

Exploiting Elsevier's CC License Requirement to Subvert Embargo

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Poster available at: <http://hdl.handle.net/1808/24107>

Abstract: In the last round of author sharing policy revisions, Elsevier created a labyrinthine title-by-title embargo structure requiring embargoes from 12-48 months for author sharing via institutional repository (IR), while permitting immediate sharing via author's personal website or blog. At the same time, all pre-publication versions are to bear a Creative Commons-Attribution-Noncommercial-No Derivatives (CC-BY-NC-ND) license. At the time this policy was announced, it was rightly criticized by many in the scholarly communication community as overly complicated and unnecessary. However, this CC licensing requirement creates an avenue for subverting the embargo in the IR to achieve quicker open distribution of the author's accepted manuscript. In short, authors may post an appropriately licensed copy on their personal site, at which point we may deposit without embargo in the IR, not through the license granted in the publication agreement, but through the CC license on the author's version, which the sharing policy mandates. This poster outlines this issue, our experimentation with application, and engage viewers in questions regarding its potential risks, benefits, and workflows.

Background (Poster column 1)

In early 2015, immediately preceding the announcement of the Elsevier Sharing and Hosting Policy changes, STM (a trade association for publishers) proposed a [Consultation on Article Sharing](#):

“To gain a better understanding of the current landscape of article sharing through scholarly collaboration networks and sites, STM conducted an open consultation across the scholarly community in early 2015. The aim of this consultation was to facilitate discussion by all stakeholders in order to establish a core set of principles that clarify how, where and what content should be shared using these networks and sites, and to improve this experience for all. Our hope for this initiative is for publishers and scholarly collaboration networks to work together to facilitate sharing, which benefits researchers, institutions, and society as a whole.”

The result was a set of “Voluntary principles for article sharing on scholarly collaboration networks” (available as pdf from the STM link above)

Elsevier voiced support for the principles in a Feb. 27 Elsevier Connect post by Tom Reller (VP of Global Corporate Relations), [Elsevier welcomes STM principles to facilitate academic sharing](#)

On April 2 Elsevier submitted comments to the STM Consultation, announced and shared on Elsevier Connect: [Elsevier's contribution to the STM Voluntary Principles consultation request](#) in which Tom Reller wrote: "Elsevier is currently clarifying its sharing and posting policies in-line with these principles."

[Unleashing the Power of Academic Sharing](#) Elsevier Connect press release by Alicia Wise, April 30, 2015 announcing the new policy expressly mentions the STM principles as motivation. "We invite hosting platforms – whether repositories or social collaboration networks – to work with us to make the vision of seamless research sharing a reality."



Figure 1: "Elsevier's New Sharing Policy" Note that "after acceptance" author manuscripts (AAM) can be shared "on personal websites or blogs", but not openly through institutional repositories (IR). After embargo AAM can be shared publicly on non-commercial platforms (like an IR, for example).

<https://www.elsevier.com/data/assets/image/0010/88939/sharing-guidelines.jpg>

"We ask that shared copies contain a DOI link back to the formal publication and be distributed under a clear user license...In the coming months, we will take steps to ensure that from the point of acceptance all manuscripts and articles are tagged with this information, including a noncommercial Creative Commons user license (CC BY NC ND) on all accepted manuscripts."

"You may share your accepted manuscript immediately on a personal website or blog."

"For institutional repositories, we have removed a complex distinction between mandated and voluntary posting, thereby permitting all institutional repositories to host their researchers' accepted manuscripts immediately and to make these publicly accessible after the embargo period."

New Article Sharing Guidelines: <https://www.elsevier.com/about/our-business/policies/sharing>
 Hosting Articles Policy: <https://www.elsevier.com/about/our-business/policies/hosting>

Reaction (Poster column 2)

[Stepping Back from Sharing](#) by Kevin Smith on the Scholarly Communications @ Duke blog, May 4, calls the new policy “a masterpiece of doublespeak” and “effort to micromanage self-archiving”. Smith highlights 2 problems: embargoes (“complicated and draconian”) and restrictive license (CC-BY-NC-ND “further limits the usefulness of these articles for real sharing and scholarly advancement”). Further, he says “...the new policy is exactly a reverse of what Elsevier calls it; it is a retreat from sharing and an effort to hamstring the movement toward more open scholarship.”

On May 20 COAR and SPARC issue a [Statement Against Elsevier's Sharing Policy](#): “This policy represents a significant obstacle to the dissemination and use of research knowledge, and creates unnecessary barriers... In addition, the policy has been adopted without any evidence that immediate sharing of articles has a negative impact on publishers subscriptions. Despite the claim by Elsevier that the policy advances sharing, it actually does the opposite. The policy imposes unacceptably long embargo periods of up to 48 months for some journals. It also requires authors to apply a “non-commercial and no derivative works” license for each article deposited into a repository, greatly inhibiting the re-use value of these articles. Any delay in the open availability of research articles curtails scientific progress and places unnecessary constraints on delivering the benefits of research back to the public...As organizations committed to the principle that access to information advances discovery, accelerates innovation and improves education, we support the adoption of policies and practices that enable the immediate, barrier free access to and reuse of scholarly articles. This policy is in direct conflict with the global trend towards open access and serves only to dilute the benefits of openly sharing research results. We strongly urge Elsevier to reconsider this policy and we encourage other organizations and individuals to express their opinions.”

The COAR Statement is quickly signed by: SPARC, ACRL, ALA, ARL, ASERL, COAPI, CC, EFF, GWLA, bepress, UC Libraries, CMU, Oberlin Group, dozens of prominent public and private universities and university libraries.

[New Policy from Elsevier Impedes Open Access and Sharing](#) May 20 COAR news release about the Statement Against Elsevier's Sharing Policy: “Elsevier's policy is in direct conflict with the global trend towards open access and serves only to dilute the benefits of openly sharing research results,’ said Heather Joseph, Executive Director of SPARC and Kathleen Shearer, Executive Director of COAR, in a joint statement. ‘Elsevier claims that the policy advances sharing but in fact, it does the opposite.’”

[COAR-recting the Record](#) May 21 Elsevier Connect post by Alicia Wise reacting to the COAR Statement: “They introduce absolutely no changes in our embargo periods.” Wise also references the [Taylor & Francis Open Access Survey](#) on author preferences of Creative Commons license terms to support Elsevier's inclusion of non-commercial and no-derivatives terms on the imposed required license for sharing AAM under the new policy.

[Re COAR-recting the Record](#) on May 28 COAR/SPARC respond to COAR-recting the Record with recommendations to Elsevier to improve the new policy, also noting that “since the ‘Statement against Elsevier’s sharing policy’ was published just one week ago (on Wednesday May 20, 2015), it has been signed by close to 700 organizations and individuals, demonstrating that there is significant opposition to the policy.”

Regarding embargoes, COAR/SPARC states: “...there are several aspects of their new policy that severely limit sharing and open access, in particular the lengthy embargo periods imposed in most journals- with about 90% of Elsevier journals having embargo periods of 12 months or greater.”

Regarding CC license, COAR/SPARC observes: “This type of license severely limits the re-use potential of publicly funded research. ND restricts the use of derivatives, yet derivative use is fundamental to the way in which scholarly research builds on previous findings, for example by re-using a part of an article (with attribution) in educational material. Similarly, this license restricts commercial re-use greatly inhibiting the potential impact of the results of research.”

COAR/SPARC recommendations:

1. Elsevier should allow all authors to make their “author’s accepted manuscript” openly available immediately upon acceptance through an OA repository or other open access platform.
2. Elsevier should allow authors to choose the type of open license (from CC-BY to other more restrictive licenses like the CC-BY-NC-ND) they want to attach to the content that they are depositing into an open access platform.
3. Elsevier should not attempt to dictate author’s practices around individual sharing of articles. Individual sharing of journal articles is already a scholarly norm and is protected by fair use and other copyright exceptions. Elsevier cannot, and should not, dictate practices around individual sharing of articles.

[Universities Yelp as Elsevier Pulls Back on Free Access](#) on May 29 the Chronicle of Higher Education frames the policy change as a reaction to the growth of IRs and OA policies (green OA). Alicia Wise confirms that framing: “Elsevier, however, felt the emerging university-based repositories were getting too close to replicating the services it sells to survive, Ms. Wise said. Even the permission for individual scientists to post freely on their own websites might cross that line as the ability to search throughout the Internet improves, she said.”

[A Distinction without a Difference](#) also on May 29, by Kevin Smith on the Scholarly Communications @ Duke blog, on the difference (or not) between “personal website or blog” and IR: “...the real world does not conform to Elsevier’s attempt to make a simple distinction between ‘the Internet we think is OK’ and ‘the Internet we are still afraid of.’” Smith, and others view the singling out of repositories as an attack on IRs and OA Policy institutions and their policies and faculties who supported them.

[Growing support for statement against Elsevier policy](#) on June 4, COAR update: “In the last two weeks, over 1600 individuals and organizations from 52 countries around the world have signed a [statement](#) opposing Elsevier’s new article sharing and hosting policy, underscoring that many in the scholarly community do not support the new policy.”

Alicia Wise posts in the comments in this and other items (June 8):

“Hello Everyone –

After a week of listening to, and conversing with, a number of researchers, librarians, and other stakeholders, we’ve honed in on the following points that seem to be causing the most confusion and angst. Our responses on each point are spread across comment threads and listservs, and I felt it might be helpful to post some key points here:

1. Embargoes: These are neither new, nor unique, to Elsevier. Publishers require them because an appropriate amount of time is needed for subscription journals to deliver value to customers before the full-text becomes available for free. Confusion has arisen because we haven’t always enforced our embargos, preferring to work with Institutional Repositories (IRs) directly to develop institution-specific agreements. Our new policy eliminates the need for repositories to have agreements with us. Instead we are now communicating our embargoes more clearly.
2. Embargo Lengths: Our embargo periods are typically between 12 and 24 months, with some longer or shorter exceptions. We are now hearing that it is the length of our embargo periods that is of concern rather than the fact of their existence. Generally embargos should be set on a title-by-title basis by publishers, however we recognize that other stakeholders seek influence over embargo lengths too and this is reasonable. We have already been planning a review of our embargo periods in 2015. While I cannot pre-judge the outcome of this review, we are very conscious of the many new funding body policies that have emerged in the last year with 12 month embargo periods all of which we will factor in.
3. Author’s rights to self-archive in their IR: We have removed the need for an institution to have an agreement with us before any systematic posting can take place in its institutional repository. Authors may share accepted manuscripts immediately on their personal websites and blogs, and they can all immediately self-archive in their institutional repository too. We have added a new permission for repositories to use these accepted manuscripts immediately for internal uses and to support private sharing, and after an embargo period passes then manuscripts can be shared publicly as well.
4. Retrospective Action: Based on helpful conversations over the last week we know we need to make it much more clear that we do not expect IRs and other non-commercial repositories to take retrospective action.

5. New IR Services: We are developing protocols and technology to help non-commercial sites implement this policy going forward, and have been piloting tools and services to help automate this – for example tagged manuscripts and APIs with metadata and other information about articles published by researchers on your campuses. To register for more information or to express interest in participating in a pilot, please see this page.

6. More clarity: Our new sharing and hosting policies are intended to provide clarity to researchers so that they understand how they can share their research, including on newer commercial sharing sites, and to lift the old requirement for IRs to have agreements with us. I have also uploaded a slide to slideshare showing the differences between our old and new policies (see <http://www.slideshare.net/aliciawise/whats-changed-in-sharing-policy>), and continue to encourage you all to read these for yourselves (see <http://www.elsevier.com/connect/elsevier-updates-its-policies-perspectives-and-services-on-article-sharing>).

We appreciate the feedback we have received, and wish to continue these discussions. We look forward to engaging with you – for example at the upcoming Open Repositories conference and at library conferences such as ALA. You can also always email me directly at a.wise@elsevier.com.”

Embargo Subversion: Theory (Poster column 3)

Being that the policy remains in place, how can we work within it to support author rights, achieve greater access to KU-authored work, and build and leverage KU ScholarWorks (the institutional repository at the University of Kansas)?

Answer: Turn one sticking point (the restrictive license) against the other (embargoes). By allowing immediate AAM posting to the author’s “personal website or blog” with CC license, Elsevier has created the avenue for subverting any embargo. Per Creative Commons’ website, under a [CC-BY-NC-ND license](#), “You are free to: - **SHARE** - copy and redistribute the material in any medium or format.”

A so-licensed item, shared via author’s personal website or blog, could be rehosted on every non-commercial website in the world, including any IR, or every IR, but especially our IR. If the work is not already in the repository, add it like any other item with a note that deposit is enabled by the license. If it is already in the IR (embargoed), change provenance from Elsevier’s sharing and hosting policy to the CC license and drop the embargo.

Embargo Subversion: Applied

When an event occasions an IR ingest of an Elsevier article, depending on circumstances, I deposit AAM with embargo then explain how author can enable us to make full text available via licensed version on personal website or blog immediately, OR I explain how they should license

and post on their personal website or blog, send the link, and then deposit sans embargo. In either case, it's a teaching moment: copyright, author's rights, IR, CC, benefits of sharing, visibility and impact strategies, etc. When author follows through: another openly available paper. If they don't follow through, at least we had the conversation and hopefully they better understand the relevant issues.

Questions/Risks

This model is difficult to scale: it's still pretty hands on, requires action on part of author and repository managers, author may not understand Creative Commons licenses and application process, more communication with author is needed, more IR record management to change provenance or edit a record to remove embargo.

Elsevier could change the policy: a few people have suggested that I shouldn't talk about this too loudly because Elsevier could change the policy to close the loophole. Fair enough, but strategies to achieve OA and support authors that we can't talk about aren't real strategies. If this works we should talk about it and implement it when we can. If they change the policy, we'll look for ways to deal with that. In a way, that would be a win: walking back on a policy the open community criticized.

What is a non-commercial "personal website or blog"? Wordpress? Weebly? Wix? Do departmental pages or lab websites count? Academic social media (clearly RG and Academia.edu wouldn't count, but there's not a huge distance between RG and Wordpress)? Why not an IR? As Kevin Smith suggests, Elsevier is making a distinction without a difference. How much are we to worry about it?

I welcome feedback and comments on this poster/idea. Please email me!