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ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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July 10, 2007

The Honorable David Obey
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

The Honorable James T. Walsh, Ranking
Member
Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies
Washington, D.C. 20515

Dear Chairman Obey and Ranking Member Walsh:

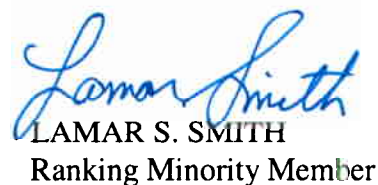
We understand that the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies is considering the possible insertion of a provision in the FY 2008 appropriations resolution that would require authors of scientific articles to submit them for public dissemination on the NIH website. This is a matter within the Rule X jurisdiction of the Committee on the Judiciary, with significant implications for intellectual property rights and the incentives for creative and scientific endeavors that are fostered by those rights. The Committee on the Judiciary, Subcommittee on Courts, the Internet, and Intellectual Property is planning to hold a hearing to further explore the complex issues involved, and we would appreciate your forbearing from including any such provision in your resolution at this time.

The attached letter from the Chairman and Ranking Minority Member of the Subcommittee on Courts, the Internet, and Intellectual Property explains the matter in greater detail, and provides assurance that the Subcommittee will hold a hearing if you agree to remove this provision.

Thank you for your consideration.

Sincerely,


JOHN CONYERS, JR.
Chairman


LAMAR S. SMITH
Ranking Minority Member

Enclosure

cc: The Honorable Jerry Lewis
The Honorable Howard L. Berman
The Honorable Howard Coble
The Honorable John Sullivan, Parliamentarian

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Tenth Congress

June 13, 2007

The Honorable David Obey
Chairman
Subcommittee on Labor, Health and Human Services, Education, and Related Agencies
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515

The Honorable James T. Walsh
Ranking Member
Subcommittee on Labor, Health and Human Services, Education, and Related Agencies
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Obey and Ranking Member Walsh:

We write as Chairman and Ranking Member of the Courts, the Internet and Intellectual Property Subcommittee of the House Committee on the Judiciary in regards to a provision we understand is included in the Labor HHS Appropriations bill scheduled for markup on Thursday, June 14, 2007.

Specifically, we understand language to direct the National Institutes of Health (NIH) to change its public access policy for journal articles, which are published and peer-reviewed by private-sector scientific, technical and medical publishers, from a voluntary program to a mandatory requirement is included in the Labor-HHS Appropriations bill. This change could have the effect of severely restricting the scope of protection for a critical class of copyrighted works.

We understand and share the goal of widely disseminating the results of publicly-funded research. However, there are concerns the provision may, through blanket application, ultimately undermine incentives for publishers to make substantial investments in conducting peer review of research prior to publication and compromise the integrity of the copyright protections, which have served as catalysts for the investments and infrastructure needed to sustain a rigorous pre-publication peer review process.

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Such major changes in policy warrant thorough consideration by Congress. We understand neither the current NIH voluntary program nor the specific copyright implications of this proposed policy have been the subject of a hearing in either body. In light of the importance and complexity of the intellectual property and peer review issues impacted by this proposal, we respectfully urge your Committee to take no action to alter the current NIH policy until the Judiciary Committee has examined its implications for the copyright protections of these important works. Should you be willing to remove this mandate, we pledge to have a hearing on ways to more effectively achieve your goal without creating a disincentive to investing in peer review.

In the interim, we would support efforts to encourage NIH and others to work with publishers to raise awareness and participation in the voluntary manuscript deposit program. A successful expansion of this program would enhance public access to NIH-funded research without the side effects of compromising incentives for publishers to engage in robust peer review of manuscripts or curtailing the rights of copyright owners to distribute or license their works.

Sincerely,



Howard L. Berman
Chairman
Subcommittee on Courts, the Internet, and
Intellectual Property



Howard Coble
Ranking Member
Subcommittee on Courts, the Internet, and
Intellectual Property