

**Statement of
Heather Dalterio Joseph
on behalf of the
Scholarly Publishing and Academic Resources Coalition (SPARC)
Alliance for Taxpayer Access
Association of Research Libraries**

**Before the
Subcommittee on Courts, the Internet, and Intellectual Property
Committee on the Judiciary
Regarding H.R 6845, the Fair Copyright in Research Works Act
September 11, 2008**

Chairman Berman, members of the House Judiciary Subcommittee on Courts, the Internet and Intellectual Property, and especially, Chairman Conyers - thank you for the opportunity to testify today on H.R. 6845, the "Fair Copyright in Research Works Act." I serve as the Executive Director of the Scholarly Publishing and Academic Resources Coalition (SPARC) and also as the Coordinator of the Alliance for Taxpayer Access (ATA). I am also speaking today on behalf of the Association of Research Libraries.

I am here today because SPARC, ARL, and ATA represent a large number of the users who currently rely on and directly benefit from access to the works that would be affected by this proposed legislation. I am also here having spent fifteen years as a publisher in both not-for-profit and commercial publishing organizations. And finally, I am here as a mother and as a member of the public, with a deep and abiding interest in the results of the research that my tax dollars help to support.

I would like to express my serious reservations about this legislation, and particularly about the negative impact it would have on the advancement of scientific research and on the availability of vital health care information for millions of Americans by overturning the crucially important National Institutes of Health's Public Access

Policy.

SPARC, a membership organization of more than 225 college and university libraries in the U.S, is dedicated to working collaboratively to expand the dissemination of the results of scholarly research by leveraging the vast new opportunities presented to the academic community in the networked digital environment. ARL represents 123 research libraries in North America. As academic and research libraries, we represent the customer base of the journal publishing industry, providing the majority of the subscription income received by these publishers.

SPARC also serves as the coordinating organization for The Alliance for Taxpayer Access, an alliance of more than 80 libraries, universities, patients advocacy groups, consumer groups, and student organizations who are dedicated to ensuring that a specific subset of scholarly research - specifically the results of research that has been funded using taxpayer dollars - is made freely and rapidly accessible to the public.

U.S. taxpayers underwrite tens of billions of dollars of research each year, and the widespread sharing of the results of this research is an essential component of our government's investment in science. It is only through the **use** of these findings that

fundings - and, by extension, taxpayers – obtain value from their investment. Faster and wider sharing of knowledge fuels the advancement of science and accordingly, the return of health, economic, and social benefits back to the public. This is why 33 Nobel Laureates have written in strong support of the NIH Public Access Policy. That letter is included in my written statement.

Yet, despite the fact that the public has paid for this research, colleges, patients, physicians, researchers, and other members of the public frequently cannot access taxpayer-funded research findings because they simply cannot afford to subscribe to all of the journals in which these findings are published.

As the Executive Director of SPARC, I see libraries face this access issue on a daily basis. Even the most well-funded, private university libraries can not afford to subscribe to all of the journals they would like to provide their students. This situation is exacerbated by the continued rapid escalation in price of journal subscriptions, which puts libraries in the position of having to cancel subscriptions. Libraries now routinely find themselves in the position of paying more and more money only to be able to provide their patrons – students, faculty, researchers – with access to less and less.

This is why the organizations that I represent today have enthusiastically supported efforts such as the NIH's which are designed to break this logjam. The NIH Public Access Policy is a simple, effective, and carefully balanced Policy. It requires that all investigators funded by the agency submit an electronic version of their final peer-reviewed manuscripts to PubMed Central (PMC), the online archive of the National Library of Medicine, to be made publicly available within twelve months of publication, and in a manner consistent with copyright law.

The policy is designed to create a broadly accessible, permanent archive of the results of NIH-funded research in order to advance the conduct of science and enhance the agency's accountability to the public. In short, this Policy ensures that the U.S. taxpayers are able to benefit fully from the research that they have underwritten.

During the extensive public comment periods and discussions that have taken place over the past four years, opponents of the policy have expressed a variety of concerns. Chief among them has been the fear that the policy would create a resource that is competitive with journals, and would ultimately damage publisher revenues. The concern is that their primary customer – academic libraries – will view the availability of an author's manuscript in PubMed Central as an adequate substitute for subscribing

to a journal, and will, as result, cancel subscriptions in large numbers. There are several reasons why this fear is unfounded.

First, the current NIH Public Access Policy is a compromise policy that contains safeguards against this happening. Authors who receive NIH funding are required to deposit only their final accepted, peer-reviewed manuscript - the raw, word-processing file – into PubMed Central, rather than the final, copyedited, formatted, enhanced -- and copyrighted -- version that will ultimately appear in the journal. The final articles with these value- added features remain solely the publishers to distribute and sell as they choose.

Second, the NIH Policy allows an embargo period of up to one year before a manuscript becomes publicly available. In the realm of the extremely fast-moving, crucial biomedical research funded by the NIH, information, after one year, is already old. The value in the articles resulting from this research lies largely in their immediacy.

Finally, there are very few, if any, journals that publish only research articles that have resulted from NIH funding. The vast majority of journals publish articles resulting

from other funding sources, along with review articles, editorial material, commentary, and other value added material.

The findings of recent studies have supported the use of these safeguards. In a 2006 report commissioned by a publishing organization, the Association of Learned and Professional Society Publishers (ALSP) surveyed librarians to determine what factors would prompt them to cancel journal subscriptions.¹ The report concluded that “availability of content via delayed open access was not an important factor in journal cancellations.” Specifically, they noted that for availability of material in an archive such as PubMed Central to become a factor in subscription cancellation:

1. The embargo has to be very short. 82% of librarians surveyed noted it had to be 3 months or less, and for 92% it had to be 6 months or less;
2. The raw manuscript, or preprint, is not a substitute for the journal only 9% saw access to a preprint as an adequate substitute and
3. Completeness counts – 75% of librarians said the archive would have to contain over 90% of a given journal’s content before it became a factor in considering cancellation.

The library community does not view this policy as a chance to save money by cutting subscriptions to biomedical journals – but rather as an important opportunity to

supplement our journal collections by providing access to additional material that we would not otherwise be able to provide to our patrons. And importantly, libraries strongly support NIH's role in preserving this biomedical literature for future generations of users.

As a publisher, I have seen first hand that the experience of organizations who have voluntarily participated in depositing materials into PubMed Central supports this survey. As a direct example: The American Society for Cell Biology (ASCB), where I served as Publishing Director, has made the research articles from its journal , *Molecular Biology of the Cell*, available on PubMed Central just two months after their publication since 2001. Additionally, the society puts all of the journal's content into the database, not just the fraction supported by NIH funding. Despite this, the revenue generated by *Molecular Biology of the Cell* has increased steadily since 2001. Participation in PubMed Central actually resulted in an increase in the number of articles downloaded from the society's website, increasing the visibility of the journal and the papers published there.

The ASCB is not alone in this experience. There are several hundred other journals also voluntarily depositing content into PubMed Central (see list at http://publicaccess.nih.gov/submit_process_journals.htm). None of these would do so

if it threatened their core business in any way.

Finally, as a mother and member of the general public, the NIH Public Access Policy addresses the public's rising interest in self-education on health matters and need to see the results of their extensive investments. The information we are talking about today is, after all, generated by a public agency tasked with protecting and improving the public health. The information contained in PubMed Central is not esoteric research of interest only to elite scholars. It is crucial, health-related information that can make a life-or-death difference in the lives of the American public. As of today, the NIH database contains more than 27,500 articles on malaria, 50,000 on AIDS, 41,000 on HIV, 5,000 on health disparities, 2,000 on disadvantaged populations and more than 77,000 on diabetes research. This is a vital resource for individuals looking for health care information at any time of the day, from anywhere, any day of the week.

When my five-year-old son was diagnosed just nine weeks ago, with autoimmune, insulin-dependent Type 1 Diabetes, I did what every member of the patients advocacy groups I represent today predicted I would. I got online and looked for every piece of current information I could get my hands on. I did this from home, at 3 in the morning the night we got home from the hospital, desperate for information that could

reassure me that there was something else I could do besides wake my child up twice a night to check his blood sugar for signs of hypoglycemia. I found a 2008 study of continuous glucose monitors, rating parent and patient satisfaction in the prevention of nighttime instances of low blood sugar². Notably, what was available to me was the authors' final manuscript, posted just one month before, available solely because of the NIH public access policy. It was worth the world to me.

Besides serving the interest of the public as just described, the NIH policy also strikes a careful balance between increasing access to the literature and respecting the concerns of publishers, by operating within the current copyright structure. As noted by 45 of law professors who specialize in copyright law, the NIH policy in no way conflicts with U.S. copyright law. The agency receives a non-exclusive license from the researchers they fund, who retain their copyright and are free to enter into traditional publication agreements with journals or to assign these rights to anyone they want, subject to the standard federal purpose license.

Unfortunately, the Fair Copyright in Research Works Act would effectively overturn this important and much needed policy. By prohibiting agencies from making the results of the research they fund public in the manner that they choose, this bill would

significantly inhibit our ability to advance scientific discovery. This legislation is not in the best interest of the taxpayers who fund the research nor the scientific community and the public that that rely upon it.

Thank you once again for providing me with the opportunity to testify.

1. "ALPSP survey of librarians on factors in journal cancellation" Mark Ware Consulting Ltd, http://www.alpssp.org/ngen_public/article.asp?id=200&did=47&aid=157&st=&oaId=-1
2. Weinzimer, Stuart MD, c/o DirecNet Coordinating Center, Jaeb Center for Health Research, FreeStyle Navigator™ Continuous Glucose Monitoring System Use in Children with Type 1 Diabetes using glargine-based multiple daily dose regimens: Results of a Pilot Trial," <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2365493>,