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VIA FACSIMILE

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn Building
Washington, DC 20515

RE: Fair Copyright in Research Works Act, H.R. 801

Dear Chairman Conyers:

On behalf of NetCoalition¹, I am writing to express concern with the Fair Copyright in Research Works Act, H.R. 801. H.R. 801 would reverse the National Institutes of Health's public access policy, and prevent other federal agencies from adopting similar policies. This would harm Internet companies and retard innovation and economic recovery.

The public access policy adopted by Congress requires NIH-funded researchers to deposit copies of articles resulting from NIH funded research into the online archive of the National Library of Medicine, PubMed Central, no later than twelve months after publication in a peer-reviewed journal.

It is the mission of NetCoalition companies to help their users locate and access the information they need. The NIH public access policy furthers this mission by placing valuable publicly funded medical research in an online location where search engines operated by NetCoalition members can index and link to it. The public access policy thus simultaneously assists the broad dissemination of important healthcare information and promotes the growth of the Internet.

¹ NetCoalition's members include Amazon.com, Ask.com, Bloomberg, eBay, Google, Yahoo!, and Wikipedia, as well as state and local ISPs.

These benefits would be multiplied if other federal agencies adopted similar policies. For example, the broad availability of publicly funded research concerning energy generation, storage and conservation would accelerate the discovery, development, and adoption of solutions to the global warming and energy dependence crises. Unfortunately, H.R. 801 reverses the NIH policy, and prevents other federal agencies from adopting similar policies.

It appears that H.R. 801 is premised on the notion that the public access policy is inconsistent with copyright law because it requires the involuntary transfer of copyright. This argument threatens to disrupt the fundamental relationship between authors and the entities that pay them for the creation of content. A wide variety of entities, including Internet companies, book and magazine publishers, and marketing departments, pay authors in advance to create works such as articles, novels, and photographs. In exchange for the advance, the author agrees to transfer the copyright to the entity, or to grant the entity a license to use the work.

This system is beneficial to both the author and the entity. The entity receives the content it needs, and the author receives payment while she is creating the content. Because creation of high quality content can take months or even years, this system is particularly important to individual artists or small production companies.

Once the author receives the advance, she must live up to her end of the bargain. She must create the content, and she must transfer the rights she agreed to transfer. The NIH public access policy is no different from this system of advances. In exchange for a large grant, an investigator agrees to give NIH a nonexclusive license to post the peer-reviewed manuscript created with that grant on PubMedCentral a year after publication. Treating the NIH policy as an unlawful involuntary transfer would call into question the legitimacy of the system of advances relied upon by authors and businesses. Undermining the advance system would have dire consequences. Entities would stop making advances to authors because they would not be able to enforce the terms of the agreements. Authors would suffer since they would receive no payment until after they created the content.

In short, the argument that the NIH public access policy constitutes an involuntary transfer of copyright calls into question the legality of many copyright agreements entered into every day by thousands of authors and businesses. We urge you to reject this dangerous contention.

Finally, it bears emphasis that the value of the NIH-funded articles lies not in their expression, but in facts and ideas they contain. As the Supreme Court unanimously ruled in *Feist Publications, Inc., v. Rural Telephone Service Co., Inc.*, 499 U.S. 340 (1991), the Constitution forbids copyright protection of these facts and ideas so as to encourage their broad dissemination and use. By ensuring public access to these facts and ideas a year after their publication, the NIH policy promotes copyright's fundamental objectives.

We are happy to discuss these matters in greater detail with you or your staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Markham C. Erickson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Markham C. Erickson
Executive Director