

09 January 2019

Dr. Walter G. Copan
Director, National Institute of Standards and Technology
100 Bureau Dr., Stop 1070
Gaithersburg, MD 20899-1070

Re: STM feedback on NIST Special Publication 1234

Dear Dr. Copan:

On behalf of the International Association of Scientific, Technical and Medical Publishers (STM), I want to thank you for the opportunity to comment on NIST Special Publication 1234, "Return on Investment Initiative for Unleashing American Innovation." The members of STM stand in strong support of the Administration's efforts to maximize the value of the transfer of Federal investments in science and technology. In fact, in fulfilling their commitment to communicate the latest discoveries, our members already work with all funders and practitioners of research towards enabling innovation and further discovery. Publishers diligently work to ensure that discoveries are able to be understood, trusted, and built upon, and look forward to continuing our collaborative work with the Administration to implement our shared goals.

STM is the leading global trade association for academic and professional publishers. It has more than 150 members in 21 countries who each year collectively publish more than 66% of all journal articles, as well as tens of thousands of monographs and reference works. STM members include non-profit scientific and scholarly societies, commercial publishers, and university presses who work collectively to ensure broad access to and use of the latest scientific and scholarly information. The majority of our members are small businesses and not-for-profit organizations, who represent tens of thousands of publishing employees, editors and authors, and other professionals across the United States and world who regularly contribute to the advancement of science, learning, culture and innovation throughout the nation. They comprise the bulk of a \$25 billion publishing industry that contributes significantly to the U.S. economy and enhances the U.S. balance of trade.

We want to reiterate our support for the initiative, and our appreciation of the opportunities that were provided during the process of the green paper's development for feedback. Our comments in this letter echo those we submitted in response to the "Request for Information Regarding Federal Technology Transfer Authorities and Processes," as published on May 1, 2018 in 83 FR 19052, Docket Number: 180220199-819-01, but build on those comments in the context of the current green paper. We would also welcome an opportunity for face-to-face discussion about the many ways that data can be leveraged to increase the government's ROI, and could make our experts available for a discussion at your convenience to help with finalizing the draft green paper.

In advance of any direct dialogue, we would like to emphasize our appreciation for the green paper's recognition of the importance of intellectual property. As noted in the paper, innovations, knowledge, and creations are appropriately protected through intellectual property (IP), and significant strategic value can be created by managing these IP rights. Critically, the creation and dissemination of new products and opportunities is enabled through non-federal ownership of IP, which delivers significant ROI to the public. The report recognizes that IP in this case is not limited to patents, but also includes copyright, trademarks, and trade secrets, which are each important forms of IP that are being used to ensure the broadest possible impact of federal research.

To encourage more entrepreneurial activity and a greater ROI, the report helpfully suggests that the government should clarify, through consistent and streamlined government-wide policies and practices, the ownership, use, and compulsory licensing of IP. In particular, we strongly support the intention expressed in the document that the application of "government use licenses" be limited and that any use be construed narrowly. In particular, we appreciate "Intended Action 1" and the regulatory changes suggested in footnote 43. Additional language would be helpful to indicate that the government use license should be limited to internal use by the government. We also recommend that the language of the regulatory change suggested in the second bullet of footnote 43 be expanded to apply to all forms of IP related to Federal and Federally-funded research. These clarifications would greatly increase the potential for commercialization by removing uncertainty about competing government use.

We also agree that, as noted throughout the document, additional steps must be taken to ensure the greatest possible return on investment for federal research and development, and that researchers and innovators can commercialize digital products reporting on or deriving from federal R&D. Intended Action 8, to establish consistency government-wide, would be an excellent step in this direction.

We noted in our earlier submission that the US Department of Education's Open Licensing Requirement for Competitive Grant Programs runs counter to the expressed goals of the ROI initiative and the Lab-to-Market cross agency priority (CAP) goal of the President's Management Agenda (PMA), as well as the central principle of the Bayh-Dole Act. As NIST moves ahead with its partners to implement Intended Action 8, it will be important to address such policies that actively prevent the commercialization of intellectual property created by a grant recipient, moving them into harmonization with other government policies and the cross-agency priority.

Additional consideration is required for the new federal policies regarding data, including data arising from federal R&D. While this topic is the subject of considerable discussion within the Administration, including through the Federal Data Strategy, it would be appropriate to also consider the topic in the context of the ROI initiative. Specifically, federal policies that aim to make data more available to the public in order to increase the ROI for the taxpayer must be coordinated across agencies and must also ensure that any IP rights related to data – including copyrights, patents and trade secrets – are respected. Data is the next frontier, and the government should avoid creating the barriers to translation, commercialization, and collaboration that exist with respect to other R&D assets. The recommendations and results of the green paper could be productively applied to this area moving forward. Publishers have spent a great deal of time over the past decade carefully considering opportunities for creating value with data and we would welcome the opportunity to discuss the issues involved further.

Thank you for your work on this initiative, and your continuing engagement with the stakeholder community. Please let us know if you would be willing to discuss these issues in a face-to-face meeting in the coming months. We look forward to continuing to assist agencies maximise the potential of Federal investments in science and technology.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Michael Mabe', with a stylized flourish at the end.

Michael Mabe
CEO STM