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# I Hear the Train A Comin' -- The Research Works Act

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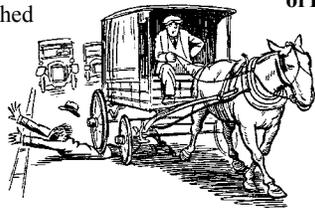
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## I Hear the Train A Comin' — The Research Works Act

Column Editor: **Greg Tananbaum** (ScholarNext Consulting) <greg@scholarnext.com> [www.scholarnext.com](http://www.scholarnext.com)

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 pronouncement, 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 [govtrack.us](http://www.govtrack.us) at <http://www.govtrack.us/congress/bill-text.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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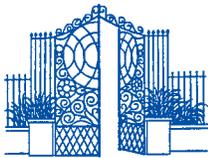
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(3) PRIVATE-SECTOR RESEARCH WORK — The term “private-sector research work” means an article intended to be published in a scholarly or scientific publication, or any version of such an article, that is not a work of the United States Government (as defined in section 101 of title 17, United States Code), describing or interpreting research funded in whole or in part by a Federal agency and to which a commercial or nonprofit publisher has made or has entered into an arrangement to make a value-added contribution, including peer review or editing. Such term does not include progress reports or raw data outputs routinely required to be created for and submitted directly to a funding agency in the course of research.

In essence, the *Research Works Act* would repeal the 2008 law that mandated **PubMed Central** deposits for NIH-funded research. It was introduced by **Carolyn Maloney** (D-NY) and **Darrell Issa** (R-CA), both of whom received substantial campaign donations from **Elsevier** (for more on this paper trail, see **Michael Eisen's** blog post at <http://www.michaeleisen.org/blog/?p=807>). The bill has the support of the **Association of American Publishers (AAP)**, although, as of this writing, a number of its members have come out against it. These dissenters include **ITHAKA**, **MIT Press**, **AAAS**, and **Nature Publishing Group**. AAP did not consult its members before endorsing the bill.

I won't re-litigate the nitty-gritty issues here, in part because others have written eloquently on the perils of the *Research Works Act* (the aforementioned **Michael Eisen**, **Richard Poynder**, and *The Atlantic's* **Rebecca Rosen** all come to mind), and in part because I strongly suspect the bill is doomed to be unsuccessful. Similar measures introduced in 2008 and 2009 failed, thanks in large part to widespread opposition among the academic and scientific communities. Rather, I would like to call out some perhaps under-discussed elements of this kerfuffle:

1. The *Research Works Act* applies to “private-sector research work”. This is defined in the bill as “an article intended to be published in a scholarly or scientific publication, or **any version of such an article**... to which a commercial or nonprofit publisher has made or **has entered into an arrangement** to make a value-added contribution, including peer review or editing [emphasis added]. “This definition would obviously vitiate **PubMed Central**, which accepts either the final, published articles or peer-reviewed final manuscripts (postprints). However, would it also deter the networked dissemination of preprints, working papers, manuscript drafts, and other early versions of the scientific record? If and when a publisher enters into an arrangement to peer review that work, one could reasonably interpret the answer to this question as “yes.” Remember, the bill states that “No

Federal agency may ... engage in any policy, program, or other activity that causes, permits, or authorizes network dissemination of any private-sector research work without the prior consent of the publisher of such work.” Does **NASA's** support for the **Astrophysics Data System (ADS)** Article Service constitute engaging in a restricted activity? What about **Brookhaven National Laboratory's** financial contribution to arXiv? To the extent that these databases post materials that may be under review at commercial journals, or indeed, may have already been refereed and even rejected (per review constituting “a value-added contribution”), the government's support of these services would be illegal. The *Research Works Act* therefore has the potential to impact more than a single database.

2. The political offensive against open access runs counter to international trends. In the UK, the “Innovation and Research Strategy for Growth” report was presented to Parliament in December, 2011. Prepared by the Secretary of State for Business, Innovation and Skills, it clearly validates the government's commitment to the dissemination of publicly-funded research. Indeed, with the unambiguous statement that, “Our goal is a transformation in the accessibility of research and data,” the report extends the notion of open access to include not just scholarly outputs but also the data behind those outputs as well. In Australia, the Australian Research Council's “Discovery Projects Funding Rules for funding commencing in 2012” strongly encourages open-access publishing. Funded researchers who fail to make their work accessible must justify this decision in the grant's final report. These are but two examples (more policies and mandates can be found at the **SHERPA/JULIET** site: <http://www.sherpa.ac.uk/juliet/>) of a discernible international trend toward openness that the *Research Works Act* seeks to buck.

3. The arguments used by some of the bill's supporters seem forced at best, disingenuous at worst. On the **LIBLICENSE** listserv, **Elsevier's** representatives have stated, “As a company, we want to continue to work in partnership with **NIH** and others to achieve our vision for universal access to information. For us, *RWA* is an important bill because it reminds people that collaboration and partnership rather than government mandates can be powerful ways to widen access to scientific information.” On **Michael Eisen's** blog (see <http://www.michaeleisen.org/blog/?p=807>) **Elsevier** has argued that **PMC** is superfluous because, “Free access to journal articles is also provided through research libraries throughout the country.” Both of these claims

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are specious, the latter because the access is not free to the libraries footing the bill, and the former because clearly the *Research Works Act* is a jab and not a handshake to the NIH. The **Association of American Publishers (AAP)** statement on the bill (see <http://www.publishers.org/press/56/>) picks up on the duplicative access thread by claiming, "Journal articles are widely available in major academic centers, public libraries, universities, interlibrary loan programs, and online databases. Many academic, professional, and business organizations provide staffs and members with access to such content." The AAP frames the bill as a stance against Big Government, "preventing regulatory interference with private-sector research publishers." This speaks to my final point below.

4. The political discourse in the United States today is dominated by anger toward the perceived collusion between well-heeled corporate interests and the politicians beholden to them. The Occupy Wall Street movement, in particular, gives voice to the fury at a system that has abandoned the primacy of the common citizen. The *Research Works Act*, if the visceral reaction against it among rank-and-file scientists and academics is an indicator, is scholarly communication's Occupy moment. The narrative of the publishing industry donating heavily to two members of the **House** in exchange for the introduction of a bill that helps protect their bottom line at the expense of public access to research resonates in this, our national winter of discontent. It is this take on the *Research Works Act* that is finding a better reception than the AAP's "reduce regulatory interference" spin. **PubMed Central** has put 2.3 million articles and counting in the hands of the 99% — indeed, in the hands of the 100%. The *Research Works Act* faces a heavy headwind as a result. 🌳

## Bet You Missed It

### Press Clippings — In the News — Carefully Selected by Your Crack Staff of News Sleuths

Column Editor: **Bruce Strauch** (The Citadel)

*Editor's Note:* Hey, are y'all reading this? If you know of an article that should be called to *Against the Grain's* attention ... send an email to <[kstrauch@comcast.net](mailto:kstrauch@comcast.net)>. We're listening! — **KS**

#### HISTORY FOOD HEAVEN by Bruce Strauch (The Citadel)

If you're in Charleston, SC for the justly famed **Charleston Conference**, try to get a reservation (start 3 months in advance) at restaurant **Husk**. **Chef Sean Brock** has created a true sensation. With the aid of two former **Citadel** professors — **Richard Porcher** (biology) and **David Shields** (English Lit Colonial period) they have re-created lost Southern fare — a culinary reclamation project if you will. Think Ossabaw pig — a native pig raised on native nuts, cured with local sea salt. Think heirloom veg and grains not tasted since the 1800s laced with local oddities like cattails and poke-weed.

**Shields** unearthed the antique recipes and **Porcher** scoured the countryside for the lost plants. He found sea bean, sheep sorrel, wild mustard and yucca flower in Johns Island; purslane, pine tips, lamb's quarter and Queen Anne's lace on Edisto.

And they planted it all. Wild ramps, garlic scapes, black radishes, fiddlehead ferns. American chestnuts, Ethiopian blue malting barley, China black rice and Sea Island cream peas. Rattlesnake beans, Carolina Gold rice, Carolina white gourdseed. Rare varieties of oats, wheat and cowpeas.

*Southern Living* and *Bon Appetit* are gushing praise.

See — **Burkhard Bilger**, "True Grits," *The New Yorker*, Oct. 31, 2011, p. 40.

#### DICKENS MANIA by Bruce Strauch (The Citadel)

They're filming a new version of *Great Expectations*, with of course **Helena Bonham Carter** as Miss Havisham. Wick-edness, corruption, squalor in the belly of the Victorian beast. And we use the term "Dickensean" to describe just that.

It's the **Dickens** bicentenary and it's being celebrated in 50 countries. Exhibitions, amateur theatricals, commemorations, and in London, of course guided walks. You can go to **Dickens World**, a theme park in Chatham, SE England and ride **Disney** type rides through the novels.

Good reading on him? Try **Robert Douglas-Fairhurst**, *Becoming Dickens* or **Claire Tomalin**, *The Invisible Woman: The Story of Nelly Ternan and Charles Dickens* about his secret mistress.

See — **Joshua Hammer**, "Mad For Dickens," *Smithsonian*, Feb. 2012, p.72.

