



Government Mandated Public Access to Private Sector Journal Articles Undermines Copyright and Will Have Adverse Impact on Science and Scientific Publishing

Each year, non-profit and commercial journals invest time, expertise and hundreds of millions of dollars to peer review, publish, archive and disseminate articles on scientific, technical and medical research. There are positive models for increased public access, such as in last year's America COMPETES Act, in which NSF was directed to make project reports and citation to research it funds available on its website. However, Congress also established a contradictory model by directing the National Institutes of Health to take the articles written by NIH grantees and post them for free use on the Internet in direct competition with the publishers who peer review and publish the articles. The Committees with jurisdiction over federal research and copyright policy never reviewed the potential negative impact of the NIH policy on science, publishing and copyright. **Journal publishers oppose mandates for any federal agencies, and prefer the NSF model.**

- **Government mandated public access to private sector articles undermines peer review publishers who help ensure the quality and accuracy of scientific research.**

Private-sector publishers, both commercial and non-profit, invest hundreds of millions of dollars a year in the peer review process that ensures research articles are rigorously reviewed by experts in specialized fields before they are published. Mandating that journal articles be made freely available on government websites will likely result in a decline in publishers' subscription revenues. This will be a powerful disincentive for publishers to invest in this process as well as in the technical innovations that enable broad dissemination of authoritative research results. It will also have a negative impact on an industry that contributes significantly to U.S. exports, jobs and economic growth.
- **Government mandated public access to private sector articles must be rejected in favor of alternatives.**

Congress has recently addressed the same issues of ensuring timely and meaningful public access to the results of government-funded research in more fair and reasonable ways that avoid negative impacts and were accomplished through the regular process of legislative consideration. In the National Science Foundation Authorization Act signed into law in 2007 as Title VII of the America COMPETES Act, Congress addressed the issue of ensuring public access to the results of government-funded research by directing the NSF to make all "final project reports and citations of published research documents" resulting from such research available to the public through the NSF's Web site, along with summaries of the outcomes of NSF-sponsored projects.
- **Government mandated public access to private sector articles undermines copyright policy.**

The mandatory deposit of publishers' copyrighted articles in an online government site for worldwide distribution is in fundamental, inherent and unavoidable conflict with publishers' copyrights in those works. In effect the application of such a policy is indistinguishable from the imposition of an extraordinary and unprecedented exception to the most fundamental of publishers' copyrights—namely, the right to reproduce and distribute the copyrighted work. Just as America is making the case that our trading partners should protect patented and copyrighted works, the U.S. Government should not be taking and distributing publishers' copyrighted works.
- **Government mandated public access to private sector articles is costly and unnecessary.**

Electronic repositories for providing free online access to scientific and medical journal articles would be costly to develop and maintain and would likely divert resources from federal research grants. In addition, these repositories would be duplicative of private-sector databases which allow greater access to research articles than at any time in history. With more and more research available every day through innovative business models, the private sector offers the public extensive access to research articles.
- **Government mandated public access to private sector articles must end.**

In 2008 Chairman Conyers of the House Judiciary Committee introduced the bipartisan *Fair Copyright in Research Works Act*. This legislation would ensure that federal agencies do not diminish copyright protections for journal articles to which private-sector publishers have made significant value-added contributions through peer review and other publishing quality assurance practices. This legislation is essential to restoring protection that has existed for more than a century and that has provided the necessary incentives for publishers to invest in the peer-review and expert screening of research and to provide and maintain the infrastructure necessary to publish, distribute and archive scientific journal articles.