



June 26, 2015

Lorian Smith
Office of the Assistant Secretary for Preparedness and Response
US Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201

Re: Federal Register Doc. 2015–1256 (ASPR Plan for Public Access to Federally Funded Research)

On behalf of the major trade associations of scholarly publishing – the Professional and Scholarly Publishing Division of the Association of American Publishers (“AAP/PSP”) and the International Association of Scientific, Technical, and Medical Publishers (“STM”), we appreciate the opportunity to comment on the Assistant Secretary for Preparedness and Response (ASPR) Public Access Plan for Federally Funded Research: Publications and Data (“the Plan”).

Our members publish the vast majority of materials used in the U.S. by scholars and professionals in biomedicine and other areas of scholarship, and are the worldwide disseminators, archivists and shapers of the scholarly record in both print and electronic forms. They include non-profit professional societies, commercial publishers and university presses that create books, journals, computer software, databases and electronic products in virtually all areas of human inquiry and activity. Collectively, our members represent tens of thousands of publishing employees, professional individuals, editors and authors throughout the country who regularly contribute to the advancement of American science, medicine, learning, culture and innovation. They comprise the bulk of a \$10 billion commercial and non-profit publishing industry that contributes significantly to the U.S. economy and enhances the U.S. balance of trade.

The goal of our members’ publishing activity is to help produce and provide access to high-quality peer-reviewed articles in a useful and user-friendly digital environment that enables researchers and other readers to discover, analyze and link to the latest breakthroughs and developments in scholarly research. In particular, publishers of scientific and medical journals have, for more than 100 years, played an integral role in building and documenting the U.S. scientific research enterprise. They make significant intellectual contributions to the work through editorial review, curation, and countless other investments. In addition to their efforts to create and disseminate publications that report on and analyze the latest research, they also have considerable experience and investment in digital technology, metadata standards and tools to help users understand and work with data. This makes publishers uniquely positioned to help the Federal Government in expanding public access to digital data, ensure the long-term stewardship and discoverability of data and support the innovation and economic development that is derived from scholarly advancements.

We seek opportunities to work with the ASPR and the rest of the Department of Health and Human Services to advance the goals of Section 103 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111-358) and the February 22, 2013 Executive Office of the President, Office of Science and Technology Policy (OSTP) memorandum on “Increasing Access to the Results of Federally Funded Scientific Research.” However, any efforts to provide wider access to research publications need to be undertaken in collaboration and consultation with the scholarly community, including publishers, to prevent any negative impacts on the research enterprise. In this context, it is important to note that the high-quality peer reviewed articles our members produce are not the result of federal grants, but also represent significant investments by the publishing organizations to improve, disseminate, interpret, and steward those reports. It is with this in view that we offer the following comments and suggestions for the further development and implementation of the Plan.

Public-private partnerships

The publishing community has had broad success advancing access through public-private partnerships. One such effort, of particular relevance to ASPR’s mission, is the Emergency Access Initiative (EAI). EAI provides free access to full text articles from major biomedicine titles to healthcare professionals, librarians, and the public affected by disasters. Developed in partnership between publishers and the National Library of Medicine (NLM), including AAP/PSP and the National Network of Libraries of Medicine, this program demonstrates how the public good can be advanced through voluntary collaboration that can be mutually beneficial. Publishers and the public have universally seen EAI as a benefit.

As ASPR seeks to advance its public access policy, publishers would like to see similar collaboration to ensure the scholarly community is served by the policy’s implementation. Although the Plan refers to PMC as a public-private partnership, publishers have often felt that the implementation of PMC and the NIH Public Access Plan do not fully take their concerns into account. Some of these concerns include the diversion of traffic from publisher platforms,¹ the difficulty in obtaining usage data on publisher content accessed through the National Library of Medicine (NLM), and the reformatting of published content for delivery through NLM. We would welcome the opportunity to work with ASPR to address some of these issues, consistent with the Plan’s commitment to exploring new approaches and partnerships.

Finally, we would like to point to the potential for further collaboration that could save ASPR and HHS valuable resources through CHORUS (the Clearinghouse for Open Research of the United States)². This service, developed by publishers as a public service and run by a non-profit organization, enables easy,

¹ See Davis PM. 2013. Public accessibility of biomedical articles from PubMed Central reduces journal readership—retrospective cohort analysis. *FASEB Journal* 27 (7): 2536-2541 <http://dx.doi.org/10.1096/fj.13-229922> and Davis PM. 2012. The Effect of Public Deposit of Scientific Articles on Readership. *The Physiologist* 55: 161-5 <http://www.the-aps.org/mm/Publications/Journals/Physiologist/2010-present/2012/October.pdf>

² www.chorusaccess.org

free access to articles reporting on federally funded research and ensures the identification, discovery, and long-term preservation of such articles. We are pleased that ASPR's plan explicitly notes that it will provide access to articles "via publisher-supplied links," which is something that CHORUS facilitates. At the same time, we are concerned that the Plan requires researchers to redundantly submit manuscripts to the NIH Manuscript Submission System (NIHMS) and PMC. We encourage ASPR to consider utilizing CHORUS fully in future iterations of the implementation of its policies, consistent with its goals to partner with appropriate scholarly archives in a way that promotes efficiency and takes advantage of modern electronic information capabilities.

Sustainability and embargoes

A key issue to ensuring the sustainability of the scholarly communication enterprise is ensuring the viability of economic models for publishing. While we appreciate that long-standing policy at HHS and ASPR allows researchers to use grant funds to cover publication costs, including costs for publishing in open access venues, and we encourage this policy to continue, other business models are used in publishing and should not be undermined. These include subscription publishing, where costs are underwritten on the reader side. HHS has previously recognized that to sustain publishing, it is necessary to allow embargoes to ensure the viability and sustainability of subscription journals that serve the research public. However, the current NIH policy limits the variability of embargoes to a maximum of 12 months.

Given the wide range of disciplines that may be funded by ASPR, we strongly encourage ASPR to consider additional flexibility for embargoes. Health emergencies and disaster response are affected by fields as diverse as social science, mathematics, civil engineering, and others, in addition to biomedicine. These fields have been shown to have much longer usage curves than the health sciences.³ We were encouraged that the Plan allows authors to "specify the date the final manuscript will be publicly accessible through PMC," and recognize that the Plan indicates that "HHS is developing a common approach to the issue of alternative embargo periods." We urge ASPR to work expeditiously to ensure researchers, disciplines, and journals that need longer embargo periods for their articles can still satisfy the requirements of ASPR grants. ASPR should not cede responsibility for setting appropriate policy to the NIH.

We appreciate that, with respect to data, the Plan explicitly recognizes that access may conflict with the provisions of the Bayh-Dole Act of 1980. In our view, the goals of Bayh-Dole to preserve private sector interest to advance the public good of bringing new discoveries to market equally apply to scholarly publishers' work to create and provide access to high-quality peer-reviewed articles. Additionally, we appreciate that the Plan only applies prospectively, and not retroactively. We encourage ASPR to maintain a commitment to this principle, as some other agencies have worryingly suggested they may consider previously-funded researchers as subject to new public access plan requirements.

³ See, for example, www.publishers.org/usagestudy

Redundancy and burdens on the research enterprise

Publishers are devoted to providing access to the scholarly literature, and work closely with researchers, librarians, and others in the research community to minimize the administrative burdens associated with bringing articles to publication. We are therefore concerned that the Plan imposes additional administrative burdens on ASPR's grantees that in our view are unnecessary and redundant. These requirements also add additional expense to ASPR and NLM to administer them.

For example, the Plan says that "Manuscripts resulting from funded work must be submitted directly to the NIH Manuscript Submission System (NIHMS)" and that researchers must submit through PMC. Presentations by the Association of American Universities indicated that it takes "23 steps and several emails for authors to submit manuscripts to PubMed Central" and others have suggested that the requirement is even more burdensome. A recent study⁴ showed that similar public access requirements in the UK require significant investments in time and money that takes away from research. We encourage ASPR to consider newer alternative mechanisms, including CHORUS, for providing access more efficiently to articles that report on funded research.

At the same time, we recognize that elsewhere the Plan does provide an appropriate safety valve to prevent the proliferation of requirements on researchers, by deferring to other agency's policies where they are at least as strong as those in the Plan. We welcome clarification of what qualifies as a "comparable" public access plan.

Data

In contrast to peer-reviewed publications, which are not the "result" of federally-funded research and contain significant publisher added-value, digital data does often directly result from activity funded by the government. Publishers support better discoverability and reuse of scholarly data and are actively working with researchers to develop tools and processes to ensure the availability and utility of such data. AAP/PSP have separately submitted comments to National Institutes of Health's ("NIH") February 18, 2015 Request for Information ("RFI") regarding "Input on Sustaining Biomedical Data Repositories," and we refer you to that submission for general comments on data stewardship and how publishers might be able to work with ASPR on the implementation of the Plan for data.

We support ASPR's indication that they will carefully consider intellectual property and the potential need for varied embargo dates and conditions for delaying data release. The requirement for release within 30 months of creation or immediately upon publication of a peer-reviewed publication based on the data set may be unrealistic or overly burdensome. Where appropriate, publishers would be willing to share our experience with working to publish data with ASPR as implementation moves forward.

⁴ <http://www.researchconsulting.co.uk/wp-content/uploads/2014/11/Research-Consulting-Counting-the-Costs-of-OA-Final.pdf>

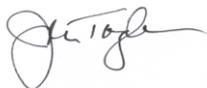
Review and further plan development

We appreciate that government policies to advance public access are still in their early stages of development and implementation, and hope that you will consider and address our concerns in future iterations of the policy. We were encouraged that the Plan explicitly notes that the implementation will be an iterative process, involving full and open consultation with stakeholders, and welcome the opportunity to be part of the conversation. We encourage ASPR to ensure that evaluation and impact assessment of the Plan consider all aspects of the research community, including both positive and negative effects on scholarly communication and the availability of diverse high-quality peer-reviewed research outputs.

The OSTP memorandum requested that agencies “provide a mechanism for stakeholders to petition for changing the embargo period for a specific field by presenting evidence demonstrating that the plan would be inconsistent with the objectives articulated in this memorandum.” We support this provision, and emphasize that agency policies should avoid restricting the amount or direction of such changes to the embargo period, but rather allow the evidence to support any change. While the ASPR plan does not mention a petitions process specifically, we understand that HHS is developing a common process for petitions as outlined in Appendix A of “Guiding Principles and Common Approach for Enhancing Public Access to the Results of Research Funded by HHS Operating Divisions,” which envisions that petitions from the public would follow customary procedures utilized by the HHS Executive Secretary for handling citizen petitions. As a petitions process is an important safeguard to ensure that members of the public can request changes to a public access policy, we recommend that agencies establish a dedicated mechanism and process for submission and consideration of petitions and guidance on the content of such petitions. For instance, NSF’s public access plan provides a dedicated email address to direct petitions, initial guidance on the kinds of elements a sufficient petition might include (to be expanded upon further following discussions with agencies and stakeholders) and a description of the expected process for consideration of such petitions.

Thank you for the opportunity to comment on the Plan. We look forward to future opportunities to provide input on and collaborate in ensuring access to high-quality peer-reviewed scholarly communication.

Sincerely,



John Tagler
Vice President & Executive Director
Professional & Scholarly Publishing
Association of American Publishers, Inc.
71 Fifth Avenue, New York, NY 10003
455 Massachusetts Ave, Washington, DC 20001
jtagler@publishers.org
Phone: [212 255-1407](tel:212-255-1407)



Michael Mabe
Chief Executive Officer
International Association of STM Publishers
Prins Willem Alexanderhof 5
The Hague, 2595 BE
The Netherlands
Mabe@stm-assoc.org
Phone: [+44 1865 339321](tel:+44-1865-339321)