

Martin Frank, Ph.D.

Executive Director, American
Physiological Society
9650 Rockville Pike
Bethesda, MD 20814-3991
Tel: (301) 634-7118
Fax: (301) 634-7241
Email: mfrank@the-aps.org
www.dcprinciples.org

Allan Adler

VP, Government & Legal Affairs
Association of American Publishers
50 F Street, NW, Suite 400
Washington, DC 20001
Tel: (202) 220-4544
Fax: (202) 3473690
Email: adler@publishers.org
www.pspcentral.org

September 24, 2007

The Honorable Daniel K. Akaka
522 Hart Senate Office Building
Washington, DC 20510

Dear Senator Akaka:

We the undersigned publisher members of the Professional and Scholarly Publishing Division of the Association of American Publishers (www.publishers.org), and members of a coalition of academic and society publishers from within the DC Principles Coalition of scientific publishers (www.dcprinciples.org) are writing to express strong opposition with language in the Fiscal Year 2008 Labor, Health and Human Services, Education, and Related Agencies (LHHS) Appropriations Bill that would transform the public access policy of the National Institutes of Health (NIH) from a voluntary initiative into a mandatory federal policy. Our strong opposition is based on the fundamental concern that a mandatory federal policy requiring these works to be made available for worldwide distribution is in inherent conflict with publishers' copyrights, which provide the publishing industry with the protection needed to recover publishing costs and continue to make the substantial investments new technologies require in order to speed distribution and broaden access to research results, thereby helping to advance scientific progress.

The proposed LHHS Appropriations language would **mandate** that final peer-reviewed manuscripts of private sector journal articles based on research funded by the NIH be deposited in the NIH PubMed Central (PMC) database for **open availability worldwide within 12 months of publication**. This contradicts the current NIH policy which encourages the **voluntary** submission of such articles. While federal funds may facilitate scientific research, publishers invest substantially in selecting, vetting, publishing, disseminating and archiving of the research articles. Despite the claim that the bill would have no adverse impact on the rights of copyright owners, the proposed mandatory language, in fact, represents a fundamental shift in copyright policy. The overriding premise of the proposed language is that copyright owners should be compelled by the government to make their copyrighted works freely available so that anyone can reproduce, distribute or publicly display the manuscripts.

Publishers are committed to disseminating research results as broadly as possible, as evidenced by the tremendous increase in access provided over recent years. We have been working actively with

the NIH to make the voluntary policy a success, and have been seeking to expand this partnership with NIH. While we would welcome Congress' support for an enhanced public-private partnership with NIH, we firmly believe that changing the policy to mandatory submission will undermine the existing system of scholarly publishing, the life-blood of science, which ensures the scientific validity, credibility and reliability of published works.

More specifically, changing the current policy from voluntary to mandatory would:

(1) **Undermine copyright and go against existing U.S. government policy and interagency approval process, as well as equitable Congressional procedures.** The congressional committees with jurisdiction over the substantive issues like copyright have never reviewed the policy since it was done through appropriations bills. Mandatory submission of research articles, without compensation, for public, worldwide dissemination over the Internet is a major change in copyright policy and sets a very dangerous precedent resulting in publishers having, in effect, only **one year** of copyright protection to recoup their investment. In addition to the negative domestic copyright implications, this unnecessary threat to intellectual property protection in the United States would make it very difficult for our trade agencies to promote copyright protection (and patent protection where patents result from government funded research) with our trading partners and would threaten industries that contribute significantly to U.S. exports, jobs and economic growth. It is our understanding that this radical "mandatory" policy shift is not supported by senior officials at HHS or other agencies.

(2) **Undermine a key \$7-8 billion sector of the U.S. economy.** U.S. professional and scholarly journal publishers employ tens of thousands of U.S. citizens and devote hundreds of millions of dollars a year to: (a) select among millions of scientific manuscripts to publish only the best science; (b) conduct the critical peer review process which the scientific community relies upon to know that published articles are scientifically accurate and relevant; and (c) edit, disseminate and archive these journal articles. Making these articles available free on the Internet after one year, without compensation, could severely hamper journal publishers' ability to recoup this significant investment which is fully dependent on journal subscription income. If some research journals fail because of the lack of resources, scientific research and the public could suffer from the loss of the information those journals would have disseminated. This adverse effect is contrary to the policy's intent.

(3) **Create, rather than address, a policy problem.** New cures and innovative medical discoveries have been made possible by the easy ability of research scientists around the world to access these articles published by professional and scholarly journal publishers. This access has been made possible by the substantial investment in advanced information systems made by publishers. Publishers' objectives are to meet the needs of **all** researchers, and the vast majority of scientists agree that they have good access to the information they need through journal publishing. In fact, access to articles ranks a mere 12th out of 16 on their list of barriers to research productivity, far behind issues such as "cutting red tape" and "funding."¹ Publishers continue to sponsor new, groundbreaking initiatives to improve access. For example, PatientINFORM is a partnership with the American Cancer Society, the American Heart Association, the American

¹ *Journals and Scientific Productivity: a case study in Immunology and Microbiology*, by Rowlands and Oliveri, May 2006, www.publishingresearch.org.uk.

Diabetes Association and other organizations that give patients and caregivers free online access to original medical studies from publishers' peer-reviewed medical journals.

We ask your assistance in protecting the integrity of science, our intellectual property, our industry, our employees, and our members. Mandatory submission of research articles would set a very dangerous precedent, chipping away at intellectual property protection in the United States at the very time we are fighting to protect our intellectual property rights overseas. Just as we need to protect the intellectual property of the American research and manufacturing sector, we must also protect the scholarly communication system of the American scientific community which has helped to make our country the world's leader in biomedical and behavioral research.

Finally, we ask you to consider that, while changing the current NIH program from voluntary to mandatory submission could adversely impact U.S. journal publishers and the scientific research enterprise, advocates of this change cannot offer any persuasive reason why Congress should proceed with the proposed legislative action before its committees with jurisdiction over copyright law have had an opportunity to evaluate the asserted need for the proposed change, and the possible implications and consequences that such a change might have for copyright policy in the U.S. and the global marketplace. There is simply no urgency that justifies such a Congressional rush to judgment on this important matter.

We respectfully urge you to work with your Senate colleagues to remove the mandatory NIH Public Access language provisions from the LHHS Appropriations Bill and ensure that such a critical shift in U.S. policy is reviewed by the Committees with substantive jurisdiction.

Thank you in advance for your assistance in this important matter.

The Undersigned

American Academy of Pediatrics
American Association for Cancer Research
American Association for Clinical Chemistry
American Association for Dental Research (AADR)
The American Association of Immunologists
American Dairy Science Association
American Dental Association
American Physiological Society
American Psychological Association
American Registry of Professional Animal Scientists (ARPAS)
American Society of Agronomy
American Society of Animal Science
American Society for Biochemistry and Molecular Biology (ASBMB)
American Society for Investigative Pathology
American Society for Nutrition
American Society of Plant Biologists
The Association for Research in Vision and Ophthalmology
Botanical Society of America
Crop Science Society of America

Elsevier, Inc.
The Endocrine Society
The Entomological Society of America
The Federation of American Societies for Experimental Biology (FASEB)
Matt Cahill, Executive Vice President, Journal Publishing, Lippincott Williams & Wilkins, Wolters
Kluwer Health
The McGraw-Hill Companies
Infectious Diseases Society of America
IOP Publishing
The Physiological Society
Poultry Science Association
Radiological Society of North America (RSNA)
SAGE
Society for Experimental Biology and Medicine
Society for the Study of Reproduction (SSR)
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