

## HR 801 Issue Summary

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### The Broader Context of Research Publishing

*Raw Effort.* Who holds the legal rights to reproduce and distribute the results of research? Under the traditional system, journal publishers hold the legal rights to reproduce and distribute the research results published in their journals. However, even a casual comparison of the raw effort and intellectual contribution invested by the researchers and the publishers show that the publisher's claim is inappropriate at best and immoral at worst.

In terms of effort of contribution, the researcher is responsible to:

- Generate original, significant ideas for new research,
- Compete for and win grant funding for the research,
- Identify and hire highly qualified students and other professionals to conduct the research,
- Rigorously and responsibly carry out the program of research, and
- Write up the results of the research in a communicative manner.

In terms of effort of contribution, the publisher is responsible to:

- Receive the written results of the research,
- Coordinate volunteers who review the merits of the research results (these volunteers are other researchers who review at no cost to the publisher),
- Make a publication decision about the research results, and
- Publish the results.

**The researcher is responsible for the overwhelming majority of the effort that goes into conceiving, conducting, and reporting the research.** The publisher is responsible for only the tiny portion of effort that goes into publication. The publisher makes almost no intellectual contribution to the papers they publish (note again that the publisher does not review the written results for intellectual rigor and quality, the publisher coordinates the review efforts of other researchers who volunteer to perform the reviews). At the end of the lengthy research process in which the publisher makes only coordinating and editorial contributions, the publisher demands exclusive legal rights to control the reproduction and distribution of the results of the researcher's work. Publishers traditionally charge the original researcher for copies of his/her own work. The scholarly publishing status quo is completely out of balance. The researcher should control the reproduction and distribution rights to his/her own work.

*Financial Investment.* We can conduct a similar analysis from a financial perspective. The average annual dollar value of a National Institutes of Health (NIH) grant is

between \$210,769 (Gass, 2005) and \$239,826 (Druss & Marcus, 2005). The scholarly published output of the average NIH grant is approximately 1.6 research articles per year (Druss & Marcus, 2005). This puts the average financial cost of generating a research article somewhere between \$105,385 per article and \$119,913 per article. By contrast, the average cost for a traditional, high quality journal to publish an article, including administrative and other costs, is \$2750 (Wellcome Trust, 2003).

**In terms of average financial investment per article, the publisher is responsible for 2.2% and 2.5% of the overall investment.** Again, it is clear that the status quo is completely out of balance, and that the researcher should control the reproduction and distribution rights to his/her own work.

*Faculty Response to the Imbalance.* Faculty senates and similar organizations at a growing number of institutions have recognized this magnitude of the imbalance and acted to adopt formal policies claiming nonexclusive reproduction and distribution rights for their own research work. Some of the faculty groups that have formally adopted these policies include:

- Harvard's Faculty of Arts and Sciences,
- Harvard Law School,
- Stanford's School of Education,
- Harvard's Kennedy School of Government, and
- MIT (the entire university).

While faculty are a group that is famously unable to agree on anything, the **votes for these policies pass unanimously** because of the universal recognition of the insanity of the current situation.

#### HR 801 and the NIH Public Access Policy Specifically

The National Institutes of Health public access policy, sometimes referred to as the "NIH Mandate" is based on a very simple principle: (1) taxpayers fund the NIH, (2) the NIH funds research, therefore (3) the output of the research belongs to the public. We paid for it, and it belongs to us. The same principle is true for all government funded research, whether that funding comes from the National Science Foundation (NSF), Department of Education, Department of Energy, Department of Labor, or any other taxpayer-funded entity. However, only NIH currently requires its grant recipients to publish their research in publicly accessible outlets.

The purpose of HR 801 is to simultaneously (1) reverse the NIH mandate and (2) make it illegal for other governmental agencies to establish similar public-access-to-research-results policies. There is no conceivable sense in which HR 801 benefits the taxpaying public. **The sole beneficiary of HR 801 is the private publishing**

**industry, and that benefit comes at the expense of the taxpaying public** whose interests our elected officials have an obligation to represent.

*HR 801 and the Economy.* In the traditional arrangement, taxpayers pay over and over again for the same research. First, we pay to fund the research through the NIH, NSF, or other governmental entity. Second, publishers claim exclusive rights to distribute the results of that research. Finally, state-funded universities and libraries pay to subscribe to the journal so that students, faculty, and patrons can have access to the results of the research. As a citizen of the state of Utah, which has ten public institutions of higher education, **every Utah taxpayer pays at least 11 times for the same piece of federally-funded research** – once to fund the research itself, and ten additional times so that each university can have access to the results of the research.

In the current economic downturn our country is experiencing, and given the current status of federal and state budgets, everyone is looking for ways to decrease waste in government spending. The existing NIH mandate guarantees that the taxpaying public only pays once for research. As good stewards of taxpayer resources, elected representatives should be encouraging the adoption of similar mandates by other governmental research funding agencies. The passage of HR 801 would be an enormous step backward, creating a situation in which (1) taxpayers pay multiple times for the same piece of research and (2) funding agencies are prohibited from insuring public access to results of research.

Given the level of effort and financial investment in research by individual researchers and the taxpaying public, **there is absolutely no sense in which HR 801 is a "Fair Copyright in Research Works Act."**

## References

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