

Testimony

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Chairman Berman, members of the House Judiciary Subcommittee on Courts, the Internet and Intellectual Property, thank you for the opportunity to testify today on the Fair Copyright in Research Works Act. My name is Martin Frank. I serve as the Executive Director of the American Physiological Society (APS) and as the Coordinator of the Washington DC Principles Coalition for Free Access to Science (DC Principles Coalition).

The American Physiological Society is a not-for-profit society with over 10,000 members. The Society was founded in 1887 and published its first journal, the *American Journal of Physiology* in 1898. At present, APS publishes 14 journals that are available online and in print. APS was at the forefront of the online revolution, taking our first steps towards digital publication of content starting in 1993, even before the advent of the World Wide Web. At present, the Society publishes approximately 4,000 articles annually, making them all freely available after 12 months from our online journal site at HighWire Press. The Society made this decision in 2000 without government intervention because it served our members. It is a decision that we can modify should 12 months prove disadvantageous to the Society's business model. We were able to make the decision because the Society controlled copyright on the articles and we had subscription revenue to support the necessary infrastructure.

The DC Principles Coalition was founded in March 2004 to represent the concerns of not-for-profit publishers, who believe in free access to science and who make the full text of their journals freely available within the constraints of the publisher's business and publishing requirements. Many of the DC Principles Coalition members disseminate their research journals

through private sector initiatives such as HighWire Press. HighWire, a division of the Stanford University Libraries, hosts the world's largest repository of high impact, peer-reviewed scientific content. HighWire currently hosts 1171 journals from more than 140 scholarly publishers. These journals collectively have published 4,831,190 full text articles to date. The majority are indexed by Google, and nearly all the life sciences research abstracts are indexed in PubMed along with live links back to the journal article. This feature extends to all research articles published by these journals, not just those funded by the government. Moreover, nearly 2 million of these articles -- 1,933,209, to be exact -- are freely available today. HighWire publishers produce 71 of the 200 most-frequently-cited journals and offer readers enhancements such as links to databases available from NCBI as well as links to referenced articles from other participating journals.

From the beginning, we have said that scholarly publishers are a diverse group and one size does not fit all. At present, the DC Principles Coalition is comprised of 73 not-for-profit publishers responsible for the publication of nearly 400 journals. The societies themselves have over 700,000 individual members. Together Coalition members publish nearly 100,000 articles annually of which approximately 20% are based on research funded in whole or in part by the National Institutes of Health. However, there are a number of journals, including those of the APS, for which the NIH funded content is 50% or more.

On behalf of the 10,000 members of the APS and the 73 not-for-profit publishers of the DC Principles Coalition, I would like to express my strong support for the Fair Copyright in Research Works Act. By protecting copyright, this bill preserves the current incentives for the continued investment in the peer review process that is essential for the quality and integrity of scientific research. It does so by ensuring that the federal government does not diminish

copyright protections for scientific journal articles in which private sector publishers have made a significant value-added contribution.

The DC Principles Coalition members readily acknowledge the benefits of widely disseminating the results arising from the research published in our journals, whether the research is publicly funded or not. That is why we have all moved to online distribution of our complete journal content. That is also why we make it available freely after an embargo period. We also recognize that there are those in the developing world who have difficulty accessing the scientific literature and for that reason we arrange to distribute our content through such World Health Organization initiatives as HINARI and AGORA. Coalition members also participate in PatientInform, an initiative designed to provide patient access to research articles along with interpretations and commentaries that are relevant to their medical conditions.

Mandatory requirements like those implemented by NIH undermine scholarly publication. Copyright protections have spurred the investments and infrastructure needed to maintain a robust and thorough pre-publication peer review process in the digital age. These are costly endeavors, and if publishers cannot recover their costs, the quality of our journals will suffer to the detriment of our members' science.

As scholarly publishers, it is our mission to maintain and enhance the independence, rigor, trust, and visibility that have established our journals as reliable filters of information emanating from basic and clinical research. This is a key feature of the partnership between scholarly societies and their members. Our common goal is to advance science and patient care by ensuring that research meets the highest standards. The government undermines our

publishing activities when it diminishes one of our most basic rights under copyright – namely, the right to control the distribution of the works we publish.

The Fair Copyright in Research Works Act will help ensure that the federal government does not diminish copyright protections for peer reviewed articles and the valuable publications in which they appear. Publishers add value after the government funded experiments are completed and often times to manuscripts written years after the research grant has ended. In the digital age, publishers are the ones who underwrote the development of special software and provided platforms for the online manuscript submission systems that are at the front-end of the peer review process and the staff to run it. Journal editors, who are supported by the publisher, use their expertise to identify knowledgeable scientists who can to serve as peer reviewers to determine whether the manuscript meets the high standards set for publication in their journal. Reviewers are asked to evaluate the strengths and weaknesses of a manuscript, including its experimental protocol and data interpretation. It serves as part of science and the scientific process itself, helping to advance research and ensure the validity of clinical applications. Consequently, not all manuscripts are accepted for publication, keeping standards high and benefiting the public.

Accepted manuscripts are then moved to the journal staff responsible for coordinating and managing the copyediting and formatting of the manuscript, the redrawing of figures to make them suitable for publication, and its printing and electronic dissemination. The value added by publishers also includes correcting technical errors, ambiguous wording, or ethical questions that are identified during the production process.

Non-profit and commercial publishers invest hundreds of millions of dollars every year in the peer review, editing, disseminating, and archiving of scholarly articles as well as the creation of unique journal identities. This is something that researchers and funding agencies alike rely upon in order to make critically important professional judgments. Peer review, which ensures the quality and integrity of research articles, is at the heart of this process and of scientific communication. Copyright provides the incentive for publishers to continue to invest and innovate in peer review publishing and the development and continuation of journal identities because it is critical to our ability to protect our journal articles and recoup our investments.

The copyright protection that journal publishers receive when they agree to publish a manuscript allows the journal and the Society to continue to do the important work required to further science. The Fair Copyright in Research Works Act will help ensure that copyright protections for research works remain in place, helping to protect the revenue needed to advance science and support our scholarly communities.

Because the NIH mandate in effect reduces copyright protection for publications to only one year, it risks undermining the revenue stream derived principally from subscriptions, that enables publishers to add value to research articles and to enhance readers' ability to discover and use scientists' work. As the number of full-text articles based upon NIH-funded science in PMC increases, concern grows that current journal subscribers will access the text from that website, rather than from the journal's own online site. Over time, this is bound to cause subscription cancellations. If publication costs cannot be recovered through subscriptions, journals will try to recover them through author fees or similar mechanisms that would reduce

funds available for research by amounts much greater than the cost of subscriptions. We are gravely concerned that the funding base of some journals may become eroded to the point where they can no longer adequately serve their communities and will be forced to implement or increase their authors' fees at a time when funding levels are shrinking. In both cases, researchers are disadvantaged – in one case by having less freedom to choose where to publish, or what community to reach, and in the other, failing to have adequate resources to fund research designed to develop treatments and cures for disease.

Since the NIH Public Access Policy applies only to NIH grant holders, some journals will be impacted more than others. Many journals have over 50% of their articles reporting on NIH-funded research. The majority of these journals are published by non-profit publishers. Journals with a higher proportion of articles reporting on NIH funded research are more likely to lose subscriptions when the material is made available for free on the NIH website. If the NIH policy were applied to other federal agencies, the number of articles reporting on federally funded research would increase, thereby raising the threat. Journals that are published less frequently will also suffer greater exposure as fewer issues would be missed in a twelve month period. When faced with the choice of subscribing to a journal or waiting twelve months for free access, some subscribers will cancel their subscriptions and wait or gain access to needed articles through interlibrary loan or pay per view.

The findings of several recent studies lead publishers to believe they could be harmed by the mandatory NIH policy.

- The Publishing Research Consortium (PRC) commissioned an independent study of how decision making factors such as embargo period and article version would affect librarians' cancellation of subscriptions. The survey reported that a significant number of librarians would be likely to cancel subscriptions when some of a journal's peer-reviewed manuscripts are available freely through open access. For example, with a delay of twelve months for free access to 40% of a journal's manuscripts, a large proportion (44%) of those surveyed said they would opt for free content over a paid subscription.¹
- A study published by the Special Libraries Association found that in the life sciences, only 60% of an article's usage takes place in the first year after publication. That means that 40% of the usage of an article takes place after twelve months. In some fields such as physiology, the "shelf life" of an article is even longer. For APS journals, which are free after 12 months anyway, this means that we are still competing with PubMedCentral for traffic from individuals who have the choice whether to subscribe or not.²

A mandatory federal policy requiring these works to be made available for worldwide distribution is in inherent conflict with copyright, which provides publishers with the protection needed to – 1) recover the costs of conducting peer review, editing, publishing, and archiving of scientific articles; 2) create unique journal identities on which researchers and funders rely in making critically important personal and professional judgments; and 3) continue to make the substantial investments in new technologies to speed distribution, broaden access to and archive and protect research results, thereby helping to advance scientific progress.

¹ *Self-Archiving and Journal Subscriptions: Co-existence or Competition?* at www.publishingresearch.org.uk

² Tenopir & King, *Towards Electronic Journals*, Special Libraries Association, 2000, pg 189.

The dissemination of publicly funded research is possible without diminishing copyright protections. The National Science Foundation (NSF) has been directed by Congress, under the America Competes Act, to provide access to government funded research in a way that does not conflict with copyright principles. Under that approach, NSF will provide access to the research reports, summaries of journal articles, and citations to the copyrighted articles. HR ____ will allow the government to continue to disseminate research results, while ensuring that copyright protections in private sector research works are not diminished.

In conclusion, I strongly support the Fair Copyright in Research Works Act. This important legislation will help ensure that the federal government does not diminish copyright protections for scientific journal articles in which private-sector publishers have made a significant value-added contribution. By protecting copyright for research works, HR _____ will continue to provide incentives for private-sector investment in the peer review process which helps ensure the quality and integrity of scientific research.

Thank you once again for providing me with an opportunity to testify and for considering HR ____, the Fair Copyright in Research Works Act. I would be happy to answer your questions at this time.