



Washington DC PRINCIPLES for
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Dr. Francis S. Collins, Ph.D., M.D.
Director, National Institutes of Health
National Institutes of Health, Building 1
One Center Drive, Room 126, MSC 0148
Bethesda, MD 20892-0160

Re: NIH Images, a database of images in biomedical literature

Dear Dr. Collins:

The Professional & Scholarly Publishing division of the Association of American Publishers and members of the DC Principles Coalition, have previously commented to the HHS and NIH on the implementation of various policies affecting the publishers of scholarly and academic journals, including the Public Access policy (see <http://publicaccess.nih.gov/>). We have accepted as a general principle that NIH would, in its implementation of the Public Access Policy, abide by the Congressional requirement under the Consolidated Appropriations Act of 2008 to implement the policy "in a manner consistent with copyright law" that would respect copyright law and limit its relevant activities to the relatively narrow grant of rights authorized by Congress (i.e. that the material to be posted and made publicly accessible would be a "manuscript" displayed on PubMed Central (PMC). The notion of preparing "derivative works" was specifically excluded from the "small strand of the worldwide rights" retained for the implementation of the Policy in the NIH FAQ on how the Public Access Policy affects copyright holders (see FAQ 5 at <http://publicaccess.nih.gov/FAQ.htm#819>).

The recent notice from the NIH of 28 October 2010 (see <http://www.nih.gov/news/health/oct2010/nlm-28.htm>) announces a number of applications involving images from journal articles deposited in PMC, including the creation of a new NCBI database of images, and the enhancement of images and image searching on PubMed as well as on PMC. To the extent that NIH has not negotiated with and obtained permission from the journal publishers who own the copyright in the respective articles, including images and other illustrations, it is our view that such use is a derivative work and an unauthorized expansion and extension of the limited rights granted NIH, and as such would violate copyright law. We

have consulted with a number of our members and no publisher reports having been contacted by NIH for permission to create such derivative uses.

PSP members are actively engaged in enriching the content that they publish, including by the use of images and extended image information including metadata to permit image searching. The NIH implementation directly impacts such projects and unfairly competes with academic and scholarly journal publishers. Such concerns were precisely the reasons why the Congress provided a narrow grant of rights and noted the requirement to comply with copyright law.

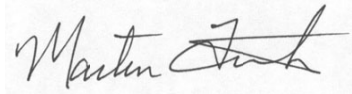
PSP members are also actively engaged with providing permission processes that are easy to request and negotiate. Publishers are also happy to engage in meaningful discussion with NIH to understand what NIH's intentions are with respect to the images database, and consider the research needs and the competitive aspects.

We would appreciate confirmation that HHS and NIH will reverse this policy as it applies to article manuscripts submitted under the Public Access policy and to any content submitted by a journal where the derivative use of the images is not expressly permitted in an agreement.

Sincerely,



Allan Adler



Martin Frank, Ph.D.

cc: Dr. Donald A.B. Lindberg, M.D., Ph.D.

Dr. David Lipman

Chairman Patrick Leahy and Ranking Minority Member Chuck Grassley, Senate Judiciary Committee

Chairman Lamar Smith and Ranking Minority Member John Conyers, House Judiciary Committee

Chairman Darrell Issa and Ranking Minority Member Elijah Cummings, House Oversight and Government Reform Committee