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January 26, 2015

To: Governor Bruce Rauner  
Illinois Board of Higher Education  
University Presidents of Chicago State University, Eastern Illinois University, Governors State University,  
Illinois State University, Northeastern University of Illinois, Northern Illinois University, Southern Illinois  
University, University of Illinois, Western Illinois University

Re: University Open Access to Research Articles Task Forces (P.A. 98-0295)

On behalf of the Association of American Publishers (“AAP”) and its more than 100 scholarly publisher members, I would like to thank you for this opportunity to submit an open memo regarding the process and output of the university open access to research articles task forces (“task forces”) created at nine Illinois public institutions of higher education pursuant to the Open Access to Research Articles Act, P.A. 98-0295 (“The Act”). The Act allowed for any member of a task force to submit a minority report, including AAP members who served on task forces. AAP member representatives were able to submit minority reports for two institutions to date, affording us the opportunity to share feedback about those issues we did not think had been adequately or consistently addressed in the reports. However, there are still a number of concerns that AAP and its members have regarding most of the task force reports. We believe that it is important to make note of our concerns at this time to ensure full consideration of the issues involved in policies that impact the stakeholders of scholarly communication.

AAP is appreciative that The Act included an avenue for scholarly publishers to participate in the process. However, despite outreach from several AAP members, some university task forces did not have representation from any publishers of scholarly journals. This meant that at these institutions the perspective of the faculty members’ publishing partners was absent from the task force’s discussions and deliberations. In addition, some task forces did not even make information available to the public or provide opportunities for interested stakeholders to comment. Even though the task forces were to be conducted as open meetings, pursuant to the Illinois Open Meetings Act, it was sometimes difficult to get information or gain access to meetings for task

forces that did not include a scholarly journal publisher representative. Although many task forces chose to publish meeting notices, agendas, minutes and reports online, others did not provide any access to task force information. This lack of access resulted in a loss of stakeholder participation in the process, which could have been valuable not just for scholarly publishers but for the broader community.

In brief, in this memo I will emphasize four main points that we feel were not necessarily made clear or fully considered in some of the task force deliberations and reports: the value of an “opt-in” approach; the variety of approaches taken to support the costs of publishing; the need for embargoes where costs are not expressly addressed; and options to minimize burdens on researchers and university administration. Each of these concerns speaks to a need for flexible approaches to support academic freedom and the sustainability of scholarly communication.

We strongly support the attention given by many of the task forces to protecting the principles of academic freedom and faculty members’ ability to publish in the venues of their choosing. However, we are concerned that despite considering this issue, most task forces still recommend an “opt-out” policy rather than an “opt-in” policy that would be more consistent with such concerns and faculty collective bargaining agreements. Opt-out policies that mandate assignment of a non-exclusive license to exercise any and all rights of copyright to an author’s institution, especially when that license authorizes others to do the same, are not consistent with the principles of academic freedom and faculty member rights. Such a broad license mandate will mean that many authors will not be able to publish in their journal of choice without obtaining a waiver. Beyond serving as an administrative burden, the waiver requirement may serve as a deterrent against publishing in certain journals. An opt-in policy that minimizes administrative burden to the faculty and that does not introduce any constraints around faculty members’ right to publish in the journal(s) of their choice can effectively meet the commitment to disseminate an institution’s research and scholarship as widely as possible, without infringing on academic freedom or author choice. Absent that approach, steps should be taken to ensure that waivers are as easy to obtain as possible.

We also strongly support the flexibility shown by many of the task forces in allowing different avenues to provide access, and would urge that policies ensure the maximum flexibility possible for achieving access. Most of the task force reports we have been able to review have a strong bias toward Green OA—requiring universities to invest in and authors to deposit manuscripts in an institutional repository (IR)—without giving equal consideration to other viable open access options for university faculty, including those that require smaller new financial and infrastructure investments. These alternative options include access through distributed networks, delayed open archives, and Gold OA through article processing charges (APCs), alongside Green OA. Gold OA, where funding for access is specifically provided to ensure long-term free access to the final published journal article, has the distinct advantage of ensuring the sustainability of high-quality publishing by expressly accounting for the costs of publishing, dissemination, and preservation. In most cases, Gold OA also ensures the availability of an article immediately upon its publication, worldwide and permanently. While a university may not wish to establish a source of institutional financial support for Gold OA article processing charges (APCs), its open access policy could state support of Gold OA as a viable OA option for faculty without

bias. With the goal of disseminating university research and scholarship as widely as possible, it seems essential to promote the full range of open access options available to faculty authors for their articles.

In contrast, where Green OA is being used, it is important that policies recognize the significant investments publishers make to ensure the quality and integrity of scholarly communication. Green OA has no business model and is thus dependent on subscriptions to be successful. One way publishers support Green OA is through setting of journal-specific (discipline-based) embargo periods that recognize the differences in usage patterns in different areas of study.<sup>1</sup> These strike a balance between providing access to a version of the article and allowing time for the subscription-revenue-supporting Green OA to be recovered. It is therefore vital that any successful, sustainable open access policy that relies on Green OA align very closely with publishers, and it is essential for the universities to explicitly encourage its faculty members to abide by publisher embargo periods through policy and practice.

We hope that, as the reports and potential policies move forward, all decision makers are aware of the valuable role that publishers play in the scholarly communication ecosystem and keep in mind the important partnership between faculty-member authors and their publisher partners. This includes identifying opportunities for institutions to work with publishers to develop and implement open access publication options that leverage a range of OA publishing options and existing infrastructure, tools, and services to reduce duplication of effort and costs. Our publisher representatives shared information about CHORUS ([www.chorusaccess.org](http://www.chorusaccess.org)), an initiative launched in 2013 to deliver public access to research articles reporting on US funded research, which is likely to represent a significant proportion of articles published by the faculty across all the Illinois universities. CHORUS demonstrates that access can be expanded through strategic leveraging of publishers' existing infrastructure and we are disappointed that none of the reports discussed potential collaboration opportunities that could do the same. Such approaches, either building on CHORUS or separately, might not result in any new costs to the universities, unlike an expansion of institutional repositories, and would further align Illinois universities with federal policies and federal agency search capabilities.

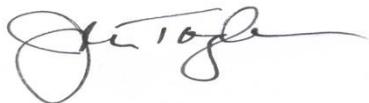
Finally, we were disappointed that some universities did not take full advantage of their task force's work, as intended by The Act, to fully consider the impact of any proposed policies. Often, open access policies were developed separate from a task force and/or in advance of the task force completing its report. Where this was the case, the policies often ended up similar to their initial drafts, or mere copies of policies used at other institutions. This was not universally true. Some universities took to heart The Act's directive that task forces "shall...design a proposed policy regarding open access to research articles, based on criteria that are *specific to each public university's needs*." In these cases, universities opted not to create a policy, or to create an opt-in approach. We urge those reviewing the reports and the prospective policies to carefully consider the good work undertaken by the task forces in reviewing any proposed policies.

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<sup>1</sup> See, for example, [www.publishers.org/usagestudy](http://www.publishers.org/usagestudy) for data on these differences

The AAP and its members remain committed to continuing to work with any Illinois institution developing an institutional open access policy and remain available for discussion and participation on any open access task force or committee in the future. If I or any of our members can be helpful in the future, please let me know.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John Tagler". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

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