SLASIAC Standing Subcommittee on Copyright Policy
November 8, 2010, 1-3pm
Conference Call

Meeting Notes

Participants: Atchison, Butler, Carmikle, Garrell (co-chair), Hancock (co-chair), Louis, MacDonald,
                Rzeszutko
      Absent: Anderson
       Staff: Miller

1. Faculty posting lectures on the web (You Tube, etc.) on their own, without campus authorization.

    Background: SLASIAC meeting notes from 10/28:
    "The Subcommittee will take up the question of "unauthorized" posting of course lectures
    online, as well as other potential practices (such as screen-casting) that might have legal
    implications for UC (e.g., privacy or third-party copyright). The Subcommittee will focus on
    whether there needs to be a new or revised systemwide policy, and will include online learning
    needs and digital instruction trends it its discussion."

Discussion:
The group began the discussion by noting the differences in how recorded lectures could be posted to
the web. There are institutionally-sponsored options, such as Berkeley's official webcasts or YouTube
channel, or UC Irvine's Teaching, Learning and Technology Center, or UCTV. Then there are individual
instructors who post lectures on their own to YouTube or other sites. Jan Carmikle explained that, a
couple of years ago, she approached the Office of General Counsel with the concern that UC Davis
instructors were posting their lectures to the web without guidance or oversight by the University.

    Discussion of the issue included:
    *   Options for lecturers who want to post their courses (official channels are not available at all
        campuses)
    *   Privacy issues (including students in the videos)
    *   Risk or liability to the University – use of University name
    *   Potential "third party" copyright infringement (of materials used in the lectures)
    *   Conflict of interest

Committee members discussed ways to address the issue, including examples of parallel situations.
Kathryn Atchison mentioned the tradition in certain departments at UCLA of obtaining departmental
approval for selling lectures. Others noted that there may be UC policies that are violated when lectures
are posted for free.

In response to a question about what would have been helpful to Berkeley when they were starting up their video program, Mara Hancock said that some guidance on the University's position on open materials in general and the legal risks associated with posting lectures. Help in choosing which (Creative Commons) copyright license to use for the videos would have been helpful. She said that some sort of model or template would have been useful. Mara stated that Berkeley might not be 100% effective in their "scrubbing" the videos for potential pitfalls of copyright or privacy, but they have a liberal take-down policy and have not yet been asked to remove a video from the web.

While academic employees generally own their course materials (per the 2003 Policy on Ownership of Course Materials), Jan Carmikle explained that the course lecture itself is not copyrighted; it only becomes copyright-protected once it's recorded. It is not clear that the lecturer owns the course recording copyright if all of the "work" to record it has been done or provided by the University ("exceptional University resources," in the language of the Policy).

Conversation eventually came around to whether instructors posting their lectures to the web is an actual problem for the University. And, if so, is it a copyright issue? And if it is a copyright issue, does it warrant a new or revised policy, or could new guidelines (or "best practices") suffice?

In the end, the group concluded that the launch of an online instruction pilot program [see: http://groups.ischool.berkeley.edu/onlineeducation/] within the University may not be the best time to come out with a new policy. Instead, the Subcommittee will come up with a list of best practices for instructors who might be interested in recording (or being recorded by the University) lectures for distributing publicly on the web.

Action: Joanne Miller and Mary MacDonald will draft a preliminary list of guidelines to send to the group.

2. Need for Revised Policy (or Guidelines) on Use of Copyrighted Materials for Teaching and Research.

    Background: The 1986 UC Policy and Guidelines on the Reproduction of Copyrighted Materials for Teaching and Research (http://www.ucop.edu/ucophome/coordrev/policy/4-29-86.html) is out-dated.

    Notes from the March, 2008, Subcommittee meeting say: "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."

Discussion:

Mary MacDonald prefaced the discussion on the Policy on the Use of Copyrighted Materials for Teaching and Research by saying that she had questioned whether specific guidelines based on the Ad Hoc Guidelines should be used because they may tend to create a "ceiling" and not a "floor" of what is permissible. She now thinks that some guidance is useful, with appropriate caveats about their being minimum, not maximum, standards. The question is whether the existing policy needs to be updated, or whether it should be changed substantially. UC's guidelines repeat the "Guidelines for Classroom Copying in Not-for-Profit Educational Institutions With Respect to Books and Periodicals" (with the exception of "spontaneity") that were adopted by an *ad hoc* committee of educators and publishers who agreed on a common set of minimum actions that educators and researchers could take within the scope of fair use. While these guidelines do not have the force of law, they are a base upon which to build. If the policy is revised and guidelines are included, it should be made more explicit that they are a floor, not a ceiling. Some Committee members felt that the policy was definitely in need of an update – if only for more current language.

Action: Mary, Joanne, and Jan will draft a more user-friendly, up-to-date version of the policy, and will distribute to the Subcommittee by the end of January.

Next meeting: The Subcommittee will meet via conference call in January, and possibly again for a face-to-face meeting in conjunction with the SLASIAC in-person meeting at the end of February.