost’s Office in an appropriate format (such as PDF) specified by the Provost’s Office.

The Provost’s Office may make the article available to the public in an open-access repository. The Office of the Provost will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the Faculty from time to time. The policy will be reviewed after three years and a report presented to the Faculty.

EXPLANATORY NOTES

line 1, disseminating the fruits of its research and scholarship as widely as possible: The intention of the policy is to promote the broadest possible access to the university’s research. The preamble emphasizes that
the issue is access, not finances.

line 3, grants: The wording here is crucial. The policy causes the grant of the license directly. An alternative wording, such as “each faculty member shall grant”, places a requirement on faculty members, but does not actually cause the grant itself.

line 4, scholarly articles: The scope of the policy is scholarly articles. What constitutes a scholarly article is purposefully left vague. Clearly falling within the scope of the term are (using terms from the Budapest Open Access Initiative) articles that describe the fruits of scholars’ research and that they give to the world for the sake of inquiry and knowledge without expectation of payment. Such articles are typically presented in peer-reviewed scholarly journals and conference proceedings. Clearly falling outside of the scope are a wide variety of other scholarly writings such as books and commissioned articles, as well as popular writings, fiction and poetry, and pedagogical materials (lecture notes, lecture videos, case studies). Often, faculty express concern that the term is not (and cannot be) precisely defined. The concern is typically about whether one or another particular case falls within the scope of the term or not. However, the exact delineation of every case is neither possible nor necessary. In particular, if the concern is that a particular article inappropriately falls within the purview of the policy, a waiver can always be obtained.

line 5, grants: Again, not “shall grant”.

line 6, exercise any and all rights under copyright: The license is quite broad, for two reasons. First, the breadth allows flexibility in using the articles. Since new uses of scholarly articles are always being invented — text mining uses being a prime example — retaining a broad set of rights maximizes the flexibility in using the materials. Second, a broad set of rights allows the university to grant back to an author these rights providing an alternative method for acquiring them rather than requesting them from a publisher. Even though the university is being allowed to exercise a broad set of rights, it is not required to exercise them. Universities are free to set up policies about which rights it will use and how, for instance, in making blanket agreements with publishers. For example, a university may agree to certain restrictions on its behavior in return for a publisher’s acknowledgement of the prior license and agreement not to require addenda or waivers. Harvard has provided a model agreement of this type as well: http://osc.hul.harvard.edu/docs/model-pub-agreement-090430.pdf.

line 8, not sold for a profit: This term may be preferable to the vaguer term “noncommercial”. The intention is to allow uses that involve recouping of direct costs, such as use in coursepacks for which photocopying costs are recovered. Given that open access availability allows seamless distribution using a medium with essentially zero marginal cost, even this level of commercial activity may not be needed. Indeed, Harvard has stipulated in agreements with publishers that it will refrain even from cost-recouping sales: “When Harvard displays or distributes the Article, Harvard will not charge for it and will not sell advertising on the same page without permission of Publisher. Even charges that merely recoup reproduction or other costs, and involve no profit, will be forbidden.” Allowing cost recovery does provide an additional set of rights that can be negotiated in this way. Alternatively, the policy can eschew all sales if deemed preferable, in which case, the phrase “for a profit” can be dropped.

line 8, authorize others: The transferability provision allows the university to authorize others to make use of the articles. For instance, researchers can be authorized to use the articles for data mining. Importantly, the original authors themselves can be authorized to make use of their articles, for instance, to legally distribute their articles from their own web sites (as they often do illicitly now), to use them for their classes, to develop derivative works, and the like.

line 9, do the same: This ordering of phraseology, introduced in the MIT policy, makes clear that the
EXPLANATORY NOTES

transferability provision applies both to the retained rights and the noncommercial limitation.

line 10, articles completed before the adoption: Application of the license retroactively is problematic, and in any case suspect. This clause makes clear that the license applies only prospectively.

line 13, Provost: The model language is envisioned as a university policy, where the university academic arrangements are overseen by a Provost. For a school-wide policy within a university, with oversight by a Dean, some occurrences of “Provost” may be replaced by “Dean” where appropriate, as was done in the Harvard policies.

line 13, will waive: Not “may waive”. The waiver is at the sole discretion of the author. This broad waiver policy is important for the palatibility of the policy. It is perhaps the most important aspect of this approach to open-access policies. The ability to waive the license means that the policy is not a mandate for rights retention, but merely a change in the default rights retention from opt-in to opt-out. Many of the concerns that faculty have about such policies are assuaged by this broad waiver. These include concerns about academic freedom, unintended effects on junior faculty, principled libertarian objections, freedom to accommodate publisher policies, and the like. Some may think that the policy would be “stronger” without the broad waiver provision, for instance, if waivers were vetted on some basis or other. In fact, regardless of what restrictions are made on waivers (including eliminating them entirely) there is always a de facto possibility of a waiver by virtue of individual faculty member action demanding an exception to the policy. It is far better to build a safety valve into the policy, and offer the solution in advance, than to offer the same solution only under the pressure of a morale-draining confrontation in which one or more piqued faculty members demand an exception to a putatively exceptionless policy.

line 14, license: The waiver applies to the license, not the policy as a whole. The distinction is not crucial in a pragmatic sense, as it is generally the license that leads to waiver requests, not the deposit aspect of the policy, and in any case, an author has a de facto waiver possibility for the deposit aspect by merely refraining from making a manuscript available. Nonetheless, if it is possible to use this more limited formulation, it is preferable in reinforcing the idea that all articles should be deposited, whether or not a waiver is granted and whether or not they can be distributed.

line 14, delay access: Duke University pioneered the incorporation of an author-directed embargo period for particular articles as a way of adhering to publisher wishes without requiring a full waiver. This allows the full range of rights to be taken advantage of after the embargo period ends, rather than having to fall back on what the publisher may happen to allow. Since this is still an opt-out option, it does not materially weaken the policy. An explicit mention of embargoes in this way may appeal to faculty members as an acknowledgement of the prevalence of embargoes in journals they are familiar with.

line 15, express: An author must direct that a waiver be granted in a concrete way, but the term “express” is preferred to “written” in allowing, e.g., use of a web form for directing a waiver.

line 15, direction: This term replaced an earlier term “request” so as to make clear that the request cannot be denied.

line 16, author’s final version: The author’s final version—the version after the article has gone through peer review and the revisions responsive thereto and any further copyediting in which the author has participated—is the appropriate version to request for distribution. Authors may legitimately not want to provide versions earlier than the final version, and insofar as there are additional rights in the publisher’s definitive version beyond the author’s final version, that version would not fall within the license that the author grants.
line 17, no later than the date of its publication: The distribution of articles pursuant to this policy is not intended to preempt journal publication but to supplement it. This also makes the policy consistent with the small set of journals that still follow the Ingelfinger rule. An alternative is to require submission at the time of acceptance for publication, with a statement that distribution can be postponed until the date of publication.

line 23, reviewed: Specifying a review makes clear that there will be a clear opportunity for adjusting the policy in light of any problems that may arise.
To: Faculty Advisory Committee on Policy

From: Ad-hoc Faculty Committee to study Open Access
Andrew Appel (Computer Science), Anne Cheng (English/African-American Studies), Lynn Enquist (Molecular Biology), Carol Greenhouse (Anthropology), William Jordan (History), Helen Milner, (Politics/WWS), Gideon Rosen, (Philosophy), Karin Trainer (University Librarian), Chris Tully (Physics).

Subject: Recommended open-access policy

Date: March 24, 2011

In late 2010 the Dean of the Faculty appointed an ad-hoc faculty committee, comprising professors from all the divisions of the University, to study the question of open-access to faculty publications. The committee met several times in February and March 2011 and adopted this policy and report by unanimous vote. As requested by Dean Dobkin, we make this report as a recommendation to the Faculty Advisory Committee on Policy.*

Much of the faculty’s scholarly output is in the form of articles published in refereed journals and conferences; the faculty generally publish these scholarly articles without expectation of direct monetary compensation. Some journals (though by no means all) then restrict access via expensive subscriptions prices and other restrictive practices. An “open-access” policy is intended to make the faculty’s scholarly articles, published in journals and conference proceedings, available as well to a wider public than can afford to pay for journal subscriptions. In addition, an open-access policy permits the University to run an “open-access repository” where the faculty can conveniently make those articles available.

Several of our peer Universities have adopted open-access policies with these goals in mind; we studied some of these policies before coming to consensus on the policy we recommend below.

We recommend a revision to the Rules and Procedures of the Faculty that will give the University a nonexclusive right to make available copies of scholarly articles written by its faculty, unless a professor specifically requests a waiver for particular articles. The University authorizes professors to post copies of their articles on their own web sites or on University web sites, or in other not-for-a-fee venues. Of course, the faculty already had exclusive rights in the scholarly articles they write; the main effect of this new policy is to prevent them from giving away all their rights when they publish in a journal.

Although it makes sense to adopt such a policy even if the University does not establish an open-access repository of its own, we believe that the University and its faculty will benefit most from this policy if it does establish such a repository. The University already runs a public data-storage archive that could be adapted for this purpose. We recommend that the University establish such a repository, but we recognize that there are many issues of implementation and resources to be considered, so we do not make any specific recommendation regarding implementation.

*In September 2011 the Faculty Advisory Committee on Policy voted to recommend this action to the Faculty. The Faculty at its meeting of September 19, 2011 unanimously adopted this open-access policy into the Rules and Procedures of the Faculty of Princeton University.
Specifically: We recommend the following changes to the Rules and Procedures of the Faculty. In Section VIII.D.3.c, that is, “COPYRIGHT POLICY – Relationship between the University and its Faculty, Employees, and Students”, insert a new numbered paragraph (1) as shown below, and renumber paragraphs (1)-(6) into (2)-(7).

1) The members of the Faculty of Princeton University strive to make their publications openly accessible to the public. To that end, each Faculty member hereby grants to The Trustees of Princeton University a nonexclusive, irrevocable, worldwide license to exercise any and all copyrights in his or her scholarly articles published in any medium, whether now known or later invented, provided the articles are not sold by the University for a profit, and to authorize others to do the same. This grant applies to all scholarly articles that any person authors or co-authors while appointed as a member of the Faculty, except for any such articles authored or co-authored before the adoption of this policy or subject to a conflicting agreement formed before the adoption of this policy. Upon the express direction of a Faculty member, the Provost or the Provost’s designate will waive or suspend application of this license for a particular article authored or co-authored by that Faculty member.

The University hereby authorizes each member of the faculty to exercise any and all copyrights in his or her scholarly articles that are subject to the terms and conditions of the grant set forth above. This authorization is irrevocable, non-assignable, and may be amended by written agreement in the interest of further protecting and promoting the spirit of open access.

In addition: in the new paragraph 3 (old paragraph 2), change “and makes no claim” to “and, except as provided above in paragraph 1, makes no claim”. In the new paragraph 5 (old paragraph 4), change “paragraphs 1, 2, and 3” to “paragraphs 1, 2, 3, and 4”.

An open-access policy without a ready means for faculty to post their scholarly articles and an equally ready means of retrieval would be of very limited value. In some fields, especially the sciences, engineering and certain of the social sciences, convenient methods of posting and retrieval are already in place. But as this is not generally true of the humanities and humanistic social sciences, the committee recommends the creation of a University ‘repository’, types of which exist at peer institutions, that will facilitate these goals. The repository would also be available to provide links to the other posting/retrieval systems in use in other fields. Besides serving the aim of open-access, the repository will also offer a picture of the range of scholarship in the University at large. Without suggesting precisely how the repository should be constituted or what resources should go into it at the outset and for maintenance, the committee does recommend that support be provided to instruct faculty, perhaps most especially humanities and humanistic social science faculty, in posting their work and otherwise using the repository.

In coming to this recommendation we have relied on the following principles:

(1) The principle of open access is consistent with the fundamental purposes of scholarship.
(2) University support (tangible and intangible) for open access is consistent with other forms of university support for scholarship.

(3) The primary agents of open access are the faculty; university support for open access is a form of service to the faculty intended to expand the beneficiaries of the university's research mission.

(4) A university policy on open access should recognize and respect the diversity and dynamism of disciplines, professional organizations and academic publishing—maintaining communication, flexibility and diversity as core principles of implementation.

(5) Implementing a university-wide open access policy entails ongoing outreach to departments and faculty, involving the participation of chairs, managers and IT specialists—particularly in units where open access is not now the norm.

This concludes our formal recommendation. The rest of this report contains explanations and clarifications.

**Frequently Asked Questions**

**Q.** Does this take away rights from the faculty, or give the faculty more rights?

**A.** In a narrow sense, it takes away one right: the right to give away all the rights to your article when you sign a copyright assignment. The policy forces the University (and you in turn) to retain some rights, so that even as the journal publishes your article, you can post a copy on your own web site (or the University's). So, in a broader sense, it helps you keep your rights. See also, Ulysses and the sirens: it ties you to the mast, but you still get to hear the song.

**Q.** What if this policy is absolutely incompatible with a journal's copyright contract, and the journal won't budge on this, and won't let me publish?

**A.** You can obtain a waiver of the policy for any article, upon request. This waiver (which should be as easy to obtain as entering the bibliographic information into a web form) will then permit you, as before, to give away all the rights to your article.

**Q.** Doesn't the waiver make the policy completely toothless in practice?

**A.** One might think so, but in fact the experience of other universities is that they can use a university open-access policy of this kind (even with waivers) to lean on the journals to adjust their standard contracts so that waivers are not required, or with a limited waiver that simply delays open-access for a few months.

**Q.** What kinds of publications are covered by the policy?

**A.** Refereed journal and conference articles actually published; not unpublished drafts, not books, fiction, poetry, music, film, lecture notes, case studies, etc. We intend the term “scholarly articles” to be as explained by Professor Stuart Shieber of Harvard University in his annotated model open-access policy:
“scholarly articles: The scope of the policy is scholarly articles. What constitutes a scholarly article is purposefully left vague. Clearly falling within the scope of the term are (using terms from the Budapest Open Access Initiative) articles that describe the fruits of scholars’ research and that they give to the world for the sake of inquiry and knowledge without expectation of payment. Such articles are typically presented in peer-reviewed scholarly journals and conference proceedings. Clearly falling outside of the scope are a wide variety of other scholarly writings such as books and commissioned articles, as well as popular writings, fiction and poetry, and pedagogical materials (lecture notes, lecture videos, case studies). Often, faculty express concern that the term is not (and cannot be) precisely defined. The concern is typically about whether one or another particular case falls within the scope of the term or not. However, the exact delineation of every case is neither possible nor necessary. In particular, if the concern is that a particular article inappropriately falls within the purview of the policy, a waiver can always be obtained.”

http://osc.hul.harvard.edu/sites/default/files/model-policy-annotated_0.pdf

Q. Does this policy cause extra work for me? I don’t want any extra hassle.

A. Unlike (for example) the Harvard policy, this policy does not include a specific requirement that the faculty transfer actual copies of their articles to a University repository. We suggest that use of the repository should be voluntary. But we believe that the University can design a repository and associated services that will be very attractive and easy to use by the faculty.

Q. The journals I publish in (APS, ACM, IEEE, PLOS, …) already have publication contracts compatible with open-access policies, so why do I need this?

A. Lucky you. But your colleagues in other disciplines, who publish in other journals, might also want the right to put some of their work on the Web. This policy gives the University leverage to negotiate on their behalf.

Q. I already put my work in open-access repositories such as the Arxiv or PLOS.

A. Good for you. Nothing about our proposed policy says that you must do any more than you do already.

Q. Another university’s policy asks its professors to put the “last version after refereeing and before copy-editing” into their repository. Must I distribute work that is not copy-edited?

A. No. Nothing in our policy requires that. With some journals that may be convenient, if the journal’s copyright policy contains a clause permitting open-access distribution of that just-before-copy-editing version.
What happens if a journal publisher refuses to publish my article because of the prior permission given to MIT under the Policy?

When and how do I submit a paper to DSpace@MIT under this policy?

What will be done with the articles?

What kind of writings does this apply to?

What version of the paper is submitted under this policy?

Does the policy apply to articles I've already written?

Does the policy apply to co-authored papers?

Opting Out (Obtaining a Waiver)

How do I opt out?

What happens if I do not opt out, but assign exclusive rights to a publisher anyway, mistakenly signing a publisher's agreement that conflicts with the policy?

What happens when co-authors disagree on whether or not to opt out?

Why does the policy include an opt out? Doesn't that undermine the policy?

What happens if I do not opt out, but assign exclusive rights to a publisher anyway, mistakenly signing a publisher's agreement that conflicts with this prior license to MIT that permits open-access distribution? MIT recommends that you communicate this policy to your publisher and add to any copyright license or addendum for scholarly articles an addendum stating that the agreement is subject to this prior license. That way, you will avoid agreeing to give the publisher rights that are inconsistent with the prior license to MIT that permits open-access distribution. MIT provides a suitable form of addendum for this purpose. Whether you use the addendum or not, the policy still will have force.

What if a journal publisher refuses to publish my article because of the prior permission given to MIT under the policy?

When and how do I submit a paper to DSpace@MIT under this policy?
Papers should be submitted as of the date of publication. To submit a paper under the policy, upload the author's final manuscript, post peer-review, via a web form, or send it to the OA Policy Submission list. If you have already submitted this version to a preprint server (e.g. arXiv), you may email the paper's identifying repository number, or the URL, instead of the paper.

Scope of the Policy
What kinds of writings does this apply to?
It applies to "scholarly articles." Using terms from the Budapest Open Access Initiative, scholarly articles are articles that describe the results of research and that authors give to the world for the sake of inquiry and knowledge without expectation of payment. Such articles are typically presented in peer-reviewed scholarly journals and conference proceedings.

Many written products are not encompassed under this specific notion of scholarly article, such as books, popular articles, commissioned articles, fiction and poetry, encyclopedia entries, ephemeral writings, lecture notes, lecture videos, or other copyrighted works. The Open Access Policy is not meant to address these kinds of works.

What version of the paper is submitted under this policy?
The author's final version of the article; that is, the author's manuscript with any changes made as a result of the peer-review process, but prior to upload or posting to a preprint server.

Does the policy apply to articles I've already written?
The policy applies to articles that were completed before the policy was adopted March 18, 2009, nor to any articles for which you entered into an incompatible publishing agreement before the policy was adopted. The policy also does not apply to any articles you write after leaving MIT.

Does the policy apply to co-authored papers?
Yes. Each joint author of an article holds copyright in the article and, individually, has the authority to grant MIT a non-exclusive license. Joint authors are those who participate in the preparation of the article with the intention that their contributions be merged into inseparable or interdependent parts of the whole.

Opting Out (Obtaining a Waiver)
How do I opt out?
To opt out, fill out a simple web form, or send an email or other written notice to oapolicyoptout@mit.edu informing MIT of the following:
- Name of MIT author
- Title of article (expected or working title)
- Journal you expect to publish in
- Reason you are opting out

What happens if I do not opt out, but assign exclusive rights to a publisher anyway, mistakenly signing a publisher's agreement that conflicts with the policy?
MIT would still have far stronger rights, because it would have been granted (through this policy) prior to the signing of the publisher contract. If the publisher expresses concern that cannot be remedied, you may email the paper's identifying repository number, or the URL, instead of the paper.

Could I retract a paper later if a publisher required me to do so?
It would be possible to remove a paper, particularly in cases involving a legal dispute. The specifics would depend on the procedures worked out by the Faculty Committee on the Library System to implement the policy.

Legal Aspects
Is MIT taking the rights to my writing?
No. This policy grants specific nonexclusive permissions to MIT. You still retain ownership and complete control of the copyright to your writings, subject only to this prior permission. You can exercise your copyrights in any way you see fit, including transferring them to a publisher if you so desire. However, if you do so, MIT would still retain its license and the right to distribute the article from its repository. If your article arises, in whole or in part, from NIH-funded research and was accepted for publication after April 7, 2008, you must retain sufficient rights to comply with NIH's Public Access Policy.

What happens if I get into legal difficulty when attempting to comply with the policy?
Staff in the Office of General Counsel and the Libraries are available to support the policy and to supply guidance to faculty.

How may I use an article that appears with both a publisher copyright statement and a Creative Commons License?
Some articles in the MIT Open Access Articles collection appear with a publisher's copyright statement (e.g. "c2009 American Political Society") in addition to a Creative Commons license. The publisher's copyright statement may indicate that the article's copyright was transferred by the author (or the publisher, if the author used a template provided by the publisher in expectation of copyright being transferred). Because the MIT Open Access Policy operates automatically to give MIT a license to any scholarly articles faculty members complete after its adoption, MIT's license predates this transfer of copyright to a publisher. Therefore, while the article's copyright is held by the publisher, that copyright is subject to MIT's pre-existing license.

MIT has chosen to distribute articles under its Open Access Policy using one of the standard Creative Commons licenses: the Attribution-Noncommercial-Share Alike license. If a CC license appears with an article, it is the CC license that determines how the article may be used.

This particular CC license means that:
- Attribution: You must attribute the work in the manner specified by the author or licensor (but not in any way that suggests that you endorse you or your use of the work)
- NonCommercial: You may not use this work for commercial purposes
- Share Alike: If you alter, transform, or build upon this work, you may distribute the resulting work only under the same or similar license to this one.

More information on the CC Attribution-NonCommercial-ShareAlike license

What Will Be Done with the Articles?
What will MIT do with the articles?
MIT will continue to operate its open-access repository, DSpace@MIT, to make available the scholarly articles provided under the policy. This repository has MIT standing behind it to ensure its availability, longevity, and functionality, to the extent technologically feasible. The repository is backed up, mirrored, and made open to harvesting by search services such as OAIster and Google Scholar. Adjustments will be made to the deposit processes, under the guidance of the Faculty Committee on the Library System, to make it as convenient as possible. MIT may further allow others to distribute the content, provided that the articles are not sold for profit. For instance, faculty at other institutions could be given permission to make copies for free distribution directly to their students. However, MIT does not have—and cannot grant to others—the right to sell the articles for a profit or to sell a book containing the articles for a profit.

Does this license preclude all activities that involve payment?
No, not necessarily. An activity will not cease to be permitted under the policy merely because a charge is imposed to cover some or all of the costs of the activity, provided that articles are not sold for a profit. Hence, for example, MIT's selling course packs at cost would be permitted. The Faculty Committee on the Library System will provide advice on what levels of repository material are appropriate and consistent with the purposes of the policy.

Can others distribute my work, for instance, placing it in a course pack?

This policy would grant MIT the right to license others to distribute the work, so long as the work was not sold for a profit. For example, MIT could give permission for an article to be used in a course pack (including giving such permission to you if you have assigned such rights). However, no one would be able to sell your articles for profit without getting permission from the appropriate right holder, whether that were you or a publisher to whom you have assigned such rights.

Can articles be used to provide search or other services by companies such as Google?

Yes, the license allows MIT to enable both commercial and nonprofit entities to use the articles to provide search or other services, so long as the articles are not being sold for a profit. This is true even if the services generate advertising revenues or the company charges for the services. For instance, the license allows MIT to enable the articles to be harvested and indexed by search services, such as Google Scholar, so that they can more readily be found, and to be used to provide other value-added services as long as the articles themselves are not sold for a profit. MIT also could authorize use of the articles in a commercial service that provides information extracted from the articles (but not the full text itself), such as bibliographic data or citation lists. Any arrangements would be consistent with the goals of open access and ensuring wide visibility and availability of scholarly articles.

Who will monitor implementation of the policy?
The Faculty Committee on the Library System (which is a standing committee of the MIT faculty) is working with the MIT Libraries to develop an implementation plan that has faculty interests in mind. They anticipate developing processes and procedures by soliciting input from the faculty and providing progress reports to the faculty as the implementation plan is developed. The Faculty Policy Committee will be responsible for presenting a report regarding the policy to the faculty.

Impact of Policy on Scholarly Publishing Environment

Will this policy harm journals, scholarly societies, small friendly publishers, or peer review?

There is no empirical evidence that even when all articles are freely available, journals are canceled. The major societies in physics have not seen any impact on their publishing programs despite the fact that for more than 10 years, an open access repository (arXiv) has been making available nearly all of the High Energy Physics literature written during that period. If there is downward pressure on journal prices over time, publishers with the most inflated prices—which tend to be larger commercial publishers—will feel the effect of their value-added services, such as peer review logistics, copy editing, type setting, and maintaining web sites.

Will this policy harm those in tenure processes who need to show publication in high quality journals?

No. The policy does not affect those who need to publish in journals that do not cooperate with the policy.

How will this policy affect other universities, particularly small ones?

We expect that as similar policies are passed at more universities, the overall climate for scholarly communication will improve, benefiting all institutions in the network of higher education. Smaller universities may find it advantageous to broaden their access to the resources to build their own repositories, but shared repositories are starting to become available for such cases.

What's in it for MIT?

The policy would increase the impact of MIT research by making it more widely available. Studies show a very large citation advantage for open access articles, ranging from 45% to over 500%, but restrictive publisher business models limit wide sharing through onerous terms in contracts with university libraries and individual authors. For example, many publishers prohibit authors from posting their work openly on the web, and publishers commonly 'rent' access to their content, putting access at risk following cancellation of subsciptions. Performing systematic searching, advanced indexing, or analysis is prohibited in virtually all contracts.

The policy would give MIT a means of negotiating for more attractive terms with publishers, an effort needed in a context of dramatic inflation and market consolidation: the 5 largest journal publishers now account for over half of total market revenues, and over the past 15 years, the price of scholarly journals has grown roughly three times as fast as the Consumer Price Index.

More Information

Would it be Open Access?

Open access as discussed in relation to this policy refers to free availability of journal articles on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful, non-commercial purpose, without permission or fee. The policy applies only to faculty because in a faculty policy it seemed clearest to focus on faculty work. MIT already has the technical infrastructure in place to store the articles, in the form of the open access repository DSpace@MIT. In addition, the MIT Libraries have experience supporting access to faculty research such as technical reports and working papers, and for the past several years have maintained an Office of Scholarly Publishing and Licensing to assist faculty who wish to retain rights in their published works. Once an implementation plan is developed, the policy will be implemented.
it will be possible to assess what other staff or technical support might be needed, if any, and to reassess priorities in light of those needs.

**How is this policy related to the NIH Public Access Policy, and how is that policy working?**

The NIH Public Access Policy applies only to NIH funded research – about 1/3 of MIT’s funded research dollars. It requires authors to deposit their peer-reviewed articles in the open access repository PubMedCentral where they must be accessible within 12 months of publication. Making the policy mandatory has had a dramatic effect on deposits: the rate has increased from under 10% to an estimated 60%. The policy makes tax payer funded research available to taxpayers.

A particular article could be subject to both this policy and the NIH Public Access Policy, if it is peer reviewed and arose, in whole or in part, from NIH-funded research. If an NIH-funded article is covered by this open access policy, the author would use the MIT amendment to publication agreements to cover NIH’s obligations and accommodate the MIT policy. Even if the author decides to opt out of the policy for an article, the author must reserve rights sufficient to comply with the NIH policy when entering into a publication agreement for the article.

For more information on the NIH addendum and compliance with that policy, please see the MIT web page about [complying with the NIH policy](http://libraries.mit.edu/sites/scholarly/mit-open-access/open-access-at-mit/).

**Why doesn’t the policy express support for open access journals?**

This policy takes only a first step towards re-balancing the scholarly publishing system, giving MIT a means of negotiating for faculty and allowing wider sharing of their research. Other steps will no doubt make sense in the future. Some universities, for example, have begun supporting open access journals by creating funds authors can use for publication fees.

**Why doesn’t the policy offer a delay before posting the articles, so that the MIT version doesn’t show until after journal publication?**

Different disciplines have very different “half lives” for journal articles, making it very difficult to include a particular time period in an overall policy. Instead, the opt out exists for authors whose publishers require a delay before posting.

**Won’t this lead to the proliferation of versions and confusion over citation?**

With or without this policy, the academic community will need to work on the problem of version control in digital scholarship. There are technical and standard-based solutions that will address this problem. The has been examining this issue, along with the [International working group of scholars, scholarly societies, and publishers](http://www.scholarlyoa.org/) and the [Version Identification Framework](http://www.versionidentification.org/). These efforts will be closely monitored.

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Draft discussion document for Duke Open Access policy

Prologue

Among the enduring themes of Duke’s strategic plan are "knowledge in the service of society" and "affordability and access," key components of our goal as a research university to create, disseminate and preserve knowledge. In Spring 2009, Provost Peter Lange established the Digital Futures Task Force to propose a set of measures that Duke University can undertake to further these ends.

The proposed Open Access policy would provide the legal basis for Duke to preserve the work of Duke scholars in a permanent digital repository and to provide access to that work to anyone who seeks it. The policy is intended to serve the faculty's interests by allowing articles to receive open distribution, simplifying authors' retention of distribution rights, aiding preservation, and providing unified action to discourage publishers from rejecting articles because they will be available in open access. In any case in which the license works against the interest of a faculty member, the policy allows for waiver of the license or delay of distribution.

While the precise mechanisms by which this will work have not yet been fully developed, the intention is that this policy will not result in more work for the faculty, and it is worth a relatively small investment because, in many fields, work published in journals is not accessible to those who do not subscribe to the journal or whose libraries don't subscribe.

By joining research universities such as Harvard, Stanford, and MIT as well as funding agencies including NIH in adopting an open access policy and building a digital repository service, Duke becomes part of a growing, important movement toward a new mode of open access scholarly publication.

Digital Futures Task Force, co-chairs Cathy N. Davidson (English, Franklin Humanities Institute) and Paolo Mangiafico (Office of the Provost)

- Martha Adams, Medical School
- Stuart Benjamin, Law School
- Samantha Earp, OIT Academic Services
- Deborah Jakubs, University Librarian and Vice Provost for Library Affairs
- Jim Moody, Sociology
- Negar Mottahedeh, Literature
- Tony O'Driscoll, Fuqua School
- Tim Pyatt, University Archives/Special Collections Library
- Kathleen Smith, Biology
- Kevin Smith, Library/Scholarly Communications
- Kim Steinle, Duke University Press
Policy Text

The Faculty of Duke University is committed to disseminating the fruits of its research and scholarship as widely as possible. In addition to the public benefit of such dissemination, this policy is intended to serve faculty interests by promoting greater reach and impact for articles, simplifying authors’ retention of distribution rights, and aiding preservation. In keeping with these commitments, the Faculty adopts the following policy.

Each Faculty member grants to Duke University permission to make available his or her scholarly articles and to reproduce and distribute those articles for the purpose of open dissemination. In legal terms, each Faculty member grants to Duke University a nonexclusive, irrevocable, royalty-free, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, and to authorize others to do so, provided that the articles are not sold. The Duke faculty author remains the copyright owner unless that author chooses to transfer the copyright to a publisher.

The policy will apply to all scholarly articles authored or co-authored while the person is a member of the Faculty except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. The Provost or Provost’s designate will waive application of the license for a particular article or delay access for a specified period of time upon written request by a Faculty member.

To assist the University in distributing the scholarly articles, each faculty member will make available, as of the date of publication or upon request, an electronic copy of the final author’s version of the article at no charge to a designated representative of the Provost’s Office in an appropriate format (such as PDF) specified by the Provost’s Office. The Provost’s Office will make the article available to the public in Duke’s open-access repository. In cases where the Duke license has been waived or an embargo period has been mutually agreed, the article may be archived in a Duke repository without open access for the period of the embargo, or permanently in cases of waiver.

The Office of the Provost, in consultation with the Executive Committee of the Academic Council, will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the Faculty from time to time.

The Faculty calls upon the Library Council and Duke University Libraries to develop and monitor a plan for a service or mechanism that would render compliance with the policy as convenient for the faculty as possible.

The policy and service model will be reviewed after three years and a report presented to the Faculty.
Additional background info / FAQ

Benefits of open access and an institutional repository

- **How does this benefit faculty authors?**
  - Repeated studies indicate that scholarly articles that are available in open access form are downloaded and cited more often than articles published only in subscription-based journals, and that citations occur more quickly than with a traditional publication cycle.
  - Duke will provide persistent storage of and access to a digital copy of your work, ensuring that it will continue to be available to readers even if access is no longer possible through the original publisher’s online service.
  - You will have a persistent web address for each of your articles that can be used for citing your work, and that you can use for links in academic or personal web pages and social networking sites, and which can be e-mailed to colleagues who want to read your work. This will save the labor of repeated scanning and file management. The web page at Duke that this address points to will have a link to and citation information for the original article on the publisher’s site as well as an archival copy in the Duke repository that will be accessible to those who do not have subscription access to the published version.
  - Research funding mandates are becoming more common, and pending federal legislation would vastly increase the numbers of funded research works for which open access will be a requirement. A license given to Duke will allow the university to make the process of fulfilling these mandates much easier for individual authors.
  - Because Duke will hold a cumulative license in the scholarly works of its faculty authors, the university will be able to negotiate directly with publishers on behalf of covered authors. This can make the process of publication and open access deposit much easier.


- **How does this benefit Duke?**
  - Using the opportunities provided by the Internet and digital technologies to improve access to the scholarly work produced by Duke faculty helps the university fulfill its fundamental educational mission.
    - Specifically, greater access to scholarship serves the strategic goals of greater international impact and collaboration. Such access can also foster and facilitate greater interdisciplinary collaboration and enhances university’s goal of using knowledge in the service of society.
  - By creating a university-managed repository of scholarship at Duke, the University can showcase the work of its faculty across disciplines without interfering with the normal interests and expectations of each individual author.
**Benefits for the academic researcher:**

1. increase the visibility of your research findings, your work is easier to disseminate, easier to find and easier to read
2. make it easier to manage your list of publications on your personal website and your organization’s website
3. give you a place where your scholarly works are permanently stored, whether they are a PDF of a journal article, a Microsoft Word document of a technical report, a Microsoft PowerPoint file of a conference poster, a JPEG file of a photograph, an audio file of a musical performance or a video file of a speech
4. enable a simple web address to your piece of work that can be cited in subsequent works or easily refer other interested parties too
5. make possible easy access to materials previously only available in print e.g. theses, dissertations
6. give an indicator of the impact your research is having in your field, help identify who is reading your work (or at least from where they are accessing it) and encourage impact to be more related to the merit of your work and not the name of the journal in which it is finally published
7. offer new opportunities for publishing your works e.g. as part of a virtual journal, for others to comment on your work and provide feedback
8. encourage others to do the same, so you can easily find and read the work of your colleagues and others
9. make it easier to keep abreast of the latest research findings (certainly within the University)
10. for those working in a fast-moving field e.g. computer sciences or electronics, enable quick and dated dissemination or your research findings, which could establish prior discovery
11. have a safe, backed-up and secure place to store your scholarly works
12. have an organized single point of reference for your work, accessible 24/7, readable from any web-enabled device (Windows PC, Apple MAC, PDA, mobile phone), from work, from home, while you are abroad at a conference etc.
13. reduce your workload associated with managing your portfolio of scholarly works (or at least not add to it)
14. improve your understanding of copyright, make you aware of your rights and maximize the return of your efforts
15. meet and manage the requirements of funding bodies with respect to disseminating your research outputs and ensure you can confidently tick this box on new funding applications

**Benefits for research administrators, research managers, librarians, and senior academic staff, Heads of Faculty/School:**

16. provide new opportunities for the archiving and preservation of valuable digital works
17. provide meaningful reports on scholarly work, which can act as a barometer of research activity in a particular field, help to identify trends and inform managers involved in strategic planning
18. provide timely alert messages on latest submissions which can increase awareness and responsiveness of support functions and managers
19. facilitate cross-boundary research, by cataloguing scholarly works according to the subject material and not (solely) the affiliation of the author
20. reduce duplication of records and inconsistencies in multiple instances of the same works
21. reduce some of the mundane activities of managing digital collections by automating common tasks and harvesting information from other sources

Benefits for the University (and its component parts):

22. demonstrate to its employees, in particular the academic community, that individuals and their work are valued, by supporting mechanisms that reduce workload and maximize the benefits to them of their efforts
23. provide a reference point for scholarly works that can interoperate with other systems and maximize efficiencies between them by sharing information
24. increase the visibility, reputation and prestige of the institution
25. improve the accuracy and completeness of the institution’s record of scholarly works
26. ease the management of an institution’s intellectual property rights by raising awareness of copyright issues and facilitating the recording of relevant rights information
27. provide a resource of information for a 'shop window’ or marketing tool to show others how the institution is making a difference, this would act to entice staff, students and funding
28. act as a tool to support externally and internally driven audits of research activity e.g. annual reviews, accreditation
29. reduce total cost and risk of ownership, in particular incurred by an institution’s component parts who might be supporting equivalent services locally (or at least allow local resource to be allocated to alternative activities)
30. offer greater flexibility and integration than other mechanisms of disseminating scholarly works (e.g. disparate independent system/websites) with more coherent security and preservation of digital materials
31. contribute to the mission and values of an institute, in terms of openness, freedom-of-speech and equality-for-all

Benefits for the global community:

32. assist research collaboration through facilitating free exchange of scholarly information
33. aid the public understanding of research endeavors and activity
34. reduce costs (or at least allow their reallocation) associated with publisher subscriptions

[Adapted from http://www.irproject.manchester.ac.uk/about/businesscase/index.html]

Is this policy unique?

• No. The faculty at Harvard University, as well as at Stanford, MIT, Boston University and others have adopted similar policies. The language in this document draws heavily from similar policies adopted over the past two years by these institutions.
• Research funders are supporting such efforts as well. For instance, the National Institutes of Health now require posting of articles derived from research they fund in the open-access repository; and the Howard Hughes Medical Institute (HHMI) as well as the Wellcome Trust require any scholarly articles on research they fund to be made openly accessible. A bill now going through the US Congress, the Federal Research Public Access Act, would require that US Government agencies with annual extramural research expenditures of over $100 million to make manuscripts of journal articles stemming from research funded by that agency publicly available via the Internet. The manuscripts will be maintained and preserved in a digital archive maintained by that agency or in another suitable repository that permits free public access, interoperability, and long-term preservation, such as the one being developed at Duke. The law would require that each manuscript be freely available to users without charge within six months after it has been published in a peer-reviewed journal.

• A list of the many institutions and funders that already have similar policies can be found here: http://www.eprints.org/openaccess/policysignup/

Impact of the policy

• Is the university taking the rights to my writing?
  o No. The Open Access Policy grants a limited nonexclusive license to Duke. You still retain ownership and complete control of the copyright in your writings, subject only to this prior license. You can exercise your copyrights in any way you see fit, including transferring them to a publisher if you so desire. (However, if you do so, Duke would still retain its limited license to archive and distribute the article from its repository. Also, if your article arises, in whole or in part, from NIH-funded research and was accepted for publication after April 7, 2008, you must retain sufficient rights to comply with NIH's Public Access Policy.)

• What will Duke do with the articles it has license to?
  o Duke has set up a repository called DukeSpace to make available the scholarly articles provided by its faculty members. This repository has the institution of Duke University standing behind it to ensure its availability, longevity, and functionality, to the extent technologically feasible. The repository will be backed up, mirrored, and made open to harvesting by search services such as OAIster (now part of WorldCat) and Google Scholar.

  Through the transferability provision, Duke may further allow others to distribute the content, provided that the articles are not sold. For instance, faculty at other institutions could be given permission to make copies for free distribution directly to their students. However, Duke does not have—and cannot grant to others—the right to sell the articles or to sell a book containing the articles.

• So who owns the copyright in articles I write?
  o You, as the author of the article, own copyright in it until and unless you sign that copyright over to a publisher. The license to Duke is not an “assignment” or transfer of copyright. It is just permission from you, as the copyright holder, to Duke to make
a certain specified use of your work. This license arises immediately for all scholarly articles written while a faculty member at Duke after the effective date of the policy; if you do sign your copyright over to a publisher, the limited license granted prior to that “assignment” remains with Duke.

• **What does it mean to say this is a non-exclusive licenses?**
  o “Non-exclusive” means that the permission you give Duke to put you work into DukeSpace does not prevent you from giving permissions to others, including publishers, to also exercise some or all of the rights you hold as the copyright holder. What you do with your work, or allow others to do with it, remains your decision.

• **Can others distribute my work, for instance, placing it in a course pack?**
  o Only a party with appropriate rights can license an article for use in a course pack. This policy grants Duke the right to license such uses, so long as the course pack was not sold, so that others (and yourself if you otherwise transfer copyright) could get permission from Duke for free use of your articles in course packs. Alternatively, others (and you) could continue to get permissions from the publisher, typically by paying royalties to the publisher, if desired. To take another example, Duke also could authorize others to make your articles available online (for example, in another repository), provided that they were not sold. Of course, no one would be able to sell your articles without getting permission from the appropriate rights holder, whether that is you or a publisher to whom you have assigned such rights.

• **Can my articles be used to provide search or other services by companies such as Google or disciplinary repositories?**
  o Yes, consistent with the goals of open access and ensuring wide visibility and availability of scholarly articles, the license allows Duke to enable both commercial and nonprofit entities to use the articles to provide search or other services, so long as the articles are not being sold. For instance, the license allows Duke to enable the articles to be harvested and indexed by search services, such as Google Scholar, so that they can more readily be found, and to be used to provide other value-added services that don't involve charging for access to the articles themselves. Duke also could authorize use of the articles in a commercial service that provides information extracted from the articles (but not the full text itself), such as bibliographic data or citation lists.

• **Will Duke be able to take advantage of future changes in technology to provide open access to the articles?**
  o Yes, if new technological means of distributing or making the articles available evolve during the lengthy term of copyright, the license is intended to give Duke the flexibility to use those means to advance the purposes of the policy, provided always that the articles are not sold.

• **What kinds of writings does this apply to?**
  o Only scholarly articles. Using terms from the Budapest Open Access Initiative, faculty's scholarly articles are articles that describe the fruits of their research and that
they give to the world for the sake of inquiry and knowledge without expectation of payment. Such articles are typically presented in peer-reviewed scholarly journals and conference proceedings. Many of the written products of faculty effort are not encompassed under this notion of scholarly article: books, popular articles, commissioned articles, fiction and poetry, encyclopedia entries, ephemeral writings, lecture notes, lecture videos, or other copyrighted works. This is not to denigrate such writings. Rather, they are generated as part of separate publishing or distribution mechanisms that function in different ways and whose shortcomings, if any, the present policy does not and is not meant to address.

• **Does the policy apply to articles I wrote before the policy was adopted?**
  o No, it doesn't require that you deposit any articles that were completed before the policy was adopted, nor any articles for which you entered into an incompatible publishing agreement before the policy was adopted. If you wish to deposit articles written prior to the adoption of the policy, you are welcome to do so, provided that you retained the right to make your articles available in this fashion when you signed any publication agreements regarding them. Of course, the policy also does not apply to any articles you write after leaving Duke.

• **Does the policy apply to co-authored papers?**
  o Yes. Each joint author of an article holds copyright in the article and, individually, has the authority to grant Duke a non-exclusive license. Joint authors are those who participate in the preparation of the article with the intention that their contributions be merged into inseparable or interdependent parts of the whole. If coauthors disagree about making the article available for open access via Duke’s repository, the opportunity to waive the license (opt out) is available.

• **Will this policy harm the journal publishers?**
  o There is no reason that it should. The policy allows each author to decide where to publish his or her work and how to accommodate the requirements of a chosen publisher. Many publishers already permit authors to deposit their final author’s manuscript in an institutional repository like DukeSpace. A sample publication contract that permits this, used by a Duke University Press journal, can be found at [http://library.duke.edu/blogs/scholcomm/wp-content/uploads/2007/02/dukepubk.pdf](http://library.duke.edu/blogs/scholcomm/wp-content/uploads/2007/02/dukepubk.pdf). If a publisher wants the release of an open access copy of the author’s final manuscript delayed for 6 months or a year so as not to undermine subscription sales, this policy can accommodate that embargo. Finally, if a publisher absolutely objects to the license granted to Duke, the license will be waived upon request of the faculty author.

• **What if a journal publisher refuses to publish my article because of this prior license?**
  o This should be an uncommon problem; according to a 2008 survey, between 70 and 80% of journal publishers already allow authors to deposit articles they publish in an institutional repository.1 If your publisher objects, however, you have a number of

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1 The study, by The Publishing Research Consortium, an industry “think tank,” can be found at [http://www.publishingresearch.net/documents/JournalAuthorsRights.pdf](http://www.publishingresearch.net/documents/JournalAuthorsRights.pdf)
options. One is to obtain a waiver of the license under the policy. Alternatively, you can work to persuade the publisher that it should accept Duke’s non-exclusive license in order to be able to publish your article, or seek a different publisher. You can consult with Duke’s Office for Scholarly Communication for help in the process of working with publishers and addressing their specific concerns.

• **How does the waiver process work?**
  This will depend on the method by which your article is submitted to the DukeSpace repository. If you (or someone you designate) submits your article, you will have the option at the time of submission to specify whether you are opting out of the open access provisions of the license (in which case a copy of your work will be archived by Duke, but access will not be provided to the public from Duke) or by placing a temporary embargo (delay of release) on open access. If article citations and full text are being collected by other means (automated processes based on your faculty database profile or online bibliographic sources, or as a service by librarians, for example) you will be asked whether any of your articles require a waiver or embargo. In many cases, the Library’s Scholarly Communications Office or automated processes should be able to advise you on the default policies of your publishers using databases of publisher copyright and self-archiving policies (such as SHERPA/RoMEO). See below for more information on the submission process.

• **Can I delay access to my article in DukeSpace?**
  Yes, you can also instruct that your article not be accessible for some period of time after publication (an embargo). Doing this may make some publishers more comfortable with this policy, without requiring a complete waiver. In this case, your article will not become available in DukeSpace until after the period of time you designate has elapsed.

• **How will this license affect the peer-review of my article and the promotion and tenure process?**
  Since this policy does not affect your ability to submit your article for publication to any journal you wish, the peer-review will be determined by the practices of the journal you choose and will not be affected by the prior license to Duke. After you make any changes to your article in response to the review process, you should submit the revised version so that the DukeSpace repository will contain the final author’s version of your article. As with peer-review, this license will have no impact on the promotion and tenure review process because you will still be free to publish in whatever journal you wish that will accept your work.

• **My publication contract allows me to put the “final author’s version” of my article in an institutional repository, but not the “publisher’s version.” What are these different versions?**
  These discussions generally distinguish three versions of an article. The “pre-print” is the version you submit initially to a publisher and which is sent out for peer-review. The final author’s version (sometimes called a post-print) is the revised version that

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2 http://www.sherpa.ac.uk/romeo/
you create after the peer-review process and in response to comments from reviewers. This is the version that will usually be deposited in DukeSpace under this policy (and many publishers already allow this under their existing publication contracts). The publisher’s version is the article as it appears in the journal, after it is copyedited and formatted by the publisher. Publishers are inconsistent about whether they allow deposit of the publisher’s version in an institutional repository; some allow and even encourage it while others forbid it. In any case, there should be little substantive difference between the published version and the final author’s versions that will be available in DukeSpace. DukeSpace will accept the latest version possible under the publisher’s contract, and will wherever possible provide a link to and citation information for the published version, to make clear that the published version is the preferred version and that the Duke copy is a secondary copy for archival purposes and to provide access to readers who do not have access to the published version.

- **My publisher offers open access to articles it publishes for a fee. How does this relate to the policy?**
  - Because this license allows Duke to provide open access to your article in DukeSpace, it is not necessary for you to pay a separate fee to the publisher for the same level of access. If you wish to do so, of course, you are free to make that decision, and some grant funders who support research allow grant money to be used in that way.

**DukeSpace and the planned service model for assisting with deposit.**

**How will the process work?**

- As the policy has not yet been adopted, precise procedures have not yet been worked out for assisting faculty to deposit and make available their articles via a Duke repository. We anticipate that there may be several options to make this process simple and quick for faculty or their assistants.
- For authors wishing to submit articles themselves (or have someone submit on their behalf), there will be a web form to do so.
- In many cases, initial compilation of lists of your publications might be done periodically through automated processes based on your faculty database profile or online bibliographic sources (i.e. Google Scholar, Web of Science, or repositories like PubMedCentral to which you have already submitted articles), or as a service provided by librarians. In these cases, you would be asked to confirm the information collected, specify whether you need to opt out of the policy or place a temporary embargo on any of them, and upload your final author’s version if one was not able to be collected from the published source.
- We aim to integrate the deposit process as much as possible with other existing processes that faculty already perform, such as updating profile web pages or submitting citations of publications for annual reports – in this scenario you might upload a formatted list of citations (exported from EndNote or Refworks or Zotero, for example) and an automated process would assist in preparing reports and profile
pages as well as collecting the articles themselves for deposit to the repository, and providing persistent links to them in your profile and reports.

- We may also be able to provide a service that allows you to CC article submissions to an e-mail address at Duke that will trigger the deposit process.

- Examples of how this works at Harvard illustrate how it might also work here at Duke:
  

**Where will the funding for an open access repository come from?**

Open access is a University priority, and also helps support well established University initiatives such as a broader global audience, interdisciplinary research and service to society. As such, the budgeting for institutional repository initiatives is part of long term planning and budgeting, not a short term charge back to departments. The Library, OIT and others will be working on repository efforts in order to fulfill University goals. Some of the cost of these efforts might come from internal reallocation, some from external funding, and some from planned new spending over time.

**Additional resource on Open Access**

- **Statement of principles for university open access policies**
  - [http://www.arl.org/sparc/advocacy/three-principles-for-univ.shtml](http://www.arl.org/sparc/advocacy/three-principles-for-univ.shtml)

- **FAQ for helping publishers understand university open access policies**