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March 17, 2008

The Honorable Elias Zerhouni
Director
The National Institutes of Health
Bethesda, MD 20892

**Subject: Comment from the American Institute of Physics (AIP) on the
Implementation of the NIH Public Access Policy**

Dear Dr. Zerhouni:

The American Institute of Physics (AIP) is concerned about the implementation of the NIH Public Access Policy. AIP, an umbrella organization for ten physics-related societies representing 130,000 scientists, engineers and educators is a nonprofit publisher of science journals.

AIP has been fully compliant¹ with the NIH's public access on a voluntary basis. This was the case before the 2007 legislated mandate and will continue to be so as outlined in the January 2008 Revised NIH Policy. Nevertheless, we are greatly apprehensive about the NIH's implementation of the policy and its likely harm to the integrity and viability of peer-reviewed scientific publishing.

While AIP and many publishers embrace the laudable legislative goal of public access to the published results of NIH-funded research, we take issue with NIH's *implementation* of the policy. The current and proposed NIH implementation will compromise the integrity and usefulness of the scientific record by presenting researchers and the public with multiple versions of the same article. Furthermore, NIH's implementation often involves reprocessing published results, altering form and sometimes substance, resulting in the creation of online publications that compete with journals of scholarly publishers. AIP is also concerned that NIH, in the spirit of global public access, will distribute copies to Web sites hosted outside the United States and license re-use of the submitted materials to third parties.

In addition to our deep concern about the negative impact on the integrity and viability of peer-reviewed scientific publishing due to NIH's reprocessing and repurposing of articles posted for public access, there are significant economic and intellectual property considerations. The value of creating a peer-reviewed article for NIH to post entails significant costs. Who will pay for the value added to a research article after an author submits his/her manuscript to a publisher? Up to the present time, the answer to this question has been *the scientific publisher*. Scientific publishers (both for-profit and nonprofit) invest considerable resources in the peer review, editorial, production, distribution and archival processes that underpin quality journals. In exchange for this added value, publishers are compensated under a variety of standard and innovative business models. The models typically involve a) the reader paying (through institutional or individual subscriptions) or b) the author paying (by open access fees or page charges) or c) third-party payments (for example advertising or subsidies) or d) a combination of all of these.

¹ AIP explicitly allows authors to deposit their articles to PubMed Central with full authorization to make the articles publicly available after a twelve-month waiting period. Authors may also choose to publish their articles before the twelve-month period has expired by paying AIP's "Author Select" open access fee. AIP also offers to make the deposit to NIH on behalf of the author, thereby ensuring that "the record of science" is not distorted by having multiple versions of the final, published article.

Member Societies:

American Physical Society
Optical Society of America
Acoustical Society of America
The Society of Rheology
American Association of
Physics Teachers
American Crystallographic
Association
American Astronomical Society
American Association of
Physicists in Medicine
AVS The Science and
Technology Society
American Geophysical Union

Other Member Organizations:

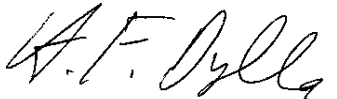
Sigma Pi Sigma Physics
Honor Society
Society of Physics Students
Corporate Associates

Somehow the economic loss from the NIH taking of the publisher-paid, peer-reviewed articles, and, if used, the desirable NIH posting of a copy of the version of record article, needs to be compensated. NIH should make it very clear that author payment of publication fees for NIH posted articles are not only an allowable grant expense, but that funds are specifically provided for such publication. NIH should budget for such publication fees.

AIP, as well as Congress, are concerned about how NIH will respect the vital intellectual property rights inherent in the copyright publishers obtain from authors. While NIH has been very careful to-date to put the onus of respecting copyright onto the author, a likely result may be to undermine the ability of authors to transfer the needed rights to a publisher. But AIP is willing to provide the NIH (and authors) simple and streamlined methods of depositing the final, copyrighted, peer-reviewed and as-published version of articles. In return, AIP asks that NIH provide proper links to the published version of record and facilitate the payment of author fees.

For NIH to effectively implement the policy, NIH should address both the needs of the public for access and the continuing need for a vibrant scientific publishing enterprise. NIH should engage with scientific publishers and follow the full rulemaking process that the federal government has put in place for implementing new rules that have significant impact on the private sector. Without careful review, comment, negotiation, and implementation of NIH's public access policy, some well-established and respected scientific journals might be so strained by government competition that publishers will be forced to cease or restrict their publication. Presumably, this is not NIH's purpose.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. F. Dylla', with a horizontal line extending from the end of the signature.

H. Frederick Dylla