

November 8, 2013

Larry Bucshon

Chairman

Committee on Science, Space and Technology – Subcommittee on Research and Technology

U.S. House of Representatives

2318 Rayburn House Office Building

Washington, DC 20515

The Honorable Larry Bucshon,

On behalf of 11 national and regional library, publishing, and advocacy organizations, we are writing to express our strong opposition to the language contained in Title III, Section 302, of the proposed “Frontiers in Innovation, Research, Science, and Technology Act of 2013” or the FIRST Act. This proposed language would severely undercut the ability of federal science agencies to implement meaningful policies to ensure that all members of the public receive timely, equitable, online access to articles and data reporting on the results of research that their tax dollars directly support.

Our government funds research with the expectation that new ideas and discoveries from this research will accelerate scientific discovery and innovation, promote entrepreneurship, stimulate the economy, and improve the lives and welfare of all Americans. Around the world, there is widespread agreement that policies ensuring fast public access to, and full use of, articles reporting on the results of this research are critical to optimizing these outcomes.

The language in Section 302 of the FIRST Act would turn back the clock on the substantial progress already made towards meaningful public access by the National Institutes of Health (NIH), undermine the widely-supported White House Office of Science and Technology Policy Directive on Public Access to the Results of Federally Funded Research, and put the U.S. at a severe disadvantage with the rest of the world in terms of policies that promote innovation and competitiveness.

The experience of NIH has shown that such an agency-branded repository can provide significant value to the public and to the federal government. PubMed Central, the NIH’s publicly-accessible archive of its funded research articles, currently contains more than 2.8 million full text articles, and receives more than 1 million individual unique users each day, signaling the public’s strong support of such a solution. Such branding of agency repositories allows taxpayers to see the significant value of agency investments.

The proposed language in Section 302 of the FIRST Act calls for access to articles reporting on federally funded research to be restricted for up to *three years* after initial publication – allowing a 24 month embargo period, along with the possibility of an additional one year extension. This is completely out of line with the policies in wide use around the world – by public funders ranging from the European Commission to the

Research Councils in the United Kingdom, as well as private funders ranging from the Wellcome Trust to the HHMI – which all call for maximum embargo periods of no more than six to 12 months.

The language in Section 302 allows for extension of restrictive embargo periods, yet it makes no provision for shortening embargo periods. We do not support provisions that fail to take into account the potential harm to stakeholders that can accrue through unnecessarily long delays in being allowed access to the results of publicly funded research.

To further exacerbate the delay in providing timely, effective access to the public, the language in Section 302 calls for a needless, additional 18 month delay for agencies to develop policies in consultation with the National Science and Technology Council. This is work that has already been completed – it was required by the White House Directive issued on February 22, 2013, and represents a complete duplication of federal agency efforts, and a waste of federal resources.

Additionally, the FIRST Act condones an approach where simply providing a link to an article on a publisher’s web site would be considered an acceptable compliance mechanism. We strongly believe the federal agencies must be guaranteed full text copies of their funded research articles to not only archive, but also to provide to the public for full use.

While we support the concept of ensuring that articles and data that result from public funds are effectively linked, we are troubled that the language in Section 302 conflates data and article access and preservation. It does not make it clear what data must be made accessible or where such data would reside. Requiring data to reside in the same repository as articles would severely limit the options for federal agencies, impose unnecessary cost burdens on the agencies, and most likely significantly delay effective implementation of public access policies.

Public support for science is enhanced, and the return on taxpayer investment in science is more fully realized, when the public can directly see the benefits from our investment in scientific research. The language in Section 302 of the FIRST Act is designed to protect the business interests of a small subset of the publishing industry, subsidized by taxpayer dollars, rather than ensure that the interests of all stakeholders in the research process are adequately balanced. At a time when our focus should be on providing mechanisms to encourage innovation across a wide variety of commercial sectors, in order to fuel the development of new ideas, products and services, and ultimately jobs, the FIRST Act does exactly the opposite -- imposing restrictions on access to research results that benefit one small sector of an industry, rather than encourage their use by the widest possible audience.

To that end, we support expansion of the successful NIH policy through mechanisms described in the White House Directive on Public Access to Publicly Funded Research and the proposed “Fair Access to Science and Technology Research Act” (H.R. 708 and S. 350). Specifically, we support provisions that provide for:

- Immediate deposit of articles to federally owned or approved repositories in

formats and under terms that enable their productive reuse, including computational analysis by state-of-the-art technologies;

- A maximum embargo period of six months; or a 12 month maximum embargo period with explicit provision that the embargo can be **reduced** *if* stakeholders provided credible data showing that the delay causes harm or reduces benefits to the public;
- An explicit statement of the terms of use applicable to articles to ensure that their full productive reuse is enabled – including text mining, data mining, and full computational analysis by state-of-the-art technologies.

We believe that these provisions will enable the public to realize the full potential of public access to accelerate scientific research, to generate innovation, and spur economic growth and job creation.

We appreciate the growing support for advancing the issue of ensuring access to publicly funded research. We will continue to work for the passage of FASTR, and look forward to having the opportunity to work with you to modify the language currently contained in the FIRST Act to position it to support effective public access to the results of publicly funded research.

Sincerely,

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Association of College and Research Libraries

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American Library Association

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Association of Research Libraries

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Contact: Prudence Adler (202-296-2296)

Creative Commons

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Contact: Tim Vollmer (650-294-4732)

Coalition of Open Access Policy Institutions

<http://sparc.arl.org/COAPI>

Contact: Andrew Wesolek (864-656-0137)

Electronic Frontier Foundation

www.eff.org

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Greater Western Library Alliance

www.gwla.org

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PeerJ

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SPARC (Scholarly Publishing & Academic Resources Coalition)

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