

March 24, 2014

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The Honorable Lamar Smith and Eddie Bernice Johnson,

The America COMPETES Act was originally created to “invest in innovation through research and development, and to improve the competitiveness of the United States.” To that end, our government funds research with the expectation that new ideas and discoveries will accelerate scientific discovery and innovation, promote entrepreneurship, stimulate the economy, and improve the lives and welfare of all Americans. On behalf of 16 national and regional library, publishing, funding and advocacy organizations, we are writing to express our strong opposition to the language contained in Section 303 of the ‘Frontiers in Innovation, Research, Science, and Technology Act of 2014’ (FIRST Act), which we believe runs counter to the intent of the goals set forth in the original bill.

Public support for science is enhanced, and the return on taxpayer investment is more fully realized, when the public can directly see the benefits from our investment in scientific research. This pending legislation would severely undercut the ability of federal science agencies to implement policies that would ensure that the public receives timely, equitable access to, and full use of, articles and data reporting on the results of research that their tax dollars directly support.

The language in Section 303 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 an initial 24 month embargo period, along with a possible additional one year extension. This time frame is completely out of line with the policies in wide use around the world. 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 Howard Hughes Medical Institute, all call for maximum embargo periods of no more than six to 12 months.

The language in Section 303 allows for the extension of restrictive embargo periods, yet it makes no provision for shortening embargo periods to help accelerate progress of scientific discovery, and speed the delivery of potential benefits to the public. 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 303 calls for a needless, additional 18-month delay while agencies develop a plan for creating a policy in consultation with the National Science and Technology Council. This work is duplicative of efforts that have already been completed in accordance with the White House Office of Science and Technology Policy Directive on Public Access to the Results of Federally Funded Research issued on February 22, 2013, and is 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.

Substantial progress has already been made towards meaningful public access in the U.S. A prime example is the policy implemented by the National Institutes of Health (NIH). This policy was recently expanded by the FY14 Omnibus Appropriations Act to include all agencies in the Departments of Labor, Education and Health and Human Services with over \$100 million in extramural research funding. 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 3 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. Furthermore, such branding of agency repositories allows taxpayers to see the significant value of agency investments.

Additionally, the language in Section 303 would impose unnecessary costs on federal agency public access programs by conflating access and preservation policies as applied to articles and data. The legislation does not make clear enough what data must be made accessible, nor does it adequately articulate the location of where such data would reside, or its terms of use. Ensuring effective access to and reuse of data - and the connection of that data to research articles - is critical to leveraging the full value of U.S. taxpayer's investment in scientific research.

The language in Section 303 of the FIRST Act is designed to protect the business interests of a small subset of the publishing industry, 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.

To that end, we support expansion of the successful NIH policy through mechanisms described in the White House Directive and the 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, with the expectation that this maximum will be reduced over time to zero; and
- 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 your attention to this matter, and urge you to modify Section 303 of the FIRST Act to support increased public access to the results of publicly funded research.

Sincerely,

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