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December 22, 2008

John Podesta and Valerie Jarrett
Co-Chairs
Obama-Biden Transition Project
451 6th Street, NW
Washington, DC 20270

Re: Copyright Protection for Scientific, Technical and Medical Journal Publishing

Dear Mr. Podesta and Ms. Jarrett:

We are a diverse group of not-for-profit scholarly and scientific societies and commercial publishers, many of whom are members of the Professional and Scholarly Publishing Division of the Association of American Publishers and the DC Principles Coalition for Free Access to Science. Collectively, we represent hundreds of thousands of publishing employees and professional members across our nation and publish millions of peer-reviewed scholarly and scientific journal articles in a multitude of disciplines. We have read with great interest the Obama Administration's science platform and agree with many of the priorities identified as critical to advancing U.S. interests in science and innovation. We look forward to partnering with the new Administration to ensure that these goals are met.

In seeking to work with the new Administration, we would like to make you aware of our continuing concerns regarding the Public Access Policy of the National Institutes of Health, which effectively allows the NIH to unfairly compete directly with private-sector journal publishers in the distribution of peer-reviewed scientific journal articles that are authored by NIH-funded researchers. This policy, which was made mandatory last year through a rider on appropriations legislation, requires NIH-funded researchers to provide the NIH with their final, peer-reviewed manuscripts for such articles upon their acceptance for publication in such journals, and allows the NIH to recast the manuscripts into a different format for the NIH's PubMed Central database and then make them freely available online through the

PMC website just twelve months after publication of the final articles in the journals. The NIH mandate thus severely diminishes both the market and copyright protection for these copyrighted works to which not-for-profit and commercial publishers have made significant value-added contributions, and makes the NIH a free, alternative source of access to these materials in competition with the journal publishers' subscription or other distribution models.

Not-for-profit and commercial publishers together invest hundreds of millions of dollars every year in the peer review, editing, publishing, disseminating, and archiving of scientific and scholarly journal articles. Peer review, which ensures the quality and integrity of research articles, is at the heart of this process and the scientific research communication enterprise. Copyright protections for these journal articles provide the essential incentives for publishers to continue to invest in peer review and other quality assurance publishing processes that help ensure the reliability and widespread dissemination of the public record of scientific research. In addition to the negative implications for domestic copyright policy, this incursion upon intellectual property rights in the United States will make it difficult for the Federal Government to continue its active promotion of effective copyright protection and enforcement policies with our international trading partners and will adversely impact a \$7-8 billion industry that contributes significantly to U.S. exports, jobs and economic growth.

Representative John Conyers (D-MI), Chairman of the House Judiciary Committee, has raised concerns with this new NIH mandate and the negative implications it will have on journals as a critical class of copyrighted works. Further, Chairman Conyers has expressed concerns that the NIH mandate could actually *diminish* the amount of information about scientific and medical research available to the public. Just three months ago, in response to these concerns, Chairman Conyers introduced the bipartisan *Fair Copyright in Research Works Act* (H.R. 6845) and scheduled a House subcommittee hearing to begin to explore the copyright implications of the new mandatory NIH policy. This legislation, which we expect to be reintroduced in the new Congress, would ensure that federal agencies do not utilize research funding agreements to diminish copyright protections for journal articles to which private-sector publishers have made significant value-added contributions through peer review and other publishing quality assurance practices. We firmly support this legislation and look forward to its re-introduction.

We certainly do not oppose reasonable efforts by the Federal Government to make the results of publicly-funded research as widely available as possible in the United States, and we strongly support the statutory directive to ensure broad access to the results of publicly-funded research as enacted by Congress two years ago in the America Competes Act. Under that law, the National Science Foundation will provide meaningful public access to the results of NSF-funded research in a way that does not diminish copyright protection for private-sector works explaining such results. However, we firmly believe that government mandates requiring the free dissemination of private-sector journal articles by federal agencies will undermine the existing system of scientific and scholarly publishing, which helps to ensure the validity and integrity of published articles that explain the results of publicly-funded research.

We respectfully request your support and assistance in protecting the quality and integrity of scientific research by preserving the incentives for investment in peer-reviewed journal publishing. Ensuring that the Federal government does not diminish copyright protections for journal articles to which the private-sector has made significant value-added contributions is key to this effort, complemented by an America COMPETES approach to public access. We would welcome the opportunity to work with the Obama Administration in this important endeavor that we believe will help advanced the interests of science and protect the economic viability of an important American industry.

Sincerely,

American Academy of Pediatrics
American Association for Cancer Research
American Association for Dental Research
American Association of Immunologists
American Chemical Society
American College of Clinical Pharmacology
American Dairy Science Association
American Heart Association
American Institute of Aeronautics and Astronautics
American Institute of Physics
American Physiological Association
American Psychological Association
American Registry of Professional Animal Scientists
American Society of Animal Science
American Society for Plant Biology
American Sociological Association
Association for Research in Vision and Ophthalmology
Association of Learned and Professional Society Publishers
Botanical Society of America
Elsevier, Inc.
The Endocrine Society
European Association for Cardiothoracic Surgery
The European Federation of Biochemical Societies
John Wiley & Sons
Human Factors and Ergonomics Society
International Association for Dental Research
The Ornithological Council
Poultry Science Association
The Physiological Society
Protein Science
The Protein Society
Sage Publications, Inc.
Society for the Study of Reproduction
Thieme Publishers, Inc.
Wolters Kluwer Health

Attachment: Statement of Support for Society Publishers—a petition signed by approximately 400 scientists who do not support mandates requiring when journal access must be provided.

Cc:

Neera Tanden

Julius Genachowski

Valerie Jarrett

Tom Wheeler

Bill Corr

Dora Hughes

Mark Childress