Systemwide Library and Scholarly Information Advisory Committee
Standing Subcommittee on Copyright Policy

March 30, 2008 2 p.m. – 4 p.m.
Conference Call

Meeting Notes

Attending: David Goldberg (chair), Kathryn Atchison, Jan Carmikle, Ben Crow, Gary
                Lawrence, Charles Louis, Mary MacDonald Chuck Rzeszutko

1. Open Access and Copyright
   a. The NIH deposit requirement
   b. The Harvard open access resolution and the proposed UC Open Access Policy

Lawrence began by reviewing the requirements of the NIH policy and the University's actions to date to support compliance, briefly discussed the outcomes of the proposed UC open access policy that was distributed for formal review in winter 2007, and linked these topics to the recent open access resolution of the Harvard Faculty of Arts and Sciences. In summary: the policy guidance and compliance instrument (the "Tucker letter") produced by the UC Research Administration Office to implement the NIH requirement (which has the force of federal statute) represents a necessary good-faith effort to comply on the part of the institution, but is probably insufficient; the "Tucker letter" by itself does not guarantee that PIs will necessarily have the rights needed to comply, and faculty will undoubtedly want and need additional direct support to achieve compliance. The UC Libraries, in consultation with their respective campus RAOs, are beginning to create information resources and services in support of the requirement, but the principle responsibility will continue to lie with the PIs, who by common interpretation of the UC policy on copyright ownership are the rights owners in their publications. A UC "open access" policy, in the spirit of the earlier (but heavily criticized) draft and the Harvard initiative, could if properly crafted give UC as an institution the rights needed to help insure compliance with the NIH requirement. The Harvard initiative provides impetus to revisit the UC policy proposal, but while the goals of the UC policy were generally supported by Senate groups in the formal review, significant criticisms of the procedures involved would need to be addressed; this would probably best be accomplished by broad consultation with and education of the faculty before a new policy proposal were fielded for review. The "sponsored works" provisions of the current policy on copyright ownership provide another avenue for exploration of an institutional role in NIH compliance, and it would be helpful to know whether NIH envisions any compliance enforcement mechanisms against institutions, in addition to the compliance mechanisms already announced to provide incentives for PIs. A selected subset of the members of the University Committee on Library and Scholarly Communication are consulting with Lawrence and Catherine Candee on strategies for moving the UC open access policy forward; with respect to the "lightweight" revision of the Harvard resolution that Lawrence prepared for discussion by that group, Atchison remarked that the draft language would have the benefit of compelling campuses for the first time to designate individuals with specific copyright-related responsibilities.

2. Review of committee discussion papers:
   a. Academic file-sharing

In general, the subcommittee felt that the best strategy for dealing with the issues raised was broader and more effective education of faculty and staff. The educational initiatives that have been undertaken by UCD and UCLA were discussed, but the general consensus was that face-to-face individual and group discussions could not be scaled affordably to reach all of the target audience and were not always successful in addressing the faculty's concerns, which typically arise at the "point of use." There was strong consensus that development of a "toolbox" of informational resources and related materials would be generally useful, but no locus of responsibility or support for its development was evident. Experience with the extant UC-wide copyright email discussion list suggests that broad community engagement in the problem through this channel is unlikely, but the list reaches most individuals on campus who might have materials to contribute to such a tool kit.

Action: Lawrence will post to the list asking members to identify and provide copies of (or links) to the copyright educational and informational materials they have developed, with the results to be reviewed by the subcommittee.

   b. Open source

The primary issues raised by this discussion paper have to do with (a) the intersection of the copyright and patent domains, which are otherwise very different in law, UC policy, and administration; (b) the "downstream" effects of open source development, in which licensing decisions made for one project complicate rights determinations for subsequent projects that incorporate the original work; and (c) the greater potential for complications arising from multiple authorship, especially involving UC non-academic staff (where problems can create institutional, as well as personal, liabilities).

Action: MacDonald suggested that Atchison, Carmikle, and Rzeszutko, who have experience with the problems raised by open source, might draft an outline of issues and suggested approaches for future consideration by the subcommittee.

   c. Faculty as authors & publishers

[N.B. the issues raised in this paper were largely addressed in the discussion of item 1 above.]

3. Update on revision of Policy & Guidelines on Use of Copyrighted Materials

MacDonald explained that the extant 1986 document consisted of two parts: (a) a relatively brief policy statement and (b) extensive guidance based on (but somewhat more expansive than) guidelines that were developed in conjunction with (but not incorporated in) the 1976 revision of the Copyright Act. In her view, and as amplified in the subcommittee's discussion, the current guidelines are outdated and may never have been addressed to higher education; and in current thinking, firm guidelines are held in disfavor by many copyright scholars and activists (as minimum permissible uses tend over time to become viewed as maxima). MacDonald concluded

by asking the subcommittee to consider whether a formal Presidential policy with guidelines is necessary or desirable. In the view of many subcommittee members, more effective copyright education is needed whether or not official policy guidelines exist, and education efforts may merit the group's attention more than a policy revision at this time. It was suggested that a review of the relevant policies of peer institutions might be helpful in informing this question, but no action was decided upon in this area.

4. Items from SSCP for the April 23, 2008 meeting of SLASIAC

In view of the discussion reported in item 1 above, it is the view of the subcommittee that (a) the campus town hall meetings proposed by SLASIAC in fall 2007 and set for further discussion in April represent an important opportunity to engage faculty in discussion and impart information about the management of their publication rights and their roles in the scholarly communication process and (b) to avoid confusion or diffusion of interest, the town hall meetings should focus solely on the rights management/publishing issues.