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January 15, 2013

**ROBERT L. POWELL, CHAIR**

University of California  
Academic Council  
1111 Franklin Street, 12<sup>th</sup> Floor  
Oakland, CA 94607

**RE: Proposed Open Access Policy for UC-wide Review**

The proposal was forwarded to all Davis Division of the Academic Senate standing committees and Faculty Executive Committees within the schools and colleges for comment. Detailed responses were received from the Committees on Faculty Welfare, Research, and Library as well as the Faculty Executive Committees from the College of Biological Sciences, and College of Letters and Science. In addition, the Davis Division Library Committee sponsored an open campus discussion forum on November 30, 2012. Simultaneously the committee sponsored a web forum to gather and respond to faculty questions and concerns at: [http://academicssenate.ucdavis.edu/forums/index.cfm?forum\\_id=70](http://academicssenate.ucdavis.edu/forums/index.cfm?forum_id=70)

The Davis Division supports the Open Access policy in principle; however, there are serious reservations about endorsing the policy as written. Despite efforts by the Library Committee to address member concerns, the Davis Division still feels that there are more questions than answers about the implications of the policy, not to mention widespread confusion about what the policy actually says. This has led many to question whether the policy language captures intent. The following are noted areas of misapprehension:

- The policy states that the University will make the article available in the repository even if faculty opts out: "The University of California will make the article available in an open access repository." There is no exception for opt-outs. The intent is to archive the article while keeping it unavailable for viewing if the faculty member opts out, but the policy does not express this intent.
- The following sentence at the end of paragraph two is unclear: "Application of the license will be waived for a particular article or access delayed for a specified period of time upon express direction by a Faculty member to the University of California." Specifically, it is unclear as to what "application of the license" being waived means. In addition, this sentence does not indicate whether the faculty or the University decides if the license will be waived or access to it delayed.

The Library Committee offers the following suggestions for revision:

- Replace the aforementioned sentence in paragraph two with: "Any faculty member may opt out of granting a license described in this paragraph by communicating to the University their wish to do so."
- Add the following qualifier to the second sentence of paragraph 3: "The University of California will make the article available in an open access repository unless the Faculty member opts out of granting a license to the University for that article."

- Add a new paragraph following paragraph 3: "A Faculty member may choose to delay granting a license to an article under this policy to the University for a period of the Faculty members choosing. If a Faculty member chooses to delay the grant of the license, the Faculty member should communicate the period of delay to the University. The University will not make the article available in an open access repository until the period of delay has passed."
- Add the following to the last paragraph: "Faculty members are not subject to discipline or sanction for declining to comply with this policy."

In addition to the specific suggestions for revision above, the Division is apprehensive over several copyright and publishing issues not addressed by the policy or the FAQ attached to the proposal:

- It is unclear as to whether the final license would be restricted to non-commercial use. The policy seems to allow reprinting parties to profit from selling the faculty member's work, a concept that a minority explicitly expressed concern over. Some want to exercise control over whether and where their work is reprinted. This does not mean the faculty have an issue with open access, just with the policy's treatment of reprints.
- If a published work contains items reprinted by permission, does UC and/or CDL help negotiate copyright issues that are currently handled by publishers?
- If "no" to the prior question, then is this an instance when faculty should opt out, and does this inherently exclude all art history articles (for example) from the repository?

This list is not exhaustive. Copyright issues are a widespread concern expressed by committees and members. These questions are being raised before the policy is even implemented, leading some to believe that an exorbitant amount of time and financial resources will need to be dedicated to helping faculty navigate the publishing and copyright implications of the policy.

The above concern is a small facet of the overall apprehension that enacting an open access policy will inevitably place undue financial burden on libraries, the faculty and the University. It is unclear how much staff support will be needed to help faculty comply with the policy, and there is no assurance that the policy will be effective and worth the investment. For these reasons, one suggestion is that the policy expire and be reviewed for effectiveness and value.

Since there remain many unknowns about the impact the policy will have once implemented, the Davis Division would like to emphasize that implementing the policy should not disadvantage other important library services. The Division remains concerned that the processes resulting from open access will be time consuming for faculty and waste precious library resources. It remains unclear as to how the current policy actually saves the library any money on journal subscriptions; libraries must continue to subscribe to the relevant journals.

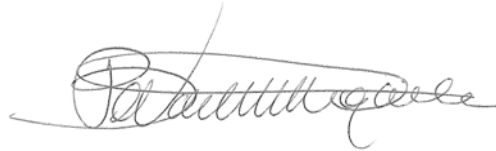
It is also important to consider that open access might have a negative effect on traditional journals whose profits fund endeavors in the field, or are run by non-profit professional organizations. While Open Access seeks to remove power from profit-seeking publishers, it might inadvertently punish smaller publishers who are not to blame for the current high-costs of publishing as well as the researchers who will have to pay to have their work published in these smaller journals to cover the loss of profits.

Furthermore, a minority is strictly against an open access policy for the following reasons:

- Many faculty will have to opt out routinely per their publisher's request, resulting in this policy simply leading to more resource and time spending.
- UC should not waste money creating and developing its own open access database, since institution specific databases are not nearly as effective or as widely accessed as national or international ones.

While there is support and understanding of the basic principle of providing access to the scholarship of UC to the public, the Davis Division finds the proposed policy's language unclear. There are more questions than answers about the Open Access policy, and we would like additional clarification on the above issues before fully endorsing the proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruno Nachtergaele". The signature is fluid and cursive, with a large initial "B" and "N".

Bruno Nachtergaele, Chair  
Davis Division of the Academic Senate  
Professor: Mathematics