September 16, 2015

Dear Member of Congress,

The undersigned organizations oppose S. 779, the Fair Access to Science and Technology Research Act of 2015, in its present form. While we appreciate the efforts made by the Senate Committee on Homeland Security and Governmental Affairs to improve the legislation, public access is a complex issue with far-reaching implications for science and peer-review publishing, and this bill has proceeded without any debate or hearing. S. 779 in its present form would significantly harm the system of peer-reviewed scholarly communication and the ability of publishers to invest in education, research, and digital platforms that advance and help ensure the quality and integrity of science.

The majority of federal agencies have already issued public access plans to promote access to federally funded research, pursuant to the process established by the America COMPETES Act of 2010. Therefore, this legislation is unnecessary and could in fact undermine the very goal it seeks to advance.

Publishers support the public's ability to search, access, and review journal articles that report on government-funded research, and they have worked for many years to provide wide access to the articles they publish. Our organizations work with researchers, physicians, and other practitioners, as well as federal agencies, libraries, and others involved in supporting science and the scholarly record to improve the impact of research and enable the communication of research. Publishers seek to continue to work collaboratively with Congress, the Office of Science and Technology Policy (OSTP), and the responsible federal agencies to develop a coordinated approach to public access that respects the diverse needs of the scholarly community. S. 779 falls short of this goal.

The undersigned include non-profit scientific societies that use the proceeds from their journal operations to serve the public and the scholarly enterprise; small businesses that support researchers and their local communities; and others devoted to creating, disseminating, and preserving scholarship. All make significant investments in support of science and the use of research to improve lives that would be undermined by S. 779.

Under one-size-fits-all mandates, restrictive license terms that undermine copyright, and a 12 month limit on opportunities to recoup their investments, many of the undersigned organizations would be unable to continue the work they do to advance science, health, and innovation: including managing the peer review process, revision, and copyediting; preparing manuscripts; creating extensive links to related research; providing electronic and print distribution; and ensuring discovery and deposit into long-term archives. This would be devastating to the integrity of the scholarly record and would negatively impact jobs throughout the scholarly publishing ecosystem.

We urge you to oppose S. 779 and to focus on providing oversight to the development of agency plans consistent with current law. If the Senate plans on moving forward with S. 779, this legislation should be further amended as outlined in the attachment, to better reflect the work already underway by federal agencies as a result of Congressional action.

Should you have any questions, please feel free to contact any of the undersigned organizations.

Sincerely,

Specific concerns with S. 779 as reported out of
the Senate Homeland Security and Government Reform Committee on July 29, 2015

The undersigned are concerned that S. 779 would lead to an inflexible, one-size-fits-all government-wide policy that would undermine copyright and intellectual property and is inconsistent with the evidence of differences among areas of scholarly research.

In contrast, a process already underway at the federal agencies under the direction of the White House Office of Science and Technology Policy (OSTP), implementing the Congressional mandate in Section 103 of the America COMPETES Reauthorization Act of 2010, provides an appropriately flexible approach to providing public access. In response to the February 21, 2013, OSTP memo, most of the federal agencies that fund research have already announced plans to implement public access policies. Many have taken flexible and collaborative approaches that would be made more difficult by S. 779.

There are five areas in which we believe the OSTP memo strikes the appropriate balance to promote public access that would be harmed or undone by the proposed legislation.

- **The OSTP memo avoids ambiguous, overly-expansive intellectual property demands that go far beyond public access.** The OSTP memo focuses on providing public access to articles, so that the public can read and use the reports of funded research. In contrast, the requirements in S. 779 pose numerous technical and policy questions related to formats, licensing terms, and the use of copyrighted and trademarked works that have yet to be considered by policymakers. In making broad demands with respect to reuse and other capabilities, S. 779 creates a costly burden on researchers, agencies, repositories, and publishers.
- **The OSTP memo provides a 12 month post-publication timeframe for free access as a guideline, not a maximum limit**. The communication practices of different disciplines and even different journal communities vary. The evidence on this is clear, as shown in research like www.publishers.org/usagestudy. While a 12 month embargo has been implemented for fast-moving, well-funded biomedical sciences in the NIH Public Access Policy, this embargo is not appropriate for all disciplines.
- **The OSTP memo provides a petition process to change the period of delay for a specific field**. Whatever the starting point for a public access policy, agencies should be given the flexibility to adjust the policy without undue burdens; S. 779 suggests an unworkable article-by-article approach.
- **The OSTP memo provides flexibility for agencies to determine the best method to provide public access.** S. 779 was amended to allow the use of third-party repositories, but in places it still seems to suggest that federal agencies should establish their own government-run or government-supported repositories for the collection, distribution, and maintenance of the literature. This could prove to be extremely inefficient and expensive to integrate with future private-sector innovations in information technology and delivery systems. Under policies that permit a flexible public-private cooperative approach, publishers are incentivized to continue to improve offerings for the scholarly community, and agencies can choose efficient and cost-effective approaches to public access.
- **The OSTP memo directs agencies to assess their policies for impact, and revise as needed.** In contrast, S. 779 would study only whether agencies are using the best license terms, with a presumption that copyright might need to be overridden. Any report or analysis should include a full assessment of the impact of public access policies, investigating both the costs and benefits; and agencies should be given the flexibility to adjust their policies in response to the results.

The undersigned organizations:

Academica Press, LLC
American Anthropological Association (AAA)
American Association for Dental Research
American Astronomical Society
American College of Cardiology (ACC)
American College of Physicians
American Dairy Science Association
American Dental Association (ADA)
American Geophysical Union
American Institute of Aeronautics and Astronautics (AIAA)
American Institute of Chemical Engineers (AIChE)
American Mathematical Society
American Medical Association (AMA)
American Meteorological Society
American Physiological Society
American Psychiatric Association Publishing, Inc.
American Psychological Association (APA)
American Public Health Association (APHA)
American Society for Investigative Pathology (ASIP)
American Society of Agricultural and Biological Engineers (ASABE)
American Society of Agronomy
American Society of Cataract and Refractive Surgery (ASCRS)
American Society of Civil Engineers (ASCE)
American Society of Clinical Oncology (ASCO)
American Society of Cytopathology (ASC)
American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE)
American Society of Hematology (ASH)
American Society of Mechanical Engineers (ASME)
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Association of American Publishers (AAP)
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Barnhardt & Ashe Publishing, Inc.
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Human Kinetics
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Illuminating Engineering Society
Institute of Industrial Engineers (IIE)
International Association for Dental Research
International Association of Scientific, Technical, and Medical Publishers (STM)
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National Kidney Foundation
Silverchair
Society for Industrial and Applied Mathematics (SIAM)
Society for Mining, Metallurgy & Exploration (SME)
Society for Sedimentary Geology (SEPM)
Society of Cardiovascular Computed Tomography
Society of Nuclear Medicine and Molecular Imaging (SNMMI)
Software and Information Industry Association (SIIA)
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Thieme Publishers
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