Jennifer Nichols  
Associate Secretary  
Department of Academic Freedom, Tenure, & Governance  
American Association of University Professors  
1133 Nineteenth St., NW, Suite 200  
Washington, DC  20036  
jnichols@aaup.org

Dear Ms. Nichols,

The Association of College and Research Libraries (ACRL) applauds the American Association of University Professors (AAUP) for updating its report *Academic Freedom and Electronic Communications* and soliciting comments on this draft report. The members of ACRL work with members of AAUP on a regular basis at universities across the country, and our organizations share a commitment to protect academic freedom and promote new forms of scholarship that serve the needs of members of the academy.

ACRL respectfully submits that the draft report *Academic Freedom and Electronic Communications* can be strengthened in two important areas. First, while re-affirming AAUP's 1999 *Statement on Copyright* that "it has been the prevailing academic practice to treat the faculty member as the copyright owner of works that are created independently and at the faculty member’s own initiative for traditional academic purposes" is an important statement, it alone does not address the complexity of rights retention by faculty authors. Many faculty authors routinely give away their rights under copyright law to commercial publishers who are beholden not to the academy, but to their stockholders. It is this transfer of all rights that subsequently eliminates the faculty authors’ ability to re-use their own work, and enables publishers and vendors to control access to and use of this scholarship. As the report goes on to note, “college and university libraries are themselves compelled to accede to the demands of outside vendors” which in turn hampers access to and use of this content in the academy. In addition, the university library is compelled to buy back the same research produced by its faculty, straining a system already experiencing extreme financial pressures.

Second, the practice of academic freedom, in its fullest sense, includes the ability to use the scholarship of others to generate new knowledge. This entails not only gaining access to that scholarship, an activity libraries have always facilitated, but also to quote, cite, capture and incorporate portions of that scholarship into new works. Stated in copyright terms, this activity is making a fair use of the work for educational purposes. However, fair use is under attack, with several copyright lawsuits against universities and their libraries for use of digitized copyrighted content on university campuses still
working their way through the federal courts. In addition, faculty members now receive takedown notices from copyright owners for content posted on webpages and other electronic forums. The most recent example is Elsevier sending take down notices for articles authored by faculty and posted on their own webpages (see Posting Your Latest Article? You Might Have to Take it Down in the December 6, 2013 issue of the Chronicle of Higher Education at http://chronicle.com/blogs/wiredcampus/posting-your-latest-article-you-might-have-to-take-it-down/48865?cid=at&utm_source=at&utm_medium=en). However, the use of images and other works are also challenged, with monetary demands made that are beyond the means of most faculty members, and the threat of a lawsuit producing a chilling effect on faculty asserting their fair use rights under U.S. Copyright Law. If fair use erodes, so too will the ability of faculty to exercise the academic freedom to generate new scholarship that is unencumbered by fear of legal repercussions for use of copyrighted works.

Unfortunately, the AAUP report does not take the opportunity to fully address faculty author options to retain their rights under copyright when publishing or the importance of fair use in the full exercise of academic freedom. The issue of rights in the works of faculty members is also a burgeoning question regarding data that is produced by faculty. Since data, in its many forms, serves as the building block of research and scholarship, AAUP has an opportunity to inform this conversation at an early stage. ACRL would encourage AAUP to expand its statements on freedom of research and publication to more fully address these important copyright issues for the academic community and their faculty members. Furthermore, we urge AAUP to support and assist faculty members in retaining copyrights to their works. It is through a genuine commitment to faculty ownership of copyright that academic freedom can be preserved.

Finally, ACRL applauds AAUP for bringing attention to the issue of user privacy and confidentiality for use of library materials, particularly digital content licensed from vendors. ACRL and our parent organization, the American Library Association, have long been committed to protecting library patron privacy and confidentiality and advocate on this issue among our members and to state and federal legislative bodies.

Thank you again for the opportunity to provide comments on the Academic Freedom and Electronic Communications report. We look forward to exploring ways our associations can successfully serve the needs of our mutual constituents in the academy.

Sincerely,

Mary Ellen K. Davis
Executive Director
Association of College and Research Libraries
ACRL/ALA, 50 E. Huron St., Chicago, IL 60611-2795