

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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April 16, 2013

Assembly Member Jim Frazier, Chair
Committee on Accountability and Administrative Review
California State Assembly
Sacramento, California

RE: **Opposition to AB 609 - Taxpayer Access to Publicly Funded Research, for hearing on April 17, 2013**

Dear Chairman Frazier and members of the Committee:

We encourage you to reject AB 609 because it sets a dangerous precedent for creative work and would disadvantage California researchers and institutions that include state agencies among their supporters.

The bill would establish a dangerous precedent for state control over research output where a state agency provided any direct funding. While AB 609 addresses published research, this bill's principles could lead to state control over other content funded with grants from state agencies. For example:

- Patents and copyrighted work resulting from state funded research
- Blogs, videos, and photos featuring the results of research projects with state support
- Software developed by or for research receiving state funding

Taking just the software example, it's instructive to recall what happened in the software industry a decade ago, when supporters of *Open Source Software* sought to advantage their model versus the prevalent model of commercial software. Like the *open access* movement behind AB 609, the open source software campaign originated in Europe and found supporters in the US to pursue legislative mandates for government-funded institutions.

Advocates of open source software sought legislation to force customers to choose *their* software license, instead of competing on the merits of features, performance, and costs. Commercial software providers and customers argued successfully against mandates, preferring the freedom to choose open source software if and when it better met their needs.

A decade later, software customers have a rich variety of choices ranging from paid licenses to free software, from local installation to cloud-hosted software-as-a-service. Today, open source and commercial software models coexist and compete, and we see hybrid models such as Linux and Google Apps. It was market competition—much of it here in California—that created this vibrant technology ecosystem. It was not driven by mandates for any single business model.

This same outcome would most likely occur for competing models of open access journals versus paid peer-review journals— but only if we avoid mandates that deny researchers the ability to choose the best route to publicize and advance their work.

Today, California professors and researchers are free to publish in any of the many open-access journals available. They make these choices based on many factors, including credibility, exposure for the university, and advancement of their own careers.

But if California becomes the first state to mandate open access publication, it would incur two *first-mover disadvantages*. First, California researchers who count on state grants will be disadvantaged relative to their peers in California and across the country. AB 609 would restrict California researchers' access to high-profile publications in paid journals, limiting their options for exposure and career advancement. That disadvantages California institutions, which would have a harder time competing against institutions in every other state when it comes to attracting and retaining researchers who are keen to publish their work in paid journals.

Another first-mover disadvantage would fall on state agencies that make research grants alongside other grantors, since fellow funders could object to being forced into open publication just because a portion of total support came from a California agency.

Today, much of the research conducted in California is funded by federal and state grants that require matching funds from other sources – sources that do not want to relinquish control over research publications. For example, the **California State University Program for Education and Research in Biotechnology** (CSUPERB) is awarding research grants next month that *require* matching funds from non-state sources:

CSUPERB recognizes that collaborations with partners and institutions external to the CSU broaden the opportunities for innovative biotechnology projects, promote multi-disciplinary partnerships, encourage product development and other translational and outreach activities, and enrich California's communities and life sciences industry.

JV proposals must include matching contributions from external partners, totaling at least the same dollar amount requested from CSUPERB.

<http://www.calstate.edu/csUPERB/grants/entrepreneurial-joint-venture/documents/2013JointVentureRFPFINAL.pdf>

AB 609 imposes an open publication mandate to any research that received *any* direct funding from state agencies, which would include collaborations like the Cal State example above. AB 609 would create a significant disadvantage for external funding partners who would be reluctant to contribute matching funds, since the presence of any state funding brings new restrictions on where and how their research could be published.

We ask that you vote against imposition of a mandate when market forces are already at work, and reject the negative consequences of AB 609.

We appreciate your consideration of our views, and would be glad to provide further information.

Sincerely,



Steve DelBianco
Executive Director, NetChoice

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