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ALPSP's response to Request for Information: National Institutes of Health Public Access Policy (NOT-OD-08-060)

To:
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From:
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1 Introduction

The Association of Learned and Professional Society Publishers (ALPSP) is the international association for non-profit publishers and those that work with them. ALPSP is the only international association that represents scholarly and professional publishers across all disciplines of academic endeavour. Its broad and diverse membership includes publishers of journals operating on author-side payment models, subscription models and hybrid business models combining these. ALPSP has more than 360 organizational members including more than 40 in the United States. We have members in 36 countries who collectively publish more than 10,000 journals – around half the world's total - as well as books, databases and other resources.

ALPSP's mission is to play an active part in shaping the future of academic and scholarly communication, and we welcome the opportunity given by the National Institutes of Health to comment on the 'Revised Policy on Enhancing Public Access to Archived Publications Resulting from NIH-Funded Research' (NOT-OD-08-057) (Revised Policy) by responding to the 'Request for Information: NIH Public Access Policy' (NOT-OD-08-060).

This submission will only comment on those questions which we consider relevant to the ALPSP membership.

2 General comments

ALPSP supports the principle of public access to scientific literature but believes that the aims of the NIH public access policy are best met by NIH consulting and working in conjunction with all relevant stakeholders, including publishers, on an ongoing basis and in a robust and meaningful manner.

We believe that by implementing the Revised Policy on April 7, 2008 - before completing a thorough consultation - the approach taken by NIH regarding the Revised Policy does not adhere to the Administrative Procedure Act. We also note the short timescales between the announcement on March 7, 2008 of a public meeting regarding the Revised Policy, the meeting taking place on March 20, 2008 and the Revised Policy coming into effect on April 7, 2008.

We therefore respectfully request that the NIH suspend the Revised Policy and undertake a formal rulemaking according to the provisions of the Administrative Procedure Act. A Rulemaking would allow all interested stakeholders the opportunity to comment with adequate deadlines and offer a formal procedure via which the NIH could address the issues raised.

3 Question 1 - Do you have recommendations for alternative implementation approaches to those already reflected in the NIH Public Access Policy?

3.1 Many journal publishers, and most of those publishing in the biomedical sciences, make the final 'version of record' journal article freely available on the Internet a maximum of 12 months after publication. We believe that it would be highly preferable if NIH linked PubMed and/or PubMed Central to final published journal articles on publishers' website and adapted PubMed and PubMed Central to allow for full-text searching across the publishers' websites.

This approach does not constitute a "dark archive" as some have suggested since articles appearing in journals operating a delayed open access publishing model are available freely on the Internet in compliance with the NIH public access requirement. We would suggest that the policy mandating deposit of peer-reviewed manuscripts in PubMed Central should be reserved for only those

articles published in journals that do not make content freely available on the publishers website after 12 months or less.

There are numerous advantages to this approach:

- It would provide a more comprehensive 'one-stop-shop' for searching the biomedical literature which would include vastly more than the 10% of articles that arise from NIH funded research
- It would assist with version control and enable readers to access the trustworthy version of record with corrections, links to corrigenda and errata and thus maintain the integrity of the corpus of literature
- Journals would be able to determine their own access policies within a 12 month timeframe based upon the requirements of their business models
- It would eliminate needless and expensive duplication of the storage, curation and preservation of a large number of research articles

We therefore urge NIH to reconsider this proposal.

3.2 We note the confusion that has arisen from the use of the term "journal articles" in the Public Access Frequently Asked Questions (FAQs) posted on January 11, 2008 and the continued use of the terms "journal manuscripts" and "journal papers" used in the amended version of the FAQs[1] as updated on May 2, 2008. We believe that NIH should be clear and unambiguous in referring to the final peer-reviewed manuscript in order to avoid confusion with the final journal version of record.

We would draw your attention to the NISO / ALPSP project on Journal Article Versions[2] which will shortly produce a standard nomenclature for versions of journal articles. We urge NIH to utilize these definitions once the standard has been formally announced by NISO.

3.3 We note that Congress directed the NIH to ensure copyright agreements and rights were preserved and it seems onerous, unfair and an avoidance of this responsibility to transfer that obligation to researchers. At the very least the NIH should implement procedures during the process of uploading manuscripts to PubMed Central to check that the version of the article uploaded is consistent with copyright law and that institutions and investigators are complying with their obligation to ensure that "any publishing or copyright agreements concerning submitted articles fully comply with this Policy".

3.4 The Revised Policy now calls for the deposit of review articles. Review articles are commissioned by Publishers and Editors and are written based on the scientific expertise of the author; they are not based on the specific research projects supported by NIH grants and we therefore respectfully suggest that review articles should not be subject to the mandatory Revised Policy.

4 Question 2 - In light of the change in law that makes NIH's public access policy mandatory, do you have recommendations for monitoring and ensuring compliance with the NIH Public Access Policy?

4.1 As mentioned in 3.3 above, ALPSP believes that NIH should implement measures to ensure that manuscripts deposited in Pub Med Central in response to the Revised Policy are the correct version and that the Revised Policy is therefore implemented in a manner consistent with journal policies and copyright law.

[1] http://publicaccess.nih.gov/FAQ.htm
[2] http://www.niso.org/workrooms/jav

4.2 To assist with version control, adherence to copyright law and to minimize duplication of costs, NIH should implement measures to ensure that where manuscripts are deposited by journals on behalf of their authors the submission of duplicate copies or different versions are not accepted for ingress into PubMed Central.

4.3 We believe that NIH should implement measures to detect inappropriate usage of manuscripts and other copyrighted material posted on PubMed Central and should immediately alert the publisher of any articles so abused. NIH should also implement specific safeguards to prevent copyrighted material available on PubMed Central from being altered, pirated, made into derivative works, redisplayed, republished, resold or used for any other commercial purpose.

5 Question 3 - In addition to the information already posted at http://publicaccess.nih.gov/communications.htm, what additional information, training or communications related to the NIH Public Access Policy would be helpful to you?

5.1 ALPSP fully supports the thorough list of concerns regarding the NIH public access policy and its implementation advanced by the Professional and Scholarly Publishing Division of the Association of American Publishers and the DC Principles Coalition. These questions were raised in a letter[3] to Dr E A Zerhouni on April 16, 2008 and are attached to our response as Appendix I for your convenience.

6 Question 4 - Do you have other comments related to the NIH Public Access Policy?

Please see our general comments in section 2 above.

In addition, we are aware of calls for the NIH to reduce the upper limit of the Revised Policy's embargo period from 12 months to six months or less. Research[4] has indicated that the upper limit of 12 months is the minimum required for publishers of biomedical journals supported by subscription revenues to have a chance of recovering their costs. We therefore urge NIH to commit retaining the upper limit at 12 months and allow journals to choose a shorter embargo period if it is compatible with their business model.

Ian Russell

Chief Executive, ALPSP

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[3] See http://www.dcprinciples.org/Zehouni-4-16-08.pdf

[4] See for example *Self-Archiving and Journal Subscriptions: Co-existence or Competition?* (Beckett and Inger 2007; www.publishingresearch.net/documents/Self-archiving_summary2.pdf) and *ALPSP Survey of Librarians on Factors in Journal Cancellation* (Ware 2006; www.alpsp.org)

Appendix I – Questions / comments raised by Professional and Scholarly Publishing Division of the Association of American Publishers and the DC Principles Coalition

1) Regarding Consultation with Publishers, Societies and Authors

- Many investigators are not aware of the new policy. Does NIH have a formal mechanism and the necessary resources to handle the questions that will arise from authors and journals?
- What is NIH's timeline for amending this policy moving forward?
- What mechanism will NIH put in place to continue the dialogue with publishers that will help ensure this policy is "implemented and steered" effectively and that publisher concerns are addressed?

2) Regarding Copyright

- Why hasn't the NIH supported the full value of copyright and its use in business models including those which involve driving traffic to a publisher site, and permit linking to publishers' web sites, rather than requiring deposit at PubMed Central?

3) Regarding Brand Protection, Repurposing and Piracy

- What mechanisms will NIH put in place to ensure that any revisions to copyrighted materials such as reformatting, enhancing, linking or otherwise changing the articles respect the integrity of the copyrighted content it receives? What assurance will NIH give that this will be done in accordance with guidelines agreed to with publishers?
- Will NIH identify precisely how manuscripts will be linked to databases and other resources, and which databases? Publisher concerns about links include: a) would links within the article obscure the information in the text? b) Would it change the editorial emphasis by seeming to suggest that certain information within the article is more important than other information, simply because there is a link? c) Would it be appropriate to change that emphasis in the context of the research and the article's focus?
- How will NIH ensure proper protection of publisher or society trademarks and branding? There been no affirmation of these markers of quality, and often branding information is missing, potentially misleading users to the erroneous conclusion that the NIH is claiming copyright, or that the content is in the public domain.
- How will NIH respect the rights of copyright holders and stipulate what NIH will or will not allow related to third-party use of its works? Will NIH, for example, ensure that manuscripts are not distributed to other sites around the world besides PubMed Central? Will NIH implement guidelines that explicitly prohibit third parties from exploiting content that appears on PMC without the consent of the publisher?
- How will NIH prevent piracy of the articles from PubMed Central? Will NIH prevent copyrighted material available on PMC from being altered, pirated, made into derivative works, redisplayed, republished, resold or used for any other

commercial purpose? What will happen if piracy is discovered as a result of downloading of content from PubMed Central and will NIH notify publishers?

- If deposited content will be "mirrored" to other sites outside the U.S., after publisher approval, how will the sites be established, and how would national and international copyright considerations protect rights holders? What guidelines will NIH agree to with publishers before any distribution of copyrighted content occurs on PMC international mirror sites?

4) Regarding Compensation

- What latitude will NIH have in negotiating terms and conditions directly with publishers and other rightsholders who might wish to undertake direct licensing arrangements with NIH that would enable the deposit of copyrighted works on behalf of authors? Given that NIH's policy would amend many journal copyright policies and effectively reduce the value of those rights, will NIH be empowered to negotiate such licensing terms, including publication charges/payment, as certain non-government funding agencies have done?
- The policy provides for publisher deposit of final peer-reviewed manuscripts on behalf of authors, and includes allowance for grantees to use grant funds in the payment of publication fees. How will such funds be identified in the grant and what has NIH budgeted per year for such costs over the next five years?

5) Regarding Scope

- If other public or private funders support research also supported by NIH, what will researchers be expected to do if these other sources oppose the posting of their funded work on PubMed Central?
- Will NIH agree to stipulate that its requirement for the deposit of peer-reviewed manuscripts in PubMed Central only applies when NIH funding represents substantial funding for the research on which the scholarly work is based?
- The policy also holds that "Principal investigators and their institutions are responsible for ensuring all terms and conditions of awards are met." Yet, this includes the submission of articles that arise directly from the investigators' NIH-funded research even if they did not author or co-author the publication. In fact, NIH-funded investigators and institutions are being held responsible for making sure these other authors are "aware of and comply with" the NIH policy. How could they comply with this provision?
- What will the repercussions be for investigators and journals that do not follow the process?
- NIH's 2005 voluntary policy stated that it did "not apply to contributed book chapters, editorials, reviews, or conference proceedings." Rather, it applied "only to peer-reviewed research publications." Will NIH modify its guidelines to state that its deposit requirement only applies to peer-reviewed manuscripts that report findings of empirical research and does not apply to literature reviews?

6) Regarding Integrity of Research, Quality Control and Meaningful Public Access

- How will the NIH know the final month of publication when the month is not always established upon acceptance to a journal?
- Many manuscripts currently appear on PMC in violation of publisher policies. How will NIH ensure under the new public access policy that individuals post the correct manuscript version to PMC to be publicly available at the correct time, consistent with publisher agreements? Will NIH ensure that embargo and posting policies are implemented on a journal-by-journal level or at least publisher-level? Will NIH provide a detailed description of the process at NIH to monitor and ensure prompt take-down of manuscripts improperly submitted?
- For publishers submitting directly, how will NIH ensure that manuscripts will not be accepted from individuals or entities other than the publisher?
- How will NIH ensure that researchers are not misled as to the accuracy and validity of manuscripts on PMC? Will there be pointers to final published versions on publisher sites? Will NIH develop, for example, a special section within PMC for members of the general public/patients to "land" on suitable information for patients and "disclaimers" that the PMC author manuscript represents only a small part of the literature, with references and links to voluntary health organizations (VHOs), Patient Inform, publisher sites?
- How will NIH deal with plagiarism and ethics issues? Will NIH establish guidelines in consultation with publishers on how to deal with corrective notices, corrigendum, and retractions?

7) Regarding Cost

- NIH faces funding shortages from the federal government. How much will it cost to effectively implement this policy?
- Does this cost detract from funds to grantees actually conducting the innovative research that advances science?

8) Regarding Measuring Impact and Effectiveness

- Will NIH provide publishers with detailed and robust PMC bibliographic usage statistics that will enable them to assess the impact of PMC usage on their subscriptions?
- What oversight or governance will monitor whether NIH's performance in pursuit of its intended purpose a) is met; b) is not costly for the taxpayer; c) is not burdensome on research investigators; or d) does not have a negative impact on the integrity of the scientific and medical literature (e.g. errors and versioning problems introduced, economic harm to journals and publishers)?
- What steps will NIH take if it is found that its Public Access Policy is hurting rather than advancing scientific research?