

Association of American Publishers | AAP

AAP Feedback to cOAlition S “Guidance on the Implementation of Plan S”

Introduction

The Association of American Publishers (AAP) represents the leading book, journal, and education publishers in the United States on matters of law and policy. We believe strongly in the role of publishing in a democratic society, and advocate for outcomes that incentivize the publication of creative expression, professional content, and learning solutions to the benefit of the public. As key contributors to both local markets and the global economy, publishers invest not only in high-quality intellectual property, but also in the scientific progress and intellectual advancements that are the point of disseminating knowledge. AAP is therefore vigilant about protecting the rights and privileges afforded to publishers and authors under copyright law and the corresponding legal freedoms to write and publish.

AAP’s membership is diverse but united by mission, particularly in the realm of academic publishing. From research societies to university presses, to commercial publishers, our members collectively publish thousands of scholarly journals, covering nearly every academic and professional field in science, technology, medicine, social sciences, and the humanities. These publishers not only invest in content, but also in the tools by which to make it available, making major private investments to create high-quality scholarly journals and to disseminate them to readers around the world.

Because dissemination is the critical objective of publishing, AAP has long supported public policy frameworks that enable a mix of business models to achieve and continuously improve upon the objective of making important works of authorship readily available to those who want to read and/or share them. Many of our members are strong advocates of open science and offer researchers an increasing array of publishing options and tools to enhance the dissemination and impact of research publications. AAP believes that a robust and innovative licensing landscape is an important part of this objective, and that licensing options should continue to include models for open access where they are sustainable. AAP is committed to working together with research funders, scholarly authors, and other stakeholders to develop appropriately balanced frameworks in this regard.

Plan S

Unfortunately, there is little such balance in the pending Plan S proposal that is the subject of this submission. Having studied the “Guidance on the Implementation of Plan S” (the “Guidance”), AAP is deeply troubled by the plan’s failure to recognize the value of publishers and the services that publishers provide to support scholarly authors in creating and disseminating journal articles, as well as the wide variety of business models that publishers employ in order to provide these important services. Instead, the Guidance mandates a one-size-fits-all approach to access and licensing¹ that would (1) pose a significant threat to scholarly societies and the researchers they

¹ While the Guidance technically purports to allow three paths to Plan S compliance, all three paths require immediate open access and immediate open licensing, effectively prohibiting a broad range of hybrid and subscription business models to impose a single, narrow approach.

support, (2) restrict the foundational freedoms to write and publish, and (3) ultimately reduce investment in scholarly publishing by undermining copyright law.

Plan S was developed and announced without input or buy-in from key stakeholders in the scholarly publishing community, and without following basic principles of sound regulatory process. Among other things, cOAlition S did not offer stakeholders a notice-and-comment opportunity before announcing the foundational regulatory principles of Plan S, and likewise did not offer a notice-and-comment opportunity before crafting the Guidance. cOAlition S also failed to conduct formal impact assessments before developing Plan S and the Guidance, and the Guidance itself fails to even acknowledge, let alone resolve, significant stakeholder concerns raised throughout the process. Furthermore, elements of Plan S—such as undermining copyright law, picking winners and losers between business models, and proposing price controls—would undercut sound economic principles that have enabled innovation, diversity, and growth in scholarly publishing for decades.

AAP urges cOAlition S and the Plan S signatories to consider fostering open access through an inclusive, stakeholder-driven, and evidence-based process that considers the wide diversity of researchers, scholarly disciplines, reading audiences, and publishers that contribute to and benefit from scholarly publishing. This process would involve consulting with a broad range of stakeholders and receiving input and buy-in *before* crafting foundational principles. This process would also involve undertaking empirical analysis to identify and understand the important differences in scholarly disciplines, research communities, and reading audiences that have led to the wide diversity of publishing business models we see today.

Open access policies should be sustainable and should be designed to promote innovation and diversity in scholarly publishing. Furthermore, open access policies should be carefully crafted to avoid unintended consequences that would harm the dissemination of knowledge by reducing the quality and distribution of scholarly articles.

It is the strong view of the American publishing industry that Plan S, as outlined in the Guidance, is not a sustainable policy model for scholarly publishing, and AAP has serious concerns that Plan S will do considerably more harm than good. We have further explained this view below.

Question 1: Is there anything unclear or are there any issues that have not been addressed by the guidance document?

The Guidance fails to address several concerns, raised by a variety of stakeholders over the last five months, about the negative consequences that could occur upon implementing Plan S. Not only does the Guidance fail to explain how Plan S signatories can alleviate these concerns and avoid potential negative consequences through their implementation frameworks, the Guidance completely ignores many concerns, failing to even acknowledge that they were raised. As a result, it is unclear how cOAlition S and the Plan S signatories will address these serious issues as they move forward with implementing Plan S, or whether they will commit in good faith to doing so.

The following issues are particularly concerning to AAP:

A. Plan S poses a significant threat to professional and scholarly societies and the researchers they support

Professional and scholarly societies play an important role in fostering and communicating research in a wide range of fields covering everything from science and medicine to the social sciences and humanities. In addition to publishing and distributing key journals in their fields, societies engage in a broad array of activities that support researchers and professionals in identifying relevant and timely research topics, learning about new research, connecting and collaborating with colleagues, and engaging in public service and advocacy to ensure that important new research has an impact in the real world.

Among other things, these activities include: (1) organizing conferences where groundbreaking new research is presented and where researchers have the opportunity to connect with one another and ask each other questions about their research; (2) developing and offering educational programs to ensure that professionals are aware of the newest research and its implications for their professional practice; (3) encouraging members to engage in research in emerging disciplines and organizing events to facilitate the growth and development of emerging research disciplines; (4) developing and distributing supplementary content that enhances the value of research, such as supplementary data or statistical analyses related to a study, as well as supplementary interviews, commentary, and visual abstracts; and (5) engaging in public policy advocacy to ensure that researchers' needs and concerns receive a voice in government.

It is important to understand that societies' fund the vast majority of their activities through publication revenue from their journals. For some societies, publishing accounts for upwards of 90% of revenue. But this revenue stream is far from automatic. Societies rely on diverse publishing models—often publishing a mix of journals from full subscription to hybrid to open access—to secure the revenue that supports their initiatives and allows them to create the greatest possible value from the research in their field. Furthermore, journal publications are also a key factor for driving society membership, and thus play an important role in enabling the wide range of valuable member and community services that societies offer.

Unfortunately, Plan S would jettison societies' diverse publishing models in favor of an untested one-size-fits-all approach, and nothing in the Guidance addresses the significant risk this poses to societies' viability or offers any guidance as to how research funders may tread carefully here to avoid substantial disruption to societies. The assumption appears to be that societies could simply shift their publishing models toward open access journals funded by open access publication fees, and still maintain adequate revenue streams to fund their publishing operations as well as their many initiatives to support researchers. This is a highly unrealistic assumption. For many societies in the United States, it would be incredibly difficult to shift from their current broad revenue base of journal subscribers to a far narrower revenue base of authors, and this is particularly so in fields where authors do not traditionally have access to funds to cover publication costs. And even if funders are willing to contribute to open access publication costs, the Guidance makes clear that these amounts will be limited, tightly regulated, and capped to reflect "the costs involved in the quality assurance, editing, and publishing process," which leaves out many other costs related to running a high-quality publishing operation, let alone other costs that societies incur in their broader initiatives to support researchers.

By failing to consider the activities and publishing models of professional and scholarly societies and how Plan S will impact them, the Guidance loses sight of the important goal of promoting a vibrant and open research ecosystem that benefits people around the world to the greatest extent possible. Instead, the Guidance focuses on the far more narrow goal of eliminating the subscription and hybrid publishing business models, without regard to the important benefits these diverse business models enable for societies and the researchers they support.

B. Plan S restricts the foundational freedoms to write and publish

One of the most troubling aspects of Plan S is that it restricts authors' and publishers' foundational freedoms to write and publish. Publishers cherish and champion these freedoms, and AAP firmly believes that it is inappropriate for research funders to limit researchers'—and by extension, publishers'—ability to publish scholarly articles reporting on research.

Publishers have long played a central role in the dissemination of knowledge, enabling researchers to communicate their results to the audience of their choice by publishing in the journals most suitable for the specific articles at hand. In doing so, hundreds of scholarly publishers compete with each other to provide the highest value services to researchers and their audiences. Publishers make extensive investments not only in ensuring that their journals publish high-quality, rigorous, and reliable content, but also in developing distribution mechanisms and marketing strategies to ensure that the content makes it into the hands of the relevant audience. The end result is a vibrant, competitive marketplace, where researchers can turn to a broad array of journals—providing a wide variety of options and targeting a wide variety of audiences—to find the publication outlet that best fits their needs.

By prohibiting researchers from publishing in the vast majority of journals, and by mandating a one-size-fits-all model for access and licensing, Plan S would eliminate this diverse and competitive marketplace. In doing so, Plan S would drastically limit researchers' and publishers' freedom to write and publish. While many researchers and publishers have raised serious concerns about this, the Guidance is surprisingly silent on the issue. In fact, despite a highly-publicized letter by nearly 1,700 researchers around the world detailing how Plan S limits scholarly authors' freedom to publish,² the Guidance offers no advice or instruction to research funders as to how to address this significant problem.

Several specific concerns have been raised about the potential negative impact of Plan S on the freedoms to write and publish:

- By banning publication in hybrid journals, Plan S would prevent researchers from publishing in over 85% of existing journals, with the greatest effect on the highest quality peer-reviewed journals (including the most important and selective non-profit society journals) that provide the greatest value to researchers.
- Given that many national research funders in Europe and around the world will likely not participate in Plan S, the plan risks negatively affecting global scientific cooperation, as

² See An Open Letter from Researchers to European Funding Agencies, Academies, Universities, Research Institutions, and Decision Makers, available at <https://sites.google.com/view/plansopenletter/open-letter> (list of signatories available at <https://sites.google.com/view/plansopenletter/signatories>).

researchers collaborating with colleagues in Europe could be forced to abide by the plan's rigid requirements and forego publishing in the most important journals in their field.

- By narrowly requiring one publishing business model, Plan S will likely increase the costs of disseminating scholarly research, thereby fueling the proliferation of low-quality scholarly articles as well as predatory journals that defraud researchers.
- Plan S ignores critical distinctions between different researchers and scholarly disciplines, and instead requires an ill-advised “one-size-fits-all” approach that will have particularly negative effects on researchers in certain fields.

As cOAlition S is well aware, these concerns have led many to conclude that Plan S risks serious harm to academic freedom by preventing researchers from publishing in the journals of their choice and by discouraging international research collaboration.

AAP shares these concerns. By mandating a one-size-fits-all framework and severely restricting researchers' and publishers' freedom to publish, Plan S threatens scholarly publishing's core goal of advancing the dissemination of knowledge by producing collaborative, high-quality, and widely distributed journal articles reporting on research. Despite the Guidance's silence on this issue, AAP sincerely hopes that research funders will consider the importance of the freedom to publish—and the vibrant and diverse research environment it fosters—in crafting their implementation frameworks for Plan S.

C. Plan S undermines copyright law and the core incentives that fuel investment in scholarly publishing

According to the Guidance, Plan S requires authors to make their published journal articles immediately and freely available via a “worldwide, royalty-free, non-exclusive, irrevocable license to share (i.e. copy and redistribute the material in any medium or format) and adapt (i.e. remix, transform, and build upon the material) the work for any purpose, including commercially, provided proper attribution is given to the author.” These requirements of immediate and free access under a broad open license pose a serious threat to the scholarly publishing ecosystem. To understand why, it helps to consider the full range of investments that scholarly publishers make in order to support the dissemination of knowledge.

First, publishers invest in the creation of scholarly journal articles, building the infrastructure and services that allow journals to transform submitted draft manuscripts into high-quality, peer-reviewed articles. Among other things, this includes creating journals and staffing their editorial boards with experts, reviewing thousands of submitted manuscripts, managing the peer-review process (identifying reviewers, coordinating reviews, conducting editorial synthesis and assessment of the review and authors' changes), making significant post-review improvements to articles (e.g. copy editing, layout and design edits, creating or improving graphic presentations), verifying references, assessing articles for ethical considerations, and conducting plagiarism checks. The end result of this investment is a peer-reviewed published article that represents the gold standard in academic research and scholarship. The fact that Plan S targets published articles reporting on research—*after* publishers have made significant investments in the articles—rather than drafts or project reports created during the research process that don't implicate publisher

investment, is a testament to the value that publishers add in the creation of high-quality rigorous scholarly articles.

Second, publishers invest in the dissemination and long-term stewardship of scholarly journal articles. This can include building direct-to-customer distribution platforms or contracting with other entities to secure distribution. It also includes facilitating discovery by assigning digital identifiers, providing XML tagging and metadata, conducting search engine optimization, and submitting articles to abstracting, indexing, and discovery services. In terms of long-term stewardship, publishers deposit articles into digital archives, update articles for corrections or addenda, update links, track citations and other important metrics, conduct ongoing copyright and plagiarism protection in order to safeguard the integrity of the work, and ensure ongoing enhanced platform functionality and integration. These are all valuable and important services that require significant investment even after publishers have invested in improving the articles themselves.

Third, in addition to investing in the creation, dissemination, and long-term stewardship of high-quality journal articles, publishers also invest in cultivating an audience for these articles. Among other things, publishers market and brand their journals and create valuable supplementary materials that assist a wide range of audiences in understanding the relevance and importance of scholarly articles—helping professional audiences decide which articles are most relevant to them, and helping to explain scholarly articles to interested non-professional audiences. These efforts play an important role in facilitating the dissemination of knowledge. After all, research and science don't become "open" to the public simply by making journal articles freely available. Research and science only truly become open to the public if journal articles are explained to people in ways that they can understand, and publishers make significant investments in doing just that.

In a similar vein, it is a common mistake to assume that because something is available for free it will be more widely disseminated and will generate more value for the reading audience. Consumers of scholarly articles, like all other consumers, have limited time to devote to identifying and reading relevant articles. And like in any other industry, marketing, branding, and audience cultivation for journals plays an important role in reducing consumers' search costs and increasing their consumption of articles that are relevant and valuable for them. Free distribution that jettisons these important publisher-provided services could very well reduce the dissemination and consumption of scholarly articles.

Copyright law lies at the heart of publishers' ability to make all of the above investments. By securing to authors a property right in the fruits of their creative labors, copyright creates a marketable asset that fuels investment and drives innovation in scholarly publishing, facilitating the creation, publication, and dissemination of scholarly journal articles.³ But copyright only functions to enable this virtuous cycle of investment and innovation if copyright owners are permitted to exercise the property rights inherent in their copyright free of restrictions that, contrary to the purpose of copyright law, would undermine its ability to function as a marketable asset.

³ In the United States, as in many constitutional democracies, copyright is more than just a statute—it is grounded in the nation's constitution. America's Founding Fathers recognized the importance of copyright law in incentivizing the dissemination of research, enshrining in the United States Constitution the Congress' power to "Promote the Progress of Science . . . by securing for limited times to Authors . . . the exclusive Right to their . . . Writings." U.S. Constitution Article I, Section 8, Clause 8.

Plan S, on the other hand, effectively removes all meaningful copyright title and ownership from scholarly journal articles. By requiring immediate free access to journal articles under a broad open license, Plan S places a restrictive lien on scholarly authors' copyright that eviscerates its usefulness as an investment-enabling asset. In doing so, Plan S undermines copyright law and the core incentives that fuel investment in scholarly publishing, significantly limiting publishers' ability to make critical contributions to support the dissemination of knowledge. Plan S would thus result in lower quality articles, inferior distribution platforms, reduced and inferior long-term stewardship of articles, and increased search costs that make it harder for scholarly authors to connect with their audience. And despite this profound disruption to the scholarly publishing marketplace, the Guidance says very little about how Plan S envisions funding publishers' crucial investments in this space.

Instead, the Guidance stresses the importance of publication cost transparency, but fails to acknowledge that requiring publisher cost and pricing transparency—effectively forcing publishers to reveal their trade secrets—runs the risk of reducing competition between publishers, thereby stifling innovation in scholarly publishing business models. The Guidance further suggests that open access publishing costs should be standardized and capped to reflect “the costs involved in the quality assurance, editing, and publishing process,” but the Guidance says nothing about the costs involved in the dissemination, stewardship, and audience cultivation for scholarly articles, and the Guidance ignores the profound negative effects that standardized price controls could have on competition, innovation, and diversity in scholarly publishing business models.⁴ Furthermore, the Guidance appears to assume, without justification or explanation, that publishers would be able to radically change their business models to fit into Plan S's one-size-fits-all approach without suffering significant disruption in their ability to operate and publish high-quality articles.

It is also worth noting that Plan S's required open license would severely restrict authors' and publishers' ability to police deceptive and misleading uses or adaptations of scholarly works that would normally constitute copyright infringement. This is particularly concerning in scientific and medical fields, where misleading modifications could lead to negative health and safety outcomes. Furthermore, requiring authors to allow anyone to “remix, transform, and build upon” their work can have detrimental professional and career consequences for authors in a wide variety of fields, and particularly in the social sciences and humanities. The required license even allows alteration and reuse for *commercial* purposes, which could easily be in competition with the author or publisher, or at a minimum could free-ride on the author's work. Plan S would thus have the bizarre effect of restricting scholarly authors' ability to decide how to share their articles while simultaneously encouraging free-riders to reuse or adapt other authors' articles without permission, including for their own commercial purposes.

In short, Plan S proposes to cast aside the core system that enables and incentivizes investment in scholarly publishing, but the Guidance offers virtually no explanation of how Plan S would enable and incentivize continued investment to sustain a vibrant, diverse, and innovative scholarly publishing ecosystem. AAP urges cOAlition S and the Plan S signatories to fundamentally

⁴ The Guidance's note that “cOAlition S will commission an independent study on open access publication costs and fees” likewise says nothing about the costs involved in the dissemination, stewardship, and audience cultivation for scholarly articles, or the potential negative effects that standardized and capped open access publishing fees could have on competition, innovation, and diversity in scholarly publishing business models.

reexamine and rethink the consequences of this policy before moving forward with implementing Plan S.

Conclusion

AAP appreciates the opportunity to provide this feedback to cOAlition S and hopes that cOAlition S and its signatories will rethink and reexamine Plan S and the Guidance in light of these concerns.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Matt Bar", with a stylized flourish at the end.

Matthew Barblan
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