

Heather Joseph

Fair to whom?

New House bill challenges public access

In February, Rep. John Conyers (D-MI) reintroduced a proposed piece of legislation, H.R. 801, innocuously titled “The Fair Copyright in Research Works Act.” At first glance, it would be easy to dismiss this bill as just another of the myriad copyright and intellectual property-related proposals that are routinely made in Congress, without much punch. However, it’s important for the library community to take a very close look at this particular bill.

H.R. 801 actually packs quite a potential wallop and has widespread implications.¹ It is designed to amend current U.S. copyright law, and carves out a subclass of copyrighted works—specifically, those works that are the result of taxpayer funding—and makes it illegal for the government to require that these works be made freely available to taxpayers as a condition of the federal support researchers receive.

The bill, originally introduced last September, would have the ultimate effect of “turning back the clock on the National Institutes of Health (NIH) Public Access Policy,” (as noted by Rep. Howard Berman, R-CA) and would stifle the government’s ability to make the results of research funded by all federal agencies—not just NIH—broadly available to the public.

The U.S. government funds research with the expectation that resulting ideas and discoveries will advance science, stimulate the economy, and improve the lives and welfare of members of the public. To this end, the NIH Public Access Policy ensures that the results of our nation’s \$29 billion annual investment in research reach the broadest possible audience. The policy requires that, in exchange for receiving federal research

dollars, grantees deposit the final electronic manuscript of their peer-reviewed research articles into PubMed Central, NIH’s digital archive, to be made publicly available within 12 months of appearance in a scholarly journal.

A wide range of stakeholder groups—from libraries, universities, and colleges to patient advocates, Nobel Laureates and students—have embraced the NIH policy. Its appeal stems from wide-ranging benefits that include delivering broad access to the results of crucial biomedical research and allowing scientists and researchers to collaborate and engage in cutting-edge research.

It also creates a permanent archive, ensuring that not only this generation, but also future generations of researchers can build upon these results. The NIH policy creates a welcome degree of accountability and transparency, enabling better management of our collective investments in research, and extending maximum possible benefits to the public in return.

Yet, H.R. 801 would reverse the only U.S. policy currently in place to ensure public access to publicly funded research, and make it impossible for other agencies to enact similar policies. It is supported largely by the publishing lobby, who argue that such a law is needed to protect the value publishers bring to the final articles, specifically during the

Contact Joyce L. Ogburn—series editor, cochair of the ACRL Scholarly Communications Committee, and university librarian at the University of Utah—with article ideas, e-mail: joyce.ogburn@utah.edu

Heather Joseph is SPARC executive director, e-mail: heather@arl.org

© 2009 Heather Joseph

Senate approves NIH policy extension

The Senate has passed H.R. 1105, the Consolidated Appropriations Act of 2009. The bill contained a small change to the language concerning the NIH Public Access Policy, which effectively makes the policy permanent and negates the necessity of having the language explicitly included in the LHHS Appropriations Bill on an annual basis. The policy now reads:

“The Director of the National Institutes of Health shall require in the current fiscal year

and thereafter that all investigators funded by the NIH submit or have submitted for them to the National Library of Medicine’s PubMed Central an electronic version of their final, peer-reviewed manuscripts upon acceptance for publication to be made publicly available no later than 12 months after the official date of publication: Provided, That the NIH shall implement the public access policy in a manner consistent with copyright law.”

peer review process. Publishers charge that the NIH policy unfairly “expropriates” the results of this value-added service from them.

However, the publishing lobby’s argument ignores a crucial fact—that the peer review process is a voluntary, unpaid process conducted by researchers, not by publishers. H.R. 801 mistakenly over-values the contribution made by publishers, while ignoring that of researchers, authors, peer-reviewers and taxpayers, all of whom contribute to the process of scholarly publishing without direct remuneration.

H.R. 801 also presupposes that the NIH Public Access Policy undermines the rights of the author and conflicts with U.S. copyright law. As attested to by NIH, legal scholars, and Congress, this is not the case. Copyright is an author’s right. NIH-funded research is copyrightable and—as is appropriate—the copyright belongs to the author.

The NIH policy requires only the grant of a nonexclusive license to the agency, leaving the author free to transfer some or all of the exclu-

sive rights under copyright to a journal publisher or to assign them anywhere they so choose. The NIH policy in no way conflicts with copyright law. The fact that H.R. 801 would require a change to current U.S. copyright code to create such a conflict clearly underscores this point.

If H.R. 801 were to pass, damage would be done not only to the public’s ability to freely access the results of research that their tax dollars helped to fund, but also to our shared interpretation of copyright policy and the peer review process. The results would be detrimental to the libraries, to researchers, to the academy, and to the public as a whole, leaving one to wonder, “The Fair Copyright in Research Works Act: fair to whom?”

Note

1. More detailed information on the content and ramifications of the bill, as well how to contact your representatives, can be found at: www.taxpayeraccess.org/fcrwa.html. *rz*

For a free trial, visit www.routledgeabes.com



- Receive weekly content updates via RSS feeds
- Over 25,000 existing records
- 5,000 new records added each year
- Powerful and focused searching
- Active reference linking through CrossRef
- COUNTER-compliant usage statistics for librarians

