APPENDIX 3

Background information on the confrontation between the UPMC and Elsevier, 2010-2011

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The relationship between the UPMC (Université Pierre et Marie Curie) and Elsevier, like that between Elsevier and the national purchasing group that includes Couperin (the public scientific and technical research establishments and *grandes écoles*), had become unacceptable over the years due to:

I. the obligation imposed by Elsevier to subscribe to its Freedom Collection (1850 titles), by offering a preferential rate for this package and prohibitive rates for separate subscriptions to the journals of interest to the individual partners in the group

II. the huge annual rate increase of the cost of this subscription, disguised as an annual increase based on the subscriber's "historic" account (paper journal account as of 2001), of approximately 5% per year since 2007, and approximately 8% per year in the early 2000s

III. of the obligation, if the client unsubscribes from one title (of its historic account), to subscribe to a title of identical financial value, in paper or electronic format. Elsevier authorizes a maximum 1% cancellation rate per year.

Elsevier's monopoly went hand in hand with attempts to intimidate the purchasing group during each rate re-negotiation, with threats to shift the financial loss due to the withdrawal of any organization onto the remaining partners in the group.

The UPMC (whose account stood at €M1.02 in 2010) attempted to withdraw in July 2009 from the 2010-2011 negotiations, but returned to the fold to avoid penalizing the other members of the group, in light of Elsevier's threats outlined in the preceding paragraph. At the time, we had informed our partners of our position and warned them that we would reconsider it in 2010.

- Starting in May 2010, we launched an information and awareness campaign with the research directorate of the UPMC and the faculties, which unanimously supported us in our plan to withdraw from the purchasing group in 2011. This position was validated by a unanimous decision of the scientific council in June 2010, which was ratified by the general assembly of unit directors in November 2011.

- In December, Elsevier presented its latest proposals for the new contract (it being Elsevier's habit to reveal its proposals less than a month before the "theoretical" negotiating deadline). As anticipated, the newly proposed contract stipulated that the institutions must maintain their historic accounts, thereby preventing any library policy adapted to the universities' individual needs. This contract was endorsed by the vast majority of the other universities and by the CNRS, which did not want to risk penalizing its researcher community. The UPMC's president then officially informed Couperin's negotiators of its decision to withdraw from the purchasing group.

- Elsevier then attempted to force the CNRS to contractually undertake, in writing, not to serve the UPMC's teachers/researchers but only CNRS researchers, even though both groups work together on a daily basis in the same joint research centers! The pressure exerted by Elsevier on the CNRS aimed, in barely veiled terms, to bring the UPMC back into the fold of the purchasing group. The CNRS refused to submit to this form of blackmail, stating that its policy is to support research collectives in partnerships with other operators.

- Elsevier then pursued the idea of not only banning the CNRS from the purchasing group, thus losing not one but two of its largest French clients, but even "cutting out" France entirely. Towards mid-January, Elsevier instead chose to contact the UPMC via Couperin to start another round of negotiations. Its first proposal was ridiculous (5.72% reduction of its account). The UPMC, aware (i) of the CNRS and its community's unwavering support, and (ii) that Elsevier had promised the purchasing group not to penalize it for the UPMC's withdrawal, then demanded that Elsevier let it freely adapt its subscription policy to its scientific needs by unsubscribing €299,000 (or approx. 30%) of its historic account.

- A negotiating marathon then took place between January 14 and 19, 2011, via the Couperin group. After several rounds, the UPMC obtained:

    i. a reduction of the scope of its subscriptions by €125,000 in 2011 and by €100,000 in 2012 (i.e. approx. 21.6% reduction)

    ii. the publisher's contractual commitment to submit a new business model to Couperin and the UPMC by December 15, 2012 at the latest, to be initiated as of 2011 with pilot institutions, including the UPMC. Should Elsevier fail to comply with this clause, any institution wishing to do so shall be entitled to withdraw from the group for the year 2013.

This last clause defends the interest of all the institutions in the purchasing group, which have been waiting for years for the publisher to propose a new business model. "Even if some will claim hastily that the UPMC simply defended its own self-interest, it is most regrettable that no other institutions followed the UPMC's example in June 2010; this would probably have led to more interesting negotiations for all involved. But let us emphasize that this was the first time that a French institution managed to make Elsevier backtrack! We should not therefore become discouraged before even having tried!" *(Letter of January 2011 by the vice-president of research to the UPMC unit directors.)*

This is indeed only a half-victory. The three-year contract signed for 2011-2013 does include an account increase for all institutions of 4.2% to 4.4% per year over that period. However, a recent study (March 10, 2011) carried out by an independent international financial firm (Bernstein Research) to assess investors' interest in buying Elsevier shares announced a growth forecast for Elsevier of less than 2% over the three coming years, or possibly less if the refusal of the Big Deal (a global negotiation regarding the Freedom Collection) were to extend to more clients or countries. This firm, which is apparently very well informed, asserted that Elsevier's policy would therefore be to attempt to lock its customers into three-year "consensus" contracts with average annual growth rates higher than 4%, even if that meant making concessions on more secondary issues.

Is this not exactly what has just happened in France?

A few concluding remarks:

- Elsevier is a giant with feet of clay. We can make it back down. No doubt we could have made it back down even further if the academics had been better informed of the financial situation.

- Elsevier has started to negotiate a policy of open access to its publications with Couperin. We need to be very vigilant and demanding on this issue of open archives, as France is at the cutting edge with the HAL archive.

- Elsevier's long-term goal (as stated in a veiled manner by its CEO, Young-Suk Chi, in a February 11, 2011 meeting with the UPMC's presidency that had been requested by Elsevier) is no longer to earn money from its publications themselves, but by exploiting first the metadata from the articles, and later the research data contained in the articles. Here again, we will need to prepare a strong legal strategy for such negotiations.

- We should not blame Elsevier alone for such behaviors, even if it is the worst offender. All major multinational publishers employ similar practices, with more or less flexibility in their negotiations, but with comparable rates of increase in cost. Finally, we should be especially concerned with the behavior of a number of scientific societies that are falling into line with, or even going one step further than, these multinationals and applying rate increases of up to 100% overnight, with no prior negotiation.