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June 25, 2007

Dear Member:

We are writing on behalf of the Professional and Scholarly Publishing Division of the Association of American Publishers, ([www.publishers.org](http://www.publishers.org)) and a coalition of academic and society publishers from within the DC Principles Coalition of scientific publishers ([www.dcprinciples.org](http://www.dcprinciples.org)) to express our strong concern with language currently being considered in the FY2008 Labor, Health and Human Services, Education, and Related Agencies (LHHS) Appropriations Bills in the House and Senate Committees on Appropriations. We employ tens of thousands across the United States.

The proposed LHHS Appropriations language would *mandate* the inclusion of final manuscripts of peer-reviewed journal articles based on National Institutes of Health (NIH)-funded research into the NIH-run PubMed Central (PMC) for open availability worldwide within 12 months of publication. This is in contradiction to the current NIH policy which encourages the *voluntary* submission of such articles. This language could serve to undermine the existing system of peer review and scholarly publication which disseminates high-quality research findings throughout the scientific community.

The independent system of peer review for the scientific literature has made the United States the gold standard in biomedical and behavioral research. This peer review system, in which publishers invest hundreds of millions of dollars per year, is supported by journal subscriptions. With free and unfettered access to research articles, libraries and other purchasers of our journals around the world will have no incentive to pay for journal subscriptions, thus depriving our coalition members of the revenue needed to support the critical system of peer review.

Another concern is that a mandate may not be consistent with copyright law and could become a taking and distribution of publishers' copyrighted works and a compulsory licensing of publishers' intellectual property. A mandatory policy may undermine publishers' copyrights and put at risk the publishing investments that depend on those copyrights by exposing articles to widespread, unauthorized downloading and broad dissemination. The exposure of these copyrighted works to misappropriation would be greatly increased, not only in this country, but abroad, as they would be removed from the substantial safeguards that publishers take to protect their copyrighted journals.

While we question the need for the voluntary public access policy that duplicates the efforts of our coalition members to provide wide dissemination of research articles, at least under the current policy, publishers are not giving up their copyright interests after one year. Publishers are voluntarily providing NIH with a no-fee license for access to their copyrighted works. Should copyright interests be violated, under a voluntary policy publishers at least have the leverage to work with NIH to reach a mutually beneficial compromise. Under a mandatory policy NIH would have no reason to collaborate with publishers if the worldwide free availability of publishers' articles resulted in copyright violations or unforeseen economic losses.

We would also like to take this opportunity to rebut a few erroneous statements that have been made in support of including this language: (1) Similar initiatives are occurring across Europe; (2) Scientists support a change to the policy; and (3) The policy has been in effect for several years and there is a low rate of participation by NIH-funded authors.

### 1. Similar Initiatives Are Not Occurring Across Europe

Rather, the few agencies that have instituted policies recognize publisher rights and most leave the timeframe for public posting up to publishers. In the debate within European countries on issues related to manuscript deposits, there is a strong recognition that publishing costs must be recouped and that research funding bodies should collaborate with publishers to put in place mechanisms for publishers submitting publications on behalf of authors.

### 2. The Scientific Community Is Split On This Issue

A 2006 study of science researchers' attitudes towards the NIH public access policy shows that some scientists fail to see the benefit of the policy when they and the public already have good access to information and they are struggling to obtain research funding. Researchers currently believe access levels are very good and are getting better. Over 75% of researchers globally indicate that access to scientific journals has become easier compared to five years ago, while the majority indicate that they have "good to excellent" access. Researchers rank "cutting red tape" and "more time for research" as 5th and 7th on the list of items that would increase their productivity. They rank access to research articles 12th on this list. Simply put, many scientists question what problem NIH is really trying to solve with its public access policy.

### 3. The NIH Public Access Policy Has Only Been in Effect for Two Years and the Rate of Deposits is Increasing Significantly

It has also been mentioned that the policy has been in effect for three years. In fact, the policy was implemented in May 2005, about two years ago. When the policy was first implemented, there was not significant communication of the policy to researchers. Not surprisingly, deposit of manuscripts reporting NIH-funded research to PubMed Central (PMC) were initially slow to start. While not entirely happy with the voluntary policy, publishers sought to work cooperatively with the NIH to make the voluntary policy a success with NIH-funded authors. However, recently NIH changed the system for calculating article deposits in a manner that downplayed industry contributions and bolstered the case for a mandatory policy. NIH's deposit numbers no longer count actual deposits, but only those that make it through their internal clearance process. We estimate that one publisher's initial direct deposit programs alone increased PMC deposit rates by a factor of seven—to 100% of those publishers' articles. NIH leadership has chosen not to acknowledge this strong positive trend and has not agreed to meet with many coalition members who would like to discuss ways in which they could help to increase article deposition into PMC. With the help of voluntary efforts by more publishers and further streamlining by NIH, we are confident that deposits will increase more substantially.

We ask your assistance in protecting the integrity of science, our industry, our employees, our members and our intellectual property. Mandatory submission of research articles would set a very dangerous precedent for the chipping away of 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 peer review system of the American scientific community which has made our country the world's leader in biomedical and behavioral research. We respectfully urge you not to support any change to the NIH's voluntary public access policy that would make it mandatory.

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
- American Chemical Society
- American College of Physicians
- American Dairy Science Association (ADSA)
- American Dental Association
- American Dental Education Association
- American Institute of Physics
- American Physiological Society
- American Society of Agronomy
- American Society of Animal Science
- American Society of Clinical Oncology

- American Society for Investigative Pathology
- American Society of Nephrology
- American Society of Plant Biologists
- Aries Systems
- Biochemical Society
- Biophysical Society
- BMJ Publishing Group
- Botanical Society of America
- Crop Science Society of America
- Elsevier, Inc.
- Emerald Group Publishing
- Federation of American Societies for Experimental Biology
- The Gerontological Society of America
- The Histochemical Society
- Human Factors and Ergonomics Society
- Infectious Diseases Society of America
- International Association for Dental Research
- Lippincott, Williams & Wilkins
- Lynne Rienner Publishers, Inc.
- McGraw-Hill Companies
- Poultry Science Association
- Royal Society of Chemistry
- SAGE
- Society for Experimental Biology and Medicine
- Society of Petroleum Engineers
- Society for the Study of Reproduction
- Society of Toxicology
- Soil Science Society of America
- The Protein Society
- University of Chicago Press
- Versita
- John Wiley & Sons, Inc.