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## Op Ed -- Vanishing Act

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## Vanishing Act

by **T. Scott Plutchak** (Director, Lister Hill Library of the Health Sciences, University of Alabama at Birmingham and Editor, Journal of the Medical Library Association) <tscott@uab.edu>

*Editor's Note: This will be a topic at the 2003 Charleston Conference — November 6-8, 2003. — KS*

Since the **Charleston Conference** this past November, there has been a fair amount of discussion on at least two electronic discussion lists (**iblicense-l** and **reedelscustomers**) concerning the circumstances under which articles may be removed from electronic versions of publications. While much of the attention has focused on **Elsevier's** policies, the issue affects much more than just the actions of one publisher.

I gave a presentation in Charleston that focused on the Human Immunology case from the Fall of 2001 (I had previously written about that circumstance in an editorial for the **Journal of the Medical Library Association**).<sup>1</sup> At the time, the Human Immunology incident was the only such circumstance that I was familiar with, but immediately after the conference, discussion on the lists pointed out that there were a number of other deletions from **Science Direct**. It turns out that some twenty or so articles could be identified on **Science Direct** as having been deleted, and, in most cases, replaced with a single page indicating that the article has been removed for "legal reasons."

In response to this flurry of concern, **Daviess Menefee** (Library Relations, **Elsevier**) posted a message on November 6th stating that **Elsevier** had developed "a strict internal policy of review" for removing articles. That message did little to ease the concerns of those following the discussion.

In early January, **Andrea Foster** published an article in the *Chronicle of Higher Education* that provided the impetus to continue the discussion.<sup>2</sup> As **Foster** pointed out, there is a clear split in how different publishers have chosen to deal with the issue of problematic articles. **Elsevier** and some others have elected to remove some articles from the database entirely, while other publishers have elected to deal with those situations by publishing clear retractions and making sure that the original article and the retraction are linked in such a way that the retraction cannot be missed if the article is retrieved.

As I argued at the time:

The policy, as it has been implemented, is simply not adequate to protect the integrity of the scientific record. Its intent is to protect **Elsevier** from legal liability, and while that is certainly important, it needs to be balanced against the broader issues of importance to the scientific community both now and in the future.

The policy as implemented provides for no external review. In the print world, a journal may elect to disavow an article by publishing a retraction, but both the retraction and the original article still remain available, so the rest of the academic community has the opportunity to make their own judgments based on the facts before them. This element of peer review, and the checks and balances it represents, is perhaps the most fundamental principle of western science. The **Elsevier** policy eliminates such review. No matter how diligent **Elsevier's** process may be, the academic community should not cede responsibility for this kind of review to a private entity.<sup>3</sup>

I suggested that to be adequate, a policy for addressing error, fraud and other legal issues in published articles should be based on the **National Library of Medicine's** (NLM) policy on retractions (<http://www.nlm.nih.gov/pubs/factsheets/errata.html>) and the recommendations of the **International Committee of Medical Journal Editors** (ICMJE) concerning corrections and retractions (<http://www.icmje.org/index.html#corrections>).

Specifically:

1. The retraction should appear on a numbered page in a prominent section of the journal.
2. The retraction should be listed in the contents page, and include in its heading the title of the article.
3. The retraction must be signed by one of the following: the author, the author's legal counsel, the author's sponsoring institution, or the editor of the journal.
4. The text of the retraction should explain why the article is being retracted.
5. In addition, the statement of retraction and the original article must be clearly linked so that the retraction will always be apparent to anyone who comes across the original article.

On January 23, a long post from **Francois Lapellerie** analyzed a number of the articles that had been pulled from **ScienceDirect**.<sup>4</sup> **Lapellerie** contacted a number of the authors to try to ascertain the reasons for the articles' disappearance. While some of the cases appeared to be those that would fall under standards definitions for retraction of articles, others clearly were not. In at least one case, the author was unaware that the article was no longer available. What emerged from the *Chronicle* article and from **Lapellerie's** investigations was that, in many cases, the articles were pulled not because of what one might consider scientific error or fraud, but rather from a concern about potential copyright violation. Indeed, in the *Chronicle* article, **Eric Merkel-Sobotta** from **Elsevier** is quoted as saying that the usual reason for pulling an article is concern over possible copyright infringement. They hesitate to provide more details on a case-by-case basis out of a concern that this would be admitting liability.

Much of the discussion that followed addressed this issue of potential publisher liability when copyright issues are involved. This is indeed a difficult area. We are in a particularly heated copyright climate these days, and electronic publishing gives publishers the option to do what they could never do before when dealing with potential infringement. But leaving the decisions solely up to publishers may not be the best thing for the advancement of science.

On February 7, **Daviess Menefee** posted a revised version of **Elsevier's** "Policy On Article Withdrawal."<sup>5</sup> In this version, separate sections are included for article retraction, article removal, and article replacement. While the article retraction section represents a significant advance (it references the **NLM** and **ICMJE** policies, and adds the extra feature that the pdf of a retraction article will include a "retracted" watermark), the sections on article removal and replacement still give some cause for concern.

The policy states, "In an extremely limited number of cases, it may unfortunately be necessary to remove an article from the online database. This will only occur where the article is clearly defamatory, or infringes others' legal rights, or where the article is, or we have good reason to expect it will be, the subject of a court order, or where the article, if acted upon, might pose a serious health risk."

One presumes from this, and from the earlier statements from **Elsevier**, that the company expects to be able to make this determination on their own, using a similar procedure of "careful review" as outlined in **Menefee's** November message. But as **Lapellerie's** investigations showed, the actual practice of **Elsevier** has not been entirely in line with the stated policy. More importantly, even if we could rely on **Elsevier** (or any publisher) to be completely consistent and accurate in following such a policy,

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**Philosophy:** I like Polonius's line in *Hamlet* as an ideal: "To thine own self be true, and it must follow, as the night the day, thou canst not then be false to any man."

**How/Where do I see the industry in five years:** I think that we'll be much more dependent on electronic resources. Take the journal for example. Libraries are already dropping print subscriptions for space and financial reasons, and users are expressing a preference for electronic versions. I think that before many more years have passed, many publishers will no longer even offer print subscriptions as an option. Other formats, some already in existence or others that haven't been invented yet, will take over the function of the journal. Although I think that the library will continue to exist as a physical place, particularly with some disciplines, our future existence will depend on how we adapt and define ourselves as an electronic place. If we are proactive in populating this new place with resources and services, we can shape users expectations of the future library. 

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the lack of transparency for the scholarly community to review these decisions and to make independent judgments about whether or not an article should be pulled is still unacceptable.


One can imagine the debates going on within the Elsevier hierarchy, and librarians should be sympathetic to their concerns. The peer review process is well known to be far from error-proof. It is almost certainly unavoidable, in the current state of publishing, to insure that one does not unwittingly publish material that infringes someone else's copyright, whether through the intentional duplication of publication by unscrupulous authors, or the unintentional "salami science" of ambitious scholars who ought to, but simply don't, know better. The easiest thing to do when one is alerted to such cases is pull the article and hope that the incident escapes wide notice.

But this is precisely the wrong thing to do. Although my own belief is still that under no circumstances should an article be removed, since we can now adequately document its history and errors, I am willing to concede that in the current uncertain environment, and to allow corporate lawyers a measure of sleep at night, there may be cases where an article may be removed, at least until a final adjudication of cause can be arrived at. But in such circumstances, there still needs to be a full accounting of the reasoning. In a post responding to the appearance of the revised policy, I suggested:

In cases where the article has been removed because of the concern of copyright violation I'd go so far as to want to see a message like, "We have recently been made aware that the article published here may have been copied in whole or in part from [citation to the original article]. Consequently, we have removed the article until such time as it can be determined that no copyright infringement has occurred." Something similarly specific for other cases of "legal reasons" would also be desirable. My question to the publishers, then, is do you feel that this level of detail would expose you to too much risk?<sup>6</sup>

I've yet to see a reply from any publishers.

One final thing needs to be said. Elsevier Science has been the primary focus of this discussion, in part because of the Human Immunology incident, and in part because it was through searching Science Direct that evidence of withdrawn articles could be found. But this is not an Elsevier problem. The evidence is very clear, in fact, that Elsevier has been trying hard to come up with appropriate policies and procedures to deal with these problems, and whether one agrees with their current statement or not, they are surely to be commended for their willingness to engage with the scholarly community on this issue. By virtue of their dominance of the market, it is appropriate that they take a leadership role, and we have heard very little from the rest of the publishing community.

We are at a perilous moment in history — talk to any archivist about the difficulties of writing biography or history that covers the last two decades of the 20th century. This includes the history of science. The technology, and our responses to it, are moving more rapidly than careful thought would allow. It is absolutely essential that scientific editors and publishers develop clear and acceptable guidelines that can adequately provide a safe harbor from unwarranted legal actions, while insuring that the scholarly community has complete access to the history of our various disciplines. 

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