

Title: Free Licenses & Creative Commons: A Powerful Tool for Open Access Publishing in Grey Literature

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Abstract

Introduction/Goal:

In today’s increasingly technologically savvy information society, “using remote access and free content to open doors for science students”, a statement made by NANSLO lab director Daniel Branan (<http://www.scoop.it/t/ava-openeducation>), is yet another example of ongoing efforts to make information more openly and freely available and accessible. Although Branan focused his remarks on the scientific community, this applies to more than one specific subject field. Rather, scientists, teachers, artists, sociologists, programmers, as well as professionals from the arts industry and economics are increasingly becoming involved in sharing and reusing their work. Open content provides an opportunity to shorten the time for research to become available, not repeat research already conducted, have data to compare, collect background information for a project, and numerous other possibilities.

Despite the well-intentioned mandate of a Creative Commons license, the free distribution of an author’s work is still “governed by applicable copyright law.” (Wikipedia, n.d.) Jack Andraka, an advocate for the Open Access Movement, laments the disappointment that can occur due to publication and distribution restrictions: “I’ve seen so many great ideas get killed in the lab when my peers are stopped by closed access [to research articles]” (<http://teamopen.cc/jack>). Open licensing is a strong instrument ensuring open access to research data.

Research Method/Procedure:

This project will uncover open licenses and describe how they are used, focusing on Creative Commons free licenses, the most widely known worldwide. The Open Access movement has begun gaining greater acceptance, with numerous institutions either strongly encouraging and/or requiring their faculty, students, and staff to deposit their scholarly work in the institutional repository. As a case in point, the University of Liege in Belgium established a mandate in 2008 whereby all publications must be deposited, including the full text of articles “as soon as the article is accepted by the editor” (<http://www.openacessmap.org/list>). Despite the well-intentioned means of encouraging authors to deposit their works in the public domain via open-content licenses, controversy still remains that this act can alter the original author’s ownership, particularly since “all transfers or licenses of copyright interests by a work’s author are revocable” (Armstrong, 2010, p. 360). The University of Liege has countered this argument with their ORBi (Open Repository and Bibliography) open access repository; a clause has been added stating that access to an author’s full text articles “will only be granted with the author’s consent and

according to the rules applicable to author's rights and copyrights" (<http://www.openaccessmap.org/list>). This increased visibility in publications and access to research has resulted in ORBi currently holding a ranking of 34 out of 1746 repositories worldwide, recording more than 2 million downloads since its inception (<http://orbi.ulg.ac>).

Via a survey, international, national, subject, and institutional repositories will be selected, in order to determine if Creative Commons licenses are being used at these facilities and if so, how and in what way (i.e. which type of documents are being deposited?, what is the degree of usage? etc). The survey will focus on the different Creative Commons licenses available, and how these affect open access and copyright restrictions.

Results:

We believe that results obtained from the survey will not only provide us with a comparative environmental scan of the existence of Creative Commons licenses at various institutions, but will also reveal insufficiencies and recommend approaches on how to increase the use of these licenses in grey literature repositories. It is anticipated that this venture will generate renewed interest and awareness in creating a more seamless link between open access publishing and grey literature. It is in this research context that the technology and innovation triangles combine, "extending the scope beyond R & D [research and development]" (Pant and Hambly-Odame, 2010), to the grey literature community as a whole. While certain document types may never be deposited into an institutional repository, and some authors may voice concerns about feeling obligated to adhere to such a mandate, the benefits clearly outweigh any potential harms. Open Access publishing in the grey literature domain via the use of Creative Commons licenses creates the multiplier effect, "permitting the creation of new works which may never have come into existence" (Armstrong, 2010, p. 368).

Open Access and the Open Access Movement: Publishing Connections

Succinctly defined, Open Access (OA) refers to material that is "free of charge, and free of most copyright and licensing restrictions" (Suber, 2013). In addition, OA documents are widely available and accessible, serving as invaluable components of research pursuits in numerous disciplines. According to Peter Suber, considered the founder of OA, the Open Access Movement began in 1993 as a result of the launch of the World Wide Web and initiation of online publishing. A decade later, several statements supporting OA began to arise, including Suber's aptly named BBB: The Budapest Open Access Initiative (February 14, 2002), the Bethesda Statement on Open Access Publishing (April 11, 2003), and the Berlin Declaration on Open Access (October 22, 2003). While the exact definition of OA differs somewhat across the statements, the underlying uniting principles remain the same: access to freely available literature without barriers, while recognizing and giving authors control "over the integrity of their work and the right to be properly acknowledged and cited" (Suber, 2013).

The continuous hunger for information, particularly that which is available at one's fingertips, culminated in the internationally renowned Open Access Week. Inaugurated in 2006, Open Access Week continues to advocate for free, immediate online access to the results of scholarly research and the right to use and re-use those results as needed (Open Access Week, 2014). Despite misgivings by some that the impact of articles published via OA is not as reputable as those found in mainstream academic journals, Suber is quick to argue that the peer review process in OA journals is just as "rigorous and honest as peer review in conventional journals, [often using] the same procedures, the same standards, and even the same people" (Suber, 2013). In order to backup these claims and offer support for publishing in OA journals, the Open Access Scholarly Publishers Association (OASPA) was founded in 2008, with a mission of representing the interests of OA journal and book publishers worldwide, in all disciplines. At present, 83 organizations and individuals are members of the OASPA including F1000Research, Utrecht University Library, BioMed Central, BMJ, Hindawi Publishing Corporation, ProQuest, SAGE, Taylor & Francis, Wiley, DOAJ, SPARC Europe, EBSCO, and many more. OASPA believes that through a shared interest in developing appropriate business models, tools, and standards to support OA publishing, "we can ensure a prosperous and sustainable future to the benefit of our members and the scholarly communities they serve" (OASPA, 2014).

Despite all the accolades for the OA Movement, particularly journals (gold OA) and repositories (green OA), Suber reminds his readers that several of the OA initiatives that exist today would not have come to fruition without publicly-funded research. Despite proclamations that OA material is free to all who wish to peruse it, Suber cautions that free is an ambiguous term, particularly since this literature is "not free to publish or produce" (Suber, 2013). To ease concerns regarding copyright along with the exorbitant fees that some vendors charge for publishing in their academic journals, organizations have been created to offset these fees, allowing authors "to publish their article in open access in a high quality journal and for a reasonable price." (Quality Open Access Market, 2014). Of particular note is

the Quality Open Access Market (QOAM), an open crowd-sourcing website, marketed as a central point of contact providing authors with a wider selection of journals to publish in, and educating publishers on improving their submission and publishing policies. This creates a “transparent academic publishing environment.” (Quality Open Access Market, 2014).

In a thought-provoking article published in 2013, Jeffrey Beall, a librarian at the University of Colorado, paints a different picture of what he believes are the true motives behind the OA movement. While certainly not condoning the purpose and value of OA, especially with its logical stance of freedom of information to all who seek it, Beall argues that the OA movement imposes “onerous mandates on researchers, mandates that restrict individual freedom.” (Beall, 2013, p. 589). In particular, Beall singles out a number of academic journal publishers, claiming that the influx of so-called predatory journals have led to some scholarly journals losing the prestige that they once carried: “there are many unscientific ideas that people can get published in scholarly journals thanks to predatory open-access publishing” (Beall, 2013, p. 595). While Beall’s views appear to be in the minority, they do posit further thought on his notion that these journals are functioning as digital repositories, leading to an increasing interest in the connections between OA publishing and the grey literature.

OA Publishing and Grey Literature

Despite an awareness among libraries and scholars of the importance of the green OA, namely institutional repositories, especially with regards to publishing in the field of grey literature, there are still only a few “institutions involved in managing repositories” (Simeonov and Stanchev, n.d., p. 165). Further, a new protocol for metadata harvesting, doajArticle, spreads awareness of the OA Movement, increasing the “interoperability between DOAJ journals and institutional repositories” (Simeonov and Stanchev, n.d., p. 167). While more and more grey literature is being made available, we have only scratched the surface of the wealth of unknown material that exists; thus access to grey literature continues and will forever remain a challenge (Banks, 2004). In a commentary published in the Journal

of the Medical Libraries Association in 2004, Marcus Banks discusses the resistance that many libraries, particularly those in the health sciences, face from commercial publishers when choosing open access platforms, placing research findings in the public domain free of charge: “moral logic argues that such information should be freely available; market logic has turned it into a valuable commodity” (Banks, 2004, p. 164). Banks laments that this logic is counter-intuitive, particularly since non-published studies often have their origins in the grey literature, acting as a supplement to the core research published in the mainstream journals. Interestingly, this supplementary material is, by and large, openly accessible.

Several arguments and convictions can be made for publishing grey literature in OA domains (both gold and green). Nevertheless, despite subjecting grey literature to internal quality assessments (where a publishing institution’s name and reputation are often at stake), the debate on the quality of grey literature continues, mainly due to concerns that it does not undergo the rigorous peer-reviewed process of many journals. Further, with no obligation for long-term archiving in place, grey literature continues to be difficult to locate, as it may be transferred elsewhere or become forever lost in cyberspace. Finally, “grey literature provides an essential complement to peer-reviewed findings” (Myska and Savelka, 2012); while there will always be copyright exceptions in place, free use Creative Commons licenses bypass many copyright restrictions, including being able to disseminate, re-use, or build upon an existing document. Without open access publishing, locating the grey literature would be a daunting task.

Creative Commons and Free Licenses

...“We come from a tradition of ‘free culture’ – not ‘free’ as in ‘free beer’ (to borrow a phrase from the founder of the free software movement¹), but ‘free’ as in ‘free speech,’ ‘free markets,’ ‘free trade,’ ‘free enterprise,’ ‘free will,’ and ‘free elections.’ A free culture supports and protects creators and innovators. It does this directly by granting intellectual property rights. But it does so indirectly by limiting the reach of those rights, to guarantee that follow-up on creators and innovators remains *as free as possible* from the control of the past. A free culture is not a culture without property, just as a free market is not a market in which everything is free. The opposite of a free culture is a ‘permission culture’ – a culture in which creators get to create only with the permission of the powerful or of creators from the past.” (Lessig, 2004)

¹See Peter Drahos with John Braithwaite, *Information Feudalism: Who Owns the Knowledge Economy?* (New York: The New Press, 2003), 37.

In the preface to his monograph *Free Culture*, Lawrence Lessig equates freedom of information with the right to produce material openly without stringent copyright requirements or other barriers to access. Since the launch of the information superhighway, the Internet, more than two decades ago, a divide has existed between authors and their works. While most would agree with Lessig's philosophy of information sharing, concerns abound with works being re-used without giving credit or obtaining permission from the creator, particularly if the said work is being used for commercial purposes. In 2001, Creative Commons (CC) was established in Massachusetts as a "nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools."

(CreativeCommons.org, n.d.). Now headquartered at Stanford University, CC has standardized the copyright dilemma by developing a set of seven licenses allowing authors to determine how and in which way their works can be shared and used. Since the inauguration of the CC movement, numerous collaborative projects in a wide range of disciplines have been undertaken, none more notable perhaps than Luke Surl's Team Open, a venture aimed at "collecting and sharing stories of the power of Creative Commons licenses" (Surl, n.d.)

Released on December 16, 2002, the set of seven CC licenses, which continue to be followed to this day, provide rights and freedoms beyond stringent copyright law and its fair use policy (Lessig, 2004). Lessig further states that in the first six months of the availability of CC licenses, more than one million objects were registered (p. 285). These seven main licenses, permitting free distribution of an otherwise copyrighted work, are as follows:

- CC0 No Rights Reserved, providing an opportunity to opt out of copyright and database protection;
- CC BY Attribution, allowing others to distribute or further build upon the creator's work, even for commercial purposes, as long as credit for the original work is given;

- CC BY SA Attribution or ShareAlike, allowing others to build upon the creator's work, even for commercial purposes, as long as the original work is credited and the new creation is licensed under the same terms as the original;
- CC BY ND Attribution – No Derivatives, allowing for the redistribution, either commercially or non-commercially, as long as the work is not changed, and credit to the original is given;
- CC BY NC – Non Commercial, allowing others to build upon the original work, for non-commercial purposes. The new work must acknowledge the creator, although as it is non-commercial, the derivative work does not need to be licensed on the same terms;
- CC BY NC SA Attribution Non-Commercial ShareAlike, allowing others to build upon the original work, for non-commercial purposes, as long as the original is credited, and the license of the new creation is identical to the original; and finally
- CC BY NC ND Attribution Non-Commercial No Derivatives. Considered the most restrictive license in the set, others may only download and share original work, as long as credit is given, but cannot change the original in any way or use it for commercial purposes.

Creative Commons & Institutional Responses Survey

Creative Commons boldly proclaims that their mission is to “help share knowledge and creativity with the world” (CreativeCommons.org, n.d.). Taking this assumption into account, the authors of this paper launched a web-based survey, with a goal of uncovering the use of open licenses, specifically CC free licenses, in digital repositories worldwide. Carefully selecting international, national, subject, and institutional repositories, the purpose of this evaluation was to determine if CC licenses were being used at these facilities, and if so, how and in what way (i.e. which type of documents were being deposited, the degree of usage of these documents and the repository itself, etc.). The survey also focused on the different CC licenses available, and how application of these terms affected open access and copyright restrictions.

The online survey ran for a one-month period, launching on September 26, 2014, and closing on October 27, 2014. Hosted via SurveyMonkey, a web-based platform familiar to the authors, respondents were tasked with answering seven questions. Although structured as a series of closed questions, necessitating only yes or no answers, respondents were probed to offer reasons for answering a question with a no. Further, nearly each question contained a comments section, thus melding the nature of the closed queries with leading open-ended requests; several respondents took advantage of this feature and elaborated on their replies.

The survey was distributed via e-mail to the administrators of 83 repositories around the world, as well as being announced at the electronic conference of the Creative Commons group, and posted on GreyNet's Linked-In social network discussion forum. Forty-five completed questionnaires were received, the results of which will now be discussed.

Results & Discussion

Question #1: Are Creative Commons licenses being used at your institutional repository? [Figure 1].

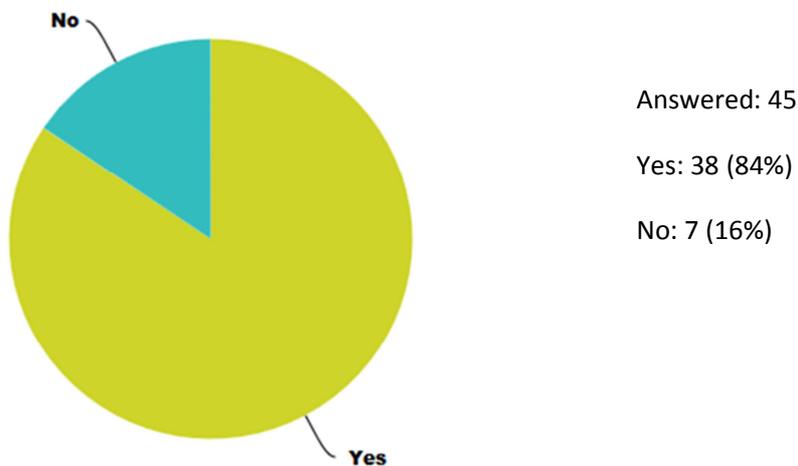


Figure 1. Level of use of Creative Commons licenses in worldwide institutional repositories.

The authors were pleased to see that CC licenses were recognized and used in the majority of institutional repositories. At sites where CC licenses were not yet established, a number of reasons were provided, the most common being legal aspects and poor awareness amongst academic staff of the existence of CC licenses and their affiliation with Open Access publishing.

Question #2: Does your institution have a Creative Commons license policy? (if yes, please briefly describe below) [Figure 2]

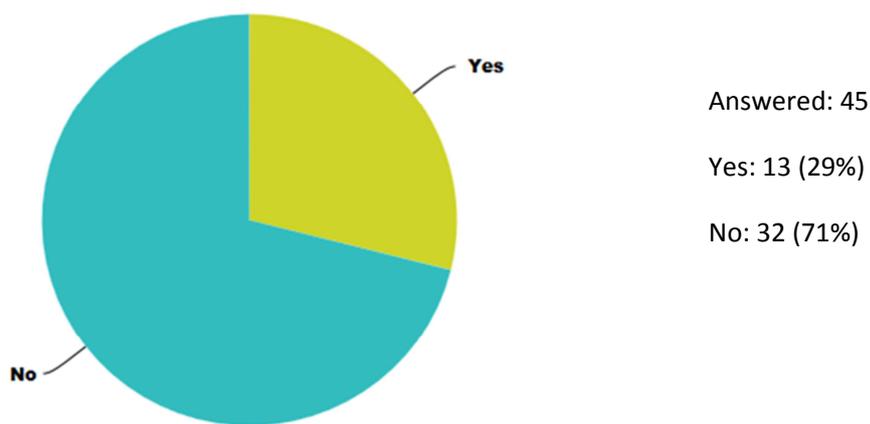


Figure 2. Availability of Creative Commons license policy in worldwide institutional repositories.

Interestingly, despite 84% of institutions surveyed claiming that CC licenses are in use within their repositories, only 29% of these organizations have established a CC license policy. An institutional CC license policy aids in explaining legal aspects while also providing authors with clear instructions on how to make best use of this policy. This creates broader awareness, requiring that each employee gain familiarity with the policy. It was thus somewhat disconcerting for the authors of this paper to learn that more than two-thirds of repositories are void of CC license standards. These numbers thus strongly support the notion that implementing a CC license policy in institutions will not only increase the use of repositories within these institutions, but will also propagate good practice in the field and thus increase awareness.

While perusing the wealth of comments provided by respondents to this question, the University of Cape Town provided an excerpt from section 9.2 of their Intellectual Property Policy, which formally endorses CC licensing:

“UCT supports the publication of materials under Creative Commons licenses to promote the sharing of knowledge and the creation of Open Education Resources. UCT undertakes certain research projects that seek to publish the research output in terms of a Creative Commons license. 9.2.1 Author(s) of Copyright protected materials that are listed in clauses 8.2 and 8.3 are free to distribute their material under a Creative Commons license. 9.2.2 Author(s) of Copyright materials that are listed in clause 8.1 should seek permission from RCIPS, who on behalf of UCT, may grant permission for the material to be distributed under a Creative Commons license.”

From the remaining commentaries relayed to this question, the authors learned that policies surrounding use of CC licenses differ according to types of documents, indicating conditions of subsidy rules. Strict usage of CC licenses for all work deposited in a repository caused problems with licensing rules as agreed to with publishers, particularly in determining which CC license should be allocated to published works on a compulsory basis. However, if the publication in question was already published elsewhere, under a different type of CC license, before being deposited in the institutional repository, the original license must be honoured. A single work cannot be entered under different CC licenses.

Question #3: Under which terms is a Creative Commons License deed issued at your institution?
(select all that apply) [Figure 3]

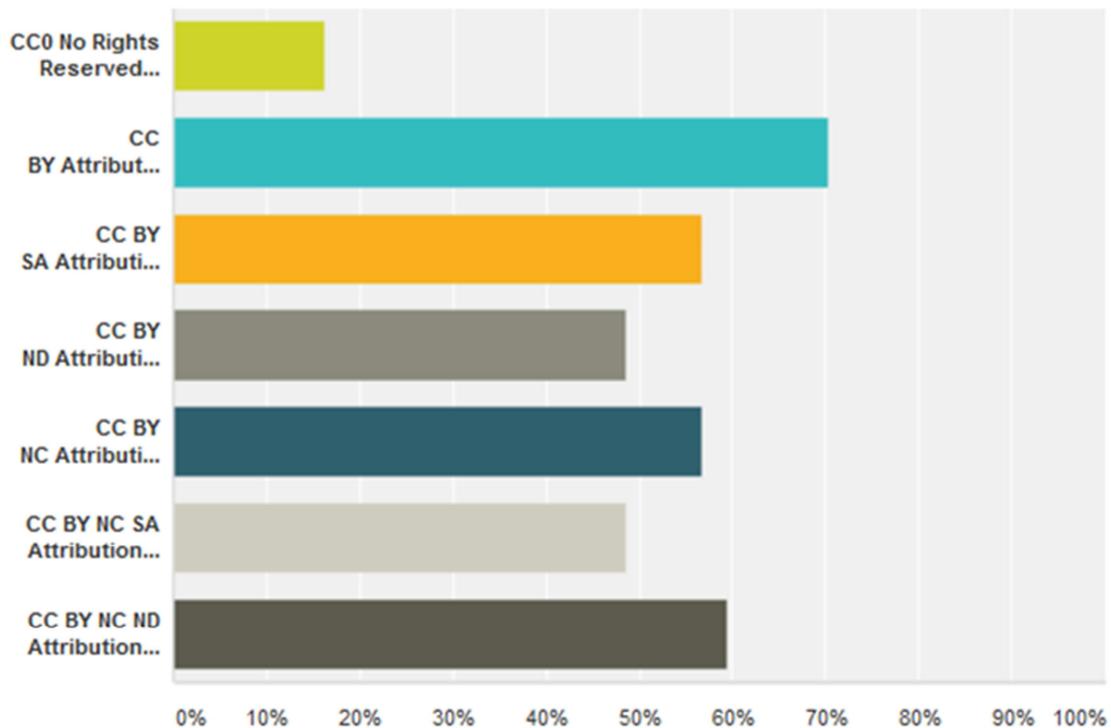


Figure 3. Terms of Creative Commons License deed in worldwide institutional repositories.

As indicated by the responses received to this question, the CC BY license is liberal, and thus used most frequently. This echoes Myska’s sentiments that “the basic and most permissive is the CC-BY license. This allows all forms of distribution, copying, adapting...for commercial gain. The author however must always be mentioned.” (Myska, 2013). Further, CC BY supports development of a work due in large part to freedom of usage. As Myska explains, “the licensor may also [use] restrictive license elements. Thus he may prohibit the commercial use (NC – NonCommercial), modifications (ND – NonDerivatives), or allow modifications upon condition (SA-ShareAlike)” (Myska, 2013). These types of licenses are also often used, particularly NC, NonCommercial. It can be difficult to determine what is considered commercial usage, which is one of the reasons why NC attribution has become a subject of legal arguments, despite the definition of NonCommercial use remaining unchanged.

NonCommercial use is thus understood as not primarily intended for or directed towards commercial advantage or monetary compensation. This disputed restrictive condition of the CC licenses has been recently at least partially clarified by the interpretational guidelines published by the CC. Although not binding, they do attempt to provide at least a basic orientation for what should be considered noncommercial use. Most importantly, it is not the nature of the *subject* using CC 4.0, but the nature of *such use* that shall be decisive. Therefore, even commercial entities may use the works licensed for noncommercial uses only. Further, the NC clause does not limit the scope and exceptions provided by the respective applicable law. In addition, the licensor is not limited to use the work commercially (i.e. to make use of dual-licensing). Unfortunately, the courts rendering decisions related to this condition do not necessarily fully comprehend the proper functioning of this clause. For example, in the Curry v Audax case, the Amsterdam District Court did not award any damages to Mr. Curry. Interestingly, the court stated that CC licensed photos had no commercial value. In another CC related case, Deutschland radio, the German District Court in Cologne deemed the NC clause as not specific enough and explained it in accordance with the “Zweckübertragungslehre as ‘only for private use.’ However, this decision is not final as it has already been appealed.” (Myska, 2014).

Question #4: What types of documents are being deposited at your institution via use of a Creative Commons license? (select all that apply) [Figure 4]

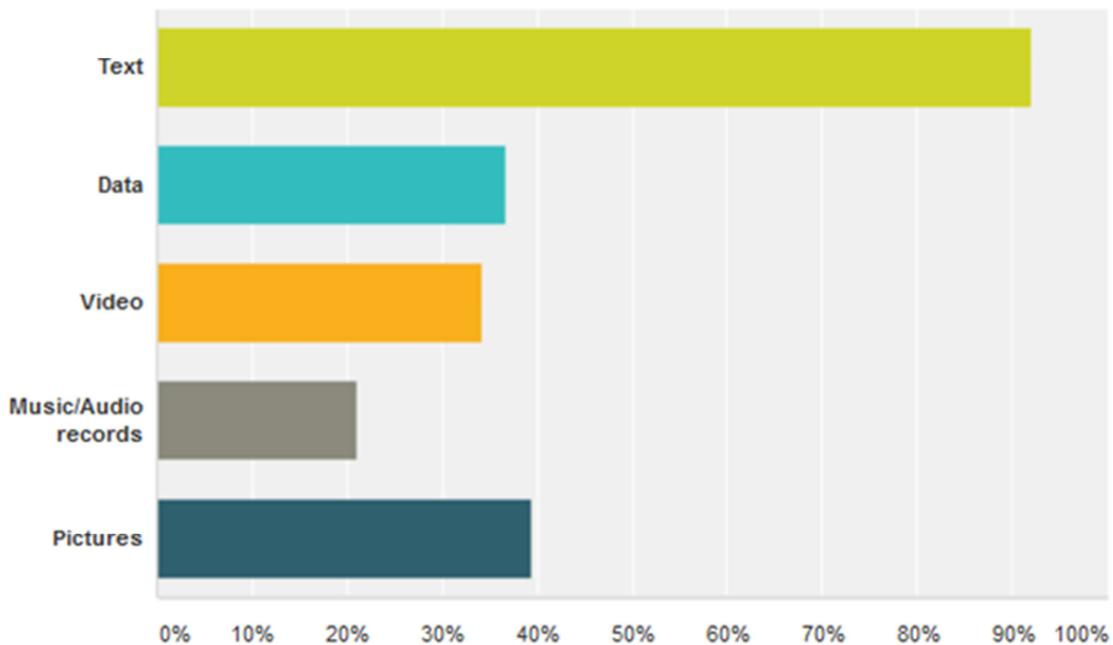


Figure 4. Types of documents deposited via use of Creative Commons license in worldwide institutional repositories.

Despite the push for increasing awareness publishing in different mediums, texts continue to occupy the majority of document types (92%) deposited in the repositories of the institutions surveyed. This finding seems to run parallel to various forms of grey literature: despite a noted increase in visual and audio representation, theses, government documents, conference proceedings, etc., all in text report format, continue to prevail. Nevertheless, despite the majority of text documents, pictorial and video elements are on the rise, perhaps attributable to increase trends in the use of social media.

Question #5: How often are Creative Commons licenses used at your institution?

In correlation with the first two questions in the survey, the authors of this paper were curious to see if any parallels could be drawn between awareness of CC licenses, subsequent policies to encourage their use, and frequency of use. Despite 84% of respondents claiming use of CC licenses in their repositories, it appears that only 16% of these licenses are used on a regular basis. More than one-half

(54%) of replies indicate that CC licenses appear to be used on an ad hoc basis, causing concerns in consistency and application.

One of the respondents to this question fittingly mentioned the need to respect the rights of third parties: “almost always and whenever possible...sometimes a CC license cannot be applied where the document in question contains third party copyright material.” As the results of the authors’ survey prove, there is considerable worldwide awareness and attention to CC licenses, and yet there continues to be a divide between claims that CC licenses are easy to use and practical compared to notions that the provision of training materials will create greater awareness.

Question #6: Besides Creative Commons licenses, does your repository use any other freely available licenses?

The majority of respondents (70%) indicated that CC licenses were exclusively used within their institutions. However, for those organizations that perused other freely available licenses, the range of possibilities was vast, and included General Public Licenses (GNU/GPL, AGPL/Free Documentation License), Open Database Licenses (ODbL), Public Domain Mark, UK Open Government License, Free ART License; Non-Exclusive Distribution License and a Metadata Open License.

Question #7: Please share your experiences using Creative Commons Licenses

The final question on the survey was qualitative in nature, open-ended to allow free reign and personal comments for understanding what CC licenses meant to readers. More than half of the respondents (25) provided thought-provoking replies. Some institutions are currently on the cusp of initiating a repository, others have had repositories in place for a number of years, and some continue to be wary of the purpose of CC licenses, expressing fears that they do not wish for others to modify any aspects of their works. Nevertheless, the majority of voiced opinions supported the CC movement, which the authors of this paper view as a positive trend towards open access publishing in the grey

literature realm. Perhaps then it is fitting to conclude with the comments of one user and his/her experience with DSpace, a common institutional repository platform:

“In general, authors/submitters do not pay much attention to the Creative Commons license screen in our DSpace workflow and simply by-pass reading the description. We have had some instances where authors submit papers that have contradictory copyright statements on their title page and we have to contact them individually to explain the terms of the CC license and to request that the statement be removed or changed to reflect the terms to which they agreed in the default license. To date, no author has objected to the terms of the CC license. We make a point of emphasizing the importance of articulating re-use terms. Some awareness among faculty and students has been aided by the advocacy and education practices of our Copyright unit. However, there is some discussion that our default license is too conservative, particularly for the purposes of re-using the data, and that we will need to create more policies, documentation, and outreach around recommended CC licenses for different types of content. We considered it a great victory to be able to incorporate the CC license as a default in our repository license and I don't think it likely that we will be able to generate buy-in for a more open default license at this time. My institution has an open access statement but no mandate.”

Conclusion

“Previously the domain of a few champions and committed individuals, but usage is on the increase”. This comment from a survey respondent fully captures the current state of using Creative Commons licenses, where usage of such licenses in digital repositories remains high despite political underpinnings. Open access statements with no accompanying mandate are problematic, and legal aspects of CC license usage, coupled with poor knowledge of their existence and correct usage is one of the primary reasons why 84% of repositories surveyed refrain from using CC licenses on a regular basis. An environmental scan of the literature available on CC licenses and their use in repositories mirrors the sentiments of the gatekeepers who replied to the authors' survey questions; experiences have been either positive or cautious, but no comments or case studies were outright negative. This fact supports efforts to spread awareness of CC licenses not only to the grey literature community, but to all researchers worldwide. The authors of this paper thus recommend CC Licenses as a standard for publishing grey literature material. Reflecting back on the types of CC Licenses in use today, and in accordance with results from the survey of institutional repositories, CC BY Attribution is most widely

used, and due to its characteristics, likely most suitable. This allows for the widest possible dissemination including commercial use which the grey literature community should not hold back from.

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