



April 4, 2018

The Honorable Mark Stone  
State Capital Room 3146  
Sacramento, California 95814

Re: AB 2192 (Stone) as amended April 2, 2018  
Scheduled for hearing in Assembly Accountability and Administrative Review Committee April 11, 2018  
Position: Support

Dear Assembly Member Stone,

I'm writing on behalf of SPARC (The Scholarly Publishing and Academic Resources Coalition), a national membership organization of more than 220 academic and research libraries – including 13 in California – to reaffirm our support of AB 2192 as amended April 2, 2018.

As college and university libraries, we fully support timely, barrier-free public access to and use of articles reporting on California state funded research. The knowledge contained in these articles is an essential component of California's collective investment in science, and its broad dissemination and use will ensure that California continues to lead the nation – and the world – in innovation. The increased sharing and use of this information will help to advance the pace of discovery, as well as to speed the translation of this knowledge into innovative, new services and products - fueling economic growth and creating jobs.

We are aware of a letter dated March 29 sent to the committee from RELX Inc./Elsevier expressing concerns over some of the provisions in AB 2192, and we'd like to provide some background and data to help address those concerns. Specifically, **the letter from Elsevier raises objections to the version of the article to be covered by AB 2192.** The letter asserts that AB 2192 would mandate "...free access to versions of scholarly communications funded by the private sector, not tax payers..." However, AB 2192 calls for access to "the author's final peer-reviewed manuscript as accepted for publication in a scientific journal" – the same version mandated by AB 609<sup>1</sup> as Chartered, the same version mandated by the U.S. Congress for all NIH-funded articles<sup>2</sup>, and the same version mandated by the White House Office of Science and Technology Policy in its 2013 Memorandum<sup>3</sup> to U.S. federal agencies.

**The letter also asserts that a 6-month embargo period would "significantly harm the current system of peer reviewed scholarly communication,"** yet provides no evidence or data to support this assertion. However, a significant amount of evidence does exist that demonstrates that policies carrying embargoes of six month in length have had no negative

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<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB609](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB609)

<sup>2</sup> FY08 Consolidated Appropriations Act <https://www.gpo.gov/fdsys/pkg/PLAW-110publ161/pdf/PLAW-110publ161.pdf>

<sup>3</sup> [https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp\\_public\\_access\\_memo\\_2013.pdf](https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf)

effect on the system of scholarly communications – or on the bottom line of the publishing industry. An embargo period of six months or less is now the norm in public access policies currently being implemented in a growing number of countries worldwide. In one major example, the European Commission has mandated a six-month maximum embargo period for all articles reporting on federally-funded life and physical science research from its 28 member countries.<sup>4</sup> Yet despite the proliferation of such policies, the scholarly publishing industry has continued to consistently report steady increases in revenue<sup>5</sup>, with profit margins that far outpace those in most other industries.<sup>6</sup>

The primary concern over embargo periods for publishers is the perceived potential for subscription cancellations by libraries, and these subscriptions constitute the overwhelming majority of most journal publishers' revenue. However, as our member libraries can readily attest, journal cancellation decisions are not based on the potential availability of a subset of author's manuscripts six months after a journal has been published.

No data has been presented by any publisher showing a negative impact on subscriptions as a result of a six-month embargo period. What we are actually seeing, is that over the past decade the trend in publishers **voluntarily** moving to make their final published articles freely available at six months has increased markedly. These include high quality journals published by both commercial and not-for profit publishers in a variety of disciplines, from the 90+ journals published by the Nature Publishing Group to dozens of journals produced by scientific and scholarly societies.<sup>7</sup> In xxxx, the American Society for Cell Biology (ASCB) decided to make its publications publicly available after a four-month embargo period, and ASCB has remained financially stable.

**The Elsevier letter objects to the provision ensuring “productive reuse” of articles reporting on California State Funded Research**, and states that AB 2192 will “allow any and all commercial exploitation of the publisher’s manuscript.” First and foremost, the use of the term “publisher’s manuscript” is both misleading and incorrect. The version of the article covered by AB 2192 is the “author’s final manuscript as accepted for publication.” The author is the sole owner of this article unless or until they sign copyright over to a third party – including to a publisher.

Additionally, the requirement that articles be made available to the public for productive reuse is not a new or unknown concept. The White House Office of Science and Technology Policy memorandum explicitly calls for the direct results of federally funded scientific research to be made **available to and useful for** the public, recognizing that the facts contained in scholarly articles are what make them so useful and so valuable; the digital environment provides the opportunity to make sense of these facts in entirely new ways. The ability to fully use these articles – to freely download and search, text mine, data mine, compute on and crawl them as

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<sup>4</sup> ROARmap <http://roarmap.eprints.org/dataviz.html>

<sup>5</sup> STM International Publishers Annual report <https://www.zbw-mediataalk.eu/wp-content/uploads/2017/07/STM-Report.pdf>

<sup>6</sup> <http://sparcopen.org/wp-content/uploads/2018/04/2014-Profit-Margins.png>

<sup>7</sup> High Wire embargo list. - <http://highwire.stanford.edu/lists/freeart.dtl>

data – is essential in order to advance discovery and innovation, and to maximize the public investment in science. AB 2192 as amended supports these uses, and does so in a way that fully respects existing copyright law.

The policy proposed in AB 2192 is an important extension of existing U.S. state and federal policy, and also represents a step towards updating these policies to bring them into better alignment with a growing body of policy around the world. Research is a global enterprise, and is essential for policies that provide access to crucial outputs be harmonized to the fullest extent possible. SPARC fully supports AB 2192 as amended, and looks forward to supporting its passage by the California State Legislature.

Sincerely,

A handwritten signature in cursive script that reads "Heather Joseph".

Heather Joseph  
Executive Director

cc: Members, Assembly Accountability and Administrative Review Committee  
Scott Herbstman, Chief Consultant, Assembly Accountability and Administrative Review  
Committee  
Greg Melkonian, Assembly Republican Caucus, Office of Policy and Budget