

LIBRARY COMMITTEE
MINUTES OF MEETING

October 12, 2011
238A Morrill Hall

[In these minutes: committee orientation; copyright law and University policy; committee business]

[These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate; none of the comments, conclusions or actions reported in these minutes represent the views of, nor are they binding on, the Senate, the Administration or the Board of Regents.]

PRESENT: Neil Olszewski (Chair), Phil Buhlmann, Jon Binks, Michelle Englund, Karen Williams (for Wendy Lougee), Joseph Spanjers, Elizabeth Fine, Suzanne Thorpe (for Joan Howland), Monica Howell, Susan Geller, Mary Ford, Evan Roberts, Ronald Hadsall, Jennifer Alexander

REGRETS: Wendy Lougee, Bill Sozansky, Mary Beth Sancomb-Moran, Owen Williams, LeAnn Dean, John Logie, David Zopfi-Jordan, Bradford Clemens, David Fox

ABSENT: Ted Higman, Vicki Graham

GUESTS: Nancy Sims, copyright program librarian, University Libraries

Professor Neil Olszewski called the meeting to order, welcomed those present, and called for introductions.

Committee Orientation

Professor Olszewski discussed the committee's duties and responsibilities. Dawn Zugay, committee specialist, University Senate Office, provided the committee with an overview of the University Senate governance structure and the committee's role. Her presentation included:

- Organization of the University Senate and its committees
- Role of committee members
 - General and ex officio
- Committee options for action including: statements, resolutions, and creation or amendment of policies
- Process for bringing a resolution from a Senate committee to the University Senate

Professor Olszewski updated the SLC on outstanding 2010-11 agenda items. He noted the SLC sent a letter to Provost E. Thomas Sullivan regarding the Libraries needs for increased funding and physical space, but had not yet received a response to that letter. He also reported that at its May meeting, the Committee on Institutional Cooperation did not consider the SLC endorsed "proposal to reconsider and reaffirm the scholarly norms that shape campus-wide participation in systems that manage scholarly publishing and

communication.” Professor Olszewski also noted that he was recently selected as chair of the Ad Hoc Committee on Open Access, and that committee is in the beginning stages of its work. Professor Olszewski also relayed that the SLC discussed digitization, orphan works, and copyright in its 2010-11 meetings.

He proposed that the SLC consider the following topics in the 2011-12 meeting cycle: 1) the major challenges and opportunities the Libraries will encounter in the next five years, and 2) the topic of communication between the Libraries and their users – how does the University community become aware of the Libraries and their work?

Professor Olszewski asked committee members to e-mail their agenda suggestions to Ms. Zugay zuga0001@umn.edu.

Basic Foundation in Copyright Law and University Policy

Nancy Sims, copyright program librarian, University Libraries, stated her primary role is outreach to faculty on copyright issues. She provides workshops and individual consultation. Ms. Sims provided the committee with a frequently asked questions document and document discussing current copyright issues in higher education. Her presentation to the SLC focused on the importance of copyright to the academe and how University copyright policy works.

Ms. Sims stated that copyright issues are more important now than ever before because of changes in technology and legal changes regarding eligibility for copyright protection. She stated the majority of the copyright laws were written around 1975 and do not reflect technology changes that have occurred since that time. There have also been changes over time regarding which materials are in the public domain. Today, the default position is that there is ownership in anything copyrightable that anyone produces.

Professor Jennifer Alexander asked about the rationale for protecting ownership. Ms. Sims explained the stated legal reason is to secure the rights of creators. She noted, however, that copyright terms have increased in length from 28 years to the life-of-the-creator plus 70 years, and that extension was retroactive.

Ms. Sims next explained that Congress’ right to legislate copyright issues arises from the Constitution, and the purpose of copyright law is to increase human knowledge, specifically by stimulating creation of as many works of authorship as possible. The challenge is to balance past, present, and future: creation and compensation and use and control.

Ms. Sims also suggested that the economic incentive theory underpinning copyright law (people create in order to charge money for the works they create) is not the only reason people create. And the laws may always deal well with alternative rationales for creating, such as the drive to document your own activities. She explained that if you are the sole source of copyrightable material (such as school portrait photographs), you do not need the artificial monopoly of copyright, will be recompensed in exchange for access to the materials over which you have a natural monopoly. And some people may be more

interested in visibility and use of their materials than in control, and may choose to make materials available under a creative commons license. She asked the committee to consider which theory of copyright applies to the creation of journal articles, whose authors publish for reasons other than monetary remuneration and often donate their copyright to the journals that publish them.

She next discussed the basics of the University of Minnesota's copyright policy.

- Faculty and faculty-like individuals own their academic works.
 - Works produced on the clock by non-faculty individuals are owned by the University.
 - Non-faculty programs instructional designs are owned by the University
- University owns all administrative works

She noted that the Board of Regents' Policy which states, "The University encourages faculty and students to exercise their interests in ownership and use of their copyrighted works in a manner that provides the greatest possible scholarly and public access to their work." provides a good grounding for considering issues of open access.

Next, Ms. Sims discussed the rights issues involved in publishing. She stated publishing contracts usually transfer all rights to the publisher. If there is no general transfer clause, only specified rights are transferred to the publisher. She emphasized that authors can negotiate the transfer of rights and reminded committee members of the variety of rights they may want to maintain such as, teaching rights, derivative works, and sharing online. Karen Williams, associate director, University Libraries, noted that some publishers are now including in contracts specific rights that authors can keep such as, using materials in their own courses or in their own subsequent works.

Professor Olszewski asked if universities that are adopting open access policies are experiencing any "push back" from the publishers. Ms. Williams responded that as of this time, there has been no real action from publishers. Ms. Sims noted that since the NIH policy requiring NIH research be placed in a publicly accessible digital archive went into effect, publishers have actually been helping to deposit work.

Professor Alexander asked why copyright is a Libraries issue. Ms. Williams explained that Libraries are no longer just a repository for the end product in the publication process; they play a role in the full life-cycle of scholarship.

Professor Alexander next asked about the use of licensed resources in the classroom. Ms. Sims responded that she teaches a workshop on copyright in the classroom, and the Libraries recommends placing a link in the materials to the licensed resource. Professor Olszewski asked if there are copyright issues when an instructor uploads material to Moodle. Ms. Sims responded that both copyright and contract issues are involved. Sharing materials with students in limited courses may sometimes fall under the fair use exception to copyright law, but materials accessed via Libraries' subscriptions are almost always subject to contractual restrictions on re-distribution.

Professor Alexander asked about individual versus University exposure for copyright violations. Ms. Sims stated that in some instances publishers are suing or otherwise contacting universities or administrators directly. However, in the Georgia state case (*Cambridge University Press v. Patton*) specific individuals were named as defendants because they are said to be responsible for controlling use of journal articles in password-protected electronic reserves and course websites. In that case, individual faculty members have been called to testify about their activities. But she stated the likelihood of individuals being exposed to the risk of litigation for copyright violations is low. There is a higher risk for the University.

Professor Evans asked if information on copyright policies is provided during New Faculty Orientation. Ms. Sims responded that she does not formally participate in New Faculty Orientation, but the Libraries provide workshops and individual consultation.

Ms. Williams briefly discussed the University's Copyright Permissions Center. She stated it is often used by faculty for clearing permissions when they are creating course packs. But she noted the Center does not usually check to see if a resource is available through the University Libraries' subscriptions, nor whether a particular publication allows the proposed use without payment. She noted that students often end up paying for the use of materials placed in their course packs even though Libraries have already paid for subscriptions. If authors retain the copyright to their works, students can benefit.

New Business

Professor Olszewski informed the SLC that the Senate Committee on Committees (C on C) would be meeting with the SLC in November to discuss its charge and composition. He noted this is part of a regular review of all Senate committees conducted by the C on C.

Hearing no further business, Professor Olszewski adjourned the meeting.

Dawn Zugay
University Senate Office