



Journal of Copyright in Education and Librarianship

JCEL is published by Clemson University Press
ISSN 2473-8336 | jcel-pub.org

Volume 2, Issue 2

Leveraging Elsevier's Creative Commons License Requirement to Undermine Embargoes

Josh Bolick

Bolick, J. (2018). Leveraging Elsevier's Creative Commons License Requirement to Undermine Embargoes. *Journal of Copyright in Education and Librarianship*, 2(2), 1-19. <https://doi.org/10.17161/jcel.v2i2.7415>



© 2018 Bolick. This open access article is distributed under a Creative Commons Attribution 4.0 License <https://creativecommons.org/licenses/by/4.0/>

Leveraging Elsevier's Creative Commons License Requirement to Undermine Embargoes

Josh Bolick
Scholarly Communication Librarian
University of Kansas

Abstract

In the last round of author-sharing policy revisions, Elsevier created a labyrinthine title-by-title embargo structure requiring embargoes from 12 to 48 months for authors sharing via institutional repository (IR), while permitting immediate sharing via an author's personal website or blog. At the same time, all prepublication 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 criticized by many in the scholarly communication community as overly complicated and restrictive. However, this CC licensing requirement creates an avenue for subverting an embargo in the IR to achieve quicker and wider open distribution of the author's accepted manuscript (AAM). To wit, authors may post an appropriately licensed copy on their personal site or blog, at which point the author's host institution may deposit without an 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 article outlines the background and rationale of the issue and discusses the benefits, workflows, and remaining questions.

Keywords: author's rights, open access, institutional repository, scholarly sharing

Leveraging Elsevier's Creative Commons License Requirement to Subvert Embargoes

Authors of academic journal articles write for impact, to expand the knowledge of their fields and to advance in their own careers, rather than for direct financial incentives (Suber, 2012). Meanwhile, some publishers reap substantial profits from that work by controlling access to it through costly and ever-increasing subscriptions and other licensing agreements that provide access to some and deny it to others based on their (or their institution's) ability to pay. Whereas academic authors generally want the widest possible readership, and limiting access naturally leads to a potential loss of readership, a conflict appears between the interests of authors and those of such publishers. In an effort to balance publication agreements back toward authors, "authors' rights" have become a significant driver of change in the scholarly publishing landscape, frequently through open access (OA). Authors' rights refers to an author's ability to exercise some degree of control over an article after it is published, or more correctly, after a publication contract has been signed (ACRL, n.d.). OA refers to both a status and a movement. As a status of scholarly work, OA refers to scholarship that is "digital, online, free of charge, and free of most copyright and reuse restrictions" (Suber, 2012). The OA movement consists of authors, librarians, publishers, funders, and other stakeholders that advocate for OA as a default mode of scholarly publishing and sharing.

Achieving OA in scholarly work includes two modes: publishing and archiving. In the case of OA publishing, also known as gold OA, articles are open on the publisher's website; they are not behind a paywall, and they are often openly licensed through Creative Commons (CC) to permit their reuse. The *Journal of Copyright in Education and Libraries* (JCEL), the publication venue of the present article, is a good example of this. Everyone in the world with access to the web can consume this article, and through the Creative Commons Attribution (CC-BY) license under which it is available, they may do whatever they want with it, more or less, provided that I am given attribution (Creative Commons, n.d.). Even in the case of an author transferring copyright ownership to the publisher, which is quite common, an openly licensed and published article substantially supports the rights of an author to participate in the post-publication life of the article. They can tweet it, post it on their website, incorporate it into future work, share it with students and colleagues, and so on. In short, they can behave as though they retained ownership of their work after signing the publication contract or exercise their rights as the author, though not exclusively, since the open license applies to everyone who can comply with the terms of the license.

This article deals with the other significant kind of OA: self-archiving or green OA. In the case of self-archived OA, authors publish in whatever venue they prefer and in which they can be accepted, retaining enough rights to share some version of their article online so that readers can at least consume the intellectual content of the article. The shared version might be the submitted manuscript (AKA preprint), the accepted manuscript (AKA postprint), or the final published version (AKA version of record). The author might share their work on a personal website or blog, departmental or other institutional website, an institutional or subject repository, or scholarly social media site (e.g., ResearchGate or Academia.edu). Generally, green OA is less likely to be openly licensed (though with significant caveats, as outlined in this paper). Anyone with Internet access can read the content, but it may be “all rights reserved,” thus limiting reuse of the article beyond sharing it. Some publication contracts are much better than others in terms of authors’ rights and open sharing, but generally, most journals now allow the open sharing of some version on some timeline, frequently after an embargo period. During the embargo, only the published version, behind a paywall or other access provision, is available to authorized readers and not to unauthorized readers (Armstrong, 2009). As will be observed in this article, publishers hold a variety of attitudes toward embargoes. Traditional publishers commonly favor them as a necessary period of artificial scarcity during which they reap a financial return on their investment. Open advocates generally oppose embargoes as an unwarranted delay in attaining maximum potential readership, thereby delaying and diminishing the impact and the progress of science. The right to share at least the accepted (peer reviewed with all associated changes, but not yet formatted and copyedited into the final published version) manuscript is a common standard.

I cannot speak for the preferences of all authors, but as an author, I much prefer openly licensed gold OA, but when that is not possible, the ability to share my accepted manuscript is better than no sharing at all and is therefore my personal minimal threshold for choosing a publication venue. The shorter the embargo, if any, the better. In short, I want my work out there, I want you reading it, talking about it, sharing it, building on it, criticizing it, and otherwise engaging with it, as soon as possible, and that requires that you at least have access to it, which both green and gold OA facilitate.

Green OA is frequently institutionalized through the establishment and maintenance of an institutional repository (IR) and a staff to assist or mediate deposits into it. IRs may be entirely managed by the host institution, frequently utilizing open source

software, such as Islandora or D-Space, or contracted out to a hosting service, such as bepress. IRs commonly host published journal articles, conference proceedings and posters, book chapters, electronic theses and dissertations, and any number of other research outputs. Many institutions have adopted OA policies to support faculty who would like to use their IRs to make their work open (Shieber & Suber, n.d).

In summary, authors who wish to provide greater access to their work frequently use institutional repositories to do so, and sometimes publishers impose a delay on how soon the open version may be released. A common use case might look like this: an author has an article accepted for publication in journal X, which allows the author to share their accepted manuscript 12 months from the date of publication in an IR with a statement noting copyright ownership with the publisher, place of official publication, and a link to that final version of record. The author works with their IR staff to deposit the accepted manuscript, and it becomes openly available in the repository at the expiration of the embargo, but not until then, unless other mitigating factors are present.

Green OA and Elsevier Background

In early 2015, the International Association of Science, Technical, and Medical Publishers (STM) a trade association conducted 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. (STM, 2015)

The consultation resulted in a set of “Voluntary principles for article sharing on scholarly collaboration networks” (available as a PDF from the STM citation) to advance the purpose quoted above.

Elsevier (a significant academic publisher) voiced support for the principles on February 27, 2015, through their public relations/ blogging platform, Elsevier Connect, in a post by Tom Reller (VP of

Global Corporate Relations), titled “Elsevier welcomes STM principles to facilitate academic sharing” (Reller, 2015). On April 2, Elsevier substantiated that embrace of the STM principles by submitting comments to the STM Consultation, which was announced and shared on an Elsevier Connect post, “Elsevier’s contribution to the STM voluntary principles consultation request.” Reller wrote, “Elsevier is currently clarifying its sharing and posting policies in-line with these principles” (2015).

Within the month, on April 30, 2015, an Elsevier Connect press release by Alicia Wise (Director of Access and Policy) called “Unleashing the power of academic sharing” announced the new sharing policy, citing the STM principles as motivation. Wise wrote, “We invite hosting platforms—whether repositories or social collaboration networks—to work with us to make the vision of seamless research sharing a reality.”

The newly announced policy stipulated “that shared copies contain a DOI link back to the formal publication and be distributed under a clear user license [CC-BY-NC-ND]” and suggested that Elsevier would pursue tagging accepted manuscripts with the license from the point of acceptance. It further stated that authors “may share your accepted manuscript immediately on a personal website or blog.” In so many words, authors may immediately share their accepted manuscript on their personal website or blog with a Creative Commons Attribution Noncommercial No Derivatives license.

However, “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” (Wise, 2015). The previous policy permitted authors to share their accepted manuscript if they did so voluntarily, but not when doing so was “mandated,” a reference to Harvard-style OA policies: researchers can share/deposit if they want, but not if they must according to an OA policy or mandate (Wise, 2015). “Mandate” as applied to U.S. institutional OA policies is a mischaracterization; no institutional OA Police strong-arm unwilling authors into sharing via IR, and no enforcement mechanisms exist.

The new article sharing guidelines were made available (<https://www.elsevier.com/about/our-business/policies/sharing>) along with a hosting articles policy (<https://www.elsevier.com/about/our-business/policies/hosting>). Journal sharing policies were updated accordingly in the widely used SHERPA/RoMEO database of publisher copyright and self-archiving policies.

Reaction from OA Advocates

The OA advocacy community's reaction to the newly announced sharing policy was swift and strong.

On May 4, in "Stepping back from sharing" on the popular Scholarly Communications @ Duke blog, Kevin Smith called the new policy "a masterpiece of doublespeak" and an "effort to micromanage self-archiving." Smith articulated two points of contention with the sharing policy, which would come to typify the larger OA community reaction: embargoes, which he described as "complicated and draconian" and the CC-BY-NC-ND license, which he characterized as restrictive, because it "further limits the usefulness of these articles for real sharing and scholarly advancement." Further, he said that "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" (Smith, 2015). In essence, Smith charged Elsevier with openwashing, or appearing to support OA for marketing purposes while continuing proprietary practices.

On May 20, the Confederation of Open Access Repositories (COAR) and the Scholarly Publishing and Academic Resources Coalition (SPARC), both significant open advocacy organizations, issued a "Statement against Elsevier's sharing policy." It states, "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." The COAR/SPARC statement mirrored Smith's bones of contention: embargoes, the restrictive license, and openwashing. Furthermore, COAR released the following statement:

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. (COAR, 2015)

The COAR/SPARC statements were quickly signed by the Association of College and Research Libraries (ACRL), the American Library Association (ALA), the Association of Research Libraries (ARL), the Association of Southeastern Research Libraries (ASERL), the Coalition of Open Access Policy Institutions (COAPI), Creative Commons, Electronic Freedom Foundation (EFF), the Greater Western Library Alliance (GWLA), the University of California Libraries, Carnegie Mellon University, the Oberlin Group, and dozens of other prominent public and private universities and university libraries, as well as bepress, a repository and publishing platform vendor that became an Elsevier subsidiary in August 2017 (McKenzie, 2017). Also on May 20, Heather Joseph of SPARC and Kathleen Shearer of COAR issued a joint press release about the “Statement against Elsevier’s sharing policy,” entitled “New policy from Elsevier impedes open access and sharing,” in which they argued that the new policy is anachronistic and “in direct conflict with the global trend towards open access and serves only to dilute the benefits of openly sharing research results.” Additionally—on openwashing—they wrote, “Elsevier claims that the policy advances sharing but in fact, it does the opposite” (COAR, 2015).

The following day, May 21, Alicia Wise responded to the COAR Statement—and by extension to the objections of the broader group of critics—in an Elsevier Connect post, “COAR-recting the record,” stating that the policy changes “introduce absolutely no changes in our embargo periods.” Wise also referenced the Taylor & Francis Open Access Survey on author preferences of Creative Commons license terms to support Elsevier’s inclusion of noncommercial and no-derivatives terms on the imposed required license for sharing accepted manuscripts under the new policy (Wise, 2015).

On May 28, COAR/SPARC responded to “COAR-recting the record” (Re COAR-recting the record) with recommendations to improve the new policy, 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 stated that “there are several aspects of their new policy that severely limit sharing and OA, 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 the CC license, COAR/SPARC wrote the following:

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.

Based on these criticisms, COAR/SPARC offered several 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. (COAR, 2015)

On May 29 in “Universities yelp as Elsevier pulls back on free access,” the *Chronicle of Higher Education* framed the policy change as a reaction to the growth of IRs and OA policies (green OA). Alicia Wise appeared to confirm 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” (Basken, 2015).

This idea that hosting accepted manuscripts is “too close” to doing what Elsevier sells is interesting to consider in the context of the recent article by Klein, Broadwell, Farb, and Grappone, which found little difference between preprints and published versions and questions publisher value-add proposition (2018).

Also on May 29, in “A distinction without a difference,” a piece on the Scholarly Communications @ Duke blog, Kevin Smith meditated on the difference (or not) between “personal website or blog” and institutional repositories, writing that “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, OA policy institutions, their policies, and faculties who supported them (Smith, 2015).

In a June 4 COAR update, “Growing support for statement against Elsevier policy,” the following statement was issued:

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. (COAR, 2015)

On June 8, Alicia Wise posted in the comments in this and other items¹: 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 embargoes, 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

1. While it is unwieldy to do so, Wise’s comment is produced here in its entirety because it articulates Elsevier’s positions on issues described throughout this article. So much of it is relevant to this discussion that cutting what remained seemed reductive.

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. (Wise, 2015)

Embargo Subversion: Theory

The policy as outlined above remains in place as of the time of writing. That being the case, how can authors and OA advocates, such as those who support IRs and related institutional scholarly communication initiatives, work within the sharing policy to support author rights, achieve greater access to and visibility for articles subject to the policy, and leverage institutional repositories to those ends? As Wise said above, we should work “to make the vision of seamless research sharing a reality.” Through a careful application of the sharing policy, I suggest that we can turn one OA community objection (the restrictive license) against the other (embargoes) so that IRs may legally host the full text in institutional repositories (all of them, technically) without any embargo at all. In permitting an author’s accepted manuscript to be immediately posted to the author’s “personal website or blog” with the Creative Commons license, Elsevier created the loophole for subverting any embargo in institutional repositories, even as they appeared to go to lengths to set them. 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” (Creative Commons, n.d.). An item licensed in this way, shared via an author’s personal website or blog, may be rehosted on every noncommercial website in the world, including any IR, or every IR, but especially the author’s IR.

Embargo Subversion: Applied

When an event occasions an IR ingest of an article published in an Elsevier journal, depending on circumstances, the repository staff may deposit the accepted manuscript per the sharing policy as Elsevier intended, with the required embargo, and then explain to the author how they can enable immediate full text availability via the CC licensed version on their “personal website or blog.” Alternatively, the IR staff might explain how the author should apply the CC license and post on their personal website or blog, send the link to a licensed version, and then deposit to the IR sans embargo. In any case, it is a teaching moment for copyright, authors’ rights, IR, Creative Commons, the benefits of sharing, visibility and impact strategies, and so on. When authors follow through, the openly available paper is indexed, preserved, and

made publicly accessible on a faster timeline than would otherwise have occurred. If authors decline to meet the conditions for immediate open sharing, at least they will experience a teachable moment, and hopefully they will better understand the relevant issues.

Questions/Risks/Discussion

The model proposed here for faster open sharing of academic papers in institutional repositories is not without difficulties or flaws. It is unlikely to revolutionize the way we accession articles into repositories because it is difficult if not impossible to scale: it is relatively hands-on and requires action on the part of authors and repository staff, authors may not understand Creative Commons licenses and how to select and/or apply the license, more communication with busy authors is needed, and more IR record management is needed to change provenance or edit a record to remove an embargo. But I am not proposing this approach as an IR collection development strategy; I view this as one tool among many (see also author addenda, OA policies, and publication contract negotiation) that can be deployed to support authors when a particular set of criteria apply: an author at my institution publishing in an Elsevier journal who objects to an embargo, has a personal website or blog, is willing to follow through with the licensing and posting, and communicates all that to us. This may be a pretty small group. Nonetheless, we routinely work within publisher-sharing policies to support sharing by and for authors to the extent possible. In that respect, using the sharing policy to enhance sharing as I have described is business as usual. Every paper shared as a result is a win, and every conversation about the underlying issues is an advocacy opportunity that may bear fruit, directly or at a later point. Given the intensive nature of the intervention and no promise of a desired outcome, it might seem that leveraging this strategy comes at too high of an opportunity cost. However, as a blanket strategy for authors publishing in Elsevier journals, it might save or at least replace time otherwise spent wrestling with embargoes that are ultimately unnecessary according to the sharing policy. What is the opportunity cost of *not* leveraging the policy in this manner when the right conditions hold? IR staff never advocate for a longer embargo than is required; we would not arbitrarily add an extra year to an embargo period, and authors would not tolerate it if we did. Not utilizing the sharing policy as outlined here is functionally the same as doing so: extending an embargo longer than is required by the sharing policy. The fact that the Elsevier sharing policy can be leveraged in this manner is an opportunity to support authors and readers on a faster

timeline and to create more awareness of the benefits of OA and related authors' rights issues, and those are my principle concerns. From the discussion above, it should be obvious that stakeholders disagree over the appropriateness of embargoes. Elsevier favors them, and COAR/SPARC do not. It is hard to imagine authors being *for* embargoes unless they fear pushback from the publisher; this tool is not for those authors, and that is fine. Most authors are more than likely apathetic toward embargoes, and so this tool would not be for them either. The model outlined in this paper to support faster open sharing is for authors that meet the conditions outlined above. In that sense, this model for undermining embargoes is neutral on embargoes, in that it should only be applied to support an author who objects to an embargo. If allowing immediate sharing on a personal website or blog per the sharing policy is not anti-embargo, then this model is not either. It is not about being *against* embargoes; it is about being *for* authors.

Anecdotally, colleagues have occasionally suggested that I should not promote this too loudly because Elsevier could change the policy to close the loophole if they find out that it exists. I presented it as a poster, deposited the poster with supplementary notes in my IR, openly licensed it, tweeted it, and engaged in online discussions of it, and I am now writing this article building on it with the near certainty that Elsevier will engage with it; in fact, they already have, if only in ephemeral ways (Bolick, 2017). In fairness, the support of green OA is a goal for which Elsevier expresses support (Hersh, 2017). It is certainly a possibility that Elsevier will change the policy, which Gemma Hersh, Elsevier VP of Policy and Communications, alluded to on the Global Open Access List (GOAL) soon after the poster was presented at the Kraemer Copyright Conference in Colorado in early June, 2017. In reacting to the posting of the IR version of the poster by Richard Poynder, Hersh wrote, "The challenge with the proposal below is that it wouldn't really work very well for very long; an embargo period is needed to enable the subscription model to continue to operate, in the absence of a separate business model" (Hersh, 2017). She seems to be saying that applying the policy will lead to Elsevier changing the policy. Further, it is hard to accept that embargo-less repository sharing of an accepted manuscript will lead to mass cancellations when immediate sharing on personal websites does not—and when many or most final versions are circulating through various well-known illegal and extralegal means (Bohannon, 2016). I am unaware of libraries making content-purchasing decisions based on accepted manuscripts' haphazard availability on the web. What seems much more likely is that cancellations are the result of annual price increases that correspond with

flat or decreasing library collection budgets. In other words, Elsevier is the principle cause of Elsevier's apparently precarious business model, its 36% profit margin notwithstanding (Matthews, 2018; Buranyi, 2017). In any case, the sharing policy is what it is. Strategies to achieve greater open accessibility and to support authors that we cannot talk about are not effective strategies, if they are strategies at all. If this method works, we should talk about it and implement it as long as it is in place. If Elsevier changes the policy, which is a certainty on some timeline for one reason or another, we will look for ways to deal with that and to support authors and sharing under the new policy or with other tools, such as Harvard-style rights retention OA policies (Shieber & Suber, n.d). While removing the CC license requirement would eliminate the means of undermining embargoes, as outlined above, it would also reverse a policy that the open community has criticized.

Finally, what is a non-commercial "personal website or blog"? As Kevin Smith discussed in "A distinction without a difference," the sites where Elsevier permits sharing and the ones they do not have little functional difference. A paper on the web is a paper on the web, even if some sites are better indexed than others. Elsevier seems to be making a dig at ResearchGate and Academia.edu as open-sharing venues, but I wonder to what extent those sites really differ from the kinds of sites the average tech-savvy among us would use to create a personal website or blog. WordPress.org is open source and not for profit, but the more user-friendly hosted version, WordPress.com, is owned by Automattic, Inc., a commercial project. What about other startups such as Weebly or Wix, or GoDaddy.com? If I do not use my commercial hosting platform in a commercial manner, am I in violation of the "non-commercial platforms" term of the sharing policy? Can an institutional lab page be considered a personal website if the author uses it as such and has control over its content? William Gunn, Elsevier Director of Scholarly Communication, suggested on Twitter, perhaps unofficially, that academics should "define it how it makes sense to you" (Gunn, 2017). Furthermore, while it is my job to provide information and support to authors at my institution regarding increasing visibility and impact, how they do so is ultimately their choice. If they deem their ResearchGate account to be their "personal website or blog" and put the CC license on their accepted manuscript as required by the sharing policy, should I worry that they might be in violation of the terms of the sharing policy regarding venue? And what are the implications of that on the exercise of the CC license? We do not generally vet CC licenses in our regular consumption/use of them. When I find openly licensed images for a slideshow during a Google Image search, I take the license at face value

without doing further work to ensure that it was properly licensed or that the licensor is the rights holder, so do I need to worry about that in terms of institutional risk as it relates to IR deposits that leverage the CC license? Future scholarship might further explore these questions and how they relate to institutional risk tolerance.

In closing, achieving green OA via IRs on the shortest timeline possible supports both authors and consumers of scholarly literature. To actuate this, IR and scholarly communication staff frequently work within publisher-established copyright and sharing policies and with authors to ingest their work and to make it legally available on the timeline permitted. Notwithstanding the reasonable objections of my friends in the open-advocacy community, Elsevier's current sharing policy simultaneously requires delays on public sharing via IR while mandating the application of a license that—when carefully applied and observed—is the mechanism for eliminating that delay. Repository and related scholarly communication staff should work with authors to apply the policy as such to advance open sharing.

References

- ACRL. (n.d.). *Scholarly communication toolkit: Author's rights*. Association of College & Research Libraries. Retrieved from <http://acrl.libguides.com/scholcomm/toolkit/authorsrights>
- Armstrong, T. (2009, May 13). *An introduction to publication agreements for authors* (Revision 1.0). Retrieved from http://blogs.law.harvard.edu/infolaw/files/2009/05/authors_publishing_intro-tka1.pdf
- Basken, P. (2015, May 29). Universities yelp as Elsevier pulls back on free access. *The Chronicle of Higher Education*. Retrieved from <https://www.chronicle.com/article/Universities-Yelp-as-Elsevier/230513>
- Bohannon, J. (2016, April 29). Who's downloading pirated papers? Everyone. *Science*, 352(6285), 508–512. doi:10.1126/science.352.6285.508
- Bolick, J. (2017, June). *Exploiting Elsevier's Creative Commons License Requirement to Subvert Embargo*. Poster presented at the Kraemer Copyright Conference Poster Presentation. Colorado Springs, CO. June 5-6, 2017. <http://hdl.handle.net/1808/24107>
- Buranyi, S. (2017, June 27). Is the staggeringly profitable business of scientific publishing bad for science? *The Guardian*. Retrieved from <https://www.theguardian.com/science/2017/jun/27/profitable-business-scientific-publishing-bad-for-science>
- COAR. (2015, May 20). *New policy from Elsevier impedes open access and sharing*. Retrieved from <https://www.coar-repositories.org/news-media/new-policy-from-elsevier-impedes-open-access-and-sharing/>
- COAR. (2015, June 4). *Growing support for statement against Elsevier policy*. Retrieved from <https://www.coar-repositories.org/news-media/growing-support-for-statement-againstelsevier-policy/>
- COAR. (2015, May 28). *Re COAR-recting the record*. Retrieved from

<https://www.coar-repositories.org/news-media/re-coar-recting-the-record/>

COAR. (2015, May 20). *Statement against Elsevier's sharing policy*. Retrieved from <https://www.coar-repositories.org/activities/advocacy-leadership/statements-and-guidelines/petition-against-elseviers-sharing-policy/>

Creative Commons – Attribution 4.0 International – CC BY 4.0. (n.d.). Retrieved from <https://creativecommons.org/licenses/by/4.0/Creative-Commons-Attribution-NonCommercial-NoDerivatives-4.0-International-CC-BY-NC-ND-4.0>. Retrieved from <https://creativecommons.org/licenses/by-nc-nd/4.0/>

Gunn, W. [@mrgunn]. (2017, June 14). Yes & I also pressed for clarification on the “personal website” point, but didn't get it. Basically, define it how it makes sense to you. [Twitter Post] Retrieved from <https://twitter.com/mrgunn/status/87500103363677316>

Hersh, G. (2017, June 17). *5 surprising facts about Elsevier and open access*. Retrieved from <https://www.elsevier.com/connect/5-surprising-facts-about-elsevier-and-open-access>

Hersh, G. (2017, June 20). [GOAL] *Elsevier's interpretation of CC BY-NC-ND* [Message 4515]. Retrieved from <http://mailman.ecs.soton.ac.uk/pipermail/goal/2017-June/004515.html>

Klein, M., Broadwell, P., Farb, S. E., et al. (2018, February 5). Comparing published scientific journal articles to their preprint versions. *International Journal on Digital Libraries*, 1–16. <https://doi.org/10.1007/s00799-018-0234-1>

Matthews, D. (2018, February 20). Elsevier's profits swell to more than £900 million. *Times Higher Education*. Retrieved from <https://www.timeshighereducation.com/news/elseviers-profits-swell-more-ps900-million>

McKenzie, L. (2017, August 3). Elsevier makes move into institutional

- repositories with acquisition of Bepress. *Inside Higher Ed*. Retrieved from <https://www.insidehighered.com/news/2017/08/03/elsevier-makes-move-institutional-repositories-acquisition-bepress>
- Reller, T. (2015, February 27). *Elsevier welcomes new STM principles to facilitate academic sharing*. Retrieved from <https://www.elsevier.com/connect/elsevier-welcomes-new-stm-principles-to-facilitate-academic-sharing>
- Reller, T. (2015, April 3). *Elsevier's contribution to the STM voluntary principles consultation request*. Retrieved from <https://www.elsevier.com/connect/elseviers-contribution-to-the-stm-voluntary-principles-consultation-request>
- Shieber, S & Suber, P. (n.d.). *Good practices for university open-access policies*. Retrieved from http://cyber.harvard.edu/hoap/Good_practices_for_university_open-access_policies
- Smith, K. (2015, May 4). *Stepping back from sharing*. Retrieved from <https://blogs.library.duke.edu/scholcomm/2015/05/04/stepping-back-from-sharing/>
- Smith, K. (2015, May 29). *A distinction without a difference*. Retrieved from <https://blogs.library.duke.edu/scholcomm/2015/05/29/a-distinction-without-a-difference/>
- STM. (2015). *STM consultation on article sharing*. Retrieved from <https://www.stm-assoc.org/stm-consultations/scn-consultation-2015/>
- Suber, P. (2012). *Open Access*. Cambridge, MA: MIT Press.
- Wise, A. (2015, April 30). *Unleashing the power of academic sharing*. Retrieved from <https://www.elsevier.com/connect/elsevier-updates-its-policies-perspectives-and-services-on-article-sharing>
- Wise, A. (2015, May 21). *COAR-recting the record*. Retrieved from <https://www.elsevier.com/connect/coar-recting-the-record>

Wise, A. (2015, May 1). Elsevier updates its article-sharing policies, perspectives and services – Open access archivangelism [Comment 1]. Comment posted to <http://openaccess.eprints.org/index.php?/archives/1150-Elsevier-updates-it-article-sharing-policies,-perspectives-and-services.html#c32218>

Wise, A. (2015, June 8). Growing support for statement against Elsevier policy [Comment 2]. Retrieved from <https://www.coar-repositories.org/news-media/growing-support-for-statement-againstelsevier-policy/#comment-1427>