

# The NIH public-access policy: making it stronger

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# Background on the NIH policy

- NIH = National Institutes of Health
- Congress asks NIH to develop a policy
  - July 2004
  - *Require OA*
  - Six month embargo max
- NIH releases draft for public comment
  - September 2005
  - *Requests OA*
  - Six month embargo

# NIH background

- NIH releases final version
  - February 2005
  - Requests OA
  - 12 month embargo
  - Author consent rather than regulatory license
    - In practice, author consent = publisher consent
  - Took effect May 2, 2005

# NIH background

- NIH is large
  - Largest funder of medical research in the world
  - Largest funder of non-classified research in the US government
  - Budget for fiscal 2006 = \$28.4 billion
    - Greater than the GDP of 142 nations

# NIH background

- If full compliance with NIH request
  - 65,000 articles/year
  - 5,500 articles/month
  - 250 articles/workday
- Actual compliance rate
  - In first 8 months under policy = 1,636 articles (out of 43,000 eligible)
  - Rate = 3.8%

# NIH background

- Cost of processing submissions
  - At current rate of submission, \$1 million/yr
  - At 100% compliance rate, \$3.5 million/yr
  - *Compare*: NIH spends \$30 million/yr on page charges and other subsidies to subscription-based journals.

# NIH background

- Publisher policies on NIH-funded authors
  - All permit deposit
  - All but one (ADA) demand 6-12 month embargoes
  - Many demand lengthy disclaimers
  - Many offer or demand to make the deposit
  - Some demand that authors pay fees or wait

# Three overriding problems

- Request rather than requirement
  - lowers compliance rate
- Permissible embargo too long and vague
  - lengthens delay before public access
- Publisher consent rather than regulatory license
  - accommodates publisher resistance



# Moves to strengthen the policy

1. NIH Public Access Working Group
2. NLM Board of Regents
3. CURES Act
4. [Cornyn bill]

# Public Access Working Group

- Recommended strengthening the policy
  - November 15, 2005
  - Shorten embargo to six months max (some exceptions) (8/11)
  - Convert request to requirement (9/11)
  - Encourage deposit of published edition (10/11)

# NLM Board of Regents

- Recommended strengthening the policy
  - February 8, 2006
  - Endorsed all three PAWG recommendations
  - Low compliance rate cannot be explained by
    - Difficulty of process
    - Lack of knowledge among grantees
    - Technical problems
  - Time for NIH to plan transition to mandate
    - April 10 meeting, coming up

# Publishers want to improve compliance rate

- March 2, 2006
- Publishing Research Consortium
  - Published study of NIH grantees and their understanding of the policy
  - Calls for increased outreach and education
  - Wants to increase voluntary compliance to head off mandate
  - Members of PRC include PA, ALPSP, STM, AAUP, AAP/PSP

# CURES Act

- American Center for CURES Act (S.2104)
  - Introduced December 14, 2005, Joe Lieberman (D-CT)
  - Requires OA
  - Six month embargo max
  - Deposit at time of acceptance
  - Govt-purpose license
  - Non-compliance could be ground to deny future funding

# CURES Act

- Scope of the bill
  - Applies to journal articles (author manuscripts)
  - Applies to some data
    - NIH-funded clinical drug trials taking place in US
  - Applies to all research funded by Dept of Health and Human Services
    - Includes NIH, and adds several other agencies
    - Covers more than half the non-classified research funded by the US federal government

# Cornyn bill

- I wish I could say more...

# Bad news

- PAWG and BOR recommendations merely advisory
- CURES and Cornyn unlikely to pass this year



# Good news

- New funder policies learn from NIH mistakes
  - NIH → RCUK, Wellcome, CURES, Cornyn, DFG
- Bipartisan support in the US
- Congress has already approved a strong policy
- Other countries acting
  - Germany, UK, Ukraine
- and ready to act
  - I expect progress in Australia, Canada, China, Finland, France, Holland, India, Italy, Japan, New Zealand, Pakistan, Scotland, South Africa, Spain, Sweden, Switzerland.

# Lessons

- Mere requests and encouragement don't work.
  - The low compliance rate at NIH is matched by universities with similar policies.
- There must be a mandate.
  - With or without sanctions
    - The university mandates work well without sanctions.
    - Mandate plus education and assistance seem to suffice.
  - The vast majority of researchers would willingly comply with a mandate from their funder or employer.
    - Swan and Brown, May 2005

# Lessons

- If the funder lets authors decide the length of the embargo, then most publishers will take the decision from authors.
- If there is flexibility about the length of the embargo, most publishers will press for the maximum.

# Lessons

- Funders who get off on the wrong foot may take years to correct themselves.
  - Especially public funders, vulnerable to lobbying.

# Lessons

- Don't let publisher dissent override author consent.
  - Don't force authors to choose between their funder and their publisher.
  - Funders are upstream from publishers.
  - Copyright transfer agreements are subject to prior funding contracts.

# Lessons

- Expect intense lobbying by publishers.
  - Answering it is laborious, repetitive, time-consuming
  - But necessary
  - Lobbying to make the affirmative argument is equally important
    - Legislators are remarkably sympathetic

# Thank you

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