

Twelve Reminders about FRPAA

From SPARC Open Access Newsletter, May 2010.

<http://dash.harvard.edu/handle/1/4725200>

Past experience suggests that these are the 12 points that opponents are most likely to distort or fail to mention.

- (1) FRPAA [Federal Research Public Access Act] mandates deposit in OA repositories, not submission to OA journals. It focuses on green OA and ignores gold OA.
- (2) It does not mandate that subscription-based journals convert to OA. It does not tell any kind of journals what their access policies or business models ought to be. It regulates grantees, not publishers.
- (3) It only applies to articles that have already been published in peer-reviewed journals.

This point has three important consequences. First, it means that FRPAA doesn't apply to unpublished articles or research notes. Therefore, it doesn't force premature disclosure from researchers who make patentable discoveries. The policy kicks in only after researchers voluntarily decide to publish.

Second, the policy does not bypass peer review. On the contrary, it demands peer review and merely widens access to peer-reviewed research.

Third, it's about archiving copies, not manipulating originals. Hence, the possibility of government censorship doesn't come up. The originals will be in libraries and independent web sites around the world, wherever the publisher's market reach and preservation back-ups have managed to place them. If some of the published originals are not in fact copied for OA archiving, or if some copies are removed after deposit, that would be regrettable (and violate the policy). But it would not affect the originals at all. It would not delete them from libraries and independent web sites around the world, shrink the range of their distribution, change their access policies, or reduce their visibility. To use the word

“censorship” to describe the incomplete copying of literature already published, distributed, stored, curated, and preserved in independent locations is incoherent newspeak. Or (to play along), if occasional non-archiving really is a kind of censorship, then publishers who want to defeat an OA archiving mandate like FRPAA want systematic non-archiving and mass censorship.

Historical note: Hard as it is to believe, in the wake of the 2006 version of FRPAA a PR consultant advised the Association of American Publishers (AAP), Elsevier, and Wiley to argue that “Public access equals government censorship,” and a short-lived organization created by the Association of American Publishers, called PRISM (Partnership for Research Integrity in Science & Medicine), actually tried it.

<http://www.earlham.edu/~peters/fos/2007/01/siege-mentality-at-aap.html>

<http://www.earlham.edu/~peters/fos/2007/08/publishers-launch-anti-oa-lobbying.html>

- (4) Under FRPAA, the government will not tell journals what to publish. The government will not conduct peer review or tell journals how to conduct peer review. It will not become a publisher where it wasn't already a publisher. It will not “nationalize science” (whatever that means).

Government funding agencies will continue to decide what research they will fund. Because they control significant funds, that's a significant power. But FRPAA didn't create it and defeating FRPAA won't repeal it.

- (5) FRPAA mandates deposit in an OA repository, but it does not limit deposits to a single repository.

This is true in two senses. First, FRPAA lets federal funding agencies host their own repositories or point grantees to suitable external repositories. Second, even after agencies make their choice, and authors deposit their work in the designated repository, authors are not limited to that repository and may deposit their work in any other repositories as well. The first point means that the designated repositories won't always be controlled by the government. The second point means that, even when they are, authors may deposit in independent repositories without restraint. The policy opens new access doors without closing any old ones.

- (6) FRPAA does not mandate OA to the published edition of an article. It applies only to the final version of the author's peer-reviewed manuscript—basically, the version approved by peer review but not yet copy-edited. This is a concession to publishers to preserve library incentives to subscribe.
- (7) FRPAA gives publishers the option to replace the author's manuscript in the designated repository with the final published version. This is a solution for publishers who worry about the circulation of multiple versions.

- (8) FRPAA does not mandate OA immediately upon publication, but permits embargoes up to six months. This is a concession to publishers and a compromise with the public interest in immediate public access.

For the first six months after publication, publishers will have exclusive distribution rights to both the published edition and (at their choice) the final version of the author's peer-reviewed manuscript. After six months, publishers will still have exclusive distribution rights to the published edition, and the only time limit on that exclusivity is the duration of copyright itself (the life of the author plus 70 years). Of course, publishers may voluntarily waive some of these exclusive rights by permitting authors to self-archive their postprints, and today more than 60% of surveyed publishers do just that.

The NIH policy allows an embargo of up to 12 months. But the NIH is the outlier here, not FRPAA. Even if the NIH's own field of medicine, the NIH is the only OA-mandating medical research funder in the world allowing embargoes longer than six months. Every other one without exception limits embargoes to six months: the Arthritis Research Campaign (UK), British Heart Foundation, Canadian Breast Cancer Research Alliance, Canadian Health Services Research Foundation, Canadian Institutes of Health Research, European Research Council, Cancer Research UK, Chief Scientist Office of the Scottish Executive Health Department, Department of Health (UK), Fonds de la recherche en santé du Québec (Canada), Fund to Promote Scientific Research (Austria), Genome Canada, Howard Hughes Medical Institute, Joint Information Systems Committee (UK), Michael Smith Foundation for Health Research (Canada), National Cancer Institute of Canada, National Institute for Health Research (UK), Vetenskapsrådet (Swedish Research Council, Sweden), and the Wellcome Trust (UK).

- (9) FRPAA does not provide funds for publication fees at fee-based OA journals.

There's a healthy ongoing debate about whether funding agencies should offer to pay these fees. Are they an unaffordable diversion of funds from research or a needed investment in unembargoed OA and peer-reviewed OA journals? (There are publishers and OA proponents on each side of this question.) The debate should continue, but don't let it confuse the issues. Objections to the practice are not objections to FRPAA.

- (10) FRPAA does not depend on publisher consent or cooperation. It will rely—most likely—on a special license, already provided by federal law, authorizing federal funding agencies to disseminate the results of the research they fund. However, FRPAA-covered agencies could also rely on the NIH rights-retention method or other methods still to be devised.

The federal-purpose license and the NIH rights-retention method both give the government a non-exclusive right to disseminate OA copies of the articles. Both methods prevent publishers from acquiring the full bundle of exclusive rights

they might have desired and might otherwise have acquired. Both methods require divided ownership. Publishers know this well, but they have track record of misrepresenting it in their public protests. They frame their complaint as if they were “the copyright holders” to these articles, without qualification. They often speak as if the government were expropriating their property or preventing them from enforcing rights they possess, as opposed to preventing them from acquiring rights they wish to possess.

<http://www.earlham.edu/~peters/fos/newsletter/10-02-08.htm#nih>

- (11) FRPAA does not amend copyright law. It does not seize or invalidate copyrights, prevent government-funded researchers from holding copyrights on their work, prevent them from transferring rights to publishers, or prevent publishers from enforcing the rights they acquire from authors.
- (12) Finally, FRPAA makes no assumptions about how many members of the lay public are interested in reading peer-reviewed scientific research articles. It doesn't matter that some members of the lay public won't care to read the articles that will become OA, or won't understand them, just as it doesn't matter that some drivers won't care to drive on a given stretch of publicly-funded road. If you don't care to have access to NIH-funded research yourself, you still benefit because doctors and researchers have access. Likewise, FRPAA will benefit everyone who cares to read this research, and benefit everyone else indirectly by benefiting researchers directly. The purpose is not to widen access for professionals alone, or lay readers alone, but to widen access for everyone who can make use of publicly-funded research.

I wrote the first version of these 12 reminders for the SPARC Open Access Newsletter, February 2, 2007.

<http://www.earlham.edu/~peters/fos/newsletter/02-02-07.htm#frpaa>

When FRPAA was re-introduced in the Senate in June 2009, I revised them in SOAN for August 2, 2009.

<http://www.earlham.edu/~peters/fos/newsletter/08-02-09.htm#frpaa>

When FRPAA was introduced in the House of Representatives in April 2010, I revised them again in SOAN for May 2, 2010.

<http://www.earlham.edu/~peters/fos/newsletter/05-02-10.htm>

The version here is the latest one, from May 2010.