

For Immediate Release

**Contact: Judith Platt (202) 220-4551
Deidre Huntington (202) 220-4550**

**Publishers Say Enactment of NIH Mandate on Journal Articles
Undermines Intellectual Property Rights Essential to Science Publishing**

January 3, 2008, Washington, DC: The Association of American Publishers today criticized a controversial new NIH research publication policy that was enacted as part of the omnibus appropriations package for 2008, and reaffirmed that journal publishers who have opposed the policy will continue to pursue their concerns with Congress regarding the policy's negative impact on science publishing and the protection of related intellectual property rights. Publishers will also urge NIH to conduct a rulemaking proceeding, with opportunity for public comment, before implementing the new policy.

Allan Adler, AAP's Vice President for Legal and Government Affairs, said the new policy is "unprecedented and inconsistent with important U.S. laws and policies regarding the conduct of scientific research and the protection of intellectual property rights."

"These issues were never examined by Congress because the statutory authority for the new policy was enacted as a rider on appropriations legislation, without hearings or studies to assess its merits and without scrutiny from the Congressional committees that have expertise and legislative jurisdiction regarding laws governing federal scientific research programs and intellectual property rights," Adler added.

Under the previous *voluntary* NIH policy, NIH-funded researchers who wrote articles for publication in scientific journals were "requested" to submit an electronic version of their final, peer-reviewed manuscripts to NIH immediately upon acceptance by a journal for publication, so that the agency could make it freely available to the international online world through its PubMedCentral web site no more than 12 months after the date of journal publication.

"But," Adler noted, "changing to a new *mandatory* policy that will 'require' such submission eliminates the concept of permission, and effectively allows the agency to take important publisher property interests without compensation, including the value added to the article by the publishers' investments in the peer review process and other quality-assurance aspects of journal publication. It undermines publishers' ability to exercise their copyrights in the published articles, which is the means by which they support their investments in such value-adding operations. The NIH policy also threatens the intellectual freedom of authors, including their choice to seek publication in journals that may refuse to accept proposed articles that would be subject to the new mandate."

"Journals published in the U.S. have strong markets abroad; indeed, in some fields of research, most sales are to institutions and individuals outside the United States," Adler said. "A government policy requiring these works to be made freely available for international distribution is inherently

incompatible with the maintenance of global markets for these highly successful U.S. exports. Smaller and non-profit scientific societies and their scholarly missions will be particularly at risk as their journal subscribers around the world turn to NIH for free access to the same content for which they would otherwise pay.”

Adler pointed out that Congress took a very different approach to ensuring public access to the results of government-funded scientific research when it reauthorized activities of the National Science Foundation in the “America COMPETES Act” enacted last August. “By addressing the issue through the regular legislative process, Congress not only avoided controversies over intellectual property interests in science publishing, but also recognized the value of publication in peer-reviewed science journals and the increasing availability of journal articles from a variety of sources. Instead of mandating free public access to articles published by private sector journals, Congress instructed the NSF ‘to provide the public *a readily accessible summary of the outcomes of NSF-sponsored projects,*’ along with ‘*citations to journal publications*’ in which funded researchers have published articles regarding such research.” (emphasis added)

“In the face of such a recent, relevant and rational precedent,” Adler concluded, “there was simply no sound reason for Congress to subsequently allow an appropriations rider to take an inconsistent and more controversial route toward achieving the same policy goal of enhancing public access to the results of scientific research funded by a federal agency.”

For additional information, Mr. Adler may be reached by email at adler@publishers.org or by phone at: (202) 220-4544.

The Association of American Publishers is the national trade association of the U.S. book publishing industry. AAP’s approximately 300 members include most of the major commercial book publishers in the United States, as well as smaller and non-profit publishers, university presses and scholarly societies. AAP members publish hardcover and paperback books in every field, educational materials for the elementary, secondary, post-secondary and professional markets, scholarly journals, computer software and electronic products and services. Members of AAP’s Professional & Scholarly Publishing (PSP) Division publish the vast majority of journals and other materials produced and used by scholars and professionals in science, medicine, technology, business, law and the humanities.