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May 28, 2008

Elias A. Zerhouni, MD, Director
National Institutes of Health
9000 Rockville Pike
Bethesda, MD 20892

Dear Dr. Zerhouni:

The American Heart Association appreciates the opportunity to comment on the mandatory Open Access Policy. Articles in AHA journals that are original research articles are freely accessible to all users after six months and all AHA journal content is freely available after one year. We also appreciate the NIH pledge to work constructively with publishers to fully address copyright concerns and make the policy work. However, we would like to echo the comments made via the DC Principles Coalition, our concerns are the same already put forward, and broadly include, as stated already by the DC Principles Coalition (1):

Copyright. Blanket requirements in grant contracts would effectively deny authors and publishers the benefits of their copyrights—the most fundamental of which is the ability to decide how and in what form their works may be distributed—in conflict with fundamental copyright principles and without compensation for the value added by publishers and editors. In effect, the application of the NIH policy is an imposition of an extraordinary and unprecedented exception or burden to the copyright works—and thus diminishes their value for any journal business model that relies on exclusivity to drive traffic, advertising and subscriptions. The NIH policy essentially mandates a business model that can accommodate this “burdened” copyright, a model that must be based on up-front submission or publication charges, rather than the current models of the vast majority of journal publishers. This does not seem to us to be consistent with the legislative mandate to implement the NIH policy consistent with copyright. Other alternatives to the NIH policy of mandated centralized posting on PMC can and should be considered, alternatives that would still be consistent with the legislative mandate of public access within 12 months of publication. For example, given our entire journals are free online after a year, shouldn't NIH support the full value of copyright and their use in business models including those which involve driving traffic to a publisher site, and permit linking to publishers' web sites, rather than requiring deposit at PubMed Central ?

Quality Control and Compliance with Publisher Policies. Many manuscripts currently appear on PubMed Central (PMC) in violation of publisher policies. How will NIH ensure under the new public access policy that individuals post the correct manuscript version to PMC to be publicly available at the correct time, consistent with publisher agreements? For publishers submitting directly, how will NIH ensure that articles will not be accepted from individuals or entities other than the publisher?

**“Building healthier lives,
free of cardiovascular
diseases and stroke.”**

Please remember the American Heart Association in your will.



Scope. The revised mandatory public access policy now calls for submission of review articles. This is of concern to publishers especially since NIH previously encouraged us to add review articles to our journals as a way to protect our subscription base under the voluntary policy. Editors commission the review articles based on the scientific expertise of scientists; they are not based on specific research projects supported by NIH research grants. Furthermore, requiring that review articles be included will seriously undermine the many journals that publish review articles only.

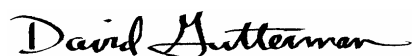
Repurposing. Changes made by NIH or authors that will result in variations from the original manuscript are of considerable concern for a number of reasons, not least of which is the potential introduction of errors. NIH needs to ensure that no changes, such as substantive editorial changes, are made to the manuscripts other than obvious errors in NIH production process or perhaps improved graphics for related illustrations. Links to other databases also raise concerns about changing an article's principal context and focus. NIH needs to identify precisely how manuscripts will be linked to databases and other resources to ensure the editorial integrity of the underlying work.

Patient education. Although we understand that the principal motivation of the legislative mandate to be patient information and education, the NIH policy implementation does not address this need directly (focusing instead on building researcher infrastructure). Publishers have been working actively with voluntary health organizations (VHOs), as you are aware, and we believe more should be done in this area by NIH, hopefully working with publishers and VHOs. We actively participate, for example, in the PatientINFORM effort.

Piracy. Third parties could commercially exploit content that appears on PMC without the consent of the publisher. What safeguards will NIH put in place to prevent copyrighted material available on PMC from being altered, pirated, made into derivative works, redisplayed, republished, resold or used for any other commercial purpose?

As stated at the beginning of this letter, these are some of the key issues that deserve continued discussion. We thank the NIH for the opportunity to comment.

Sincerely,



David Gutterman, MD, FAHA
Chairman, Scientific Publishing Committee



Daniel W. Jones, MD, FAHA
President

(1) Letter from Martin Frank, PhD, and Allan Adler to Elias A. Zerhouni, MD, April 16, 2008.