Congressional Hearing Over Public Access Filled With High Drama

By JENNIFER HOWARD

A life-and-death battle is going on over public access to federally financed research—life for taxpayers and many scientists, and death for publishers. Or so each side claims. That battle, whose outcome will affect many university researchers, kicked into high gear on Capitol Hill yesterday, as the combatants debated the merits of a bill that would curtail the National Institutes of Health's public-access policy.

The hearing, held by a House of Representatives subcommittee, did not lack for drama. It featured pleas by Nobel Prize winners, a story of how open access helped soothe an anguished mother, and warnings that intrusions by the "hairy snout" of federal regulation could destroy the economic basis of publishing.

The NIH policy that triggered this latest skirmish only went into effect in April. It requires that all researchers whose work is financed by the NIH submit electronic copies of their final, peer-reviewed manuscripts to PubMed Central, a free online archive of biomedical and life-sciences journal articles, and that the material be made publicly available within 12 months of publication. Publishers tried to derail the policy last spring and succeeded in getting Congress to specify that it be consistent with copyright law.

That point is the focus of the new bill, HR 6845, the Fair Copyright in Research Works Act, which seeks to amend the legislation governing the NIH policy. It was introduced this week by John Conyers Jr., Democrat of Michigan. Mr. Conyers is the chairman of the House Judiciary Committee. Yesterday's hearing took place before the panel's Subcommittee on Courts, the Internet, and Intellectual Property.

'Vital' for Science

Elias A. Zerhouni, director of the NIH, led off with a passionate case for PubMed as "a vital component of 21st-century science." He presented a timeline of breakthroughs related to the Human Genome Project to demonstrate what he called "a true explosion in scientific discovery," one accelerated by researchers' access to unprecedented amounts of data.
The NIH's public-access policy, Dr. Zerhouni argued, helps speed up the pace of discovery by making knowledge widely available. "We fully believe it is consistent with copyright law," he said. He also pointed out that the NIH policy allows for an embargo twice as long as the standard period in Canada, Australia, and parts of Europe.

Heather D. Joseph, executive director of the Scholarly Publishing and Academic Resources Coalition, or Sparc, expressed "serious reservations" about the legislation. Ms. Joseph's group speaks for many research libraries, which have been stalwart supporters of public access. Undoing the NIH policy, she said, would limit taxpayers' access to "crucial, health-related information that can make a life-or-death difference in the lives of the American public."

Voice cracking, Ms. Joseph drove the point home in an anecdote about her 5-year-old son, recently diagnosed with Type 1 diabetes. "I got online and looked for every piece of current information I could get my hands on," she said. "I did this from home, at 3 in the morning the night we got home from the hospital, desperate for information that could reassure me that there was something else I could do besides wake my child up twice a night to check his blood sugar for signs of hypoglycemia."

She found what she was looking for in a 2008 study of continuous glucose monitors—reported in a manuscript posted only a month earlier under the NIH's public-access policy. "It was worth the world to me," she said.

A Threat to Publishers

Yet Ralph Oman, a copyright lawyer who lectures in intellectual-property law at George Washington University Law School, made the case to the committee that "a mandatory federal policy requiring these works to be made available for worldwide distribution is in inherent conflict with copyright" and would threaten publishers' continued existence.

"My basic concern about the NIH proposal is that it will, sooner rather than later, destroy the commercial market for these scientific, technical, and medical journals," Mr. Oman said. Later, during a question-and-answer session, the lawyer got a laugh by asking whether we really wanted "the hairy snout of government" poking around in science publishing.

Both the Association of American Publishers and the Association of American University Presses issued strong statements of support for the bill.

So did Martin Frank, executive director of the American Physiological Society, which publishes scientific journals. He repeated the publishers' mantra that they make "a significant value-added contribution" to the research they publish, even if the NIH pays for it. "Articles should not be taken from those of us responsible for their creation," he told the subcommittee.

One group was not well represented in yesterday's wrangling: the scientists who actually do the research being fought over, as a subcommittee member, Zoe Lofgren, Democrat of California, noted. Most of these researchers sign their copyrights over to their publishers as a condition of
being published. One glimmer of how some of them feel came in an open letter to Congress submitted by 33 Nobel Prize winners in chemistry, physiology, and medicine.

"The current move by the publishers is wrong," the laureates wrote. "The NIH came through with an enlightened policy that serves the best interest of science, the scientists who practice it, the students who read about it, and the taxpayers who pay for it."

The subcommittee did not say when it will take further action on the legislation. But today's testimony was a bracing reminder that the war over public access is far from over, no matter how Mr. Conyers's proposed bill fares this fall.