

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

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March 18, 2013

Senator Michael W. Frerichs, chairman
Senate Higher Education Committee
Illinois General Assembly
Springfield, Illinois

RE: **Opposition to SB 1900 - Open Access to Research Articles**

Dear Chairman Frerichs:

We encourage you to reject SB 1900 because it sets a dangerous precedent for creative content, uses a mandate where market forces are already working, and would disadvantage Illinois state institutions.

The bill would establish a precedent for state control over creative productions where any government employees played even a minor role. While SB 1900 addresses only research articles, this bill's principles could logically extend to assert state copyright over other content coming out of the state's colleges and universities. For example:

- Essays, blogs, and comments written by students employed as teaching assistants
- A violin professor's sheet music or audio recordings
- Videos where faculty assisted in production or editing
- Photographs taken by work-study students
- Original artwork created with guidance from college instructors
- Software developed by students where professors assisted with debugging

Taking just the software example from this list, it's instructive to understand what happened in the software industry a decade ago, when supporters of *Open Source Software* sought to advantage their model over existing commercial software. Like the *open access* movement behind SB 1900, the open source software campaign originated in Europe and found supporters in the US to pursue legislative mandates for government and government-funded institutions.

Advocates of open source software believed that legislative mandates were needed to force customers to choose their model, instead of competing on the merits of features, performance, and costs to install and maintain the software. Commercial software providers and customers argued successfully against mandates, preferring the freedom to choose open source software 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 many hybrid models such as Linux and

Google Apps. It was market competition that created this vibrant technology ecosystem – not mandates for any single business model.

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

Today, Illinois 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 Illinois becomes the first state to mandate open access publication, it creates two *first-mover disadvantages*. First, state-employed professors and researchers will be disadvantaged relative to their peers at private institutions in Illinois and at universities across the country. SB 1900 would deny Illinois professors the opportunity for high-profile publications in paid journals, decreasing their chances for exposure and career advancement.

That disadvantage also impacts Illinois state universities, who would have a harder time competing against private institutions and colleges in every other state when it comes to attracting and retaining professors and researchers who are keen to publish their work in paid journals.

We ask that you vote against imposition of a mandate when market forces are already at work.

We appreciate your consideration of our views, and please let me know if I can provide further information.

Sincerely,

A handwritten signature in black ink that reads "Steve DelBianco". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Steve DelBianco
Executive Director, NetChoice

cc: Members of the Committee

NetChoice is a coalition of e-Commerce businesses. More information at www.netchoice.org