Public Access Policy Phase One Wrap-Up: Implementation

By Rick Weiss

Tomorrow marks the last day of Phase One of OSTP's forum on public access to published, federally funded research.
Well, not really the last day. In response to popular demand, we have decided to add some time for additional comments at the end of the scheduled process in January. But more about that in a minute.

First, thanks and kudos to everyone for making the first ten days of this process such a success. Together you weighed in with almost 200 substantive comments, many complete with links to studies and other valuable data sets that promise to keep our discussion and policy planning process evidence-based, as it should be.

As you can see by scrolling through the posts to date, you are, together, undergraduate and graduate students, scientists and mathematicians, teachers and professors, librarians and lobbyists, professionals in the business of scholarly publishing, and others. You have opined on the value of public access, the length of time that published material should remain proprietary, the version of a paper that should be made public, the importance of intellectual property concerns, the value that publishers add to scholarly papers, the array of business plans that might accommodate various degrees of public access, and the potential impacts of such changes on journal publishers, the rate of scientific and intellectual advancement, and the financial health of public and university libraries.

Though the process is still early, your participation already offers great evidence of the added value that can come from putting into practice the principles of open government.

On Monday morning we will publish a new blog post that introduces Phase Two of this forum, which will focus on Features and Technology. We will ask you to weigh in on such questions as: In what format should data be submitted in order to make it easy to search and retrieve information, and to make it easy for others to link to it? Are there existing digital standards for archiving and interoperability to maximize public benefit? How are these anticipated to change?

Phase Two will run through New Year's Eve, and we are scheduled to wrap up with Phase Three (focused on "Management") from Jan. 1 to Jan. 7.

However, we have heard from many of you that this schedule poses difficulties, especially because of the intervening holidays. We certainly don't want to be held responsible for any family squabbles resulting from your decision to skip that holiday dinner with the in-laws just because there is a public access deadline looming. So we have decided (and will soon announce in the Federal Register) to add two weeks beyond the scheduled end of this forum. We will use those last two weeks to revisit, on a more detailed level, all three focus areas that will have been addressed by then—perhaps asking you to dive deeper into a few areas that, by then, show themselves as deserving additional attention. Meanwhile, thanks to all of you for being responsive citizens as we consider this important policy question. We look forward to your ongoing and expanded participation!

Rick Weiss is Director of Strategic Communications and a Senior Policy Analyst at OSTP

This entry was posted on Saturday, December 19th, 2009 at 12:47 pm and is filed under Public Access Policy, Requests for Comment. You can follow any responses to this entry through the RSS 2.0 feed.

Responses to "Public Access Policy Phase One Wrap-Up: Implementation"

kay sieverding said on December 19, 2009 at 9:43 pm:

5 USC 552a(u)(v) The Privacy Act requires that DOJ report complaints under The Privacy Act and actions taken in response to OMB with a pubic copy available. However, even though USDOJ appointed a Privacy Act Data Integrity Board when Dick Thornburg was AG, it has had no recent publicly recorded meetings and not submitted any reports. The Privacy Act theoretically allows citizens to complain when the government creates or uses records about them outside its authorized purpose, creates them without consulting the individual or refuses to correct them. HEW has a Privacy Act complaint form but USDOJ does not.
I was imprisoned by former judge Naughty Nottingham for engaging in pro se litigation. I was not accused of perjury or any other federal offense. There were no Rule 11 c 6 orders against me. USDOJ did not file any criminal information and the U.S. attorney claims not to have even a file on me. However, the USMS imprisoned me for 124 days straight in violation of The Speedy Trial Act and without an arraignment or bail hearing. They let me go when I did what judge Naughty wanted, file motions he dictated in other courts, after my husband was threatened with imprisonment if I didn't do what judge Naughty wanted. USMS hunted me down on two other occasions and the USMS marshal in Colorado issued an order of high security felony no bond detention although I was not accused of a felony and no judge had signed a detention order and the U.S. attorney in Colorado claimed to have no information on me. I was detained without being told the charges and without being shown a warrant. The police came to my home on the request of USMS and forced me into their car but they didn't have a warrant. In court an assistant U.S. attorney Robert Anderson showed up without filing a notice of appearance and said that "the government isn't involved" but he didn't object to my being in chains and shackles. The document they called a warrant didn't list an offense and wasn't signed by a judge and the caption was "kay sieverding v. Colorado Bar Association". The docket report listed opening, pending, and terminated offenses as "none". I don't have a criminal record at all.
I filed a complaint under The Privacy Act which is still pending in the D of Columbia 09-cv-00562. USDOJ appointed David Rybicki solo even though they hired him only one month before, he has been a lawyer for less than three years, and he didn't file the required form about his

experience when there is a disputed evidentiary matter. Rybicki is opposed to discovery as to a statutory basis for my incarceration. His position is apparently that when the USMS prisoner tracking system is used that the government has immunity even if you are not accused of a federal offense and the detention doesn't meet the definition of "official detention" in the definitions in Title 18.
For years my husband and I were writing to various people as USDOJ asking for help, telling them that I was being held without a charge, sentence, arraignment, bail hearing, etc. but the government would not acknowledge these complaints. I filed a request with USMS general counsel William Bordley asking for the charges against me and all authorizations for my arrest, detention, and forced transport 1200 miles. Bordley is blind and can't read anything not in braille. Bordley's office assigned an FOIA number to my request but when "governmentattic.org" filed a FOIA request for the USMS FOIA log my complaint was not included. Basically they threw all my letters in the trash and that is the USDOJ procedure for Privacy Act Complaints. Rule 42 of the Rules of Criminal Procedure says that contempt must be prosecuted as a crime with criminal procedure, which means criminal information, sworn witnesses, right to cross examine witnesses and subpoena witnesses, arraignment etc. The only exception is if you disrupt a court room which I did not do and which no one even claimed I did. All I was accused of was not doing what Judge Naughty wanted me to do or not do in other courts.
I filed a FOIA motion to get the government's civil contempt procedures, the Privacy Complaint logs, and USDOJ responses to Privacy Complaints. First USDOJ said I didn't have standing to get the reports which are required to be available to the public. I argued that I was affected because I wish to engage in other pro se litigation because my issues before judge Nottingham were not at all resolved and I am afraid that if I do I will be kidnapped by USMS again. Then USDOJ argued that an injunction requires amending the complaint even though I found cases where USDOJ itself requested an injunction thru a motion and a motion only and that is all that is required by national and local rules. However, USDOJ still argues that they are "opposed" to releasing their civil contempt procedures, their Privacy Act complaints, and any responses to their Privacy Act complaints. The Freedom of Information Act authorizes a federal district court to order reporting of undisclosed procedures and I think that throwing people in jail without criminal procedures and throwing complaints in the trash are both undisclosed procedures.
You should also be aware that USDOJ Office of Inspector General audited the USMS Prisoner Tracking System and found that they don't keep logs, that they don't verify the accuracy of the data they input, and that the system can be used fraudulently. This is on the USDOJ web site. It cannot be very difficult for USDOJ to build a Prisoner Tracking System that would actually verify that there was a criminal charge, a trial, a sentence etc. but apparently the USMS wants to keep its options to grab people and throw them in dungeons without official process.
I hope that some other organization will file an action to get the required reports by the USDOJ Data Integrity Board as the Court will probably rule that I can't get them because I am a substandard human being not entitled to Rule of Law.
USDOJ Department of Homeland Security created a "Privacy and Civil Liberties Office" but the 2006 "Initial and First Annual Report to Congress" did not include my complaints in 2005 and 2006. They also weren't included in the 2007 "Annual Report to Congress". Apparently USDOJ couldn't even follow up with a 3rd annual report –there was no 2008 "Annual Report to Congress". I am starting to get really worried that USDOJ is planning some sort of new internment programs for any pro se litigant who objects to any court order. In my case the defense billed for multiple calls to the court about pending motions and judge Naughty adopted legal opinions contrary to the Supreme Court's decisions but the courts thought that was fine. During our entire litigation judge Naughty was paying prostitutes at least once a week (according to the 10th Circuit, 9 News etc.). I don't think he could afford that based on his reported financial statements so I think the judge may have been bribed. My incarceration for the purpose of stopping my attempts to get a decision on the merits was requested by agents billing Underwriters at Lloyds London and Mutual Insurance Limited of Bermuda. The Colorado Division of Insurance web site search shows no reports on Lloyds of London or Mutual Insurance of Bermuda even though the original events happened in Colorado and they paid for the lawyers in Colorado. The McCarran Ferguson Act of 1945, 15 USC section 6701, prohibits sales of insurance without registration with state authorities but USDOJ doesn't seem to even attempt to enforce the McCarran Ferguson Act.
Basically unless someone makes some progress with USDOJ and its civil contempt procedures and Privacy Act complaint procedures, the 99% of the population who can't afford $500,000 for a lawyer, or who prefer to rely on themselves, should just forget about going to federal court. Even if you don't think you are suing an insurance company there is probably insurance there somewhere. The insurance companies can just arrange for USMS to throw you in jail if you persist in wanting a jury trial or a summary judgment hearing.

Jamaica Jones said on December 21, 2009 at 1:29 am:

As the first NSF-funded Research and Development facility to pass an Open Access mandate, and coming from a community that has traditionally valued and relied upon the open and timely exchange of research results, we at the NCAR Library advocate for unfettered access to the scholarly articles arising from all NSF-funded research.
In the interest of the quality and advancement of science, we feel that embargoes should be capped at 6 months, should there be any delay at all. The pace of science has quickened at an extraordinary rate; any embargo keeps poorly-endowed and independent researchers from accessing the wealth of research conducted at facilities such as NCAR, while a six-month embargo period stresses the business models of the scientific societies that uphold the values and standards that are essential to ensuring the quality and validity of our science.
At NCAR, we enjoy very close working relationships with the academic societies that support, advance, and validate the research we conduct. Although we heartily endorse measures that ensure timely and public access to the results of this taxpayer-funded research, we also recognize the need to arrive upon a solution that is as supportive of the science as it is to the societies and publishers that illuminate it.
For this reason, we believe it is not enough to simply mandate public access to federally-funded research; instead, we believe it is important to work towards innovative models of publishing, peer review, and impact measurement. Last week, in a promising move, the NSF funded a workshop on new models of measuring impact - efforts such as these constitute a strong step in the right direction, and should continue to be encouraged.
In the absence of transformative change, UCAR recommends an embargo period of no greater than six months. The version submitted - ostensibly to a centralized repository akin to PubMed Central - should be the final, peer reviewed and formatted version contributed by

the publisher.
We are grateful for the Administration's interest, and look forward to continuing this important dialogue.
Sincerely,
Jamaica Jones
Special Projects Librarian
National Center for Atmospheric Research
Boulder, Colorado

kay sieverding said on December 19, 2009 at 9:47 pm:

PS One of USDOJ's matching programs is for the purpose of stopping various people from getting engineering and scientific government grants. That theoretically should also be covered by the reports from USDOJ's Data Integrity Board.

Queshaun Sudbury said on December 21, 2009 at 1:47 am:

Public Access should be consistent with the mission of the sponsoring agency.
The mission of the Office of Scientific and Technical Information (OSTI) is to advance science and sustain technological creativity by making R&D findings available and useful to Department of Energy (DOE) researchers and the public. Ongoing strategies for accomplishing this mission: Collaborate within DOE through the Scientific and Technical Information Program to develop and maintain efficient, state-of-the-art access and delivery of research results. ; Partner with others to facilitate alliances for national and international cooperation and information exchange. ; Develop, deliver, and maintain customized information products and services for a variety of constituencies. ; Implement Department-wide STI policy and best business practices. ; Preserve STI, in tangible copies or electronically, as appropriate. ; Accelerate the diffusion of knowledge to advance science (655-KB PDF). At OSTI you can find research results and science information from the Manhattan Project to the present, download documents, view energy citations, discover patents and e-prints, read about ongoing research projects and amazing accomplishments, search science confererence proceedings and software, and connect to U.S. and global science portals. OSTI develops and maintains search tools that use a special technology (slide presentation) called "federated search." OSTI is a part of the Office of Science within the U.S. Department of Energy.
The Director of OSTI states, "Through [our] products, librarians, researchers and the public can access a science page count comparable to, but not duplicative of, Google's entire science content."
The Energy Citations Database (ECD) (a service of OSTI) provides free access to over 2.6 million science research citations with continued growth through regular updates. There are over 221,000 electronic documents, primarily from 1943 forward, available via the database. Citations and documents are made publicly available by the U.S. Department of Energy (DOE). ECD includes scientific and technical research results in disciplines of interest to DOE such as chemistry, physics, materials, environmental science, geology, engineering, mathematics, climatology, oceanography, and computer science. It includes bibliographic citations to report literature, conference papers, journal articles, books, dissertations, and patents. ECD was created and developed by DOE's Office of Scientific and Technical Information with the science-attentive citizen in mind. It contains energy and energy related scientific and technical information collected by the Department of Energy (DOE) and its predecessor agencies, the Energy Research & Development Administration (ERDA) and the Atomic Energy Commission (AEC).
The U.S. Environmental Protection Agency (EPA), National Center For Environmental Research (NCER), Science to Achieve Results (STAR): EPA's STAR program is a competitive, peer-reviewed, extramural research grant and fellowship program created to encourage interagency collaboration and increase EPA's access to the nation's best scientists and engineers in academic and nonprofit research institutions. STAR supports research in a numerous fields relevant to EPA's mission, ranging from human health protection to environmental preservation. STAR program fills a unique niche by supporting "important research that is not conducted or funded by other agencies" and is "directly relevant" to the mission of EPA. STAR research results have already improved the scientific foundation for decision making even though the program is young and many of the projects have not yet been completed. The STAR grant program has made commendable efforts to leverage funds by establishing research partnerships with other agencies. The STAR fellowship program is helping to build a stronger scientific foundation for the Nation's environmental research and management efforts.

Laura Rufibach said on December 21, 2009 at 2:56 am:

I was composing a response for the Public Access Policy Phase One Wrap-Up: Implementation blog that was to run from Dec 10-20. However, since I live on the west coast and didn't attempt to post my comment until after 9 pm Pacific time (12 am Eastern time),which is technically Dec 21 on the East coast, I wasn't able to make my comment directly on the Implementation blog site. Therefore, I am making my comment here with the hope that it will be incorporated with the other comments on the Implementation blog.

Since federally funded research has been paid for using tax payer money, I completely agree that publications resulting from federally funded research should be easily and immediately available to the public after publication/peer review. Under the current system most people are unable to access journal articles that are less than a year old because of the exorbitant cost of journal subscriptions. If you are a student or faculty member at a college or university you have access to a large number of journals through school library subscriptions. However, once you leave the school and lose this access, it is extremely difficult to get the up to date information that you need to further your research. This is especially true for for-profit companies and non-profits that need access to the most current information in order to move forward in developing the cutting edge treatments. I am the Director of Research at the Jain Foundation, a non-profit privately funded organization. Part of my responsibilities is to evaluate research grants for possible funding. In order to do this effectively I must review the most current research literature. However, as a small non-profit with limited funds, it is impossible for us to afford subscriptions to the large number of journal we need to access. It is a shame the amount of time and money that is wasted in repeated experiments just because a researcher or funding agency cannot gain access to a published paper.

I would like to propose that the NIH should go beyond setting rules to govern publication and access to federally funded research and instead explore the possibility of NIH publishing the articles themselves via a free publicly available database. NIH already has a peer review system in place for grants that could be modified to include the review of publications. In addition, NIH grant money is already being used to fund the publication of papers in for-profit journals. This money could instead be used to fund the infrastructure that would be needed for such an endeavor. There are many other issues that would need to be considered and many obstacles that would need to be overcome in order for such an idea to become a reality. However, this is something that should be pursued since I believe that only with the free flow of information and a collaborative spirit will we be able to make the discoveries needed to cure/treat the numerous diseases that inflict the world today.
Thank you,
Laura Rufibach, Ph.D
Director of Research
Jain Foundation INC.
Bellevue, WA

Sharon Jordan said on December 21, 2009 at 5:49 pm:

The Office of Scientific and Technical Information (OSTI) in the U.S. Department of Energy (DOE) Office of Science appreciates the invitation extended by the White House Office of Intergovernmental Affairs and Office of Public Engagement to participate in the public consultation on public access policy. In response, OSTI is pleased to provide the following relevant factual information.
Since 1947, OSTI (http://www.osti.gov/) has fulfilled DOE's responsibilities to collect, preserve and disseminate scientific and technical information (STI) emanating from DOE R&D activities. OSTI is founded on the principle that science progresses only if knowledge is shared, and the OSTI Corollary – accelerating the sharing of knowledge accelerates the advancement of science – takes OSTI's founding principle to the next level. (See OSTI's FY 2009-2013 Strategic Plan, http://www.osti.gov/StrategicPlan09.pdf.)
OSTI has championed an aggressive effort on a series of fronts to make authoritative science information more efficiently available to researchers and the public alike. OSTI today hosts major collections of scientific and technical information – see http://www.scienceaccelerator.gov, http://www.science.gov, and http://www.worldwidescience.org.
While with these web products OSTI has shown that the web can work better for science and research and development, public access to the R&D record remains incomplete, especially in the physical sciences, which is the largest thrust of the DOE research program.
For biomedical and related life sciences funded by NIH, the NIH Public Access Policy (http://publicaccess.nih.gov/) calls upon investigators to submit an electronic version of their peer-reviewed manuscripts to PubMed Central; these manuscripts must be publicly available not later than 12 months after publication.
PubMed Central is a free, searchable and publicly accessible archive of full-text biomedical and related life sciences journal literature at NIH, developed and managed by NIH's National Center for Biotechnology Information (NCBI) in the National Library of Medicine (NLM).
For the physical sciences, there is no counterpart to PubMed Central.
PubMed Central is built upon the foundation provided by PubMed. PubMed is a free, searchable and publicly accessible archive of bibliographic information (e.g., titles, authors, abstracts) of journal articles relevant to the biomedical and related life sciences. We understand that PubMed is perhaps the most heavily used scientific database of the U. S. government.
For the physical sciences, there is no counterpart to PubMed.
Implementation at DOE of a public access policy such as now in effect at NIH would be straightforward for OSTI and the DOE Scientific and Technical Information Program (www.osti.gov/stip). The Department of Energy annually sponsors over $10 billion in basic and applied research that leads to more than 10,000 technical reports each year. Through OSTI and STIP, DOE already has a system for collecting and making publicly available the many thousands of scientific and technical reports, conference papers, and other documents not commercially published which flow from its research and development grants and awards to scientists and engineers. These documents are already made available through OSTI's Information Bridge (www.osti.gov/bridge). Every DOE laboratory has a team on the ground that collects and provides these reports. It would be a straightforward matter to expand this system and the STIP infrastructure to accommodate journal literature flowing from DOE funding.
Thank you.
Submitted on behalf of Walt Warnick, Director, DOE Office of Scientific and Technical Information, and myself

William Davis said on December 22, 2009 at 5:20 pm:

Federally mandated free access to journal articles published by scholarly societies in the social sciences and humanities is very likely to cause irreparable harm to authors, readers and publishers of those society journals.
Social science and humanities journals currently depend on subscription income to finance their publishing programs, and librarians have clearly demonstrated they will drop paid subscriptions if the same content is available free. Thus, mandated free access will deprive society publishers of the ability to continue publishing. The "solution" most often offered by advocates of mandated free access is to finance publication by assessing author-fees. Author-financed publication, however, is not a feasible model for the sustainable financing of journal publishing in the social sciences and humanities.
Scholars in the social sciences and humanities receive research support from various federal agencies, including the National Science Foundation, National Institutes of Health, Departments of Education, Health and Human Services, Transportation, Energy, Environmental Protection Agency as well as the National Endowments for the Humanities and the Arts. Thus public access policies adopted by these departments and agencies will have significant consequences for both authors and publishers in the social sciences.
Earlier this year, the National Humanities' Alliance (NHA) released a study (report available at http://www.nhalliance.org/bm~doc/hssreport.pdf) on the financing of scholarly journal publishing among social science and humanities societies. The eight societies whose journals were included in the study were the American Anthropological Association, American Political Science Association, American Economic Association, American Sociological Association, American Statistical Association, American Academy of Religion, American Historical Association and Modern Language Association
A key finding of the NHA study was that scholarly publishing in the social sciences and humanities differs in major ways from that which typically occurs in the sciences. Moreover open access policies based on assumptions about scholarly publishing in the science, technology,

engineering and medical fields, without attending to the particular characteristics of social science and humanities publishing, will almost certainly create economic havoc for trusted means of communication among scholars in these latter fields.

Why is it unreasonable to assume that open access publishing of scholarly journal content could be provided free of charge if the cost of peer review, printing, distribution, mailing and other associated fees were paid by article authors? The NHA study provides some clear answers.

First, researchers in the STEM world are often able to charge the cost of publishing their work to their federal research grants. However, grant-funded authors in the social sciences and humanities do not have the same ability to "pay to publish" as their colleagues in the STEM fields. Unlike grants to support STEM research, grants supporting social science and humanities research typically do not allow authors to use that support to pay author fees charged by publishers.

Second, the length of articles in the social sciences and humanities journals averages 19 pages, substantially longer than the average article length of 12 pages in STEM journals. This added length together with the more robust peer-review process typical of social science and humanities journals result in significantly higher publishing costs than is the case with STEM journals. Publishing costs in social science journals averages $526 per page, more than double the average $226 per page cost to publish in STEM journals. Without research support adequate to pay those costs, an author wishing to publish in a social science journal which charges author fees would face a personal expenditure (over $9,000 per article for my own society's journal) clearly prohibitive for most individual scholars.

Third, there is a much longer "half-life" of content published in social science journals than is the case in many of the "hard" sciences. In the STEM world, where the pace of the research process is very rapid, it is sometimes argued that content 6 months or even a year old has relatively little continuing value to other researchers and thus brings little subscription income to publishers of that content after such a period. Unlike the STEM world, however, journal content published in the social sciences and humanities continues to be accessed for many years, thus providing a continuing stream of subscription income to support the publishing operations of scholarly societies.

Fourth, we have already seen that the practices of one federal agency (in this case NIH) create powerful forces to adopt similar practices among other federal agencies as well as non-governmental institutions such as research supporting private foundations. Federally mandated free access to scholarly content would undoubtedly invite all funders of scholarly work to adopt the same requirement of grant recipients.

Thus, while free access to the results of scholarly work is a laudable goal, and the author-pays publishing model may appear to be a viable alternative to a subscriber-pays model, such a model clearly fails to constitute a basis on which to finance journal publishing in the social sciences and humanities. Without alternative sources of revenue—revenue that have yet to appear– federally mandated free access to this journal content could well result in the demise of the very journals that mandated open access advocates seek to make more freely available.

Bill Davis, American Anthropological Association