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May 14, 2013

Assemblymember Mike Gatto
Chair, Assembly Appropriations Committee
State Capitol, room 2114
Sacramento, CA 95814

Dear Assemblyman Gatto:

On behalf of the Professional and Scholarly Publishing Division of the Association of American Publishers, I am writing to express our members' strong opposition to California **AB 609**, as amended on May 9. This legislation will undermine the sustainability of a scholarly publishing system that ensures the integrity and quality of scientific information. The legislation also puts at risk tens of thousands of jobs in California and across the U.S. Additionally, and most critically to your Committee, this bill will require significant new costs in California research budgets, subjecting the California taxpayer to uncertain expenses immediately and long into the future.

While we applaud the intention to provide Californians with the full benefit of scientific research funded in part with their taxpayer dollars, AB 609 fails to account for the value added by scholarly publishers through managing peer review and other services they support. The investments needed to sustain a high-quality scholarly communication enterprise will remain necessary to achieve the goals of this legislation, and unfortunately are likely to be borne by California's research enterprise.

In the discussion below, I outline some of the potential fiscal and other impacts of AB 609 that are important for the Appropriations Committee when considering how to proceed with this legislation.

State Universities Could be Faced with Open Access Publishing Charges Estimated at More Than \$1 Million Annually

While AB 609 does not require authors to publish in author-funded open access journals, many journal publishers charge an article publishing fee to researchers to cover the cost to the publishers for making the journal articles freely available online. These costs could be substantial and are fundamentally unknowable, but the author of AB 609 has said that they may be similar to those in the implementation of the U.S. National Institutes of Health (NIH) policy, upon which AB 609 has been modeled. In a congressional hearing on open access in 2008, the director of NIH indicated that the agency spends \$100 million a year for page fees and open access charges. Therefore, one might estimate that California could spend \$1.1 million each year on these charges, as California's research budget is 1% of that of NIH (\$332 million vs. \$30 billion). This rough estimate is likely an underestimate, as it only accounts for publishing charges and not for infrastructure, compliance, or the variation in open access charges.

Savings to State Universities from Cancelled Journal Subscriptions Are Unlikely

There are no countervailing savings from the policies in AB 609 to offset the significant costs entailed. State universities would still need to maintain a large portion of their budgets for journal subscriptions, as students and researchers would continue to need to access research articles that are written by researchers from outside of California and not subject to the bill's provisions. Where some smaller journals may be cancelled or go out of business, and others may change to an author-pays open access business model, there will be many that continue as subscription journals. In fact, some analysts have suggested that costs for subscriptions may actually increase, as publishers will still need to recoup their investments in publication from a smaller subscription base.

CA AB 609 Will Undermine Investments in the Peer Review Process that Ensures the Quality and Integrity of Scientific Research, Potentially Requiring California to Make Those Investments Itself

The peer review process ensures that research articles are rigorously reviewed by experts in specialized fields before they are published – in effect, the “checks and balances” of good science. Publishers invest in supporting the peer review process that vets the validity and significance of authors' research findings by identifying appropriate reviewers, maintaining content management systems, providing enhanced digital coding and graphic design, disseminating the articles, enhancing the discoverability of article content and preserving the scholarly record. AB 609 would reduce publishers' ability to continue those investments, and potentially transfer those costs to the California research budget.

AB 609 Unjustly Takes High-Quality, Peer-Reviewed Final Publications Without Compensating Publishers for Their Investment In Producing Them

AB 609 authorizes the government to take private-sector journal articles to which publishers have made significant value-added contributions. While the government may fund research on which private-sector journal articles are reporting, it does not fund the value-added, peer-reviewed journal articles in which non-for-profit scholarly societies and commercial publishers have invested.

AB 609 recognizes the value added by scholarly publishers by demanding submission only of accepted high-quality peer-reviewed final publications but does not compensate publishers for their investment in producing those publications.

CA AB 609 Will Negatively Impact California Jobs

California ranks second in the country for periodical and journal publishing jobs, employing approximately 17,000 people with a payroll of more than \$250 million. By requiring surrender of their value-added, peer reviewed scientific journal articles within 12 months of publication, AB 609 will erode the financial sustainability of not-for-profit and commercial publishers, ultimately putting jobs at risk.

Government mandates that make journal articles available free will likely have the same effect on the publishing industry as experienced by many newspapers when they chose to give their content away for free. Newspapers facing bankruptcy had to start charging for online access, as it is unlikely that someone will subscribe to a newspaper (or journal) when they can obtain the articles for free online.

AB 609 Is Unnecessary Because Publishers Are Devoted to Providing Access to Research and Invest in the Dissemination of Research in a Variety of Ways

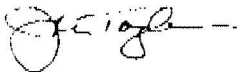
Publishers provide access to published research articles through a variety of methods, including subscriptions, article rental and free-to-reader “open access” articles that are subsidized by author fees or sponsorships. Publishers have also voluntarily created programs that provide access to research literature for communities that have been previously underserved through outreach programs, such as

patientINFORM, the Emergency Access Initiative and Research4Life, as well as programs for public libraries, journalists and high schools. Publishers have also worked with research funders, including government agencies and private foundations, for collaborative solutions to advance access to articles that report or analyze funded research. These collaborative, flexible partnerships are the right way to advance access while ensuring the sustainability of a well-functioning scholarly system. AB 609 takes us in an opposite direction and would contribute to fragmentation, duplication and dilution of efforts to build an infrastructure that is interoperable and efficient.

This Issue Requires More Study

This is a complex issue with significant implications and costs to the state. No other state has implemented such a program. This issue is being examined at the federal level in a very thoughtful and deliberative manner, and California may want to learn from that experience. A comprehensive study has been undertaken by The White House Office of Science and Technology Policy (OSTP), involving all federal funding agencies and stakeholders. The federal dialogue is examining, among other issues, how to ensure the sustainability of scholarly communication and the potential for collaborative approaches and public-private partnerships to advance access and minimize costs. California should take advantage of what is learned through the OSTP efforts at the federal level and ensure that all potential implementation costs to the state are considered. Other states that have looked at this issue have either decided to hold off on taking action or to initiate their own studies of the issue. We encourage California to do the same.

Sincerely,



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