



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health  
Bethesda, Maryland 20892

Martin Frank, Ph.D.  
Executive Director  
American Physiological Society  
9650 Rockville Pike  
Bethesda, MD 20814-3991

Dear Dr Frank:

Thank for your February 6, 2007 email to Dr. Zerhouni. I have been asked to respond to you directly.

We are sorry to hear that you are disappointed with our position, and appreciate your desire to gain experience with Pubmed Central (PMC) before making a full commitment. To this aim, Dr. Ruiz Bravo, in her December 22, 2006 letter, reiterated Dr. Zerhouni's proposal, initially presented in person on November 13, 2006, that societies consider joining the PMC NIH Portfolio agreement temporarily to see how it works for each them. She also explained the importance of using a network of archives to provide better and increased access to research publications for American taxpayers and serve the health needs of our country.

To date, two members of the DC Principles Coalition, the American Society of Hematology, and the American Thoracic Society, has agreed to partner with NIH via the PMC NIH Portfolio agreement. We hope they will provide you with the experience you are looking for.

We greatly appreciate the energy you have devoted to Public Access. We do hope you and other Coalition members will continue follow this issue, and consider the PMC NIH Portfolio agreement.

Sincerely,

A handwritten signature in cursive script, appearing to read "Neil Thakur", is positioned above the typed name.

Neil Thakur, PhD  
Special Assistant to the NIH Deputy Director for  
Extramural Research



*Integrating  
the Life Sciences  
from Molecule to  
Organism*

**PRESIDENT**

Dale J. Benos  
University of Alabama,  
Birmingham

**PAST PRESIDENT**

Douglas C. Eaton  
Emory University School of  
Medicine

**PRESIDENT-ELECT**

Hannah V. Carey  
University of Wisconsin  
School of Veterinary Medicine

**COUNCILLORS**

Susan M. Barman  
Michigan State University

James W. Hicks  
University of California, Irvine

Irving G. Joshua  
University of Louisville

Carole M. Liedtke  
Case Western Reserve  
University

Thomas E. Lohmeier  
University of Mississippi  
Medical Center

Gary C. Sieck  
Mayo Clinic College of  
Medicine

Dee U. Silverthorn  
University of Texas, Austin

J. Michael Wyss  
University of Alabama,  
Birmingham

Irving H. Zucker  
University of Nebraska  
College of Medicine

**EXECUTIVE DIRECTOR**

Martin Frank

**PHONE**

301-634-7164

**FAX**

301-634-7241

**E-MAIL**

info@the-aps.org

**WEB**

www.the-aps.org

# The American Physiological Society

9650 Rockville Pike, Bethesda, Maryland 20814-3991 (USA)

February 6, 2007

Dear Dr. Zerhouni:

It has been nearly three months since we met on November 13, 2006 to discuss a solution to the low compliance associated with author upload of their NIH funded peer-reviewed author manuscripts in PubMed Central. Unfortunately, I still have not received a formal response from you to our offer to assist by encouraging members of the DC Principles Coalition, a coalition of 75 not-for-profit publishers, to upload the approximately 15,000 NIH funded articles or 25% of the NIH funded total published in their journals. Our offer would provide NIH with the final published article, uploaded into PubMed Central, for display within 12 months of publication. Acceptance of our offer would have helped NIH to fulfill the Congressional directive to provide the American public with access to the research funded by their tax dollars. As you know, until NIH introduced the PMCi requirement in July 2006, we were well on our way to implementing the NIH Portfolio Agreement broadly. Instead, during our meeting it was implied that these international agreements were more important than providing access to the American public. You stated that you had international agreements that required you to deposit all PMC content into international repositories in the United Kingdom, South Africa, Italy, Japan, and apparently any other Nation with which NIH strikes an agreement.

While greatly disappointed in the stance taken by NIH, the American Physiological Society remains committed to trying working with NIH and I remain committed to recommending to the members of the DC Principles Coalition that they work with NIH to fulfill its mandate should the demands for PMCi participation be waived or postponed. As small publishers, concerned about the impact of PMC on our journal utilization, we cannot consider having our content cloned for deposit into PMCi repositories until we have experience with the impact of PMC on content utilization from our journals. Once we are comfortable with that relationship, we might even agree to future deposit in PMCi.

I do hope that you will reconsider our offer so we can work together to fulfill the Congressional mandate on terms that are acceptable to both NIH and not-for-profit publishers.

Sincerely yours,

Martin Frank, Ph.D.

Executive Director, American Physiological Society

Coordinator, Washington DC Principles Coalition for Free Access to Science.

## Meeting with Dr. Elias Zerhouni

On Monday, November 13<sup>th</sup>, I met with Dr. Elias Zerhouni for approximately 60 minutes to discuss the implementation of the PubMed Central (NIH Portfolio) agreement. I was accompanied by Alice Ra'anan, APS, and Howard Garrison, FASEB. Dr. Zerhouni was accompanied by Neil Thakur, Norka Ruiz Bravo, and Betsy Humphries. The meeting was arranged as a follow-up to my letter to Dr. Zerhouni expressing my frustration that the pilot project for publishers to deposit NIH-funded content on behalf of their authors had gotten off track because of the requirement that the content also be mirrored to the new PubMed Central International (PMCI) repositories. My goal for the meeting was to see if we could restore a spirit of cooperation for the mutual benefit of both NIH and society publishers.

I reiterated that NFP publishers were interested in working with NIH to fulfill the mandate of public access. However, it is also important for NIH to recognize that publishers are legitimate rights holders and as such are authorized to decide where their content resides. Making PMCI mandatory ignores the publishers' intellectual property rights. I provided Dr. Zerhouni with a proposed revision to the agreement that would allow publishers in the NIH Portfolio program to opt-out of PMCI participation. (A copy of the language is at the end of this message.)

During the meeting, Dr. Zerhouni said he could not see why PMCI was a problem since the users of international repositories could just as easily use the content at PMC, which would still divert use away from journals web sites. I responded that one could equally argue that there was no need for PMC since users worldwide can already access the articles from the journal web site. Zerhouni countered that articles in PMC are linked through Medline/PubMed as well as to the various NCBI databases, meaning that users could do a search and find the articles, etc, with relative ease. I reminded him that articles in journals were also linked to Medline/PubMed with full-text searching available through Google and the HW Portal. I also indicated that publishers working with HW have been creating a rich, dynamic environment with inter-journal linking, links to various databases, including those at NCBI, in order to create a more useful research environment for the entirety of their content, not just NIH-funded articles. Zerhouni seemed not to be aware of the efforts of HW to mirror the links available through PMC. However, he did finally seem to accept the premise that PMC was not the only game in town.

Dr. Zerhouni returned several times to his vision of building PMC into a dynamic environment to enhance search and speed research. I noted that as a scientist that I supported his vision, but as a publisher, I was concerned about its impact on the journals that NIH relies upon to do peer review, etc. Although some societies including the APS can afford to work with platforms such as HighWire that can provide a similar dynamic interface, many society publishers cannot. Their online journals offer a static version of the printed page because they cannot afford to do more. Dr. Zerhouni's vision represents a real threat to these small society journals since it will divert use and make it increasingly difficult for them to remain viable. Dr. Zerhouni did appear to recognize this as a threat and appreciated our concern.

Dr. Zerhouni asked us to consider signing the NIH Portfolio agreement on a temporary basis. In other words, we would deposit our content in PMC and allow it to be shared with PMCI with the understanding that if it resulted in significant subscription losses, we could terminate the

agreement. He even went so far as to suggest that we could withdraw our content, but Betsy Humphries indicated that would not be acceptable. I tried to suggest instead that NIH make populating PMC its priority since PMCI did not exist when NIH's Public Access Plan was first formulated.

It was an intense but friendly discussion. I am now waiting to hear whether NIH will accept my proposal to revise the language of the NIH Portfolio agreement to permit publishers to opt out of PMCI (See below). Hopefully, we will have an answer shortly.

#### PROPOSED LANGUAGE:

7. NLM may provide a PMCI archive all of the types of files that are used to provide access to the Participant's Content in PMC unless the Participant indicates in writing that it does not want its journal content transferred to one or more PMCI archives. This includes full-text XML files used to create online views of articles, and PDF, graphics, and supplemental data files that are available in their native form to PMC users. In order to ensure that each PMCI archive follows any applicable delay on free access to the full text of the Participant's Content, as defined in paragraph NLM will distribute the Participant's files from PMC to a PMCI archive only when the full text of such Content is eligible to be made available free in PMC. NLM will be responsible for the actual transmission of Participant's files from PMC to the PMCI archive. The Participant will not be charged by NLM for any cost related to the distribution of any files from PMC to a PMCI archive or any cost related to the creation and operation of a PMCI archive.

I offered the language above in place of this language, which the NIH had previously rejected:

WHEREAS, NLM ~~wishes~~ recognizes that the Participant's participation in PMC is voluntary and that participation in other PMC archives should also be voluntary, NLM agrees not to provide electronic copies of the Participant's journal content (the "Content") from the PMC archive to other archives selected by NLM (the "PMC International archives" or "PMCI archives") without receiving written permission from the Participant even though the Participant recognizes that the transfer of "Content" could in order to increase access to the Content and better ensure its preservation; and



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health  
Bethesda, Maryland 20892

OCT 20 2006

Martin Frank, Ph.D.  
Executive Director  
American Physiological Society  
9650 Rockville Pike  
Bethesda, MD 20814-3991

Dear Dr. Frank:

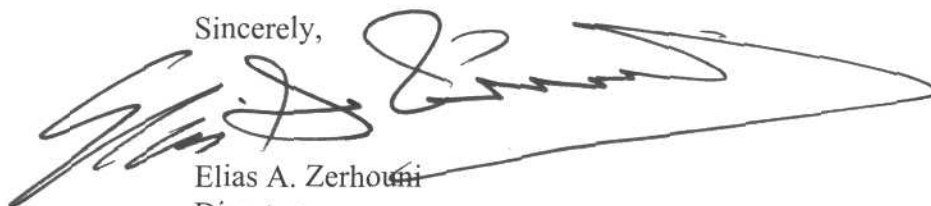
Thank you for your letter and your efforts to organize non-profit publishers to support the Public Access Policy.

As you know, the Policy calls for the deposit of manuscripts in PubMed Central, a pre-existing digital archive established by the National Library of Medicine (NLM). PubMed Central necessarily evolves in response to changes in technology and as NLM develops more efficient procedures, new inter-organizational arrangements, and revisions to publisher participation agreements that support its statutory obligation to preserve the biomedical literature. Changes in basic PubMed Central operations are independent of the NIH Public Access Policy, which is addressed to NIH-funded scientists.

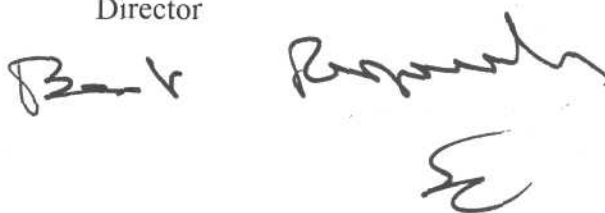
In this context, it is unfortunate that you have decided against supporting the PMC (NIH Portfolio) agreement. I believe that the NIH Portfolio agreement is a good compromise for publishers and the NIH, meets the goals of the Public Access Policy, and ultimately serves the best interests of the scientists we both support. I hope that others will follow the example of the American Society of Hematology and sign the agreement.

I want to thank you again for your leadership in this area and for the progress we have achieved together.

Sincerely,



Elias A. Zerhouni  
Director





*Integrating  
the Life Sciences  
from Molecule to  
Organism*

**PRESIDENT**

Dale J. Benos  
University of Alabama,  
Birmingham

**PAST PRESIDENT**

Douglas C. Eaton  
Emory University School of  
Medicine

**PRESIDENT-ELECT**

Hannah V. Carey  
University of Wisconsin  
School of Veterinary Medicine

**COUNCILLORS**

Susan M. Barman  
Michigan State University

James W. Hicks  
University of California, Irvine

Irving G. Joshua  
University of Louisville

Carole M. Liedtke  
Case Western Reserve  
University

Thomas E. Lohmeier  
University of Mississippi  
Medical Center

Gary C. Sieck  
Mayo Clinic College of  
Medicine

Dee U. Silverthorn  
University of Texas, Austin

J. Michael Wyss  
University of Alabama,  
Birmingham

Irving H. Zucker  
University of Nebraska  
College of Medicine

**EXECUTIVE DIRECTOR**

Martin Frank

**PHONE**

301-634-7164

**FAX**

301-634-7241

**E-MAIL**

info@the-aps.org

**WEB**

www.the-aps.org

# The American Physiological Society

9650 Rockville Pike, Bethesda, Maryland 20814-3991 (USA)

August 28, 2006

Dr. Elias Zerhouni  
Director, NIH  
Building 1 – Shannon Bldg., Room 126  
1 Center Drive  
Bethesda, MD 20892

Dear Dr. Zerhouni:

Over the last several years we have had a number of conversations about the NIH Public Access Plan and its implications for not-for-profit publishers. I also remembered your comment to me during the FASEB Board meeting in June at which time you urged me to move forward with our efforts to adapt the Linking Proposal to something that both NIH and not-for-profit publishers could be proud of. Unfortunately, last week's conference call to review our discussions with Neil Thakur proved disappointing. The conference call was disappointing because it appears that NIH is expanding the scope of the NIH Public Access Plan, which according to its name is to provide the taxpayer with access to the research that they fund.

When we met with you in February, we offered to provide NIH with the final published article funded by NIH for placement in a "dark archive" to facilitate portfolio management and mining for linkages to NIH associated databases. You thanked us for the offer of assistance and graciously agreed to respect our journal embargo periods. However, you did ask that once the content was made freely available on the journal site, you wanted to be able to display it from PubMed Central. Several of us were concerned about your request because institutional usage is what determines whether a library will subscribe to the journal and if some of that usage is diverted from the journal, publishers risk losing subscriptions. In response to your request, we asked to be provided with institutional usage data so we could track the level of usage from PMC versus the journal. While you indicated that this information could probably be provided, we ultimately learned that NIH attorneys would not allow the release of institutional usage data for privacy reasons.

The alternative was to find ways to direct traffic back to the journal, and that could be accomplished by asking NLM not to create a pdf of the uploaded article but to provide a link back to the journal so the reader could download a pdf of the article from the journal site. NLM agreed to this proposal and also agreed to no longer link from article reference lists to PMC articles but to instead link to PubMed abstracts which would then be linked to the journal article and to the article on PMC if it was also available there.

1/ Aug 28, 2006

It appeared that we were making good progress as the summer proceeded and it was anticipated that the Pilot would launch this fall and its successful implementation would result in a recommendation to the signers of the Linking Proposal that they consider participating in an effort to help NIH fulfill its mission. Had we been able to finalize the agreement, a supportive recommendation to the 57 signers of the Linking Proposal could have resulted in the annual deposit of approximately 14,000 NIH funded articles.

Unfortunately, as we were approaching agreement, NLM created a new agreement for us to sign which included a new requirement, a requirement to allow PMC to transfer our journal content to any and all PMCI archives. This was of great concern because it appeared to be beyond the scope of the NIH Public Access Plan. We had originally been told by Dr. Lipman that an open archive, not a "dark archive", was needed to ensure that the content was not corrupted. That is why we agreed to allow NIH to display our articles from PMC after the journal's embargo period had expired. Now, we were being asked to help populate PMCI repositories even though today's search technology allows individuals worldwide to access content from PMC or our journals without corruption of files.

The decision to require participation in PMCI was also at odds with what publishers currently depositing their full journal content in PMC were being asked. They were being provided with a supplemental agreement that would allow them to opt-in or opt-out of participation in PMCI. The not-for-profit publishers were not being provided with that option, which was of concern to the group negotiating on behalf of the 57 signers of the Linking Proposal. We attempted to modify the proposal that had been provided to us by Neil Thakur to recognize that our participation in the PMC (NIH Portfolio) proposal was voluntary and that a decision to participate in PMCI was also voluntary. Two clauses in the agreement were modified to reflect this as shown below:

WHEREAS, Participant is voluntarily furnishing electronically readable versions of full-text journal articles and other journal content, at no expense to NLM, in order to incorporate this information into an NIH digital archive, managed by NLM and known as PubMed Central ("PMC"); and

WHEREAS, NLM recognizes that the Participant's participation in PMC is voluntary and that participation in other PMC archives should also be voluntary, NLM agrees not to provide electronic copies of the Participant's journal content (the "Content") from the PMC archive to other archives selected by NLM (the "PMC International archives" or "PMCI archives") without receiving written permission from the Participant

Unfortunately, these changes were rejected according to Neil Thakur, even though it is possible that some of the signers of the Linking Proposal would

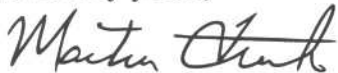
2 / August 28, 2006

have agreed to the provision of their content to PMCI archives. The important thing for the publishers was that the decision was theirs and not a requirement.

I am therefore writing to inform you that because of the unwillingness of NIH/NLM to allow PMCI participation to be voluntary, the APS will not be including its journals in the pilot. No doubt, some publishers might still decide to participate in PMC even with PMCI being a requirement. However, there remains sufficient concern among publishers who were interested about the inappropriate and unnecessary distribution of content to repositories that could divert utilization from our journals that it will be impossible for us to recommend full participation by not-for-profit publishers. Should you be able to influence the decision process and reverse the decision to make this a nonnegotiable item, we will gladly recommend full participation in PMC for all 57 signers of the Linking Proposal as well as the 75 members of the DC Principles Coalition, some of whom did not sign the Linking Proposal at the time it was circulated. Their participation would increase the potential NIH article pool to over 15,000 articles.

I remain committed to trying to find a solution that would benefit the NIH, the American Physiological Society, and other not-for-profit publishers. I hope that we can meet in the near future to determine whether there is a solution to our problem.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Martin Frank".

Martin Frank, Ph.D.  
Executive Director, American Physiological Society  
Coordinator, DC Principles Coalition

3 / August 28, 2006