# The Public Policy Environment for Academic and Scholarly Information

Discussion Paper

Prepared for the Systemwide Library and Scholarly Information Advisory Committee

## Contents

## SUMMARY

The accelerating growth in the capabilities and uses of information and communication technologies, and the growing convergence of previously distinct technology domains, means that each use of information for academic purposes is surrounded by an increasingly tangled web of laws, treaties, policies, court decisions, and regulations related to copyright and other intellectual property regimes, telecommunications, information security, privacy, international trade, contract and business practice law, and other policy domains.  In this new, volatile and contentious public policy environment, the University must be positioned to effectively advocate its academic and institutional values and defend its teaching, research and service mission. UCOP and the campuses have established a highly distributed constellation of administrative and policy functions and offices across the multiple policy domains that affect the academic use of information; in UCOP, for example, at least 15 departments have relevant expertise and responsibility, as well as the Academic Council and at least two systemwide committees.

To create a coordinating capability that can effectively leverage existing expertise by communicating and consulting with and engaging the various stakeholder groups and organizations on information-related public policy issues from an academic perspective, this paper proposes three actions:
1. Provide a venue for comprehensive Universitywide discussion, consultation, consensus development and priority setting at the institutional leadership level.
2. Provide a more detailed assessment of the policy domains and issues involved with current and prospective academic uses of information, and the topology of systemwide, UCOP, and campus stakeholder interests, as an aid to planning and action.
3. Create an adequately and appropriately staffed capability within UCOP academic affairs that can identify and analyze relevant issues, coordinate information gathering and communication among the interested UCOP, campus and faculty stakeholders, and prepare recommendations for consideration by SLASIAC and senior management.

## 1. INTRODUCTION: INFORMATION TECHNOLOGY AND THE TANGLED WEB OF PUBLIC POLICIES ON INFORMATION

The academic enterprise is centrally about information, and its higher-order brethren – knowledge, expertise, wisdom -- and its creation, dissemination, and use. For most of the history of American higher education, information-related public policies – including laws, regulations, and institutional policies – played a minor and stable role in academic life. The federal copyright laws that governed the reproduction, distribution and use of printed materials, were well understood, if not always perfectly conducive to academic culture and practice, and information policies rarely intruded into the classroom. This began to change in the 1950s, when the promise of educational uses of television compelled higher education institutions to begin to pay attention to, and often to try to influence, national telecommunication policies. At about the same time, the postwar growth of extramurally-sponsored scientific and technical research began to shine a bright light on institutions' patent and trademark law and policy.

At the beginning of the 21$^{st}$ century, the accelerating growth in the capabilities and uses of information and communication technologies, and the growing convergence of previously distinct technology domains, means that each use of information for academic purposes is surrounded by an increasingly tangled web of laws, treaties, policies, court decisions, and regulations related to copyright and other intellectual property regimes, telecommunications, information security, privacy, international trade, contract and business practice law, and other policy domains. The growth in scope and complexity of these policy domains will continue to increase as the use of technology grows; disputes are no longer limited to those of authors against publishers or research investigators against federal funding agencies, but pit commercial giants in the entertainment industry against those in computing and telecommunications, or countries that export intellectual property against those that import it (legally or otherwise).

In this new, volatile and contentious public policy environment, the University must be positioned to effectively advocate its academic and institutional values and defend its teaching, research and service mission; failure to do so may mean that (a) the ability of faculty and students to produce and distribute their research and scholarship, or to use the works of others in teaching and research, may be drastically curtailed; (b) the ability of the University to employ advanced technologies to innovate or achieve cost avoidances may be reduced, and (c) the ability of the University to realize its traditional societal role as custodian and steward of information, knowledge and culture may be severely compromised.

To cite a few examples of recent relevant activity in these areas:
- Over the last three years, Systemwide Library Planning has reviewed or commented on 14 federal bills specifically related to copyright, as well as participating in or monitoring four formal public inquiries by the U.S. Copyright Office, and five federal telecommunications bills (related to digital television broadcasting, obscenity and pornography, privacy and spyware) and a proposed FCC regulation, owing to the implications of these bills for access to and the free exchange of scholarly information or the conduct of research and teaching. Other UCOP units have also participated in these reviews (and, no doubt, others that are relevant but unknown to SLP), requiring (but not always achieving) a degree of *ad hoc* coordination among units.

- The spiraling cost of academic journals implicates copyright law, the business practices of scholarly publishers (in insisting on transfer of copyrights from faculty authors) and the academic tradition embodied in the University's copyright ownership policy (in providing that faculty own the copyrights in their independently-created scholarly works), leading the Academic Council, through its Special Committee on Scholarly Communication, to propose a policy that (a) enables and encourages faculty authors to retain their copyrights in published work and (b) grants to the University a non-exclusive license to use those works for legitimate academic purposes. On a broader stage, the Congressional directive to the National Institutes of Health to establish a free, publicly-accessible digital archive of published research papers resulting from NIH-funded research has led to a sometimes acrimonious debate between publishers, libraries, researchers and public-interest organizations that remains unsettled. Compliance with the NIH policy (and, prospectively, similar requirements that might be imposed by other governmental or private funders) implicates not only UC copyright policy, but also research administration policies and practices.
- Peer-to-peer sharing of digital versions of recorded music and feature films has gained widespread public attention and focused entertainment industry interest (and legal action) on university students as frequent infringers. The UC response has required balancing a respect for copyright law with the privacy of the users of our digital networks (as embodied in the UC Electronic Communication Policy), the interests and political strength of the industries involved and their allies in Washington and Sacramento, and a strong academic interest in ensuring that the beneficial academic uses of peer-to-peer technology are not crippled through draconian enforcement mechanisms meant solely to protect entertainment industry copyrights.
- The recent emergence of massive digital reformatting of research library collections, initially through Google Book Search and subsequently the Open Content Alliance (of which UC is a founding member) has dramatically highlighted the copyright issues involved in digital conversion of print materials (two lawsuits are pending against Google). However, managers of digital library programs like UC's Online Archive of California and eScholarship Repository have long been aware of the difficulties and expense required to identify rights and secure permissions for digital conversion of materials, often drawn from our own library, museum, and archival collections or produced by our own faculty, in order to make them available in digital form for research, scholarship and teaching.
- UC has been involved in a number of recent cases of potential disclosure to unknown parties of collections of personally-identifiable information (names, addresses, social security numbers) from both administrative and research data collections. Responses to disclosures of this kind invoke considerations of state and federal law, UC privacy and data security policies and procedures, research policies and practices, and (especially with regard to research data) issues related to the ownership of and legal and fiduciary responsibility for the data.

## 2. THE DIMENSIONS OF A UC RESPONSE

The construction of a capability within UC to respond effectively and provide positive leadership for public policy challenges to the effective use of information for academic purposes must acknowledge both the multiple policy domains involved and the current organization of UCOP and the campuses to address those domains.

### 2.1. Multiple policy domains

As noted briefly above, the public policy challenges to the academic use of information now arise in a number of domains, including (but not necessarily limited to):

- Copyright, patent, and trademark and trade secret
- Telecommunications, privacy and data security
- Scholarly publishing
- Research policies (UC's and those of governmental and private funding agencies) and associated administrative practices
- Contract law and practice
- Policies related to the mission and operation of libraries, museums, archives and other collections
- Academic and staff personnel policies
- Student conduct and other student-facing policies

### 2.2. Multiple and various organizational responsibilities

In most of these policy domains, UC and its campuses have well-established loci of organizational responsibility, but these are typically founded upon and continue to be focused on the long-standing institutional issues associated with each domain. Using UCOP as an example:

- Issues of copyright policy are addressed by the Standing Committee on Copyright, with staff support from the Office of Systemwide Library Planning in Academic Affairs, and representation from the Office of General Counsel.
- Patent policy is generally the domain of the Office of Technology Transfer, with substantial support from the Office of General Counsel.
- Issues of telecommunications, data privacy and data security are dealt with chiefly by the Department of Information Resources and Communications in the Business and Finance Division.
- Scholarly publishing and communication issues are generally the responsibility of the Office of the Associate Vice Provost for Scholarly Information (which includes the California Digital Library, the Office of Scholarly Communication, and SLP), the UC Press, and the Systemwide Library and Scholarly Information Advisory Committee (SLASIAC). Over the last two years, Academic Council has sponsored a Special Committee on Scholarly Communication and is considering a proposal to charge an existing standing committee of Council with ongoing responsibility in this area.
- Systemwide research policies are the responsibility of the Office of Research in Academic Affairs (research policy and compliance) and the Office of Research Administration in Business and Finance (administration of research).
- Responsibility for academic personnel policies is shared by the Academic Senate and the Office of Academic Advancement in Academic Affairs. Non-academic personnel policies and labor relations are overseen by the Department of Human Resources and Benefits in Business and Finance.
- The Department of Student Academic Services in Academic Affairs has general responsibility for student-related policies.
- The Office of General Counsel has responsibility to provide legal advice and representation across all these domains.

- The Offices of Federal Government Relations and State Government Relations (in the Division of University Affairs) and their coordinating Divisional legislative units (including the Department of Educational Relations in Academic Affairs) have the responsibility for coordinating and communicating between UCOP and the campuses on the one hand, and the respective legislative bodies and administrative offices on the other, on governmental (legislative, regulatory, administrative) issues arising in these policy domains.

This diffusion of responsibility and accompanying diversity of perspective on information policies is also characteristic of the campuses, with the additional complication that each campus organizes its academic and administrative structures differently, so that there is no universally-applicable systemwide "topographic map" that is reliably applicable to all campuses.

As a result, when an integrated, cross-cutting view is needed of the academic implications of changes or new developments in one or more of these policy domains, *ad hoc* solutions are found: responsible analysts call or email each other (when the interested parties are known), a meeting is convened, or occasionally an informal coordinating group emerges (e.g., the UCOP Copyright Working Group, including representatives from SLP, FGR, SGR, Educational Relations, Student Academic Services, Academic Advancement, OGC and OTT, initially formed in 2000 to coordinate response to a particularly challenging state bill, and active through 2003, but now moribund).  Various campuses may have created more durable coordinating groups to address some specific policy domains, but it is evident that no generally accepted practice has emerged among the campuses to ensure communication and coordination among all stakeholders across all relevant policy areas.

## 3. PROPOSED ACTIONS

The objectives of the following proposed actions are to effect communication, coordination and consensus-building among the key campus and UCOP stakeholders across the range of policy domains that are implicated in effectively responding to, and identifying opportunities for UC leadership in, public policy challenges that affect the academic use of information resources.

This action plan assumes that the existing constellation of administrative organizations operating in their specific policy domains at UCOP and the campuses continues to have valid and important functions to perform in their respective areas of responsibility, and must remain in place (and perhaps in some cases should be strengthened).  Rather than proposing any reorganization of existing functions, this action plan proposes development of a coordinating capability that can effectively leverage existing campus and UCOP capabilities by communicating and consulting with and engaging the various stakeholder groups and organizations on information-related public policy issues from an academic perspective. Specifically, we propose three actions:

1. **Provide a venue for comprehensive Universitywide discussion, consultation, consensus development and priority setting at the institutional leadership level.**  The Provost's Systemwide Library and Scholarly Information Advisory Committee already has both the responsibility and the stakeholder perspective to effectively advise the University on scholarly information issues, and would be the logical group to assume oversight responsibility for public policy issues affecting academic use of scholarly

information.  Further, SLASIAC has proposed that it be combined with the Provost's Standing Committee on Copyright, which has responsibility for development and maintenance of University copyright policies, with the specific UC policy responsibilities of SCC to be assigned to an appropriately-constituted standing subcommittee of SLASIAC.  This proposal would effectively bring the relevant existing systemwide academic policy groups inside a single "tent," facilitating both the broad discussion of academic issues and the capability to translate the outcomes into Presidential policy when warranted.  This proposal will be discussed at a joint meeting of SLASIAC and SCC on May 3, 2006.

2. **Provide a more detailed assessment of the policy domains and issues involved with current and prospective academic uses of information, and the topology of systemwide, UCOP, and campus stakeholder interests, as an aid to planning and action.**  The Office of Systemwide Library Planning is prepared to engage qualified assistance over the spring and summer of 2006 to effect this assessment.

3. **Create an adequately and appropriately staffed capability within the UCOP Academic Affairs Division that can identify and analyze relevant issues, coordinate information gathering and communication among the interested UCOP, campus and faculty stakeholders, and prepare recommendations for consideration by SLASIAC and senior management.**  Staffing requirements will be determined in part by the results of the assessment described above, but are likely to call for at least one journeyman analyst with proven policy analyst skills and appropriate legal analysis background.  This capability should be located organizationally to leverage established administrative infrastructure and existing relationships and responsibilities with, e.g., SLASIAC, SCC, and UCOP and campus stakeholders.