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# Open Access Publishing and Citation Archives: Background and Controversy

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Congressional Research Service. *Open Access Publishing and Citation Archives: Background and Controversy*. By Genevieve J. Knezo. (Order Code RL 33023). Washington, Dec. 12, 2006. Available at: <http://www.fas.org/sgp/crs/secrecy/RL33023.pdf>; Accessed: 01/10/2014.

In 2006, Genevieve J. Knezo published a report for the Congressional Research Service (CRS) entitled *Open Access Publishing and Citation Archives: Background and Controversy*. It provides a legislative history of, and an examination of issues surrounding, federal initiatives between 2003 and 2006 to make government-funded research more widely available. As such, it is valuable as a baseline that can be used to understand the development of federal open access policies and to provide a point-in-time reference for comparing the evolution of open access over the past decade.

The legislative history shows that, from the start, proposals to make government-funded research more readily accessible to the public in pursuit of democratic ideals ran headlong into the exclusive rights of distribution granted by copyright law. Indeed, the first piece of legislation discussed by Knezo, a 2003 House bill, “would have denied copyright protection to publications resulting from federally funded basic scientific research in order to encourage free dissemination of research results to the public.” And given that subscriber-pay publishers held copyright for most published research, they naturally viewed such legislation as a threat to their profits and lobbied hard to dilute open access legislation. This can be seen in Knezo’s account of the development of the NIH (National Institute of Health) 2005 open access policy as concessions were made to publishers that made submission of manuscripts to NIH voluntary, not mandatory; that permitted an embargo (the delay between when a manuscript was submitted and when it appeared in a free NIH repository) of twelve months; and that allowed publishers to request the removal from an NIH repository of any copyright-infringing article.

The section of Knezo’s report called “Government Purpose and Copyright Issues” is noteworthy because it explores a little-known federal power granted by a “government purpose license,” a power that NIH chose not to exercise. NIH’s approach towards copyright was accommodative, probably in recognition of the influence scholarly publishers had with Congress. Knezo intimates that NIH could have invoked a government purpose license, per the Code of Federal Regulations [45 CFR 74.36(a)], to retain “a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes.” Had NIH based its public access policy on government purpose authority, scholarly publishers would have howled, and proponents of open access like librarians would have rejoiced.

As a point-in-time reference for open access issues in the US, Knezo’s report does three things.

One, it explores what was relevant at that time: the question of who pays publishing costs, the role of foundations in supporting open access journals, the length of embargoes, concerns over peer review and article quality in open access journals, the value added by publishers, self-archiving, and, of course, copyright. None of these issues have gone away.

Two, it provides a yardstick by which to measure progress of federal government open access efforts. In 2008, PL 110-161 allowed NIH to mandate that NIH-funded research be submitted to PubMed, NIH’s publicly accessible electronic database. Although submission was no longer voluntary (as it had been since 2005), the twelve-month embargo remained in place. And in 2013, the Office of Science and Technology Policy (OSTP) mandated that all federal agencies spending more than \$100 million annually

on R&D (research and development) "create plans to make the published results of federally funded research freely available to the public within one year of publication." This was a fulfillment of the 2006 Federal Research Public Access Act (S. 2695) discussed by Knezo, though without that Senate bill's six-month embargo and advocacy of using government purpose license.

Three, it helps highlight changes in the development of open access since the timespan covered by Knezo. Although Knezo discussed university repositories and a 2005 OECD paper on "hybrid" business models for publishing, these two methods of providing open access were treated separately. Since 2005, they have been incorporated into the now generally accepted distinction on how to deliver open access: gold (all articles in a journal), green (repositories or archives that are typically institutional or disciplinary), and hybrid (some articles in a journal). Likewise, Creative Commons and Google Scholar, though mentioned by Knezo, were in their infancy then and not the powerful influences on open access that they are today. And the proliferation of faux, or scam, open access journals is one unintended consequence of open access that gets much attention now but could not have been foreseen by Knezo.

It is clear that when it comes to federally-funded agencies, the battle for open access to research has been won. And Knezo's report provides an excellent account of how that battle was fought from 2003-2006. However, when it comes to research done by CRS, the agency that sponsored Knezo's research, the battle continues to rage. CRS reports are done for Congress, not for the public. That Knezo's report is available at all is due to the efforts of those who believe that an informed democracy requires free public access to government information, a belief remarkably like the one that spawned open access. In fact, Knezo's report is available because of the work of two organizations that aim to "free government information." The report can be found online at the Federation of American Scientists (FAS) website that contains a patchwork archive of CRS reports (<http://www.fas.org/sgp/crs/index.html>), and the report is available in print from Amazon, courtesy of the BiblioGov Project, "an effort to expand awareness of the public documents and records of the U.S. Government via print publications."