

Open Access Takes on the Government

Helen Vozenilek

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Professor Ellyssa Kroski

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The open access movement in the United States is slowly expanding into the government arena. (While at least eight other countries are working to open up government-funded research results, this paper will focus on work within the United States.) Bills to ensure that taxpayer-funded research is made freely and openly available to the public have recently been introduced into the 111th Congress. This paper will look specifically at those bills which cover eleven governmental agencies and the Congressional Research Service and view them in light of the successful Public Access Policy at The National Institute of Health (NIH). This paper will also consider some of those players in the foreground and background of the movement to make the electronic products of government-funded research open to all.

HISTORY

One could argue that the *raison d'être* of the open access movement is to make the world a better place. To this end, opening up access to scientific studies and other scholarly research to everyone regardless of nationhood or password authorization is fundamental. Beginning with the Internet Age in the early 1990's, the open access movement spread like wildfire to include online journals which now number nearly 4400. (<http://www.doaj.org>) This helped remove scholarly research from the limited audience of subscription-based journals, to journals where anyone could find scholarly, peer-reviewed literature. These journals cover all subjects ranging from

Agriculture and Food Sciences, to Mathematics and Statistics, on to Technology and Engineering. The number of journals and articles available increases daily.

Journal articles written by researchers at government agencies may or may not make it into these open access journals depending on what relationship that agency or author has with publishers. According to open access advocates and their Congressional supporters, publication in open access journals should be mandatory. In their view, the U.S. Government spends a lot of valuable time and taxpayers' money on scientific and medical research and everyone should be able to share the bounties of this research money.

The Federal Research Public Access Act (FRPAA), Senate Bill 1373, introduced on June 28, 2009 by Senator Joseph Lieberman of Connecticut and Senator John Cornyn of Texas, seeks to open up to the public the fruits of federally-funded research in eleven governmental agencies.

Section 4 of the Bill states:

In General- Not later than 1 year after the date of enactment of this Act, each Federal agency with extramural research expenditures of over \$100,000,000 shall develop a Federal research public access policy that is consistent with and advances purposes of the Federal agency.

The Bill applies to these 11 government agencies: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Transportation, Environmental Protection Agency, National Aeronautics and Space Administration and National Science Foundation. The FRPAA, applying only to non-

classified research, would require that each researcher submit a final manuscript to the agency no later than six months after publication in a peer-reviewed journal.

S. 1373 was referred to the Senate Committee on Homeland Security and Governmental Affairs where it now awaits action.

A nearly identical bill, S. 2695 was introduced in 2006 again by Senators Lieberman, Cornyn and Jeff Sessions of Alabama. That bill died in the 109th Congress after it was referred to the Committee on the Judiciary where it appears to never even have gotten a hearing. To those who are worried that S. 1373 will suffer a similar fate of neglect, Corey Williams, Associate Director of the Office of Government Relations of the American Library Association insists that the introduction of the bill in itself is a victory. Williams, who works as a lobbyist for the ALA on issues of copyright and open access as well as other things, has a more long-term view of the legislative process than others might. “It’s a process. You never know what will grab hold and move quickly.” Williams is optimistic saying that the new Obama administration is based on openness and transparency and that can only bode well for the open access movement.

Williams says that the next step for S. 1373 is getting a co-sponsor within the Committee to take on the bill and to bring it to hearing. To that end, the ALA has targeted members in the sixteen states where those committee members reside. (See appendix for listing of Committee Members)

Contacted in Senator Lieberman’s Washington office, staff member Adam Sedgewick could not predict whether or not the bill would go anywhere. He described the Senate and Mr. Lieberman as “having a lot of things on their plates.” He reiterated Senator Lieberman’s interest

in and commitment to open access issues. He also said that while open access was important, cyber security was taking up much of the Committee's time.

At the end of April, 2009, Mr. Lieberman had introduced Senate Resolution 118 which would allow Senators to officially provide public Internet access to all non-confidential Congressional Research Service (CRS) products. An accompanying House Resolution, HR 3762, The Congressional Research Service Electronic Accessibility Act of 2009, was introduced six months later on October 8, 2009 by U.S. Representative Frank Kratovil of Maryland.

The CRS

With a staff of nearly 700 and an annual budget of over \$100 million, the Congressional Research Service provides timely and in-depth legislative analysis for members of Congress. In existence for nearly one century, this arm of the Library of Congress produces volumes and volumes of information on topical matters. Though not protected by copyright, the papers of the CRS are not readily available to the public. In the words of one cosponsor of HR 3762, Congressperson Leonard Lance of New Jersey: "Our bill will allow for greater transparency and ensure that non-partisan, public policy reports that are prepared with taxpayer funds for members of Congress be available to educators, students, members of the news media and every citizen across the country."

The Bill was referred to the House Committee on House Administration. As with the manuscripts covered by S. 1373, the CRS Bill would only apply to non-classified materials.

One major organization supporting opening up publications of the Congressional Research Service is the Center for Democracy and Technology (CDT). The Center for Democracy and Technology is a fifteen-year old organization working to keep the Internet open, innovative, and free. While supportive of other legislative efforts such as S. 1373, they have been especially vocal around the Congressional Research Service. The organization operates the Open CRS website, <http://openocrs.com/>, which is a direct route for citizens to get CRS reports already in the public domain.

Ari Schwartz, Deputy Director of CDT, explains the difference between the government's repository and his. "We are not the official source- we don't get the reports immediately. We think we have everything but we don't know if it is the official report or not. We are the next best thing but we want to be put out of business; we are duplicating the government services."

Legislation to open up the CRS has been introduced every year for the last ten years and has pretty much gone nowhere. As far as opposition goes, Schwartz says that Congressional members are opposed to it because the director of the CRS is so adamantly opposed. CRS director since 1994, Daniel P. Mulhollan, stated many of those reasons in a memo posted to CRS staff on April 18, 2007. In response to suggestions that taxpayers should have access to the publications, he stated: "...the true value of CRS is as a resource devoted solely to the needs of Congress. In that way, the taxpayers realize the utmost value for their "investment"." Among the reasons he named for limiting the access to CRS publications are that the CRS would be called upon to serve the interests of the public rather than the interests of Congress as is their mandate, and that opening access to the CRS publications would alter the relationship between a

congressional member and his/her constituents as now a citizen must go through their representative to get an official report.

THE NATIONAL INSTITUTE OF HEALTH

Open access advocates, disappointed by the lack of advancement on these bills, may take solace in the legislative history of open access at the National Institute of Health (NIH). The NIH is one of the world's largest medical research centers. It is operated by the U.S. Department of Health and Human Services and had a total budget of 40.9 billion in FY 2009. After four years of study and refinement, enactment and reenactment, the NIH instituted such a Public Access Policy in April, 2008 directing that articles arising from federally funded research monies must be made freely available at Pub Med Central within 12 months of publication. The already existing Medline published by the National Library of Medicine, part of the NIH, had been already offering freely accessed bibliographic citations and article abstracts since 1997. But this piece of legislation ensures that the entire peer-reviewed final manuscript be electronically submitted within a year of release.

Getting to this point was not easy and many open access advocates are not happy that the original embargo period was extended from six months to one year. NIH director, Elias A. Zerhouni, M.D. spoke out forcefully for the Policy on February 5, 2008 at the 145th Meeting of the National Cancer Advisory Board. He concluded his presentation on the many advances in the science and medical fields made possible by public access saying: "It is my opinion that Public Access to an interconnected world of scientific information databases provides one of our most powerful tools to accelerate discovery and combat disease. To take this access away now would

be a historic mistake.” Because the NIH cannot comment on ongoing legislative efforts, they are unable to lend their comments to the bills involving the CRS and the 11 other governmental agencies covered by Senate Bill 1373.

Complicating matters, on February 3, 2009, Representative John Conyers of Michigan introduced H.R. 801, “The Fair Copyright in Research Works Act,” which would effectively undo the NIH Public Policy Act and prevent other governmental agencies from creating similar open access databases. Conyers introduced the same bill a year earlier to the 110th Congress where it just sat. ALA’s Williams thinks that this bill also will go nowhere. When asked why a generally progressive Representative like Conyers would introduce such a restrictive piece of legislation, Williams suggested that it may be more a procedural pique than a real heartfelt resolution. But whether a fit of pique or a real threat, many open access advocates are up in arms.

An organization known as MAPLIGHT, Money And Politics: Illuminating the Connection (http://maplight.org/HR801_2009_Analysis) published some figures showing that Conyers and co-sponsors may be motivated by donations from book, newspapers and magazine publishers. This idea of bought votes has gained a fair amount of currency in the blogosphere, but it seems questionable that the average donation of \$5000 given to the Resolution’s five sponsoring members, would really carry so much weight. Open access advocates will especially be monitoring this Resolution as it could not only reverse the NIH Policy but prevent those eleven agencies outlined in S. 1373 from taking part in a similar opening up of their research.

SOME OF THE PLAYERS

While the legislative stage moves with fits and starts, the activist stage is working steadily to open up government research to taxpayers. The Alliance for Taxpayer Access, despite sounding like a conservative front group wanting to eliminate government spending, is a loose-knit coalition of groups working to gain access to research paid for with tax dollars. The group's focus is on government agencies as well as on institutions of higher learning who receive a large portion of their research money from taxpayers rather than through tuition dollars. The ATA is spearheaded by SPARC, the Scholarly Publishing & Academic Resources Coalition.

Made up of an international coalition of academic and reference libraries, SPARC brings the considerable weight of librarians involved in the work of scholarship to the open access debate. SPARC has been busy on the Hill writing legislators and testifying before Congressional hearings on the need for bills such as S. 1373 and the Congressional Research Services resolutions.

On the first go around of the Federal Research Public Access Act in 2006, SPARC and its activist arm ATA spearheaded gathering letters of support from universities, national student organizations and Nobel Prize-Winners. The 2009 Bill has added more supporters one of the more vocal being the Oberlin Group, a consortium of 80 libraries of various liberal arts colleges. These liberal arts colleges, primarily centered on the East Coast and Great Lakes Region, bring a fresh and activist voice to the debate.

On the other side of the debate are found such groups as the Washington DC Principles to Free Access to Science who oppose all attempts to open up government agencies to mandatory open access publishing. Calling themselves the non-for profit medical and scientific societies, they say that the 6-month embargo period will hurt the process of peer- review. They also say that government funds do not pay for all of the research and that it is supported in part by their scientific societies. In effect, they argue that the federal legislation is unneeded and that they are already helping make the research open and available to the public. The group, formed in 2004, sees themselves as the “middle-ground” between open access advocates and advocates of the current closed access journal publishing system.

In looking at DC Principles March 2004 statement of principles, the differences between their idea of “free access” and the open access sought by SPARC and others is made clear.

3. As not-for-profit publishers, we have introduced and will continue to support the following forms of free access:

- Selected important articles of interest are free online from the time of publication;
- The full text of our journals is freely available to everyone worldwide either immediately or within months of publication, depending on each publisher’s business and publishing requirements;
- The content of our journals is available free to scientists working in many low-income nations;
- Articles are made available free online through reference linking between these journals;
- Our content is available for indexing by major search engines so that readers worldwide can easily locate information.

(<http://www.dcprinciples.org/statement.pdf>)

Another group working hand-in hand with DC Principles in their opposition to Lieberman's bill is the Association of American Publishers (AAP). The AAP is the principal trade association of the U.S. book publishing industry. Both groups come out strongly in favor of Conyers' Copyright Act.

CONCLUSION

While governmental support, and to a certain extent, control, of open access publications can pose difficulties, the benefits are huge. Government organizations will not disappear overnight; they will not fail because of the lack of an operating budget; they will not plea regularly with their supporters for sustenance funds; they will not operate without a clear, some may say obsessive, focus on legalese. They, however, can be subject to the changing tides of political favor. The Administration in power can be against governmental transparency and do everything possible to slow down the movement to make governmental research and studies open to the public. But it is important to remember that although those tides may change, those steering the boats, both with oars and with outboard motors, are ultimately at the helm. It is the people within these organizations, the researchers writing the articles, the assistants collating and sending them out, that are ultimately the 'deciders.' And for anyone who is serious about scientific and medical research and gathering the largest amount of thinkers to address a problem or issue, open access is the clear choice.

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