



Bill Jacob
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*Chair of the Assembly of the Academic Senate
Faculty Representative to the Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200*

June 4, 2014

**AIMÉE DORR
PROVOST AND EXECUTIVE VICE PRESIDENT
UNIVERSITY OF CALIFORNIA**

Re: UC Policy on Copyright and Fair Use

Dear Aimée:

Academic Senate divisions and committees have reviewed the proposed revisions to the [UC Policy on Copyright and Fair Use](#) released by your office for systemwide review in early March. Six Senate divisions (UCI, UCLA, UCR, UCSB, UCSC, and UCSD) and two systemwide committees (UCOLASC and UCFW) submitted comments. The Academic Council discussed the proposed policy revisions at meetings on May 28 and June 4.

Although Council recognizes the need to update the 1986 Policy on the Reproduction of Copyrighted Materials to reflect changes in law, technology, and practice, we believe the policy in its current form is premature and incomplete, and we ask that it be revised significantly to address the concerns expressed by reviewers and circulated for a second round of review.

However, the Senate has serious concerns about the elimination of the existing policy's detailed guidance regarding the limits of "Fair Use" and the scope of instructor liability. The new policy directs employees seeking further advice to the UC Copyright website (<http://copyright.universityofcalifornia.edu/>), which has the potential to be a useful resource but is not enough. The real need, as the Riverside and Los Angeles divisions note, is for neutral advisors who are available to assist faculty in understanding Fair Use factors and making an informed judgment about what is and is not Fair Use. Neither the new policy nor the UC Copyright Website provides an adequate level of guidance for individual faculty members seeking to avoid copyright violations. The policy directive to seek advice from campus counsel does not address this concern, since campus counsel may not give legal advice to individual faculty members but must prioritize minimization of risk to counsel's client – the Regents over exploring the boundaries of Fair Use.

Council understands that University Counsel must prioritize the interests of the University rather than those of the individual faculty member seeking to exercise his or her Fair Use rights. Council notes that the policy seems designed primarily to protect UC from liability rather than protect the faculty and provide guidance about the limits of fair use. Although some Senate reviewers believe

that the lack of specific guidance about these matters will help promote a broader interpretation of Fair Use and gives faculty the greatest possible latitude in the use of copyrighted materials, others view the lack of direction as problematic.

The new policy also deletes the statement in Section V.E. of the current policy – “Infringement” – that the university will defend employees who reproduce copyrighted materials in the good faith belief that they are doing so in compliance with the law. The new policy does not include any similar statement, and it is therefore unclear what protections the university is now willing to extend to faculty and other employees who make good faith efforts to comply with copyright law but may run afoul of an aggressive rights holder. Even if such a statement were included on the web site, it remains unclear whether that would ensure the protection of the faculty.

We also note that there are currently technical issues with the Copyright Website. It contains at least one bad link, and some users have noted that it is difficult to navigate and find information quickly.

In addition, the Santa Barbara division suggests that the description of the copyright law in the Policy Text (second paragraph of the first page) should include the statement that “Copyright is a property right guaranteed for a limited time in the United States Constitution to creators of original works.” UCSB also asks for additional guidance about how to define a “chapter” of a non-text copyrighted work, such as a video or a symphony, for purposes of Fair Use.

Copyright and fair use issues are central to the faculty’s scholarly mission as our normal scope of employment includes both the creation of new copyrighted works and the frequent dissemination of information contained in works created by others. We urge the University, as it makes additional improvements to the Copyright and Fair Use Policy and the UC Copyright website, to take a more active and assertive stance in advocating for the broadest possible application of the faculty’s rights to Fair Use of copyrighted materials as they carry out instruction and research to fulfill the UC educational mission.

Due to these concerns, the Academic Council is unable to endorse the current version of the policy and looks forward to reviewing another version. Thank you for the opportunity to review and comment. Please do not hesitate to contact me if you have further questions.

Sincerely,



Bill Jacob, Chair
Academic Council

Encl: (1)

Cc: Academic Council
Executive Director Winnacker
Senate Analysts
Senate Executive Directors



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May 23, 2014

William Jacob, Chair, Academic Council
1111 Franklin Street, 12th Floor
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**RE: SYSTEMWIDE REVIEW OF THE PROPOSED REVISIONS TO PRESIDENTIAL
POLICY ON COPYRIGHT AND FAIR USE**

Dear Bill,

At its meeting of May 20, 2014, the Irvine Divisional Academic Senate reviewed the Proposed Revisions to the Presidential Policy on Copyright and Fair Use. The Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) and the Council on Research, Computing, and Libraries (CORCL) comment as follows:

The policy was formerly called the Policy on Reproduction of Copyrighted Materials for Teaching and Research. The goal of the proposed revisions is to bring this 1986 policy up to date with current changes in law, technology, and academic practices as well as UC's current policy template. CFW agreed with the proposed changes and had no suggestions for improvement. CORCL finds the policy too vague – it does not define what members of the University can or cannot do, leaving a gap between the law and the interpretation of the law. Since non-policy material has been removed from the policy, CORCL encourages the UC Copyright website to be as active as possible in providing guidance.

In addition, the Senate Cabinet noted that the Policy refers to Copyright Law as if it were a given that Fair Use is included and covers academic activities. This implicit reference may not be sufficient. The Irvine Division urges the University to take a more assertive stance in advocating for Fair Use of copyrighted materials.

The Irvine Division appreciates the opportunity to comment.

A handwritten signature in cursive script that reads "Peter Krapp".

Peter Krapp, Senate Chair

C: Martha Kendall Winnacker, Executive Director, Academic Senate

May 27, 2014

William Jacob
Chair, UC Academic Council

Re: Systemwide Review: Revision of the Presidential Policy on Copyright and Fair Use

Dear Bill,

The UCLA Academic Senate's Executive Board appreciates the opportunity to opine on the proposed revisions to the Presidential Policy on Copyright and Fair Use.

At its meeting on May 15, 2014, the Executive Board discussed the revised policy and the responses from various senate committees and faculty executive committees. (These responses are available on our Senate web site at: <http://www.senate.ucla.edu/documents/CombinedResponse-CopyrightandFairUse.pdf>.)

The discussion in the Executive Board reflected the concerns of our committees. One of the primary concerns involved the deletion of the entire section E. Infringement from the 1986 policy. The question of the limits of instructor liability is no longer in the policy and seems not to appear (or is, at least, not easy to find) at the <http://copyright.universityofcalifornia.edu/> web site. Concern about liability was raised by both faculty members and the graduate student representatives on the Graduate Council. Closely related to the question of liability was the issue of how active campuses and the University of California should be in advocating for the broadest possible application of "fair use" principles in our educational mission. In the changing technological environment that led to the reformulation of this policy, recent efforts to limit uses previously understood to be fair use have arisen. Prompt responses to those challenges have preserved fair use applications. The Executive Board hopes that the University of California will continue to advocate for broad interpretations of fair use.

Finally, members of the Executive Board expressed differing opinions regarding the usefulness of precise examples to help faculty negotiating the complex terrain between fair use and violation of copyright. What was clear was that advice is needed that is more readily accessible than navigating through many pages of a UC web site or contacting the Office of the General Council. Providing that advice may best be done on the campuses. Our divisional Senate is willing to work with the Library and the computing entities that support our instructional platforms to understand and comply with this updated policy.

Please feel free to contact me if you should have any questions.

Sincerely,



Academic Senate Chair
Jan Reiff

cc: Mary Gilly, Vice Chair, Academic Council
Michael LaBriola, Principal Policy Analyst, Academic Senate
Linda Mohr, CAO, UCLA Academic Senate
Martha Kendall Winnacker, Executive Director, Academic Senate



CHAIR, ACADEMIC SENATE
RIVERSIDE DIVISION
UNIVERSITY OFFICE BUILDING, RM 225

JOSE WUDKA
PROFESSOR OF PHYSICS AND ASTRONOMY
RIVERSIDE, CA 92521-0217
TEL: (951) 827-5538
E-MAIL: JOSE.WUDKA@UCR.EDU

May 22, 2014

William Jacob, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: Review of Revisions to the President's Policy on Copyright and Fair Use

Dear Bill:

Various committees of the Riverside Division were asked to review the Revisions to the President's Policy on Copyright and Fair Use (due to scheduling constraints the UCR Executive Council was unable to discuss this item). The reviewers were generally supportive of the revisions. The only concern (Library, Information Technology, and Scholarly Communication Committee) was the absence of a person who can provide balanced advice to the faculty concerning copyright matters.

We appreciate the opportunity to comment.

Sincerely yours,

Jose Wudka
Professor of Physics & Astronomy and Chair of the Riverside Division

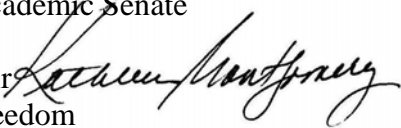
CC: Martha Kendall Winnacker, Executive Director of the Academic Senate
Cynthia Palmer, Director of UCR Academic Senate office

UC RIVERSIDE UNIVERSITY OF CALIFORNIA | **Academic Senate**
COMMITTEE ON ACADEMIC FREEDOM

May 15, 2014

To: Jose Wudka, Chair
Riverside Division of the Academic Senate

From: Kathleen Montgomery, Chair
Committee on Academic Freedom



Re: Revisions to the President's Policy on Copyright and Fair Use

The Committee on Academic Freedom has considered but has no comments to offer on the numerous editorial and organizational changes found in the proposed revisions to the President's Policy on Copyright and Fair Use.



13 May 2014

To: Jose Wudka, Chair
Riverside Division, Academic Senate

Fr: Lucille Chia, Chair *Lucille Chia*
Library, Information Technology, and Scholarly Communication (LITSC) Committee

Re: Revisions to the President's Policy on Copyright and Fair Use

The LITSC Committee reviewed the proposed policy revision via email after some discussion at our meeting 25 April (based on discussion of this topic at the systemwide UCOLASC meeting).

The "fair use" part of the revised Copyright policy is fairly vague and will likely evolve over time. Faculty need advice on what is appropriate fair use. When UC lawyers are consulted, they normally are cautious regarding the advice they give so that the University is not put at risk. On the other hand, if faculty are not aggressive in exerting appropriate fair use in their teaching, research, and extension of information to the public and other clientele, their rights may be "lost".

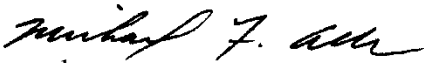
Thus, LITSCC believes a mechanism is needed whereby faculty can be provided balanced advice on what is appropriate fair use. One wants to protect the University from litigation resulting from inappropriate fair use but at the same time, be fairly aggressive in helping faculty to exert appropriate fair use.

This might start with a list of FAQ (frequently asked questions) but should probably also involve a contact that faculty might consult. This person would have to be well informed and have the talent to wisely advise faculty on appropriate fair use.



May 16, 2014

To: J. Wudka, Chair
Riverside Division

Fr: M. Allen, Chair 
Committee on Research

Re: Presidential Policy on Copyright and Fair Use

The Committee on Research has reviewed the proposed changes to the Presidential Policy on Copyright and Fair Use. The Committee has no concerns with the proposed changes.



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www.engr.ucr.edu

May 16, 2014

TO: Jose Wudka, Chair
Riverside Division

FR: Akula Venkatram, Chair
Executive Committee, Bourns College of Engineering

RE: Proposed Policy on Copyright and Fair Use

The revised policy was prepared by the Standing Subcommittee on Copyright Policy of the System-wide Library and Scholarly Information Advisory Committee (SLASIAC), which has already approved the policy.

The proposed policy on copyright and fair use revises the outdated policy from 1986 to make it compatible with current reproduction technology and practices. The 1992 UC policy on copyright ownership remains intact.

The new policy is a brief document that lays out the main principles and goals, which remain unchanged from the previous version. The detailed, specific guidelines contained in the old version have been removed from the new policy document. Instead, revised guidelines are now available on the dedicated website at <http://copyright.universityofcalifornia.edu>, and these will be monitored and updated, if needed, by the SLASIAC Standing Subcommittee on Copyright Policy.

Overall, these changes will make it easier for UC faculty to access and stay informed about UC policy on copyright and fair use. The BCOE supports this revision.

UNIVERSITY OF CALIFORNIA, RIVERSIDE



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EXECUTIVE COMMITTEE:
COLLEGE OF HUMANITIES, ARTS, AND SOCIAL SCIENCES

RIVERSIDE, CALIFORNIA 92521-0132

May 16, 2014

TO: José Wudka, Chair
Academic Senate

FROM: Erica Edwards, Chair
CHASS Executive Committee

RE: Revisions to the President's Policy on Copyright and Fair Use

The CHASS Executive Committee discussed the proposed revised version of the President's Policy on Copyright and Fair Use via email and the iLearn discussion board. There were no objections. The committee approved the revisions.

Erica Edwards, Chair

UCR CHASS Executive Committee

TO: Jose Wudka, Chair,
Riverside Division

FROM: Gillian Wilson, Chair, Executive Committee
College of Natural and Agricultural Sciences

DATE: May 19th 2014

RE: Systemwide Review of Proposed Revisions to UC Policy on Copyright and Fair
Use.

The CNAS Executive Committee did not have a meeting scheduled prior to the due date for comments so these were solicited by email. Three sets of comments were received.

- 1) "I have no comments on the copyright guideline revision. The revised document seems fine to me and is very clear."
- 2) "seemed reasonable to me."
- 3) "Overall, it seems like a smart change to me. Rather than having rigid policy that may or may not correspond to law, the document refers us to a web site with guidelines. Thus the change does not constrain faculty. Nevertheless, I am not happy about the elimination of the statement from the current policy that states "The University will defend an employee who photocopies in the course and scope of his or her employment duties."



May 7, 2014

To: Jose Wudka, Chair, Riverside Division

From: John S. Levin, Chair, Executive Committee, Graduate School of Education

Subject: Review of "Revisions to the President's Policy on Copyright and Fair Use"

Members of The Graduate School of Education Executive Committee have reviewed and discussed the above policy and have no comment beyond noting that it looks to be acceptable.

Division of Biomedical

Sciences

School of Medicine

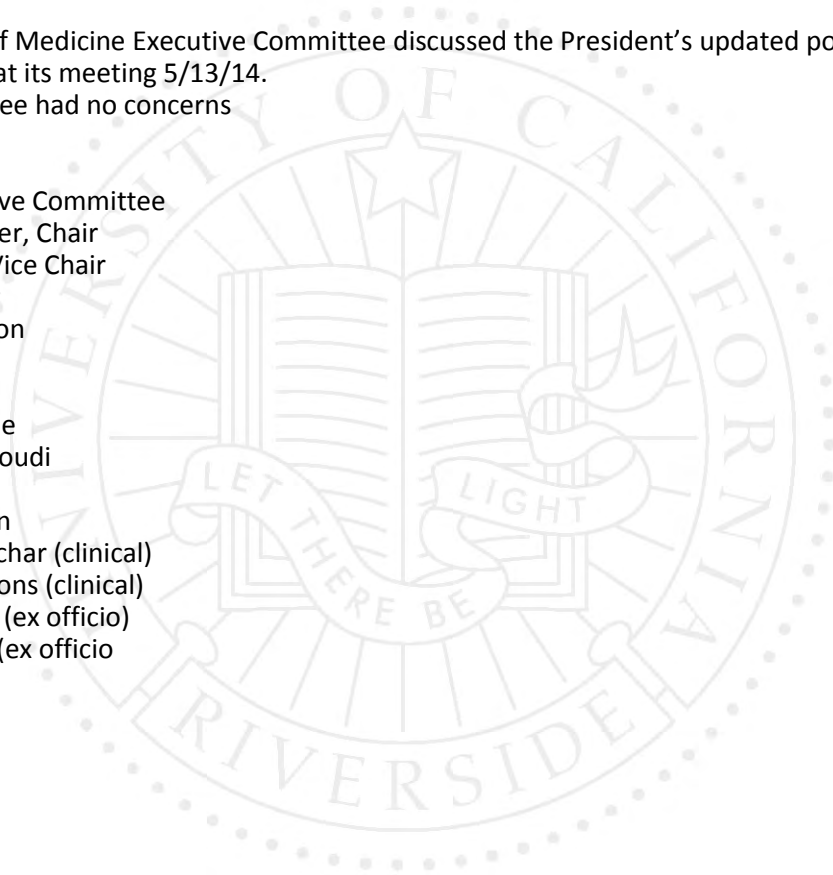
Riverside, CA 92521

Tel (951) 827-5942

To: Jose Wudka, Chair Riverside Division
From: Ameae Walker, Chair SOM executive committee
Re: President's updated policy on copyright and fair use

The School of Medicine Executive Committee discussed the President's updated policy on copyright and fair use at its meeting 5/13/14.
The committee had no concerns

SOM Executive Committee
Ameae Walker, Chair
Paul Lyons, Vice Chair
Devin Binder
Monica Carson
Iryna Ethell
David Lo
Christian Lytle
Ilhem Messaoudi
Neal Schiller
Emma Wilson
Mahendr Kochar (clinical)
Emma Simmons (clinical)
Richard Olds (ex officio)
Phyllis Guze (ex officio)





OFFICE OF THE ACADEMIC SENATE

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LA JOLLA, CALIFORNIA 92093-0002
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May 22, 2014

Professor William Jacob
Chair, Academic Council
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

Subject: Proposed Revisions to the Presidential Policy on Copyright and Fair Use

Dear Professor Jacob,

The proposed revisions to the Presidential Policy on Copyright and Fair Use were sent to the appropriate Divisional committees for review and comment and, after consultation with UCSD Campus Counsel, were discussed at the May 5, 2014, Senate Council meeting. Senate Council members found the revisions and related material on the website to be clear and likely to prove useful to faculty as they navigate the current more complicated copyright environment. However, we had several questions and concerns related to changes to Section V.E. "Infringement".

While the current policy includes an explicit statement that "the University will defend an employee who photocopies in the course and scope of her employment duties," the revision refers readers to a website (<http://copyright.universityofcalifornia.edu>) and encourages faculty to consult with campus counsel if further advice is needed. Deletion of this statement makes it unclear what protections the University is willing to offer faculty who use photocopies or its modern equivalent, electronic images or text, for instructional purposes.

If statements such as these will appear on a website referred to in the policy, rather than in the policy itself, are they still considered to be part of the Presidential Policy? If so, that should be explicitly stated in this revision. If not, what protections is the University prepared to offer its faculty? This seems to be a matter of policy rather than of practice, that therefore belongs in this document, either via a clear description or by reference to a separate Presidential Policy that describes protections for employees for actions during the course and scope of their duties. It is critical that these issues be clarified, so that it is clear what protections will be afforded to faculty by the new policy.

Finally, while including the website in the policy allows for more frequent updates as technology and legal standards evolve, it also creates a burden of maintaining the website. This is a concern, because the Senate Council noted that at the time of review, the website contained at least one broken link.

Sincerely,

A handwritten signature in blue ink that reads "Kit Pogliano".

Kit Pogliano, Chair
Academic Senate, San Diego Divisioncc: Divisional Vice Chair Boss
Executive Director Winnacker



ACADEMIC SENATE
Santa Barbara Division
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Santa Barbara, CA 93106-3050

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<http://www.senate.ucsb.edu>

Kum-Kum Bhavnani, Chair
Deborah Karoff, Executive Director

May 20, 2014

Bill Jacob, Chair
Academic Senate

RE: Copyright and Fair Use-Presidential Policy

Dear Bill,

The UCSB Division requested that the following groups review the Copyright and Fair Use Presidential Policy: Council on Planning and Budget (CPB), Council on Faculty Issues and Awards (CFIA), Council on Research and Instructional Resources (CRIR), Graduate Council (GC), Undergraduate Council (UgC), the Committee on Diversity and Equity (D&E) and the Faculty Executive Committees from Letters and Science (L&S FEC), College of Engineering (COE FEC), and the College of Creative Studies (CCS FEC). The following groups chose not to opine: UgC, D&E, and COE FEC. For the most part, all groups regard the Policy as a necessary revision given changes in law, technology and academic practices. For example, CPB noted that much of the policy information had been moved to a website and that this makes “the policy more comprehensible.” Groups endorse the Policy as written with a few minor suggestions about informing faculty about policies in this area, the Policy and the website.

CFIA encourages UCOP to alert faculty about the legal implications of the Policy and they support the distribution of information and resources to faculty to increase awareness.

CRIR reviewed the draft Copyright and Fair Use-Presidential Policy and has one specific recommendation for a wording change. They suggest that on the first page of the policy, in the second paragraph that the sentence read “Copyright is a property right guaranteed for a limited time in the United States constitution to creators of original works.” They suggest the policy will be more accurate if it is specified that copyright is a guarantee “for a limited time” or “for the designated time” in this paragraph.

In its discussions, Graduate Council raised the following issues regarding the UC Copyright website:

- The guidelines for application of United States Copyright Law in the classroom is purely devoted to text-based media, while scholars are using increasing amounts of non-text based media. Under the definition of “brevity” for example, what is a “chapter” in a symphonic score? In a video?

- As the website acknowledges, the 75-year rule regarding copyright status has been altered for some works and under certain circumstances, to anything post 1923. GC recommends that the shift in regulation be communicated more clearly and forcefully.
- The rule of thumb for most copy services is to allow for the reproduction of no more than 20% of a given text, this should be acknowledged under the definitions of brevity.

Thank you for the opportunity to comment.

Sincerely,

Kum-Kum Bhavnani

Kum-Kum Bhavnani, Chair
UCSB Division



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125 CLARK KERR HALL
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1156 HIGH STREET
SANTA CRUZ, CALIFORNIA 95064

May 19, 2014

William Jacob, Chair
Academic Council

Re: UC Policy on Copyright and Fair Use Policy

Dear Bill,

The Santa Cruz Division has reviewed the proposed renamed Presidential Policy on the *Reproduction of Copyrighted Materials for Teaching and Research* to the University of California Policy on Copyright and Fair Use. Our Committees on Academic Freedom (CAF), Research (COR), and Teaching (COT) found the timing for revision appropriate given the many changes in media and modes of reproduction. This revision has taken a broader interpretation of applicable policies that give faculty the greatest leeway on understanding fair use. The web site will serve as a good resource with relevant information. The landscape of copyright and fair use are changing rapidly, it will be easier to keep current and be more helpful than any policy statement alone could be.

Sincerely,

A handwritten signature in cursive script that reads "Joseph F. Konopelski".

Joe Konopelski, Chair
Academic Senate
Santa Cruz Division

cc: Ron Glass, Chair, Committee on Academic Freedom
Christina Ravelo, Chair, Committee on Academic Personnel
Judith Habicht-Mauche, Chair, Committee on Research
Charlie McDowell, Chair, Committee on Teaching



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
J. Daniel Hare, Chair
daniel.hare@ucr.edu

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May 14, 2014

**WILLIAM JACOB, CHAIR
ACADEMIC COUNCIL**

RE: Revised UC Policy on Copyright and Fair Use

Dear Bill,

The University Committee on Faculty Welfare (UCFW) reviewed the revised UC Policy on Copyright and Fair Use and cannot endorse the revisions. The sense of the committee is that, by simplifying the policy to and largely making it a menu of links, then it actually makes it difficult for the faculty to interpret and remain in compliance with the policies. The new policy seems to try to remove UC as an agent to help its faculty understand and be in compliance with policies, and just leaves it up to the faculty to find the right policy document and interpret it. We find this policy unhelpful to faculty, who, in the normal course and scope of their teaching duties as UC employees, must determine how they could provide their students access to up-to-date, but copyrighted material.

The changes are so sweeping that UCFW suspects something other than the need to move beyond the issues of photocopying motivated these changes. What are the liabilities or lawsuits that are driving these changes? What are the real risks that this new policy attempt to mitigate? In short, why is the UC administration seemingly absolving itself of any attempt to assist its faculty and instructors to interpret and comply with contemporary copyright policies?

We look forward to a more user-friendly and more clearly explicated draft.

Sincerely,

A handwritten signature in blue ink that reads 'J. Daniel Hare'.

J. Daniel Hare, UCFW Chair

Copy: UCFW
Mary Gilly, Vice Chair, Academic Council
Martha Winnacker, Executive Director, Academic Senate



UNIVERSITY COMMITTEE ON LIBRARY AND SCHOLARLY COMMUNICATION
Roberto Manduchi, Chair
manduchi@soe.ucsc.edu

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April 29, 2014

BILL JACOB, CHAIR
ACADEMIC COUNCIL

Re: President's Policy on Copyright and Fair Use

Dear Bill,

UCOLASC discussed the proposed revisions to the Presidential Policy on Copyright and Fair Use during its meeting on April 18, 2014.

While committee members do not feel that what is proposed constitutes actual policy, we fully appreciate the complexities related to defining what is fair use. Overall, there is unanimous agreement on the need for a clear expression of support from the University regarding the "thoughtful invocation of fair use principles." At the same time, some members did lament the lack of detailed direction about fair use application, which would be left entirely to each faculty member's judgment under this proposal.

We recommend that the University of California make a strong and explicit statement that it has and will continue to support faculty in all matters related to fair use. Fair use is of utmost importance to faculty and to the University, and faculty should be encouraged to take full advantage of this privilege.

Sincerely,

Roberto Manduchi, Chair
UCOLASC