# Open Access Expert Forum

## April 22, 2014

**Goal**

To learn from the experience of peer institutions with rights retention policies that apply to faculty across different disciplines, and inform the deliberations of the Open Access Task Force.

**Agenda**

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| 12:05 | Welcome and introductions | |
| | | Julie Kimbrough and Todd Vision (co-chairs) |
| | | Open Access Task Force co-chairs |
| 12:10 | Speakers | |
| | | Chris Kelty, UCLA |
| | | Kevin Smith, Duke U. |
| 12:50 | Q&A | |
| | | Facilitated by David Kiel |
| 1:30 | Adjourn | |

**Notes**

Vision welcomed an audience of approximately fifty task force members and other campus constituents.  He announced that all materials for the Task Force are now posted on the Task Force page within the Office of Faculty Governance website.

### Chris Kelty, Associate Professor, Anthropology, UCLA

Link to slides.

Chaired University Committee on Libraries and Scholarly Communication 2010-12 at UCLA; created UC's systemwide OA policy in the summer of 2013.  Kelty referenced the list of questions the UNC Task Force had generated and said he would address as many as possible; they are good questions and came up in California frequently as well.

Why have an OA policy?

Kelty: For authors to reserve, as a collective, the minimum rights necessary to control our publications. This is an OA policy's central goal. A benefit is allowing us to make our work openly and freely available online to benefit the public, colleagues, etc,. That is a "dual reason" to pursue an OA policy, in other words.

Kelty: There are two mechanisms in an OA policy. First is to use power of the faculty governance system to grant non-exclusive rights to the university. Has to be carefully worded; that we are only granting rights to distribute work freely and openly available. Faculty governance and administration have to have a strong relationship for this to work. Second mechanism is making the work openly available--and that depends on library or other infrastructure. In CA it was the California Digital Library, which will make the work available online. The library may need more funding and staff to accomplish this.

Kelty: History at UC: UC began pursuing this in 2005-06; faculty task force; 2007 policy went up for systemwide review, but was rejected b/c of a complicated opt-out system. It was sent back for revision. In 2008, Harvard learned from this, and put in a very simple opt-out policy, and that brought greater faculty buy-in.

Kelty: 2009--major price increase from a Nature Publishing Group derailed project; ultimately we worked this matter out, but not with a solution that really supported OA. In 2011 there was renewed interested in having our own OA policy; worked 2011-13 across the UC system's multiple campuses. Academic Council represents all 10 campuses, they approved it in May 2013 and put in a slow implementation process by which it would roll out across the various campuses. Kelty did note that this only covered 15k employees covered by the faculty senate, but 35k other non-senate covered scholars were not covered, and they are trying to address how to incorporate those now.

Opt in or Opt Out?

Kelty: no such thing as an opt-in policy--that's what we have when we don't have a policy. Any author can negotiate on a one to one basis, for each article each time, for OA. A policy turns this around and defaults to OA, so publishers have to turn around and negotiate to make things closed. In the case of a policy, though, you do need an opt-out.

Why have an opt-out at all?

Kelty: A policy that would force compliance would harm academic freedom; about 95% of publishers so far already embrace a version of green OA (making an article freely and openly available). Having no opt-out also would create ill will and lots of administrative trouble.

Nature of the license grant and types of licenses?

Kelty:  Diagram.  If you don't have an OA policy, you as an author write a piece and you have copyright on your manuscript.  We then give exclusive right to publish to a publisher, and they then make the work available to libraries who buy it and readers get read-only rights.  If you add an OA policy, you give the rights you'd normally give to publisher to the university; the university makes those materials available and puts in place a set of rights to what users can do with them -- which might include distribution, creating derivative works, even commercial use -- could be any of a variety of creative commons licenses.  This is also giving the rights to the *author* as well.

Kelty: In UC, we make a broad right available to the university, with the only restriction that they make it publicly available, and then authors put own creative commons license on it -- choosing what rights they want the world to have -- beyond readers freely accessing and copying it.

What is a scholarly article?

Kelty: no real definition; strategically vague.  You don't want to nail it down.  Does exclude books, creative works, other things.  But decision is up to the author according to conventions of discipline.

Why a requirement to deposit?

Kelty: That's what makes the policy real -- makes the article available through the repository and affirm that you want to grant those rights.

Why do people oppose it?

Kelty: It makes work for faculty.

Why require a deposit when person has opted out?

Kelty: Most of the policies allow opting out of the *license*, but not of the deposit.  This is very tricky to work into policy language.  You want to preserve the right to keep and circulate an archival copy internally.  If you don't, you signal to publishers that they also keep that right.

How do you require faculty to make work available when there are many options?

Kelty: UC policy is crafted to make it ok when people have already put it in another OA journal not to have to put it in E-Scholarship (the university repository).  You don't have to make the faculty who has already put it in an OA repository also put it into the campus one.  You want one free copy circulating.

Co-Authorship

Kelty:  The statute of the US copyright law gives authors of a joint work equivalent rights in what they publish; the authors do have to work together to understand what they plan to do with a publication.

Dealing with Publishers

California's Digital Library deals with the publishers.

Waiver Rate

Elsevier and other big publishers have asked for waivers in some cases -- but many are fine with the policy.  We don't know yet our deposit rate -- maybe 25% -- but that means there are a lot of faculty who are not even paying attention to it -- huge education effort to get that rate up.  Publication rate -- we estimate that UC system publishes 50k articles/year -- we don't even know yet how effective our policy is.

Small Scholarly Societies & Climate Change

Scholarly societies who depend on subscription rates: Libraries still buy these and prefer to pay for these than for large bundles from Elsevier etc., but the bad news is that there is really no money left in scholarly publishing; if you hope to survive based on this, well, you're out of luck.  It's not going to happen.  Akin to climate change.  Societies need to seek other sources of revenue, because relying on publication revenue will simply not work for long.  Big publishers like Elsevier and Wiley are also buying up small publishers as quickly as they can; distinctions are blurring -- and this complicates things for libraries, which are the only source of $$ anywhere in the scholarly publishing ecosystem.

Kelty's formal remarks ended.


## Kevin Smith, Director, Copyright and Scholarly Communication, Duke

## University Libraries

Smith:  I want to speak as a librarian.  I desperately want to see us transition the system we are working with -- to stop buying stuff back that scholars create, that we pay for two and three times.  I'd like to see libraries spending $$ to support the production side of scholarship, including through scholarly societies.  "We have plenty of money in the system to support the publishing side" if we can break the grip of the large publishers.

Smith: Our policy at Duke is three years old.  "Changing the default" from closed access through commercial publishers to a preference for OA.  Policy was initiated by a Digital Futures Task Force faculty committee that apparently got a grant.  The OA policy was the first of their work priorities.  Passed by our Academic Council, and Library was charged with implementation.  A number of concerns were expressed -- impact on publishers ("people hate all of them except the

one they work with"), scholarly societies (no evidence that OA policies have done damage; the rate of libraries subscribing to commercial journals has not dropped).

Smith: There was also a concern that this may create more work for us (faculty). We addressed that.

Does an OA policy conflict with peer review?

Smith: No. Most is carried out in compliance with journal policies on review, etc. No lowering of quality b/c of OA.

Smith: There is lots of fuss about cost and integrity. How much does it cost to implement? Duke library needed no increase in staff or $$ to do it (our policy implementation was slow, though, and we have had some staff increase over time). You can change the default and expectation on campus w/o a major investment -- which has to come later and be intentional in terms of decisions about what to stop and what to keep doing.

Smith: We do need a better handle on what it costs to produce scholarship, a journal article. OA movement is prying open that question.

Smith: Control -- an OA policy is really about keeping control over scholarship in the hands of faculty. On requiring OA policy with no opt out being a threat to academic freedom: it is important to remember that the current system is also a threat to academic freedom -- giving away our scholarship to large commercial entities that can put lots of restrictions on it -- especially in a time when you have many opportunities to exploit your own work for your own benefit. "The control issue is an issue of academic freedom."

Smith: Irrevocability: Duke's policy creates an "irrevocable" license. When does "irrevocability" start? Can the opt-out be exercised after the fact? Smith: Irrevocable means it can't be revoked by anyone other than the author. Author can request this. We did not want to be in a situation where once the license was granted from a publisher, they could revoke it. The faculty have to trust the institution to only use the copy for the stated ends.

Smith: The breadth of the license we get is similar to UC; we promised the faculty we would not put them in a position of having conflicting obligations. We will help them negotiate, but if they have signed agreements with publisher, we will honor them. (Referenced the flap with Nature Publishing.) We have a license that allows us to be more aggressive with publishers, but haven't exercised it as aggressively as we can.

Smith: Sometimes we deposit the final published version in our repository -- we do this, where the publisher allows it, and we can. We do let the faculty member know. No one has asked us to take them down.

Smith:  We do not have built into our system a recognition that other forms of OA are ok -- our authors, however, do want us to harvest those OA versions -- would like it to be taken in our repository and then deposited into PubMed Central, in fact, though we can't do this. We can harvest from PMC, but can't feed it.

Smith: We are creating a system for automatic harvesting, creating a publication list for each faculty member, for them to approve, and then with a single click upload the articles to our repository.

## Discussion/Q&A: Some questions for the speakers

The questions below were sent to the speakers ahead of time, and many of them were addressed in the formal remarks, captured above.  During the discussion, the materials in orange below were added.

1. Policy statement and coverage
    a. The Duke and UC policies cover "scholarly articles", without enumerating what is or not included in that term (including peer-review).  Does that term have an understood meaning in each discipline?  Do scholarly articles include digital publications, those with multi-media, other forms like drama, artistic pieces, performances, data, non-textual content, syllabi, etc.? What is excluded from coverage (monographs)?
    b. How controversial was going for an opt-out policy, as opposed to opt-in?
    c. At both Duke and UC, waiver requests are automatically granted.  Is a justification required, or is it 'no-questions-asked'?  And can the opt-out be exercised after the fact (i.e. when does irrevocable start)?
    d. Duke and UC appear to differ as to whether repository deposit is still required (Duke) or not (UC) when a waiver is granted.  Why choose one or the other approach?
    e. How are embargo lengths determined?  By the repository or by the author?  If the former, how much deference is paid to publisher policy?
    f. Was there any push for whole departments or units to have the choice of opting out?  If so, how was that resolved?
    g. UC allows authors to provide a link to a scholarly article in a repository like PubMed, arXiv or SSRN, rather than depositing a manuscript at the institution.  If that's not possible at Duke, why not?
    h. Do any faculty or faculty-like employees at universities who have this kind of open access policy create "directed works" for the university?  How are directed works handled, and have there been any issues related to directed works at institutions without open access policies?
2. Policy implementation
    a. How is compliance with the deposit requirement promoted through incentives or disciplinary action?
    b. How often is the deposit requirement simply ignored?

c. What discussions were had around the default license for content in the repository ("All Rights Reserved" in the case of UC)?
d. Does the repository deposition play into annual reporting requirements at either UC or Duke?
e. Both Duke and UC had provisions to assess the policy after 3 years, and Duke's initial period is past. How is success measured, and what was the conclusion of that assessment at Duke?
f. (Shearer: Library) Are you aware of any research linking faculty's CC choice to meaningful repercussions?

3. Benefits and harms
   a. Who, in practice, benefits from access to repository content? What do we know about who the audience is and in what contexts it is being read?
   b. How does the audience for open access vary across fields?
   c. What is the financial harm to publishers of having content freely available, particularly scholarly societies that depend on publications for revenue?
   d. Are there disciplines where researchers themselves share in revenue from "scholarly articles" that could be harmed by the availability of repository content?
   e. Does it affect evaluation of scientists to have something short of the final, edited version posted online that can be seen by hiring, tenure and promotion committees? Are there benefits?
   f. How does a policy covering faculty impact students who are coauthoring with faculty? Can students require a faculty member to opt out or request an embargo?
   g. New question from Maisner, UNC Press: What about non-peer-reviewed material being deposited?
      i. Kelty: E-Scholarship allows UC faculty to put whatever they want in, but clearly label whether it's been in a journal, peer reviewed, etc.
      ii. Smith: Same at Duke; we would accept that sort of material as well, but by and large faculty want to deposit their published, peer-reviewed material.
   h. New question from Watson, History: OA movement driven by sciences, implies that publications in the humanities are insignificant. AHA, MLA not "small scholarly societies," but huge, important organizations whose publications needs must be honestly addressed. Question: You said there is no evidence that OA damages revenue base of "small scholarly societies," but how are you so sure of that?
      i. Kelty: I'm a humanities scholar; did not mean to imply AHA, MLA are "small." More an issue of scale than of humanities vs. sciences. Large scale disciplines have a lot of influence. There are many forward-thinking OA publications in the humanities, also in the university presses. On the evidence, we don't have much evidence about OA's effects on revenues of scholarly societies. But OA isn't the revenue threat; changed economics of scholarly publishing are the threat. Libraries are the only $$ stream for scholarly publishing now. AAA has been slow to experiment

4. Relations among authors, universities and publishers
   a. How does the pre-existing rights-retention policy affect the later agreement that the author enters into with the publisher?
   b. UC has a provision to make compliance as convenient as possible for authors. UC notified ~200 publishers about the policy, and the UC eScholarship deposition interface includes a button to send a policy notification or 'letter of assurance' regarding the embargo to the publisher.
      i. What resources are required of a university to contact and negotiate with publishers? (Note: it appears that some publisher have negotiated more favorable terms with universities than in their own author agreements, e.g. SAGE)
      ii. To handle depositions, waivers and embargoes?
      iii. To check for, remove or get permissions for included third-party copyrighted material?
      iv. To "Get the Word Out" about the policy?
   c. How often are authors declined when they request from a publisher to retain copyright in the absence of a rights retention policy? How often are they required to request a waiver now by their publisher?
   d. How often do repositories receive takedown requests?
   e. What feedback have UC and Duke received from professional societies about the policy?
   f.

5. Sustainability
   a. Are there clear plans for funding and sustaining the Institutional Repositories at your campus?
   b. Are there policies or best practices for the systems that undergird these Repositories (Accessibilty? Enforcable embargo? Restrictions?)
   c. How are fees funded at your campus?
   d. How are support staff funded to support open access?
   e.

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