



## Member Societies

The American Physiological Society  
American Society for Biochemistry and Molecular Biology  
American Society for Pharmacology and Experimental Therapeutics  
American Society for Investigative Pathology  
American Society for Nutritional Sciences  
The American Association of Immunologists  
Biophysical Society  
American Association of Anatomists  
The Protein Society  
The American Society for Bone and Mineral Research  
American Society for Clinical Investigation  
The Endocrine Society  
The American Society of Human Genetics  
Society for Developmental Biology

## Associate Members

American Peptide Society  
Association of Biomolecular Resource Facilities  
Society for the Study of Reproduction  
Teratology Society  
Radiation Research Society  
Society for Gynecologic Investigation  
Environmental Mutagen Society  
International Society for Computational Biology

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# Federation of American Societies for Experimental Biology

----*Quality Life Through Research*----

August 19, 2004

The Honorable Arlen Specter  
United States Senate  
Washington, DC 20510

The Honorable Tom Harkin  
United States Senate  
Washington, DC 20510

Dear Senators Specter and Harkin:

I am writing to request your help in a matter of utmost concern to the scientific community. Report language accompanying the FY 2005 appropriations bill marked up by the House Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies directs the National Institutes of Health (NIH) to implement a specific policy for electronic dissemination of NIH-funded research. The Federation of American Societies for Experimental Biology (FASEB), representing 22 societies and over 65,000 scientists, strongly objects to this proposal, and we have been contacted by more than a dozen other organizations representing patients, scientists, and publishers with similar concerns.

The report language requires NIH to promote electronic dissemination of articles derived from NIH-funded research by requiring authors to deposit with the National Library of Medicine (NLM) a "complete electronic copy of any manuscript reporting work supported by NIH grants or contracts upon acceptance of the manuscript for publication." These manuscripts would be made accessible to the public within six months of publication. However, if any of the publication costs such as page charges or supplemental fees for color figures were paid with NIH funds, the manuscript would be open to the public immediately.

FASEB and its member societies publish 59 scientific journals. We support increased public access to published biomedical information and continue to work toward new and innovative solutions to make this possible. Journals operated by scientific societies have pioneered many of the most successful publishing innovations. As a result, more scientific papers are available now to more people than at any time in human history.

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The House proposal represents one view of how best to promote broader electronic access to science. We object vehemently that this controversial provision was simply inserted in the House report. I urge you to intervene because this proposal would have drastic and deleterious effects on a significant portion of existing scientific journals including many that are published by nonprofit professional societies who are partners in NIH's mission to improve human health.

Asking the NLM to house an electronic repository raises a host of issues. Of obvious concern to us as not-for-profit publishers is the fact that the parameters set forth in the House report language would undermine our ability to generate revenue from subscriptions. This could make it impossible for many independent scholarly journals to survive. If these journals were to fold, would the NLM then step forward to take on the *de facto* role of publisher for certain portions of our nation's biomedical research?

Substituting a "big government" program for a decentralized and highly competitive system of publication would entail risks for science and costs for the government. The net result would be to divert funds from our research efforts to replace an activity currently being conducted in the private sector. Why not instead expand the functionality of PubMed as a powerful search engine that points to the content already residing at publishers' sites?

Furthermore, as we all know, government programs are sometimes reduced or terminated. What will happen if there is a funding shortfall, or if the government decides that it will no longer publish research on topics it considers controversial or contrary to administration policy? The House language creates a situation in which there are serious risks for the free and open communication of science.

I wish to point out that the House language is based upon the premise that since taxpayers paid for all or part of the research, they should have free access to the results. However, we do not apply that premise with respect to other government-funded activities. Indeed, this presumption undermines intellectual property law.

In closing, I am concerned that such a serious issue has not seen proper Congressional debate or been adequately reviewed by the relevant committees of jurisdiction. House legislation (HR 2613) that would remove copyright privileges from publishers who publish works funded from federal grants has been pending before the House Judiciary Committee since June 2003 but has never been heard in committee. The House Appropriations Committee report language would have impact on intellectual property rights and needs to be examined by the relevant committee before requesting a proposal of this nature to NIH. Including prescriptive report language in an appropriations bill in an attempt to change policy circumvents the committee process and does not allow for adequate and appropriate consideration of such a complex issue. Moreover, NIH is already in the final stages of completing a draft policy on open access to scientific

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publishing (Washington Fax, *Policy In Perspective: National Institutes of Health open access policy planning predates House directive. 08/06/2004*). Once this draft is finalized, all interested parties will have the opportunity to submit comments. At the very least, Congressional action should await release of the NIH report.

On behalf of FASEB, I ask that the report language not be included in the final bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul W. Kincade". The signature is written in a cursive style with a large, looping initial "P".

Paul W. Kincade, Ph.D.