

113TH CONGRESS
1ST SESSION

S. 350

To provide for Federal agencies to develop public access policies relating to research conducted by employees of that agency or from funds administered by that agency.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2013

Mr. CORNYN (for himself and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To provide for Federal agencies to develop public access policies relating to research conducted by employees of that agency or from funds administered by that agency.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Access to Science
5 and Technology Research Act of 2013”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the Federal Government funds basic and
9 applied research with the expectation that new ideas

1 and discoveries that result from the research, if
2 shared and effectively disseminated, will advance
3 science and improve the lives and welfare of people
4 of the United States and around the world;

5 (2) the Internet makes it possible for this infor-
6 mation to be promptly available to every scientist,
7 physician, educator, and citizen at home, in school,
8 or in a library; and

9 (3) the United States has a substantial interest
10 in maximizing the impact and utility of the research
11 it funds by enabling a wide range of reuses of the
12 peer-reviewed literature that reports the results of
13 such research, including by enabling computational
14 analysis by state-of-the-art technologies.

15 **SEC. 3. DEFINITION OF FEDERAL AGENCY.**

16 In this Act, the term “Federal agency” means an Ex-
17 ecutive agency as defined under section 105 of title 5,
18 United States Code.

19 **SEC. 4. FEDERAL RESEARCH PUBLIC ACCESS POLICY.**

20 (a) REQUIREMENT TO DEVELOP POLICY.—

21 (1) IN GENERAL.—Not later than 1 year after
22 the date of enactment of this Act, each Federal
23 agency with extramural research expenditures of
24 over \$100,000,000 shall develop a Federal research

1 public access policy that is consistent with and ad-
2 vances the purposes of the Federal agency.

3 (2) COMMON PROCEDURES.—To the extent
4 practicable, Federal agencies required to develop a
5 policy under paragraph (1) shall follow common pro-
6 cedures for the collection and depositing of research
7 papers.

8 (b) CONTENT.—Each Federal research public access
9 policy shall provide for—

10 (1) submission to the Federal agency of an elec-
11 tronic version of the author’s final manuscript of
12 original research papers that have been accepted for
13 publication in peer-reviewed journals and that result
14 from research supported, in whole or in part, from
15 funding by the Federal Government;

16 (2) the incorporation of all changes resulting
17 from the peer review publication process in the
18 manuscript described under paragraph (1);

19 (3) the replacement of the final manuscript
20 with the final published version if—

21 (A) the publisher consents to the replace-
22 ment; and

23 (B) the goals of the Federal agency for
24 functionality and interoperability are retained;

1 (4) free online public access to such final peer-
2 reviewed manuscripts or published versions as soon
3 as practicable, but not later than 6 months after
4 publication in peer-reviewed journals;

5 (5) providing research papers as described in
6 paragraph (4) in formats and under terms that en-
7 able productive reuse, including computational anal-
8 ysis by state-of-the-art technologies;

9 (6) production of an online bibliography of all
10 research papers that are publicly accessible under
11 the policy, with each entry linking to the cor-
12 responding free online full text; and

13 (7) long-term preservation of, and free public
14 access to, published research findings—

15 (A) in a stable digital repository main-
16 tained by the Federal agency; or

17 (B) if consistent with the purposes of the
18 Federal agency, in any repository meeting con-
19 ditions determined favorable by the Federal
20 agency, including free public access, interoper-
21 ability, and long-term preservation.

22 (c) APPLICATION OF POLICY.—Each Federal re-
23 search public access policy shall—

24 (1) apply to—

1 (A) researchers employed by the Federal
2 agency whose works remain in the public do-
3 main; and

4 (B) researchers funded by the Federal
5 agency;

6 (2) provide that works described under para-
7 graph (1)(A) shall be—

8 (A) marked as being public domain mate-
9 rial when published; and

10 (B) made available at the same time such
11 works are made available under subsection
12 (b)(4); and

13 (3) make effective use of any law or guidance
14 relating to the creation and reservation of a Govern-
15 ment license that provides for the reproduction, pub-
16 lication, release, or other uses of a final manuscript
17 for Federal purposes.

18 (d) EXCLUSIONS.—Each Federal research public ac-
19 cess policy shall not apply to—

20 (1) research progress reports presented at pro-
21 fessional meetings or conferences;

22 (2) laboratory notes, preliminary data analyses,
23 notes of the author, phone logs, or other information
24 used to produce final manuscripts;

1 (3) classified research, research resulting in
2 works that generate revenue or royalties for authors
3 (such as books) or patentable discoveries, to the ex-
4 tent necessary to protect a copyright or patent; or

5 (4) authors who do not submit their work to a
6 journal or works that are rejected by journals.

7 (e) PATENT OR COPYRIGHT LAW.—Nothing in this
8 Act shall be construed to affect any right under the provi-
9 sions of title 17 or 35, United States Code.

10 (f) REPORT.—

11 (1) IN GENERAL.—Not later than October 1 of
12 each year, the head of each Federal agency shall
13 submit a report on the Federal research public ac-
14 cess policy of that agency to—

15 (A) the Committee on Homeland Security
16 and Governmental Affairs of the Senate;

17 (B) the Committee on Oversight and Gov-
18 ernment Reform of the House of Representa-
19 tives;

20 (C) the Committee on Science and Tech-
21 nology of the House of Representatives;

22 (D) the Committee on Commerce, Science,
23 and Transportation of the Senate;

24 (E) the Committee on Health, Education,
25 Labor, and Pensions of the Senate; and

1 (F) any other committee of Congress of
2 appropriate jurisdiction.

3 (2) CONTENT.—Each report under this sub-
4 section shall include—

5 (A) a statement of the effectiveness of the
6 Federal research public access policy in pro-
7 viding the public with free online access to pa-
8 pers on research funded by the Federal agency;

9 (B) the results of a study by the agency of
10 the terms of use applicable to the research pa-
11 pers described in subsection (b)(4), including—

12 (i) a statement of whether the terms
13 of use applicable to such research papers
14 are effective in enabling productive reuse
15 and computational analysis by state-of-the-
16 art technologies; and

17 (ii) an examination of whether such
18 research papers should include a royalty-
19 free copyright license that is available to
20 the public and that permits the reuse of
21 those research papers, on the condition
22 that attribution is given to the author or
23 authors of the research and any others
24 designated by the copyright owner;

1 (C) a list of papers published in peer-re-
2 viewed journals that report on research funded
3 by the Federal agency;

4 (D) a corresponding list of papers made
5 available by the Federal agency as a result of
6 the Federal research public access policy; and

7 (E) a summary of the periods of time be-
8 tween public availability of each paper in a
9 journal and in the online repository of the Fed-
10 eral agency.

11 (3) PUBLIC AVAILABILITY.—The Federal agen-
12 cy shall make the statement under paragraph (2)(A)
13 and the lists of papers under subparagraphs (B) and
14 (C) of paragraph (2) available to the public by post-
15 ing such statement and lists on the website of the
16 Federal agency.

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