I Hear the Train A Comin’ — The Research Works Act

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In my very first column on these pages, way back in the fall of 2005, I wrote about the NIH’s nascent efforts to capture publicly funded research in an openly accessible archive. In those early days, the U.S. National Institutes of Health recommended, but did not require, that all NIH-funded investigators submit an electronic version of their peer-reviewed final manuscripts to PubMed Central. NIH asked that authors make these manuscripts available immediately after the final date of journal publication. At that time, I wrote, “This policy set off loud debate within the academy, with most of the volume provided by one of two ‘true believer’ camps. One camp argues that the NIH is stepping on private enterprise by seeking to make copyrighted materials freely available to the world. By offering a competing, free version of an article, this line follows, the government is on the path to state-run publishing, or even government-controlled science. The other camp believes that the couched language of the pronounce- ment, including recommendation rather than requirement and a 12-month delay, render it stillborn.” In the intervening six-plus years, the game board has tilted in favor of the second camp. Yes, it is true that the access window has subsequently been formalized as “no later than 12 months” rather than immediately upon publication. However, the policy transitioned from a recommendation to a requirement in 2008. The number of manuscript submissions has grown from 275 in September 2005 to more than 5,000 in May, 2011. Nearly 1,300 journals have agreed to automatically submit the final published versions of their articles in PubMed Central. Close to 1,000 publications deposit all articles, not just NIH-funded papers. All told, the database houses more than 2.3 million articles. Given both the growth of the archive and the trend toward publisher participation, this seemed to most to fall under the category of “settled law.”

As of this writing, however, that is far from the case. In late 2011, a bill called the Research Works Act was introduced into the U.S. House of Representatives. The precise language of the bill (found on govttrack.us at http://www.govtrack.us/congress/billtext.xpd?bill=h112-3699) is simple:

No Federal agency may adopt, implement, maintain, continue, or otherwise engage in any policy, program, or other activity that —

(1) causes, permits, or authorizes network dissemination of any private-sector research work without the prior consent of the publisher of such work; or

(2) requires that any actual or prospective author, or the employer of such an actual or prospective author, assent to network dissemination of a private-sector research work.

In this Act:

(1) AUTHOR — The term “author” means a person who writes a private-sector research work. Such term does not include an officer or employee of the United States Government acting in the regular course of his or her duties.

(2) NETWORK DISSEMINATION — The term “network dissemination” means distributing, making available, or otherwise offering or disseminating a private-sector research work through the Internet or by a closed, limited, or other digital or electronic network or arrangement.

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