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March 26, 2007

The Honorable Tom Harkin  
Chairman  
Labor, Health and Human Services, Education Subcommittee  
Committee on Appropriations  
131 Hart Senate Office Building  
Washington, D.C. 20510

Dear Chairman Harkin:

On behalf of the Association of American Publishers (AAP) and its members, I am writing regarding the NIH Public Access Policy, which was raised at your Subcommittee hearing with Dr. Zerhouni on Monday, March 19th. As you know, the AAP represents publishers that publish scientific, technical and medical journals. We are concerned that a change to the existing NIH policy will negatively impact the private sector funded peer review process and will adversely impact many publishers, including non-profit scientific and medical societies who depend on subscription revenue from their journals to fund many important programs. We believe that the voluntary policy remains the best approach and respectfully request that the Subcommittee not direct NIH to change its public access policy.

In contrast, a public-private partnership with NIH under a voluntary policy can accomplish the goals of the NIH Public Access Policy without undermining scientific discovery or competing with the marketplace. Broad collaboration between NIH and journal publishers is critical to the success of the NIH policy. Collaboration between NIH and Elsevier and some other publishers is showing significant progress and other publishers are seeking NIH's cooperation to increase the level of participation. Dr. Zerhouni expressed in a letter to publishers in late 2006 a desire to wait to discuss broader involvement by publishers until after observing the deposit rates under the Elsevier direct deposit program which has shown substantial progress. We believe an enhanced working relationship with NIH, together with a genuine consideration of publisher concerns could very significantly improve the deposit rate.

In response to a question you asked during the recent subcommittee hearing, Dr. Zerhouni stated that a mandatory policy is necessary to achieve the NIH's goals. We respectfully disagree. A mandate that articles be deposited to PMC disregards the complexity of scholarly publishing and imposes a "one-size-fits-all" approach on a diverse community of commercial, non-profit and scientific and medical society publishers. NIH worked with all interested parties to craft a Public Access Policy that represents a compromise and balances the public access objective with the sustainability of peer review publishing. Government expropriation of the significant investments of private sector non-profit and commercial publishers risks harm to publishers. NIH has not proposed a public access database of grantee final research reports; it has requested the deposit of papers in which publishers have already made substantial investments in peer review and determining what is publishable and what is not. A voluntary policy allows NIH and publishers to work together to enhance public access in a way that is sensitive to different publishing models. A government mandate would provide no timely opportunity to adjust once the

harm has been caused to the private sector and its funded peer review process that ensures the quality and integrity of scientific research.

We are concerned that the figures referenced by Dr. Zerhouni in response to your question regarding the submission rate of articles may not tell the whole story. The 10 to 15 percent figure referenced by Dr. Zerhouni does not appear to reflect the increasing deposit rate resulting from Elsevier's direct deposit program. Based on an assessment of articles on PMC as well as publisher deposits, we believe that deposits with NIH on a current basis have increased well beyond the 10 to 15 percent rate referenced. If NIH agrees to work with additional publishers who wish to begin depositing on behalf of their authors, as does Elsevier, the deposit rate will continue to increase exponentially.

Finally, we would like to commend Dr. Zerhouni for his efforts to ensure that the implementation of the NIH policy does not negatively impact the peer review process. In responding to your question regarding the policy's timeframe, Dr. Zerhouni indicated the 12 month timeframe was necessary to prevent damage to peer review. We strongly agree with Dr. Zerhouni on that point. However, we do not agree with his characterization that the 6 month timeframe would not be a problem for most journals, only those who publish less frequently. A recent study by the Publishing Research Consortium which examined librarian preference for free content found that with a six months access delay, 57% of librarians said they would opt for the free content in place of a paid subscription. Many said they would opt for free content even at 12 months. The implication of this study is troubling for publishers of the majority of biomedical journals. Publishers have repeatedly expressed a serious concern about their ability to sustain the peer review process if their content is made freely available so soon after publication. Journals that have a high proportion of NIH-funded research would be particularly vulnerable. For many journals, mandating compliance with the policy could mean the end of their ability to finance quality peer review and journal management.

Another issue I wish to call to your attention is the mission creep of the NIH program beyond the initial goal of Public Access. NIH's intent goes well beyond simply posting articles for Public Access. NIH is adding extensive electronic tagging and often reentering text which requires further author review of processed manuscripts. These are among the very tasks that publishers have already performed and paid for. NIH is spending scarce taxpayer resources on duplicate processing in order to compete with the private sector with enhanced versions of articles already published. As every publisher knows and NIH is beginning to find out, these steps are costly. They are also unnecessary to accomplish a reasonable Public Access Policy. I would note that NIH has rejected publisher offers to provide public access to NIH funded research on their publishing platforms.

We believe that there are better, less risky ways to further enhance participation in the NIH Public Access policy than mandating deposits. Publishers can join forces with NIH to engage authors in working more closely with NIH after manuscripts have been deposited. Making the policy mandatory would not address these process issues or eliminate the need for the author or publisher to undertake a second review. A mandated policy would adversely impact broader publisher involvement. Voluntary publisher engagement will be much more effective at making the policy a success than NIH attempting to micromanage 65,000 individual scientific researchers and their publishing output.

The research community has repeatedly asked your Subcommittee for more NIH funding. To implement and enforce a mandatory public access policy would significantly increase NIH's administrative and technology costs, thereby diverting much-needed funding from the groundbreaking research that NIH funds and from which our country benefits.

Considering the immense stakes, it is prudent to work through the outstanding issues under the voluntary policy in a way that optimizes participation by all players to ensure the greatest benefit to the public's interest in scientific progress. I respectfully request that the Subcommittee not include language in the Labor, Health and Human Services and Education Appropriations bill or the accompanying report directing NIH to change its Public Access Policy. I look forward to the opportunity to discuss the Policy with you further as your Subcommittee moves through this year's appropriations process.

Sincerely,



Patricia Schroeder  
President & CEO, Association of American Publishers, Inc.